The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENTS NOS. 1230 AND 1281, AS MODIFIED

Mr. MCCAIN. Mr. President, I ask unanimous consent that the pending McCain amendments Nos. 1230 and 1281 be modified with the changes at the desk.

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

The amendments, as modified, are as follows:

AMENDMENT NO. 1230, AS MODIFIED

On page 220, strike line 13 and all that follows through page 221, line 6, and insert the following:

''(c) ANNUAL ADJUSTMENT IN ENROLLMENT FEE.—(1) Whenever after September 30, 2012, and before October 1, 2013, the Secretary of Defense increases the retired pay of members and former members of the armed forces pursuant to section 1401a of this title, the Secretary shall increase the amount of the fee payable for enrollment in TRICARE Prime by an amount equal to the percentage of such fee payable on the day before the date of the increase of such fee that is equal to the percentage increase in such retired pay. In determining the amount of the increase in such retired pay for purposes of this subparagraph, the Secretary shall use the amount computed pursuant to section 1401a(b)(2) of this title.

''(2) Effective as of October 1, 2013, the Secretary shall increase the amount of the fee payable for enrollment in TRICARE Prime on an annual basis by a percentage equal to the percentage of the most recent annual increase in the National Health Expenditures per capita, as published by the Secretary of Health and Human Services.

''(3) Any increase under this subsection in the fee payable for enrollment shall be effective as of January 1 following the date on which such increase is made.

''(4) The Secretary shall publish in the Federal Register the amount of the fee payable for enrollment in TRICARE Prime whenever increased pursuant to this subsection.''.

(b) CLARIFICATION OF APPLICATION FOR 2013.—For purposes of determining the enrollment fees for TRICARE Prime for 2013 under subsection (c)(1) of section 1097a of title 10, United States Code (as added by subsection (a)), the amount of the enrollment fee in effect during 2012 shall be deemed to be the following:

(1) $260 for individual enrollment.

(2) $520 for family enrollment.

AMENDMENT NO. 1281, AS MODIFIED

At the end of subtitle C of title XII, add the following:

SEC. 1243. DEFENSE COOPERATION WITH REPUBLIC OF GEORGIA.

(a) PLAN FOR NORMALIZATION.—Not later than 90 days after the date of the enactment of this Act, the President shall develop and submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a plan for the normalization of United States defense cooperation with the Republic of Georgia, including the sale of defensive arms.

(b) OBJECTIVES.—The plan required under subsection (a) shall address the following objectives:

(1) To establish a normalized defense cooperation relationship between the United States and the Republic of Georgia, taking into consideration the progress of the Government of the Republic of Georgia on democratic and economic reforms and the capacity of the Georgian armed forces.

(2) To support the Government of the Republic of Georgia in providing for the defense of its government, people, and sovereign territory, consistent with the continuing commitment of the Government of the Republic of Georgia to its nonuse-of-force pledge and consistent with Article 51 of the Charter of the United Nations.

(3) To provide for the sale by the United States of defense articles and services in support of the efforts of the Government of the Republic of Georgia to provide for its own self-defense consistent with paragraphs (1) and (2).

(4) To continue to enhance the ability of the Government of the Republic of Georgia to participate in coalition operations and meet NATO partnership goals.

(5) To encourage NATO member and candidate countries to restore and enhance their sales of defensive articles and services to the Republic of Georgia as part of a broader NATO effort to deepen its defense relationship and cooperation with the Republic of Georgia.

(6) To ensure maximum transparency in the United States-Georgia defense relationship.

(c) INCLUDED INFORMATION.—The plan required under subsection (a) shall include the following information:

(1) A needs-based assessment, or an update to an existing needs-based assessment, of the defense requirements of the Republic of Georgia, which shall be prepared by the Department of Defense.

(2) A description of each of the requests by the Government of the Republic of Georgia for purchase of defense articles and services during the two-year period ending on the date of the report.

(3) A summary of the defense needs asserted by the Government of the Republic of Georgia as justification for its requests for defensive arms purchases.

(4) A description of the action taken on any defensive arms sale request by the Government of the Republic of Georgia and an explanation for such action.

(d) FORM.—The plan required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012—Continued

The PRESIDING OFFICER. In my capacity as a Senator from Virginia, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. 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. LEVIN. I ask unanimous consent there be 2 minutes of debate, equally divided, prior to a vote in relation to the Udall of Colorado amendment No. 1107; that upon the use or yielding back of time, the Senate proceed to vote in relation to the amendment, with no amendments in order prior to the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Colorado.

AMENDMENT NO. 1107

Mr. UDALL of Colorado. Mr. President, this amendment strikes controversial detainee provisions that have been inserted in the National Defense Authorization Act. It would require that the Defense intelligence and law enforcement agencies report to Congress with recommendations for any additional authorities they need in order to detain and prosecute terrorists. The amendment would then ask for hearings to be held so we can fully understand the opposition to these provisions by our national security experts—bipartisan opposition, I might add—and hopefully avoid a veto of the Defense authorization bill.

In short, we are ignoring the advice and the input of the Director of the FBI, the Director of our intelligence community, the Attorney General of the United States, the Secretary of Defense, and the White House, who are all saying there are significant concerns with these provisions; that we ought to move slowly.

We have been successful in prosecuting over 300 terrorists through our civil justice system. Let's not fix what isn't broken until we fully understand the ramifications.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I yield 30 seconds to Senator GRAHAM.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, section 1031 is a congressional statement of authority of already existing law. It reaffirms the fact this body believes al-Qaida and affiliated groups are a military threat to the United States and they can be held under the law of war indefinitely to make sure we find out what they are up to; and they can be questioned in a humane manner consistent with the law of war.

Section 1032 says if you are captured on the homeland, you will be held in military custody so we can gather intelligence. That provision can be waived if it interferes with the investigation.

These are needed changes. These are changes that reaffirm what is already in law.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Michigan.

Mr. LEVIN. Mr. President, the Supreme Court has recently ruled—this is the Supreme Court talking:

There is no bar to this Nation's holding one of its own citizens as an enemy combatant. A citizen, no less than an alien, can be

part of the supporting forces hostile to the United States, and such a citizen, if released, would pose the same threat of returning to the front during the ongoing conflict.

That is the Supreme Court's statement. We can and must deal with an al-Qaida threat. We can do it properly. The administration helped to draft almost all of this bill. The provisions which would be struck——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEVIN. Are provisions which even the administration has helped to draft. So I would hope we would deal with the al-Qaida threat in an appropriate way, in a bipartisan way. The committee voted overwhelmingly for this language.

I yield the remainder of my time.

Mr. MCCAIN. I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. How much time do I have remaining?

The PRESIDING OFFICER. Three seconds.

Mr. UDALL of Colorado. The Director of the FBI, the Secretary of Defense, the Attorney General, and the Director of Intelligence have all said let's go slow.

Pass the Udall amendment.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment.

Is there a sufficient second? There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

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

The result was announced—yeas 38, nays 60, as follows:

[Rollcall Vote No. 210 Leg.]

YEAS—38

Akaka	Franken	Nelson (FL)
Baucus	Gillibrand	Paul
Bennet	Harkin	Reid
Bingaman	Johnson (SD)	Rockefeller
Blumenthal	Kerry	Sanders
Boxer	Kirk	Schumer
Brown (OH)	Klobuchar	Tester
Cantwell	Lautenberg	Udall (CO)
Cardin	Leahy	Udall (NM)
Carper	Menendez	Warner
Coons	Merkley	Webb
Durbin	Mikulski	Wyden
Feinstein	Murray	

NAYS—60

Alexander	Conrad	Inhofe
Ayotte	Corker	Inouye
Barrasso	Cornyn	Isakson
Blunt	Crapo	Johanns
Boozman	DeMint	Johnson (WI)
Brown (MA)	Enzi	Kohl
Burr	Graham	Kyl
Casey	Grassley	Landrieu
Chambliss	Hagan	Lee
Coats	Hatch	Levin
Coburn	Heller	Lieberman
Cochran	Hoeven	Lugar
Collins	Hutchison	Manchin
McCain	Reed	Snowe
McCaskill	Risch	Stabenow
McConnell	Roberts	Thune
Moran	Rubio	Toomey
Nelson (NE)	Sessions	Vitter
Portman	Shaheen	Whitehouse
Pryor	Shelby	Wicker

NOT VOTING—2

Begich	Murkowski

The amendment (No. 1107) was rejected.

CHANGE OF VOTE

Mr. MENENDEZ. Mr. President, on rollcall vote 210, I voted ''nay.'' It was my intention to vote ''yea.'' Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, if I could have Senator MCCAIN's attention as well, what we are trying to do next is to move to two amendments, if we can. Both are next on the pending list. One is the Paul amendment No. 1064, repeal the authorization for use of military force against Iraq. The second one is not directly after his but follows after two Feinstein amendments. Senator FEINSTEIN told me she could not be here early this afternoon. I told her if hers could be made part of a unanimous consent agreement, that could come later because this afternoon we have other things we can do. So the second amendment on this list is another nongermane amendment by Senator LANDRIEU, No. 1115, relative to small business research grants.

What we are trying to do is work out a unanimous consent agreement. There will be 60-vote thresholds on those two amendments. Neither one of them, I believe, is germane. As part of that agreement, we would also next move to approximately 40 cleared amendments which we would then ask be passed as cleared. That would all be part of a unanimous consent agreement we are currently drafting.

So I want to alert our colleagues——

Mr. MCCAIN. For the benefit of our colleagues, could I add also the agreement of a half hour time limit on the Paul amendment? He would agree to that. I am sure Senator LANDRIEU would agree to a short time agreement on her amendment.

Mr. LEVIN. I am sure she told me that would be OK. When we prepare our unanimous consent agreement, we will doublecheck that.

So that is where we stand. We hope in the next few minutes to be able to bring to the body a unanimous consent agreement. In the meantime, unless there is someone else who seeks recognition, I would note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. 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. COBURN. I have cleared with Senator LEVIN to be able to speak about a topic but not offer an amendment. I understand we are working on a unanimous consent agreement. I do have an amendment that at the appropriate time hopefully will be able to be brought up, but I wish to discuss it now. I think it is a way for us to save $1.1 billion over the next 5 years in the Defense Department, give children of on-base military schools a better education, help the local school districts through Impact Aid by $12,000 per student per year, and actually do what we are intending to do in terms of education.

We have 64 schools right now on 18 military bases within the United States. There are 26,000 students taught by 2,300 teachers. That is 1 teacher for every 11 students. The average cost per student per year is $51,000 in a military school—$51,000. That is 250 percent higher than the highest cost district anywhere in the United States—2½ times.

This amendment says let's use local schools, let's help local schools through these military bases, and let's give an exemption if we need to, if it is not available. If we were to do that, three positive things would happen. The first one is probably a better education. According to the teachers, conditions are so bad that some of the educators at base schools envy the civilian public schools off base, which admittedly have their own challenges. ''Some of the new schools in town make our schools look like a prison,'' said David Primer, who uses a trailer as a classroom to teach students German at Marine Corps headquarters in Quantico, VA. In other words, what they are looking at, what they are doing, and for the cost of it, the value can be higher. That is No. 1.

Second, it will help the local school districts because they will not only get Impact Aid, but they will be given up to $12,000 per year per student off a military base.

Then, finally, third, it will, over the next 5 years, save $220 million a year out of the military's budget that they would not be spending. That is after the $12,000 and the Impact Aid. So it is a way to save $1.1 billion and give a better education with better facilities to the children of our military service bases, these 26,000 students at 16 military installations. It is a win-win-win.

My hope is we will be able to call up this amendment and make it pending in the future.

I thank the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. 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. INHOFE. Mr. President, I had a number of amendments that I was just going to discuss, unless the chairman is planning to speak.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. It is fine, if my colleague wishes to discuss amendments without attempting to offer any amendments.

Mr. INHOFE. No, that is not my intention. I just want the chance to talk about them.

Mr. LEVIN. I appreciate that. If I could ask my friend about how long he needs?

Mr. INHOFE. Until the chairman is ready to speak.

Mr. LEVIN. That sounds good.

Mr. INHOFE. Mr. President, there are a number of amendments I think will probably not come up, but they should. We talked about this some time ago.

The Federal Aviation Administration has come up with a change for their SUB-S nonscheduled carriers that is going to make them comply with certain of the wage and hour—the crew rest requirements. Here is the problem we have. About 95 percent of the passengers who go into—this is our troops—Afghanistan today are carried by nonscheduled airlines as opposed to military and about 40 percent of the cargo that is going in.

Now, the problem we have is, with the 15-hour restriction on crew rest, they are unable to bring them in, leave them there, and then go back to their point of origin—someplace in Germany—without exceeding that 15-hour limitation. The only choice they would have is to leave them in Afghanistan, which they cannot do because that is a war zone.

So I want to have a way of working this out. We want to pursue this because the carriers understand what the problem is. These are the nonscheduled carriers. So it is something I think is very significant, and we need to be addressing it.

Another issue is, JIEDDO is the group that is the Joint Improvised Explosive Device Defeat Organization. They have done great work in their technology in stopping the various technologies over there, the IEDs that have been killing and causing damage to our troops and to our allies. The problem we have is it is set up just for Iraq and Afghanistan. When everything is through in Iraq and Afghanistan, that might put them in a position where they would cease to exist, and yet the technology and what they are doing right now is useful in the United States even though it is not designed by the legislation to do that. I believe this is something that can be corrected.

Another area that needs to be addressed—and I have some ideas, and this is one I would like to get in the queue; it is not pending at this time, so there is a little bit of a problem there, but it might be something that could be addressed in conference—is the military bases should be able to benefit from the production of domestic energy and resources on those bases.

In the case of the McAlester depot, they could horizontally drill and come out with some pretty good royalties that would otherwise go to the general fund or go to the State of Oklahoma. It is kind of divided in that way. Well, the problem is there is a cost that is incurred by the military operation. We need to have something that is going to allow them to receive the benefits of the production that takes place under the military installations through horizontal drilling.

I think everyone is for doing this. But the problem is, it could be scored in that if we took all of the existing production, then that would be money that would not otherwise go to our general fund. So what I would propose is to have this in the form of an amendment, and then change it to say: Any operation from this point forward—that money, those royalties, could go back to the military base because what we all agree on is we do not want our bases to have to foot the bill for these things that are taking place.

I have an amendment, No. 1101, that would stop the transfer of the MC–12W ISR aircraft from the Air Force to the Army. I think it is something that is pretty significant. We are talking about intelligence and reconnaissance. The MC–12W is a King Air or a C–12. Right now it is under the jurisdiction of the Air Force, and this bill would change it from the Air Force to the Army. Well, neither the Air Force nor the Army wants to make that change, and there ought to be a way to support that.

There are several other amendments that will be coming forward that will be offered. One I feel very strongly about has to do with the sale of the F–16C/D models to Taiwan.

Then, lastly—and I feel very strongly about this—back in 2007, we changed the commands to create AFRICOM. AFRICOM, prior to this time, was part of three commands: Central Command, Pacific Command, and European Command. Well, it is so significant in terms of national security, in terms of our economy and the activity that is going on there right now.

For example, ever since 9/11, we have been working with the Africans to help develop in Africa our programs—our 1206 programs, our train-and-equip programs. More recently, we have been involved in the LRA issue in poor countries in Africa.

Well, there is an effort now—almost any Member I guess would feel the same way—to take that command that is now in Stuttgart, Germany, and put it in Texas or Florida or someplace in the United States. I think that would be something that would inure to the benefit maybe of a Member, a Senator, but, on the other hand, it creates certain problems.

When the African Command came into effect—and I think that is one of the few issues that I, probably, am more familiar with than most other Members—the obvious place would have been to have that command located in Africa itself. My choice at that time was Ethiopia. I think there is a lot of jurisdiction for that. But they said because of the political problem—if we go back historically in Africa, and we look at the colonialism, there is this thing embedded back in the minds of people in Africa, thinking that having a command, a U.S. command located in Africa, it might revert back to some of the colonial days. That is the concern people had.

So, anyway, I thought it would have been better to have it in Africa itself. But because of this—and, by the way, I have talked to many of the Presidents of countries over there—President Kikwete in Tanzania and President Kagame in Rwanda and President Kabila in the Congo, and several of the others—and they say: Yes, you are right. It would be better to have that command located somewhere in Africa, but we have the political problem with the people who would think that is a move back toward colonialism. So it is a complicated problem.

However, I do believe all of the generals pretty much believe that AFRICOM should remain where it is. At least Stuttgart is in the same time zone. It is easier to transport people and equipment back and forth. So I would support defeating any of the amendments that would change that situation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

FIRST YEAR IN THE SENATE

Mr. KIRK. Mr. President, last week we celebrated Thanksgiving, the time of year when we look back and we give thanks for our blessings. We are all grateful for our family, our men and women in uniform, and those who also

defend our Nation in civilian life. I am particularly thankful this year, because 1 year ago today I had the honor of my life to be sworn in as the newest junior Senator for the State of Illinois to complete Senator Obama's term.

And what a year it has been. Coming from the House of Representatives, I had to adjust to the measured place and pace of the Senate. But while Americans may have a dim view of what we do here, I remain an optimist. Americans have always faced tough challenges but then rose to the occasion more successfully than any other people in history.

Although I believe there is much more to do to reduce debt, repeal burdensome regulations, and encourage job creation, I want to take a few minutes to lay out what my team has accomplished for the State of Illinois and the Nation in 1 year.

In my first 30 days in office we moved three times, we hired a staff, and then voted to prevent the largest tax increase in history, while Congress extended tax relief for millions of Americans in that legislation.

We also worked to block the transfer of al-Qaida terrorists from Guantanamo Bay to northwestern Illinois. Since then, Congress enacted the Budget Control Act, mandating about $2 trillion in reduced Federal borrowing over the next 10 years, which in my view is only a first step in addressing Washington's out-of-control spending. No one here would say that we have come near to solving the problem, but I am heartened by the bipartisan and bicameral support of the Gang of Six proposal, and now with the probable support of 45 Republican and Democratic Senators, I hope we will soon go big with their recommendations to find $4 trillion in savings.

The Congress approved three free-trade agreements to boost U.S. exports to South Korea, to Colombia, and Panama, as both President Obama and Speaker BOEHNER wanted. The action will open markets for Illinois farmers and boost exports for companies and employers such as John Deere in Moline, Caterpillar in Peoria, ADM in Decatur, and Navistar in suburban Warrenville.

Congress repealed the onerous requirement mandated by the health care law that required small businesses to document all payments over a few hundred dollars. This absurd 1099 rule was the first part of the health care law to be repealed, and it will soon be followed by the misnamed CLASS Act that even the Obama administration appears to have canceled by executive action.

Additionally, Congress reformed our patent system by moving to a first-to-file, instead of a first-to-invent, system. This signals to inventors that they should quickly file their invention and allows us to innovate without endless and expensive litigation. Along with that effort, the Kirk amendment authorizing the patent office to have a small business fast lane became law.

My office published a Great Lakes report card that gave our largest body of fresh water a C grade to draw attention to invasive species, to poor water quality, and beach closures, demonstrating the need for our legislation by myself and Senator DURBIN to ban sewage dumping in the Great Lakes.

To create more construction jobs in Illinois, I introduced the Lincoln Legacy Infrastructure Development Act which would unlock more than $100 billion in new revenue for roads, rail, transit, and airports, through more infrastructure funded by public-private partnerships. I have since met with Secretary LaHood, Chief of Staff Daley, and House Chairman MICA as a way to advance this legislation to restart our economy.

We have also had an active year in protecting our allies and America's interests overseas. On the floor today, we may consider the Menendez-Kirk amendment pending to the Defense Authorization Act which would impose crippling sanctions on the Central Bank of Iran. This is a result of a collaborative effort involving 92 Senators who signed the Schumer-Kirk letter calling for the United States to collapse Iran's terror-sponsoring bank.

In May, Senator GILLIBRAND and I introduced the Iran Human Rights and Democracy Promotion Act which establishes a special representative on human rights and democracy in Iran, imposing sanctions on companies that sell or service products that enable the Iranian regime to oppress its people. It would require a comprehensive strategy to promote Internet freedom in Iran and reauthorize the Iran Freedom Support Act. The bill is now part of the Iran, North Korea, and Syria Sanctions Consolidation Act.

In February, the Senate passed a Kirk resolution condemning human rights abuses in Iran, and we founded the Iranian Dissident Awareness Program to make dissidents such as Hossein Ronaghi-Maleki, a blogger and human rights activist, and Nasrin Sotoudeh, a lawyer and human rights activist, household names now in America.

We also fought for strict assurances that data collected from our new X-band radar in Turkey would be shared with our allies in Israel.

In total, my office introduced 18 bills and resolutions and 11 amendments. We cosponsored 132 pieces of legislation.

I am a member of four committees that have held more than 130 hearings and markups. This year we worked on the reform of No Child Left Behind, and those reforms passed the committee with bipartisan support. We also worked on legislation regarding flood insurance funding bills under the Appropriations Committee.

Most Americans who watch cable news think all Democrats and all Republicans may hate each other. While Congress has grown more partisan, I am particularly proud of the bipartisan partnerships we have fostered in such a short time. I have continued a long-standing battle against the corrupt sugar program by working with Senator SHAHEEN of New Hampshire on S. 25 to Stop Unfair Giveaways and Restrictions Act, the SUGAR Act of 2011, which would eliminate sugar price supports and increased costs for consumers that destroy American manufacturing jobs.

Senator WYDEN and I introduced legislation targeting more than $60 billion in Medicare fraud every year by issuing new identify theft-proof medical ID cards, offering the same ID card protection our troops have for our seniors.

I also joined Senator WYDEN in his efforts to ensure your constitutional rights are protected with regard to your GPS data and cell phone and other location information.

Senator CASEY and I worked together on antibullying legislation to keep our kids safe at school.

I joined Senator WHITEHOUSE in an effort to criminalize the pointing of lasers against civil aircraft to keep that industry safe.

In my capacity as the top Republican member of the Military Construction and Veterans Affairs Appropriations Subcommittee, we worked across the aisle with Chairman TIM JOHNSON to pass the first stand-alone appropriations bill out of the Senate since 2009. Since then, we have broken the logjam on appropriations bills, and I hope to quickly complete that legislation.

I especially wish to recognize one of my first friends in the Senate, Senator JOE MANCHIN of West Virginia, for our collaborative effort on many issues, the latest being a bipartisan resolution calling for the Congress to go big on deficit reduction. When we first came to the Senate together, we saw that there were few opportunities for Republicans and Democrats to interact outside the Senate floor. That is why we began to have an open lunch together each Thursday instead of the regularly scheduled partisan lunches, to discuss ways to bridge the political divide in the Senate and in Washington.

I also wish to highlight the partnership I have developed with my senior Senator from the State of Illinois. While we may not see eye to eye on many issues, Senator DURBIN and I have worked closely on a whole host of issues for Illinois. Following in the footsteps of the late Senator Paul Simon, Senator DURBIN and I have now held more than 25 joint constituent coffees here in Washington. It is like a townhall meeting, where we talk with Illinois families about what is going on at home and in the Congress.

In March, Senator DURBIN and I worked with Secretary of Transportation Ray Lahood to help the city of Chicago, American, and United Airlines come to an agreement to keep the O'Hare Modernization Program moving forward. This is the single greatest job creation program in northern Illinois, and the agreement that we helped foster keeps thousands at work at O'Hare.

We worked closely to bring high-speed rail to the State of Illinois, and together introduced legislation to expand charter schools, to improve access to EpiPens at schools for children with severe allergies, to ensure military families in North Chicago continue to receive their Federal education assistance.

We fought to open a new Federal prison in Thompson, IL, but without al-Qaida detainees, to create jobs in northwestern Illinois, and address also flooding issues in southern Illinois and levee rehabilitation in the metro east area. We have also successfully confirmed four new judges for central and northern Illinois, and have an additional two nominations, one Democrat, one Republican, pending.

But legislation is not all we do here. In my opinion, one of the most important things a Member of Congress can focus on is constituent service. We formed advisory boards for African Americans, Latinos, small business, agriculture, health care, education, and students. Since I first came to the House of Representatives in 2001, I have worked diligently as an advocate for Illinois before the Federal Government. In 1 year now, my staff has held more than 3,440 meetings with constituents and other officials and dignitaries. To be as accessible as possible, I have visited 50 out of Illinois's 102 counties and held 20 townhall meetings throughout the State.

This month, my successor in the House of Representatives, Congressman BOB DOLD, and I held the first ever live Facebook townhall meeting and answered questions we received via the social networking site and Twitter.

My office has arranged 340 Capitol and White House tours for approximately 2,800 constituents. We received more than 85,000 phone calls and responded to 66,000 letters and e-mails. We have helped more than 4,000 constituents with casework details before the government, and written more than 200 letters in support of Illinois towns, counties, and organizations for Federal grants. I have convened eight constituent advisory boards and met a total of 18 times. My office helped process 122 passports and assisted 750 veterans and their concerns before the VA.

We have accomplished quite a bit this year. I remain optimistic about the long-term future of our Nation. We can outinnovate and outproduce any nation on the planet if we create an environment that supports full job creation. But there is still a lot of work to do. The Illinois unemployment rate stands at over 10 percent. It seems each day we hear of a new company thinking of leaving our State.

The health care law threatens a further drag on our economy. We face a global sovereign debt crisis in Europe and fears of future credit devaluations for the United States.

U.S. troops continue to pursue enemies of freedom in Afghanistan and Iraq, and Iran continues its effort to develop nuclear weapons. Protests are accelerating in Egypt, and civil unrest in Syria. Piracy remains a concern off the coast of Somalia.

As I have for the past year, I will spend the next 5 years making sure that America remains the best place on Earth for any individual to rise to their full potential, a place where your rights are protected against the government, whose main mission should be to defend us, and to foster higher incomes for our families.

In these battles, I will advance the interests of the State of Illinois as the job engine at the center of the Nation's economy, protector of the Lake Michigan and Mississippi ecosystems, and the special place that sent Abraham Lincoln and hopefully future Lincolns for national leadership when America needs it most.

Of course, my heart and soul will always be with the troops—their care, their mission, and their spirit of defending a place that is the greatest force for human freedom and dignity ever designed.

I am truly grateful for the opportunity to serve my Nation twice—in the Navy and in the Senate. I thank the people of Illinois for this first year in the Senate and for the even bigger things we will do together in the years to come.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FRANKEN. 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. FRANKEN. Mr. President, I have filed two amendments that I will offer at some time, and I will talk about them now.

I am strongly opposed to the detention provisions in the Defense bill before us. I am disappointed that Senator UDALL's amendment did not pass. Taken together, sections 1031 and 1032 would fundamentally alter how we investigate, arrest, and detain individuals suspected of terrorism.

Before I get into the details of why I oppose these detainee provisions, I think it is important to recognize that September 11 irrevocably and unalterably changed our lives. I was in Minnesota on that terrible day. A number of Minnesotans died in the towers, in the air, and at the Pentagon. In New York, in the months following the attacks, I attended the funerals of brave firefighters and law enforcement officers who sacrificed their lives to help rescue folks from the towers. I cannot shake those images from my mind, and I am guessing, like many of you, I will never be able to erase the horrors of September 11 from my mind.

September 11 reminded us that we are vulnerable and that we are fighting an unusual enemy. It forced us to reassess our approach to counterterrorism, and it forced us to redouble our efforts to track down the people who aim to do us harm. But it is exactly in these difficult moments, in these periods of war when our country is under attack, that we must be doubly vigilant about projecting what makes us Americans.

The Founders who drafted our Constitution and Bill of Rights were careful to draft a Constitution of limited powers—one that would protect Americans' freedom and liberty at all times, both in war and in peace.

Today, as we contemplate fundamentally altering the criminal justice system our Founders developed in order to create a military detention system—a system that would permit the indefinite detention of U.S. citizens and lawful residents of the United States for acts committed in the United States—I think it is important to pause and remember some of the mistakes this country has made when we have been fearful of enemy attack.

Most notably, we made a grave and indefensible mistake during World War II when President Roosevelt ordered the incarceration of more than 110,000 people of Japanese origin, as well as approximately 11,000 German Americans and 3,000 Italian Americans. There is a memorial right across the street from the Capitol that should remind us all of this terrible mistake.

In 1971, President Richard Nixon signed into law the Nondetention Act to make sure the U.S. Government would never again subject any Americans to the unnecessary and unjustifiable imprisonment that so many Japanese Americans, German Americans, and Italian Americans had to endure.

It wasn't until 1988—46 years after the internment—that President Reagan signed the Civil Liberties Act, that the government formally acknowledged and apologized for the grave injustice that was done to citizens and permanent residents of Japanese ancestry.

These were dark periods in American history, and it is easy standing here today to think that is all behind us, that it is a distant memory. But I fear that the detention provisions in this bill forget the lessons we learned from the mistakes we made when we interned thousands of innocent Japanese, Germans, and Italians or when we destroyed the lives of supposed Communist sympathizers with nary a shred of evidence of guilt.

In the weeks following September 11, the Justice Department made extraordinary use of its powers to arrest and detain individuals. We arrested hundreds of people for alleged immigration violations and dozens more under a material witness statute. None of these individuals were charged with a crime. All of this happened without the military detention scheme envisioned in this bill. This was also a mistake and one that should not be repeated.

But if we pass the Defense authorization bill with section 1031, Congress

will, according to the arguments that were made on the floor last week, for the first time in 60 years, authorize the indefinite detention of U.S. citizens without charge or trial. This would be the first time Congress has deviated from President Nixon's Nondetention Act. What we are talking about is that Americans could be subjected to life imprisonment—think about that for just a moment—life imprisonment without ever being charged, tried, or convicted of a crime, without ever having an opportunity to prove your innocence to a judge and a jury of your peers, and without the government ever having to prove your guilt beyond a reasonable doubt. I believe that denigrates the very foundation of this country. It denigrates the Bill of Rights and what our Founders intended when they created a civilian, nonmilitary justice system for trying and punishing people for crimes committed on U.S. soil. Our Founders were fearful of the military, and they purposely created a system of checks and balances to ensure that we did not become a country under military rule. If this bill passes, the Supreme Court should find these detention provisions unconstitutional.

Let's put that aside for now and focus on what we are currently doing right to fight terrorism. We are doing a heck of a lot of great things when it comes to national security. I think we actually need to remember that, and we need to remember that we are winning the fight against terrorists without trampling on our constitutional rights.

Just last May, under the tremendous leadership of President Obama and Secretary Panetta, head of the CIA, we hunted down and killed Osama bin Laden. A few days ago, the Washington Post reported that the al-Qaida core has contracted and weakened since then, and its leadership ranks have been reduced to two members. To be sure, that does not mean that al-Qaida is no longer a threat, particularly coming from groups outside the core, but it is a remarkable achievement. Our current counterterrorism strategy is not broken. Indeed, just the opposite is true. We are winning the war against al-Qaida. There is no indication—none—that we need to fundamentally alter our approach to locating terrorists here or overseas.

Under Director Mueller's leadership, the FBI has turned itself inside out, and over the last 10 years, since September 11, it has become an intelligence-gathering counterterrorism machine. I can't say I have always agreed with 100 percent of the FBI's tactics, and there are times when I worry they may be overstepping, but make no mistake, if our goal is hunting down the bad guys, the FBI knows what they are doing. There is no reason to think we need to change course and create an entirely new system that would completely supplant the resources and expertise of the FBI.

For those who would argue that we need to shift these people out of our civilian criminal justice system and away from article III courts and into a military system, I have to ask why. Where is the sign that we have a problem that needs fixing? There is no reason to think we need to create an entirely different framework for a problem we have been dealing with for centuries. This enemy is not so different that we need to upend our criminal justice system.

I think this is a solution in search of a problem. There is no need to go down this path. We should be focused on doing what is best for this Nation and what is best for protecting Americans. We should be working together on this, not coming up with additional ways to divide and polarize this country. That is why, when the Secretary of Defense, the Director of National Intelligence, and the Director of the FBI express serious concerns about these provisions and when the President's top counterterrorism adviser, John Brennan, complains that these provisions will make it even harder for them to locate and detain terrorists in the United States and overseas, we should probably listen to them.

Section 1031 runs the risk of authorizing the indefinite detention without trial of Americans. Section 1032 is unnecessary and complicates our counterterrorism policy. They are bad policy.

In short, these provisions should not be passed. They are not well-considered terrorism policy, and they would authorize poorly understood and deeply troubling policies. That is why I have put forward amendments that would strike each of these two sections. That is why I cosponsored Senator MARK UDALL's amendment, the cousin of our Presiding Officer. That is why I cosponsored his amendment, and I would be happy to cosponsor amendments from our Presiding Officer as well, but that is why I cosponsored Senator MARK UDALL's amendment that would have sent these matters back to the administration and the relevant committees of Congress for the full consideration, discussion, and debate they deserve. Our national security and our freedom require nothing less.

I thank the Chair, 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.

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

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

AMENDMENTS NOS. 1125 AND 1126

Mrs. FEINSTEIN. Mr. President, if I understand the procedure, it is now appropriate for me to speak on my pending amendments. I will not offer my two amendments for a vote now, but I would like to take the opportunity to speak about them at this time. I trust that is in order.

The PRESIDING OFFICER. The Senator is recognized.

Mrs. FEINSTEIN. Mr. President, I rise to express my continued opposition to the detention provisions in the Defense authorization bill.

I was on the Intelligence Committee prior to 9/11, and I have watched the transition since that time. I have watched America—to use a phrase—get its act together, and I am proud of where this country stands at this time with the procedures, the interrogation techniques, the custody issues, and the prosecutions that have been successful in the last 10 years. In my judgment, this country is safer now than we were before 9/11.

Before the recess, I laid out my views on why the detainee provisions in the Armed Services bill were detrimental to national security because they reduce the President's flexibility to make decisions on how best to detain and potentially interrogate and prosecute suspected terrorists. Today, I would like to speak to the two amendments I have filed, and I will describe them in a moment.

Let me also reference two letters in opposition to the detention provisions in the underlying bill: one written to me from the Director of National Intelligence, James Clapper, and the second written yesterday to Chairman LEVIN from Bob Mueller, the Director of the FBI.

These letters are in addition to the Statement of Administrative Policy, which includes a veto threat to the detention provisions and the letter from the Secretary of Defense, Leon Panetta, both of which were inserted into the RECORD before the recess.

So I note that the provisions in the bill we are considering are opposed by the White House, by the Secretary of Defense, the Director of National Intelligence, and the Director of the FBI. These top national security officials are all concerned that the bill reduces the administration's flexibility to combat terrorism, both at home and abroad, and I would agree with that.

I will ask at the appropriate time for a vote on amendment No. 1125, which will limit mandatory military custody to terrorists captured outside the United States. This is a very simple amendment that only adds one word, ''abroad,'' to section 1032 of the underlying bill.

Currently, this bill creates a presumption that members or parts of al-Qaida or ''associated forces'' will be held in the military detention system, and I disagree with that approach. I believe the President should have the flexibility to hold captured terrorists in the military or the criminal justice systems, and the decision of which system to use should be made based on the individual facts and evidence of each case.

Putting aside that general view, I am very concerned that creating a presumption for military custody—which this bill does—and requiring a cumbersome waiver process will jeopardize counterterrorism cases and intelligence gathering. This concern is not

only mine, it has been raised by the White House, by Secretary Panetta, and very directly by Director Mueller in his letter.

So my amendment would clarify the situation and remove the confusion and delay that I believe this bill will cause. My amendment will make clear that under section 1032 of this bill the U.S. Armed Forces are only required to hold a suspected terrorist in military custody when that individual is captured abroad. All that amendment does is add that one word, ''abroad,'' to make clear that the military will not be roaming our streets looking for suspected terrorists. My amendment does not remove the President's ability to use the option of military detention or prosecution inside the United States.

My amendment makes clear that inside the United States there is no presumption for military custody. Inside the United States, a Customs agent or local law enforcement officer could follow his or her standard process and turn a suspected terrorist over to the FBI for handling without having to worry about whether a waiver may apply or whether it is required.

The FBI has changed. There are 56 field offices, there is a national security branch, and it is staffed with thousands of agents inside the United States. The FBI is well equipped to handle a terrorist inside the United States, but the Department of Defense is not. Listen to what Director Mueller wrote. He notes, and I quote:

> The legislation introduces a substantial element of uncertainty as to what procedures are to be followed at perhaps the most critical time in the development of an investigation. . . .

Now, I understand that the chairman and ranking member of the Armed Services Committee have included a waiver and have required that the administration issue procedures to lay out how the mandatory military custody provision will be carried out. But the administration is telling us, with a unanimous voice from all its senior counterterrorism officials, that this provision is harmful and unnecessary. But we say Congress knows better. I don't believe we do know better, and I think not to listen to those who are really responsible to carry out these missions in what is a very difficult field today, based on a careful assessment of national security, is a mistake.

The administration has threatened to veto this bill and said it ''strongly objects to the military custody provision of section 1032'' in its official Statement of Administration Policy because it would, and I quote, ''tie the hands of our intelligence and law enforcement professionals.'' So here are the experts saying: Don't do this, it will tie our hands; and here is the political branch saying: We know better.

If something had gone wrong, if there had been mistakes, if there hadn't been over 400 cases tried successfully in civilian Federal criminal courts in the last 10 years and 6 cases and a muffed history of military prosecution in these cases, I might agree. But the march is on here in Congress: militarize this thing from stem to stern. And I disagree with that. When something isn't broke, don't fix it.

Mr. President, there are rapid reaction teams part of the HIG—or High-Value Interrogation Group—who can deploy on a moment's notice, who can rapidly assess a suspect, who can carry out a proper and effective interrogation, and the executive branch then has an opportunity to decide whether the facts and the evidence really are best suited for a Federal criminal prosecution in Article III courts, or the facts and the evidence are really best suited for a military commission prosecution.

This flexibility is what we are taking away from the executive branch under the provisions in this bill. It was well practiced during the Bush Presidency, and it has been well practiced by the Obama Presidency. Virtually every national security professional connected to the handling of terrorists and the intelligence obtained from them says to change it would be a mistake. So I believe the amendment I am offering—limiting mandatory military custody to detainees outside the United States—is a major improvement to the underlying bill. It removes the uncertainty that will occur if military custody is required for detainees captured inside the United States.

Frankly, I would prefer that the provision—section 1032—be struck in its entirety, as I don't believe we should be creating a presumption of military custody over the law enforcement route. That is not what this country is about. There is the posse comitatus law on the books. The military isn't supposed be roaming the streets of the United States. But if there is going to be this type of provision, it should at least do no harm to our ability to detain, interrogate, and prosecute terrorists. So I ask for my colleagues' support on this amendment.

While I am on the Senate floor, I would like to speak briefly to the second amendment I have filed and on which I also seek a vote, since the Udall amendment has failed; that is, amendment No. 1126, which would prohibit U.S. citizens from being held in indefinite detention without trial or charge.

As Members know, section 1031 of the underlying bill updates and restates the authorization for the use of military force that was passed on September 18, 2001, 10 years ago, 1 week after the attacks of 9/11. The provision updates the authority to detain terrorists who seek to harm the United States, an authority that I believe is consistent with the laws of armed conflict. However, I strongly believe that the U.S. Government should not have the ability to lock away its citizens for years, and perhaps decades, without charging them and providing a heightened level of due process. We shouldn't pick up citizens and incarcerate them for 10 or 15 or 20 years or until hostilities end—and no one knows when they will end—without giving them due process of law.

So my amendment simply adds the following language to section 1031 of the underlying bill:

> The authority described in this section for the Armed Forces of the United States to detain a person does not include the authority to detain a citizen of the United States without trial until the end of hostilities.

It is hard for me to understand how any Member of this body wouldn't vote for this amendment because, without it, Congress is essentially authorizing the indefinite imprisonment of American citizens without charge or trial.

As I said on the Senate floor previously, 40 years ago Congress passed the Non-Detention Act of 1971 that expressed the will of Congress and the President that America would never repeat the Japanese-American internment experience—something that I witnessed as a child up close and personal—and would never subject any other American to indefinite detention without charge or trial. In the 40 years since President Richard Nixon signed the Non-Detention Act into law, Congress has never made an exception to it.

A key issue in this bill is that this is the Congress making an explicit exception that has never been made before by the Congress, and what we are saying is, it is OK to detain an American citizen without trial, ad infinitum. I don't think it is. I don't think that is what our Constitution is all about. Yet the provision in this bill would do just that.

I ask unanimous consent to have printed in the RECORD a column published yesterday in the San Jose Mercury News of California from Floyd Mori.

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

[From MercuryNews.com, Nov. 27, 2011]

S. FLOYD MORI: INTERNMENT SPECTER RAISES UGLY HEAD IN FORGETFUL U.S. SENATE

(By S. Floyd Mori)

The oldest generation of Japanese-Americans, those whose earliest memories were of their lives and families being upended by internment without charge or trial in concentration camps during World War II, at least take comfort in the hope that America is now committed to never inflicting that experience on any other group of Americans or immigrants. But our trust in that commitment is being shaken by a bill poised to go to the Senate floor that could once again authorize indefinite detention without charge of American citizens and others now living peacefully in our country.

We have reason to believe in the commitment of Americans to say never again to indefinite detention. In 1988, the Civil Liberties Act officially declared that the Japanese-American internment had been a ''grave injustice'' that had been ''carried out without adequate security reasons.'' In other words, the indefinite detention of Japanese-Americans during World War II was not only wrong, but unnecessary.

A bill on the Senate floor raises the question of whether the Senate has forgotten our history. S. 1253, the National Defense Authorization Act, has a provision in it, unfortunately drafted by Sens. Carl Levin, D–Mich., and John McCain, R–Ariz., that would let any U.S. president use the military to arrest and imprison without charge or trial anyone suspected of having any relationship with a terrorist organization. Although Sen. Dianne Feinstein, D–Calif., and more than a dozen of her colleagues are bravely calling for a halt to a damaging bill, they face significant opposition.

The troubling provision, Section 1031, would let the military lock up both Americans and noncitizens in the 50 states. There would be no charges, no trial, no proof beyond a reasonable doubt. All that would be required would be suspicion.

Although the details of the indefinite detentions of Japanese-Americans during World War II and the proposed indefinite detentions of terrorism suspects may differ, the principle remains the same: Indefinite detentions based on fear-driven and unlawfully substantiated national security grounds, where individuals are neither duly charged nor fairly tried, violate the essence of U.S. law and the most fundamental values upon which this country was built.

As the measures to indefinitely detain Japanese-Americans during World War II have been deemed a colossal wrong, the same should be true of modern indefinite detention of terrorism suspects. Our criminal justice system is more than equipped to ensure justice and security in terrorism cases, and we certainly should not design new systems to resurrect and codify tragic and illegitimate policies of the past.

As our history shows, acting on fear in these situations can lead to unnecessary and unfruitful sacrifices of the most basic of American values. In the 10 years since the 9/11 attacks, Congress has shown admirable restraint in not enacting indefinite detention without charge or trial legislation. Now with the president seeking to end the current wars, the Senate must avoid repeating the mistakes of the past and protect American values before they are compromised. We cannot let fear overshadow our commitment to our most basic American values.

The Senate can show that it has not forgotten the lessons of the Japanese-American internment. It should pass an amendment that has been offered by Sen. Mark Udall, D–Colo., that would remove Section 1031 from the act. This Senate should not stain that great body by bringing to the floor any detention provision that would surely be looked upon with shame and regret by future generations.

Mrs. FEINSTEIN. I know Mr. Mori well. He is the national executive director of the Japanese American Citizens League, which is the oldest and largest Asian-American civil rights organization in the United States. The Japanese American Citizens League—or JACL as we would say—has been an active voice on the wrongful internment of Japanese Americans during World War II, and I believe it is worth listening to what they have observed from that painful history.

The administration has threatened to veto this bill and said the following in its official Statement of Administration Policy:

After a decade of settled jurisprudence on detention authority, Congress must be careful not to open a whole series of legal questions that will distract from our efforts to protect the country.

Yet by allowing the military to detain U.S. citizens indefinitely, Congress would be opening a great number of serious legal questions, in my judgment.

This amendment would restore the language that was in an earlier version of this bill that would have established a similar ban on the indefinite detention of U.S. citizens. It is also consistent with the way we have conducted the war on terror over the past 10 years. In cases where the United States has detained American citizens, including John Walker Lindh and Jose Padilla, they have eventually been transitioned from indefinite detention to the criminal justice system, and both have been convicted and are serving long prison sentences. John Walker Lindh pleaded guilty to terrorism charges and was given a 20-year sentence, and Jose Padilla was convicted of terrorism conspiracy and sentenced to a 17-year prison sentence.

So I believe this amendment is consistent with past practice and with traditional U.S. values of due process. We are not a nation that locks up its citizens without charge, prosecution, and conviction. My amendment reflects that view, I believe in that view, and I hope this body does as well. So I urge its adoption.

Mr. President, in conclusion, I ask my colleagues' support on these two amendments because I believe they will improve the legislation.

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

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

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. 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. TESTER. Thank you, Mr. President. It is good to see the Senator in the chair.

I rise to speak on amendment No. 1145. I cannot call up this amendment at this point in time, but hopefully at some time during this debate we can deal with this issue of foreign base closures, which is what amendment No. 1145 does.

I have offered—along with my colleague from Texas, Senator HUTCHISON—to establish an overseas basing commission. We are joined on this amendment by Senators CONRAD, WYDEN, and SANDERS.

This commission would be charged with saving taxpayer money by identifying and reevaluating our overseas military base structure and investments. It is not a new discussion. This has been done before. In Washington, colleagues from both sides of the aisle have long advocated for issues similar to this one.

In Montana, Senator Mike Mansfield—a personal hero of mine and one of the truest statesmen of this body—advocated fiercely throughout his public service for a more commonsense approach to our overseas military commitment. Senator Mansfield's approach balanced our national security interests and decisions with decisions and investments that made sense fiscally. The time could not be more appropriate to renew this call. Given our budget outlook, we have a responsibility to exhaustively look for savings across our government. We need to be smart and we need to work together.

It makes a lot of sense to me that cutting overseas military construction projects that have minimal negative impacts on our national security and military readiness is the right idea. We know there is a significant higher cost associated with maintaining facilities and forces overseas, particularly in Europe, than here in the United States. We also know we need a more complete picture of the cost, the benefits, and the savings associated with overseas basing as we make tough budgetary decisions. Given our military's advanced capabilities, it is time for some responsible decisions about how to best secure our country while saving American taxpayers every penny we possibly can.

As Montana families examine their bottom line and as the country works to cut spending, it is past time to give our outdated military bases and installations a closer look. An overseas basing commission would independently address these issues firsthand and ensure that military construction spending and operational maintenance spending match our capabilities and our national security strategy.

As we move forward, I hope we will do so in the spirit of Senator Mansfield by working together and by making commonsense decisions that keep us both safe and spend our taxpayer dollars more wisely.

As I said when I opened these remarks, I think this is a no-brainer. We need to take a step back, look at the money we are spending on overseas bases, make sure we are getting the best bang for the buck and make sure it meets our national security needs. With a lot of these post-World War II installations, they can be shut down, we can save some money, and it is a win-win situation for everybody.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. 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. LEVIN. Mr. President, I was listening in the cloakroom to Senator TESTER's comments about his amendment, and I wish to tell everyone how

right on point he is. I am focusing on overseas bases and the need to close some of those bases. We have another Defense bill coming up fairly soon, if we cannot get something done on this bill—and I hope we can—whether it is the sense of the Senate or otherwise to put our focus there, because we need to reduce our presence particularly in those bases, I believe, in Europe, where we simply no longer need those bases and cannot afford to maintain them. But whether we can get a commission done is a different issue because that could actually slow down the process, to appoint a BRAC-type commission.

I just wished to comment while he was still on the floor that I believe he is right. He is focused on that which is critically important for not just the Armed Services Committee but for this Senate to look at, which is to look at the huge number of overseas facilities we have and the fact that there are many we no longer need and we have to look there for some significant savings. I just wished to commend the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Mr. President, I thank Chairman LEVIN for his comments. As we look for opportunities to save money, as we look for opportunities to focus in on the war on terror, I think our time has come to take a hard look at our overseas basing and do what, quite frankly, will enhance our opportunities to fight the war on terror while saving the taxpayers dollars over the short term and the long haul.

I thank Chairman LEVIN for his comments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, I wish to address the Senate as if in morning business for up to 5 minutes.

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

NATIONAL LABOR RELATIONS BOARD

Mr. ISAKSON. Mr. President, I come to the floor of the Senate for the fifth time in the last 3 years to discuss this administration's relentless pursuit to modify and change the labor laws of this country that have served us well for in excess of 70 years. A particular instance that is going to take place tomorrow causes me to come one more time to discuss this subject.

A few days before Thanksgiving last week, the National Labor Relations Board posted a notice that they would meet at 10 a.m. on Wednesday morning to discuss passing a rule that will change a 75-year precedent in labor law, a rule that will reduce the time period between the filing of a petition for a union organization and a vote to as little as 10 days.

Historically, in our country, it has been an average of 38 days from the filing of the petition to the vote as to whether to organize. For no cause or reason, other than unleveling the playing field, NLRB has decided to rush this rule through in an ambush-type of event. If we pull the facts back and look, it is quite easy to see what they are trying to do.

Craig Becker, who is on the National Labor Relations Board as a recess appointment of the President of the United States, was denied approval in the confirmation process in the Senate. The President chose to appoint him in a recess appointment which expires at the end of this December. Therefore, in the waning hours of his service on the Board, at a time in which the majority has a 2-to-1 vote, they are going to rush through a change in an amendment to the labor laws in the United States of America that have served us for 70 years. It is not right. It is not fair. At a time of high unemployment and distress in our economy, the worst thing to do is change the rules of the game that have served the country so well.

I will fire a warning shot also. I think there is something else that will probably happen before the end of the year, and that is there will probably be a posting of a rule to make micro-unionization possible. It has already been discussed by the NLRB. It is a process whereby we could take separate departments in the same company and let them unionize one at a time. Take a Home Depot, for example, or a Kroger grocery store. Let the butchers unionize and then let the bakers unionize and then let the detergent salesmen unionize and then let the janitors unionize and let the shop end up having 15, 20, 25 different union organizations in the same store. That has never been able to be possible and it is not right. It should be across the board within the company.

So I come to the floor to let everybody know at NLRB that I know what is going to happen tomorrow morning. I know it is a rush to judgment and it is a bad judgment and it is a mistake. We have great labor laws in this country. In fact, if we take this petition and change it down to 10 days, we are not recognizing the fact that of all the elections that have taken place in the last couple years, the unions have won 67 percent of the time. There is no problem with the organization laws, and there is no reason to compress the time from the filing of the petition to the vote. Fair is fair. A company that has an organization petition filed against it ought to have a reasonable period of time to assess the grievances that are advertised against them rather than compressing the vote period and having a rush to judgment.

I hope tomorrow the NLRB will recognize that a rush to judgment is wrong. It is not good for the country, it is not good for our economy, and it is not good for the American people. I will oppose it and do oppose it today, as I will oppose microunionization should they attempt to do the same before this year is out.

I yield back my time and notice the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. 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. NELSON of Florida. Mr. President, with the chairman's permission, I would like to speak on the Defense bill.

Mr. President, I wish to thank Chairman LEVIN. I wish to thank Senator MCCAIN. I wish to thank the entire Armed Services Committee and all the dedicated staff for their efforts in crafting this National Defense Authorization Act.

I am going to continue to work with all of my colleagues to resolve some of the very challenging provisions, one of which we just voted on, having to do with what courts the detainees are going to be prosecuted in. I am hopeful compromises will be reached in the days ahead so this bill can be passed and signed into law.

There are five amendments I and others have offered that I wish to talk about. The first is amendment No. 1210. It has been crafted in consultation with the Government Accountability Office and it would require the Department of the Navy to evaluate the cost and benefits of stationing additional destroyers at Naval Station Mayport in Jacksonville, Fl. One may ask why.

Well, the frigates at Mayport that will all be decommissioned by 2015, but the ships that will replace them, the Littoral combat ships, will not arrive until 2016. Therefore, there is a hiatus of a year in which the ship repair industry, that was built up to take care of the Navy's fleet, will be without work. From the standpoint of keeping the maintenance and repair of the Navy's fleet, we need to determine if it will be more cost effective for the Navy to mitigate this problem by bringing additional destroyers to Mayport during that timeframe, extending the service lives of the existing frigates, or by boosting the industry by bringing ships from around the country to the Jacksonville ship repair industry for repair.

Doing nothing is not an option because the ship repair business would take too big of a hit. In order to provide some oversight of the Navy's methodology, so that we can get the greatest bang for the buck and keep the Navy fleet at the level of readiness it needs, I am asking for the GAO to assess and report independently on these measures. My colleague from Florida, Senator RUBIO, has joined as a cosponsor.

I urge support of this amendment. It should not be a controversial amendment. I hope the committee will be able to accept it.

I have also proposed amendment No. 1236, which requires the Department of the Air Force to further explain their plan to change the flag officer positions at the Air Force Materiel Command. Reducing oversight and eliminating officers with vital experience

could damage the Air Force's weapons testing mission. So this amendment simply requires the Air Force to submit a report which would be assessed by the GAO. Again, this should not be a controversial amendment and ought to be accepted by the committee.

Senator SCHUMER of New York and I are working to ensure that the Department of Defense and the Veterans Affairs Department continue to study and evaluate the harmful effects of the garbage burn pits at our base in Balad in Iraq. This has gotten some attention in the press. It is horrible. What we are seeing is when our troops are exposed to these toxic fumes from these open burn pits, we see the consequences in their health that turn up later. Obviously, it is not only a diminution of the health of our troops which we ought to first and foremost protect, but of course there is a continuing cost to the U.S. Government, because years later, what we are finding is—and this comes out of the first gulf war experience with those open burn pits—we have determined that serious health problems could be traced back to the breathing in of those toxic substances because the troops were exposed to the fumes coming out of those burn pits.

What this amendment does—and it should not be controversial—is it requires a study be designed to take a look at those burn pits and further focus on the serious medical effects on our troops. So far, the reports have been inconclusive, but troops are still getting sick and it needs to be understood; thus, the reason for that study. Next year we will work to have the actual study funded. But Senator SCHUMER and I want to get on with this study and we ask and it should be accepted by the committee as a noncontroversial amendment. After all, it is what we all want, the protection of our troops.

Let me talk about amendment No. 1209. This addresses the longstanding problem faced by relatives of those who have been killed in action or whose death is related to service in the military, and that is the current law of a dollar-for-dollar reduction of Department of Defense Survivor Benefit Plan annuity offset, dollar for dollar, by the Dependency and Indemnity Compensation which comes from the Department of Veterans Affairs. The stand-alone bill, S. 260, filed by Senator INHOFE and myself, is cosponsored by—get this—49 Senators. The Senate has supported eliminating this offset for years. I hope that in the Senate, on this Defense authorization bill, we are going to remain steadfast in support of military widows and family members. Why? Because the Survivor Benefit Plan is an optional program for military retirees offered by the Defense Department. It is like an insurance plan. Military retirees pay premiums out of their retirement pay to ensure that their survivors will have adequate support when that retired military person passes away. For many retirees, reasonably priced insurance from the public marketplace is not available due to their service-related disabilities and their health issues; thus, the reason for this insurance plan, the Survivors Benefit Plan. SBP is a way for retirees to provide some income insurance for their survivors. It pays survivors 55 percent of the servicemember's retired pay. That is for the survivors of the retired military person when that person dies. It is an insurance policy.

The Dependency and Indemnity Compensation—DIC—is a completely different survivor benefit and it is administered by the Veterans' Administration. When a servicemember dies, either due to a service-related disability or illness or active-duty death, surviving spouses are entitled to monthly compensation of $1,154 from the Veterans' Administration. But here is the rub:

Of the 270,000 survivors receiving the SBP—the insurance policy that the military retiree has paid for—about 54,000 are subject to the offset, meaning some of their SBP is taken away. According to the Defense Actuary, 31,000 survivors' SBP is completely offset by the VA's Dependency and Indemnity Compensation, meaning they only have $1,154 a month to live on. These survivors are entitled to both under two different laws, but then there is a law that says you have to offset one from the other.

Military retirees in good faith bought into the insurance plan—the SBP. They were planning for the future for their families. The government now says we are going to take some of that money away. What it means is we are not taking care of those who were left behind in the same manner as these servicemembers thought they were going to get when they took care of our country. I know of no purchased annuity plan that would deny payout based on receipt of a different benefit. I say that having had some experience in insurance in my former life years and years ago as the elected insurance commissioner of the State of Florida.

It was said best by President Lincoln when he said in his second inaugural address that one of the greatest obligations in war is to ''finish the work we are in; to bind up the Nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan.''

That is the whole intention of these two laws, but we are not doing it. We are not honoring our servicemembers. The government must take care of our veterans, their widows and their orphans. Almost every year in the Senate we have passed this, eliminating the offset. What happens is it goes down to the conference and they eliminate it because it is going to cost money. We have had a couple of times where important little steps were taken in the right direction with some lessening of the offset, but we must meet our obligations to military families with the same sense of honor their loved one rendered during their service to this country, so we must eliminate this offset.

Finally, there is an amendment to sanction the Central Bank of Iran. In just the previous 2 months, Iran has attempted a terrorist attack on U.S. soil, while continuing to develop its nuclear capability back home, and it has done so in complete disregard for the Non-Proliferation Treaty.

The United States has led the international community in enacting crippling sanctions against the Iranian regime. We need to tighten down the screws more. We have done so in 1996 with the Iran Sanctions Act and again in 2009 with the Comprehensive Iran Sanctions Accountability and Divestment Act.

So we must continue these efforts. By sanctioning the Central Bank of Iran, we will make it clear to Iran's religious leaders—and that is what we have to say—that there are real consequences to their support for terrorism and their attempts to develop nuclear weapons.

A nuclear Iran would be disastrous for the region. It would be disastrous for Europe. It clearly would be a threat against Israel, one of our strongest allies, and it clearly is a threat to the national security interests of the United States.

The cost of inaction is too great. That is why we ought to go after the Central Bank of Iran by sanctioning them.

I think I have offered a number of amendments along with and on behalf of our colleagues that should be able to be accepted, and I would implore the leadership of the committee to please consider these.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I now ask unanimous consent that the Levin-McCain amendment No. 1092, which is the regular order, be modified with the changes that are at the desk—that amendment addresses the issue of counterfeit parts in the Department of Defense supply chain; further, that the amendment, as modified, be agreed to; that upon disposition of the Levin-McCain amendment, the Senate resume consideration of the Paul amendment No. 1064; that there be 30 minutes of debate, equally divided in the usual form, on the Paul amendment; that upon the use or yielding back of time, the Senate resume consideration of the Landrieu amendment No. 1115; that there be up to 30 minutes of debate, equally divided in the usual form, on the Landrieu amendment; that upon the use or yielding back of time, the Senate proceed to votes in relation to the two amendments—the Paul and Landrieu amendments—in the following order: Paul amendment No. 1064 and Landrieu amendment No. 1115; that there be 2 minutes, equally divided, prior to each vote and there be no amendments in order to either amendment prior to the votes; and that both

amendments be subject to a 60-affirmative-vote threshold.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 1092), as modified, was agreed to, as follows:

At the end of subtitle C of title VIII, add the following:

SEC. 848. DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS.

(a) REVISED REGULATIONS REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to address the detection and avoidance of counterfeit electronic parts.

(2) CONTRACTOR RESPONSIBILITIES.—The revised regulations issued pursuant to paragraph (1) shall provide that—

(A) contractors on Department of Defense contracts for products that include electronic parts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and for any rework or corrective action that may be required to remedy the use or inclusion of such parts; and

(B) the cost of counterfeit electronic parts and suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable costs under such contracts.

(3) TRUSTED SUPPLIERS.—The revised regulations issued pursuant to paragraph (1) shall—

(A) require that, whenever possible, the Department of Defense and Department of Defense contractors and subcontractors—

(i) obtain electronic parts that are in production or currently available in stock from the original manufacturers of the parts or their authorized dealers, or from trusted suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers; and

(ii) obtain electronic parts that are not in production or currently available in stock from trusted suppliers;

(B) establish requirements for notification of the Department of Defense, inspection, test, and authentication of electronic parts that the Department of Defense or a Department of Defense contractor or subcontractor obtains from any source other than a source described in subparagraph (A);

(C) establish qualification requirements, consistent with the requirements of section 2319 of title 10, United States Code, pursuant to which the Department of Defense may identify trusted suppliers that have appropriate policies and procedures in place to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

(D) authorize Department of Defense contractors and subcontractors to identify and use additional trusted suppliers, provided that—

(i) the standards and processes for identifying such trusted suppliers complies with established industry standards;

(ii) the contractor or subcontractor assumes responsibility for the authenticity of parts provided by such supplier as provided in paragraph (2); and

(iii) the selection of such trusted suppliers is subject to review and audit by appropriate Department of Defense officials.

(4) REPORTING REQUIREMENT.—The revised regulations issued pursuant to paragraph (1) shall require that any Department of Defense contractor or subcontractor who becomes aware, or has reason to suspect, that any end item, component, part, or material contained in supplies purchased by the Department of Defense, or purchased by a contractor of subcontractor for delivery to, or on behalf of, the Department of Defense, contains counterfeit electronic parts or suspect counterfeit electronic parts, shall provide a written report on the matter within 30 calendar days to the Inspector General of the Department of Defense, the contracting officer for the contract pursuant to which the supplies are purchased, and the Government-Industry Data Exchange Program or a similar program designated by the Secretary of Defense.

(b) INSPECTION OF IMPORTED ELECTRONIC PARTS.—

(1) INSPECTION PROGRAM.—The Secretary of Homeland Security shall establish a risk-based methodology for the enhanced targeting of electronic parts imported from any country, after consultation with the Secretary of Defense as to sources of counterfeit electronic parts and suspect counterfeit electronic parts in the supply chain for products purchased by the Department of Defense.

(2) INFORMATION SHARING.—If United States Customs and Border Protection suspects a product of being imported or exported in violation of section 42 of the Lanham Act, and subject to any applicable bonding requirements, the Secretary of Treasury is authorized to share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging and labels, with the rightholders of the trademarks suspected of being copied or simulated, for purposes of determining whether the products are prohibited from importation pursuant to such section.

(c) CONTRACTOR SYSTEMS FOR DETECTION AND AVOIDANCE OF COUNTERFEIT AND SUSPECT COUNTERFEIT ELECTRONIC PARTS.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall implement a program for the improvement of contractor systems for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts.

(2) ELEMENTS.—The program developed pursuant to paragraph (1) shall—

(A) require covered contractors to adopt and implement policies and procedures, consistent with applicable industry standards, for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and untrusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining suspect counterfeit electronic parts and counterfeit electronic parts, and taking corrective action;

(B) establish processes for the review and approval or disapproval of contractor systems for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts, comparable to the processes established for contractor business systems under section 893 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4311; 10 U.S.C. 2302 note); and

(C) effective beginning one year after the date of the enactment of this Act, authorize the withholding of payments as provided in subsection (c) of such section, in the event that a contractor system for detection and avoidance of counterfeit electronic parts is disapproved pursuant to subparagraph (B) and has not subsequently received approval.

(3) COVERED CONTRACTOR AND COVERED CONTRACT DEFINED.—In this subsection, the terms ''covered contractor'' and ''covered contract'' have the meanings given such terms in section 893(f) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4312; 10 U.S.C. 2302 note).

(d) DEPARTMENT OF DEFENSE RESPONSIBILITIES.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall take steps to address shortcomings in Department of Defense systems for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts. Such steps shall include, at a minimum, the following:

(1) Policies and procedures applicable to Department of Defense components engaged in the purchase of electronic parts, including requirements for training personnel, making sourcing decisions, ensuring traceability of parts, inspecting and testing parts, reporting and quarantining suspect counterfeit electronic parts and counterfeit electronic parts, and taking corrective action. The policies and procedures developed by the Secretary under this paragraph shall prioritize mission critical and sensitive components.

(2) The establishment of a system for ensuring that government employees who become aware of, or have reason to suspect, that any end item, component, part, or material contained in supplies purchased by or for the Department of Defense contains counterfeit electronic parts or suspect counterfeit electronic parts are required to provide a written report on the matter within 30 calendar days to the Inspector General of the Department of Defense, the contracting officer for the contract pursuant to which the supplies are purchased, and the Government-Industry Data Exchange Program or a similar program designated by the Secretary of Defense.

(3) A process for analyzing, assessing, and acting on reports of counterfeit electronic parts and suspect counterfeit electronic parts that are submitted to the Inspector General of the Department of Defense, contracting officers, and the Government-Industry Data Exchange Program or a similar program designated by the Secretary of Defense.

(4) Guidance on appropriate remedial actions in the case of a supplier who has repeatedly failed to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts or otherwise failed to exercise due diligence in the detection and avoidance of such parts, including consideration of whether to suspend or debar a supplier until such time as the supplier has effectively addressed the issues that led to such failures.

(e) TRAFFICKING IN COUNTERFEIT MILITARY GOODS OR SERVICES.—Section 2320 of title 18, United States Code, is amended—

(1) in subsection (a), by adding at the end the following:

''(3) MILITARY GOODS OR SERVICES.—

''(A) IN GENERAL.—A person who commits an offense under paragraph (1) shall be punished in accordance with subparagraph (B) if—

''(i) the offense involved a good or service described in paragraph (1) that if it malfunctioned, failed, or was compromised, could reasonably be foreseen to cause—

''(I) serious bodily injury or death;

''(II) disclosure of classified information;

''(III) impairment of combat operations; or

''(IV) other significant harm to a member of the Armed Forces or to national security; and

''(ii) the person had knowledge that the good or service is falsely identified as meeting military standards or is intended for use in a military or national security application.

''(B) PENALTIES.—

''(i) INDIVIDUAL.—An individual who commits an offense described in subparagraph (A) shall be fined not more than $5,000,000, imprisoned for not more than 20 years, or both.

''(ii) PERSON OTHER THAN AN INDIVIDUAL.—A person other than an individual that commits an offense described in subparagraph (A) shall be fined not more than $15,000,000.

''(C) SUBSEQUENT OFFENSES.—

''(i) INDIVIDUAL.—An individual who commits an offense described in subparagraph (A) after the individual is convicted of an offense under subparagraph (A) shall be fined not more than $15,000,000, imprisoned not more than 30 years, or both.

''(ii) PERSON OTHER THAN AN INDIVIDUAL.—A person other than an individual that commits an offense described in subparagraph (A) after the person is convicted of an offense under subparagraph (A) shall be fined not more than $30,000,000.''; and

(2) in subsection (e)—

(A) in paragraph (1), by striking the period at the end and inserting a semicolon;

(B) in paragraph (3), by striking ''and'' at the end;

(C) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

''(5) the term 'falsely identified as meeting military standards' relating to a good or service means there is a material misrepresentation that the good or service meets a standard, requirement, or specification issued by the Department of Defense, an Armed Force, or a reserve component; and

''(6) the term 'use in a military or national security application' means the use of a good or service, independently, in conjunction with, or as a component of another good or service—

''(A) during the performance of the official duties of the Armed Forces of the United States or the reserve components of the Armed Forces; or

''(B) by the United States to perform or directly support—

''(i) combat operations; or

''(ii) critical national defense or national security functions.''.

(f) SENTENCING GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''critical infrastructure'' has the meaning given that term in application note 13(A) of section 2B1.1 of the Federal Sentencing Guidelines.

(2) DIRECTIVE.—The United States Sentencing Commission shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of an offense under section 2320(a) of title 18, United States Code, to reflect the intent of Congress that penalties for such offenses be increased for defendants that sell infringing products to, or for the use by or for, the Armed Forces or a Federal, State, or local law enforcement agency or for use in critical infrastructure or in national security applications.

(3) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under paragraph (2), the United States Sentencing Commission shall—

(A) ensure that the guidelines and policy statements, including section 2B5.3 of the Federal Sentencing Guidelines (and any successor thereto), reflect—

(i) the serious nature of the offenses described in section 2320(a) of title 18, United States Code;

(ii) the need for an effective deterrent and appropriate punishment to prevent offenses under section 2320(a) of title 18, United States Code; and

(iii) the effectiveness of incarceration in furthering the objectives described in clauses (i) and (ii);

(B) consider an appropriate offense level enhancement and minimum offense level for offenses that involve a product used to maintain or operate critical infrastructure, or used by or for an entity of the Federal Government or a State or local government in furtherance of the administration of justice, national defense, or national security;

(C) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(D) make any necessary conforming changes to the guidelines; and

(E) ensure that the guidelines relating to offenses under section 2320(a) of title 18, United States Code, adequately meet the purposes of sentencing, as described in section 3553(a)(2) of title 18, United States Code.

(4) EMERGENCY AUTHORITY.—The United States Sentencing Commission shall—

(A) promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable, and in any event not later than 180 days after the date of the enactment of this Act, in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired; and

(B) pursuant to the emergency authority provided under subparagraph (A), make such conforming amendments to the Federal Sentencing Guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.

(g) DEFINITIONS.—

(1) COUNTERFEIT ELECTRONIC PART.—The Secretary of Defense shall define the term ''counterfeit electronic part'' for the purposes of this section. Such definition shall include used electronic parts that are represented as new.

(2) SUSPECT COUNTERFEIT ELECTRONIC PART AND ELECTRONIC PART.—For the purposes of this section:

(A) A part is a ''suspect counterfeit electronic part'' if visual inspection, testing, or other information provide reason to believe that the part may be a counterfeit part.

(B) An ''electronic part'' means an integrated circuit, a discrete electronic component (including but not limited to a transistor, capacitor, resistor, or diode), or a circuit assembly.

Mr. LEVIN. Mr. President, with the acceptance of this unanimous consent request, the Levin-McCain amendment, as modified, has now been agreed to; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LEVIN. So now before us is the Paul amendment No. 1064, with 30 minutes of debate. I do not see Senator PAUL in the Chamber.

I ask unanimous consent that Senator BAUCUS be added as a cosponsor to our Levin-McCain amendment No. 1092.

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

AMENDMENT NO. 1092, AS MODIFIED

Mr. LEVIN. Mr. President, until Senator PAUL gets here to begin debate on his amendment, I would, very briefly, describe what we have described before, which is the anticounterfeiting amendment, which is so important to stop the flow of counterfeit parts into the Department of Defense supply chain.

The amendment is going to do a number of things. It is going to require the Department of Defense and Department of Defense suppliers to purchase electronic parts from original equipment manufacturers and their authorized dealers or from trusted suppliers that meet established standards for detecting and avoiding counterfeit parts.

It establishes requirements for notification, inspection, testing, and authentication of electronic parts that are not available from such suppliers.

It requires Department of Defense officials and Department of Defense contractors that become aware of counterfeit parts in the supply chain to provide written notification to the DOD inspector general, the contracting officer, and the Government-Industry Data Exchange Program or similar program designated by the Secretary of Defense.

It requires enhanced inspection of electronic components imported from countries that have been the source of counterfeit parts in the DOD supply chain—China being the one that is clearly the worst offender in this regard.

It requires large DOD contractors to establish systems for detecting and avoiding counterfeit parts in their supply chains and authorizes reduction of contract payments to contractors that fail to develop adequate systems.

It requires the Department of Defense to adopt policies and procedures for detecting and avoiding counterfeit parts in its own direct purchases and for assessing and acting upon reports of counterfeit parts from DOD officials and DOD contractors.

It authorizes the suspension and debarment of contractors that repeatedly fail to detect and avoid counterfeit parts or otherwise fail to exercise due diligence in the detection and avoidance of counterfeit parts.

The amendment also includes a bill Senator WHITEHOUSE introduced that was passed out of the Judiciary Committee to toughen criminal sentences for counterfeiting military goods or services.

Finally, it requires the Department of Defense to define the term ''counterfeit part,'' which is a critical, long overdue step toward getting a handle on this problem.

I wish to thank Senator MCCAIN, who, with me, held a significant hearing in the area of counterfeit parts, demonstrating that what is going on is that electronic waste—which is shipped from the United States and the rest of the world, mainly to China—is then disassembled by hand, washed in dirty rivers, dried on city sidewalks, sanded down to remove part numbers and other marks that would indicate its quality or performance.

We have millions, literally, that we have identified of used parts that have gotten into the Defense supply chain that are not supposed to be used parts,

that are supposed to be new parts. It is amazing how far the counterfeiters—and particularly in China—are willing to go.

We have asked the U.S. Government Accountability Office, the GAO actually, to use a fake company to go online and buy electronic parts, and the GAO found suppliers that not only sold counterfeit parts—when the GAO sought legitimate parts—they found suppliers that were willing to sell them parts with nonexistent part numbers. All those sellers were in China.

We had example after example of weapons systems that had counterfeit parts in them. They endanger our troops. They endanger our taxpayers. All too often the people who pay for the replacement of counterfeit parts are the taxpayers instead of the contractors. That is going to end under our bill. So all the weapons we identified—lasers that were used for targeting Hellfire missiles; display units that were used in the Air Force's aircraft, the C–27Js, C–130Js, C–17s, CH–46s used by the Marine Corps—those counterfeit parts have gotten into those systems. We are going to put an end to this with this legislation.

I thank my good friend Senator MCCAIN for all the work he and his staff and my staff put in on that hearing in preparing this amendment, which we have now adopted.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank Senator LEVIN and the staff for the thorough job of investigation that was undertaken to identify the counterfeit electronic parts that are penetrating the Department of Defense supply chain.

I thank Senator WHITEHOUSE for his provisions which have been added to the bill from a bill he had introduced in the Judiciary Committee.

At the hearing we had on November 8, the committee received additional evidence to supplement an already robust investigative record, and some very serious issues were raised, including the threat counterfeit electronic parts pose to the safety of our men and women in uniform, to our national security, and to our economy, how counterfeits increase the short- and long-term costs of defense systems, the lack of transparency in the Defense supply chain, and the U.S. relationship with the People's Republic of China.

I see the Senator from Kentucky is on the floor. But I would just like to point out again and emphasize the points the chairman has made.

The problem of counterfeit electronic parts in the Defense supply chain is more serious than most people realize. During its investigation, our committee uncovered over 1,800 incidents, totaling over 1 million parts of counterfeit electronic parts in the Defense supply chain. Suspect counterfeit electronic parts have been installed or delivered to the military for use on thermal weapons sites, on THAAD missile mission computers, and on military aircraft, including the C–27J, C–17, C–130J, P–8A Poseidon, SH–60B, AH–64, and the CH–46.

I do not claim this legislation will solve the problem of counterfeiting from China, the whole issue of intellectual property. Counterfeiting that goes on in other aspects of the world's economy and ours is one that is a very large issue. But at least this is an effort to make sure, as much as we can, that the men and women who serve in our military are not subject to operating systems that could literally endanger their lives—much less the incredible increase of the taxpayers' dollars.

I thank the chairman again and his staff, and I can assure my colleagues this is an issue we will be following very closely in the days and weeks and months ahead.

I note the presence of Senator PAUL, so I ask for the regular order.

AMENDMENT NO. 1064

The PRESIDING OFFICER. There is now 30 minutes of debate, equally divided, on amendment No. 1064.

Mr. LEVIN. I wonder if the Senator from Kentucky would just yield for 30 seconds, not to be taken from his time, so I can answer a question that has been asked of me: What happened to the approximately 35 to 40 amendments which we had cleared? Why were they not part of this unanimous consent request?

The answer is because there are a few Senators, apparently, who do not object to the substance of the amendments but who have other goals they are, at the moment, insisting on. That puts in jeopardy the effort of literally dozens of our colleagues to achieve what is in these cleared amendments, and I hope those few Senators would relent.

The PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 1064

Mr. PAUL. Mr. President, I rise in support of bringing the Iraq war to a formal end. President Obama has ordered troops home by January 1. We should rejoice at the conclusion of the war. No matter whether one favored the Iraq war or not, there is a glimmer of hope for democracy to now exist in the Middle East in Iraq.

War is a hellish business and never to be desired. As the famous POW and war hero JOHN MCCAIN once said: ''War is wretched beyond description, and only a fool or a fraud could sentimentalize its cruel reality.''

This vote is more than symbolism. This vote is about the separation of powers. It is about whether Congress should have the power to declare war. The Constitution vested that power in Congress, and it was very important. Our Founding Fathers did not want all the power to gravitate to the Executive. They feared very much a King, and so they limited the power of the Executive.

When Franklin walked out of the Constitutional Convention, a woman asked him: What have you brought us? Was it going to be a republic, a democracy, a monarchy?

He said: A republic, if you can keep it.

In order to keep a republic, we have to have checks and balances. But we have to obey the rule of law.

Madison wrote:

> The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. The Constitution has, therefore, with studied care, vested the [power] to declare war in [Congress].

When we authorize the war in Iraq, we give the President the power to go to war, and the Constitution gives the power to the President to execute the war. All the infinite decisions that are made in war—most of them are made by the executive branch. But the power to declare war is Congress's. This division was given to make there be a division of powers, a separation of powers, to allow there to be a reluctance to go to war.

We have this vote now to try to reclaim the authority.

If we do not reclaim the authority to declare war or to authorize war, it will mean our kids or our grandkids or our great-grandkids could be sent to a war in Iraq with no debate, with no vote of Congress. We have been at war for nearly 10 years in Iraq. We are coming home. And we should rejoice at the war's end. But we need to reclaim that authority. If we leave an open-ended authority out there that says to the President—or any President; not this particular President, it could be any President—if we leave that authority out there, we basically abdicate our duty, we abdicate the role of Congress. There are supposed to be checks and balances between Congress and the President.

So what I am asking is that Congress today reclaim the authority to declare war and at the same time we celebrate that this is an end to something that no one should desire.

As Senator MCCAIN has pointed out, as many have pointed out, Dwight Eisenhower pointed out the same thing: If you want to know the hellish of war, talk to someone who has been to war.

But that is why this power is too important to be given to one person and to be left in the hands of one person—a President of either party.

So the vote today will be about reclaiming that authority, reclaiming the authority of Congress to declare war. I would recommend that we have a vote and that the vote today be in favor of deauthorizing the war in Iraq.

It is not just I who have pointed this out. The first President of the United States wrote:

> The Constitution vests the power of declaring war in Congress; therefore, no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure.

This has been recognized by Presidents from the beginning of the history

of our country. The problem is that if we do not give it up, that power is left out there, and it is a power lost to Congress.

Frank Chodorov wrote:

All wars come to an end, at least temporarily. But the authority acquired by the states hangs on; political power never abdicates.

This is a time to reclaim that power. It is an important constitutional question. I hope those Senators will consider this seriously and consider a vote to reclaim the authority to declare war.

I reserve the reminder of my time and temporarily yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I would like to first of all thank the Senator from Kentucky for quoting me. It is always a very pleasant experience as long as it is something that one would admire. On several occasions, I have been quoted in ways that I wish I had observed what my old friend Congressman Morris Udall used to say is the politician's prayer: May the words that I utter today be tender and sweet because tomorrow I may have to eat them. So I want to thank the Senator from Kentucky for his kind words.

I also want to praise the Senator from Kentucky, who is a person who has come here with a firm conviction that he not only has principles but he intends to act on those principles in as impactful a way as possible and represent the people of Kentucky in a very activist fashion. He has my admiration. However, I would rise in opposition to the amendment.

I would like to read from a letter that was sent to the chairman and to me from the Chairman of the Joint Chiefs of Staff and the Secretary of Defense.

This week, as you consider the National Defense Authorization Act, the Department of Defense would like to respond to your request for views on the amendment offered by Senator PAUL which would repeal the Authorization for the Use of Military Force in Iraq. U.S. Forces are now in the final stages of coming home by the end of 2011. We are moving to a new phase in the relationship between our two countries and equal partnership based on mutual interests and mutual respect.

While amendment No. 1064 echoes the President's policy, we cannot support the amendment as drafted. Outright and complete repeal of the AUMF–I, which is the Authorization for the Use of Military Force in Iraq, withdraws all Congressional support for any limited windup activities normally associated with ending a war. Thank you very much for your continued efforts.

The Department of Defense sent over an unclassified response that was approved by several members of the Pentagon. It says: Although we are implementing the U.S.-Iraqi security agreement in full and pulling out all of our forces by the end of the year, we still have a limited number of DOD personnel under the Chief of Mission Authority to staff the Office of Security Cooperation-Iraq. Because there may be elements that would choose this time of transition to attempt to do harm to these personnel, it is essential that the Department of Defense retain the authority and flexibility to respond to such threats. The AUMF–I provides these authorities. The administration has worked closely with Congress in circumstances where it has been necessary to rely on the AUMF, and it would continue to do so should the need arise.

In other words, and unfortunately, Iraq remains a dangerous place. We will have the largest contingent of Americans as part of the embassy there as we withdraw our combat troops. Some 16,000 Americans will man our embassy and consulates in Iraq, and unfortunately there are great signs of instability in Iraq. Al-Sadr has said that any remaining American troops will be a target. The Iranians continue to encourage attacks on Americans. There are significant divisions within the country which are beginning to widen, such as Sunni-Shia, the area around Kirkuk, increasing Iranian influence in the country.

I will refrain from addressing the deep concerns I had before the agreement to completely withdraw took place. I will leave that out of this discussion because I feel the decision that was clearly made not to keep a residual force in the country, which was made by this administration and which is the subject for debate on another day, has placed the remaining Americans in significant jeopardy. As I say, that is 16,000 Americans to carry out the postwar commitments we have made to Iraq to help them rebuild their country after many years of war and bloodshed.

I certainly understand the aim of the Senator from Kentucky. The President campaigned for President of the United States committing to withdraw all of our troops from Iraq. He is now achieving that goal. But I think it would be very serious to revoke all authority that we might have in order to respond to possible unrest and disruption within the country that might require the presence, at least on some level or another, of American troops to safeguard those 16,000 Americans who will be remaining in Iraq when our troops withdraw. So I argue that the amendment be defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I, too, will oppose the Paul amendment for the repeal of the authorization for the use of military force in Iraq for a number of reasons, but I think mainly there are just too many unknown, uncertain consequences of repealing this authority, including the need to protect our troops. I am unwilling to take this risk during the critical transition period and not knowing precisely what will happen after that transition either.

By the way, I take this position as someone who opposed the use of military force in Iraq to begin with. Back in October 2002 when Congress voted on the authorization to use military force in Iraq, I did not support it. I thought it was a mistake to do that and offered an alternative resolution that would have authorized the use of force if the United Nations Security Council supported that use of force. So I take a position here opposing the repeal of the authorization although I opposed the authorization itself in the first instance. It is an unusual position to be in. I want to explain why it is that I oppose the repeal of this authorization.

First, the drawdown appears to be on track to be completed by December 31, but there can always be unforeseen circumstances that could delay that date. There is no provision in this bill for the possibility of an extension or a modification of that date. I would be reluctant to see it modified or extended. I must say that I do not want to preclude the possibility by ending something in advance—ending an authorization in advance of circumstances arising that might require for days, weeks, months the extension or modification of the current decision to withdraw our forces by December 31.

Second, we simply do not know the consequences of repealing the authorization. Let me give a few examples. What about ongoing lawsuits in U.S. courts arising from actions by U.S. personnel that were authorized under this authorization for the use of military force? Would repeal of the authorization for the use of force have an effect? It is unknown to me. I don't know how many lawsuits there are. But what is the impact on this? That is something which surely we should want to know.

By the way, we authorized the use of force in the first gulf war. We did not repeal that authorization. Technically, that authorization continues. It has done no harm that I can see.

Third, the Paul amendment raises issues for our detention authority in Iraq. This is not an abstract concern. Currently, the administration is in the process of deciding how to deal with one high-value detainee in U.S. custody whose name is Ali Mussa Daqduq. He is suspected of having organized a 2007 kidnapping in Iraq that resulted in the deaths of five U.S. servicemembers. He is also tied to Hezbollah.

The United States is relying on the authority of the AUMF—the authorization for the use of military force in Iraq—to continue to detain Daqduq. U.S. officials are still in discussions with the Government of Iraq over the ultimate disposition of Daqduq, including possibly releasing him to U.S. custody either in Iraq or somewhere else.

Repeal of the AUMF could limit the administration's options for dealing with Daqduq after January of 2012. Would it limit those options? We don't know.

Should we pass something as dramatic as a repeal of an authorization at this time without knowing what the consequences are in the real world to our interests? I don't think we can

take that chance, so I would oppose the amendment of the Senator from Kentucky.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I would like to rise in support of the statements made by Senators MCCAIN and LEVIN.

I do not have that good a feeling about Iraq, quite frankly. I am not very confident at all that the worst is behind us. I am hopeful that we can withdraw our troops and that nothing bad will happen in Iraq, but, as Senator LEVIN just described, the implications of repealing the authorization to use military force are wide, varied, and uncertain.

What do you get by repealing this? You can go back home and say you did something that—I do not know what you get. I mean, I really do not. I do not know what we gain as a nation by taking the contingencies of using military force off the table as we try to wind down.

I just don't see the upside, quite frankly. I know the reality of what our troops face and why the Department of Defense would want to continue to have this authorization until we get Iraq behind us. At the end of the day, 4,400 people plus have lost their lives, thousands have been wounded and maimed—not counting the Iraqis who have lost their lives and have been wounded and maimed trying to create order out of chaos.

As we move forward as a body, I don't see the upside to those who are doing the fighting and who have to deal with complications of this long, protracted war by us repealing the authorization at a time when it may be necessary to have it in place. If there is any doubt in your mind about what Senators LEVIN and MCCAIN say and what the Department of Defense says about the need for this to be continued, I ask you to give the benefit of the doubt to the DOD. You don't have to; I just think it is a wise thing to do because what we gain by repealing it—I am not sure what that is in any real sense.

By having the authorization in place for a while longer, I understand how that could help those who are fighting in Iraq and the follow-on needs that come as we transition. I ask the body to be cautious, and if you have any doubt that Senator MCCAIN's or Senator LEVIN's concerns are real, I think now is the time to defer to the Department of Defense and give them the tools they need to finish the operations in Iraq.

I will close with this one thought. The vacuum created by the fact that we will not have any troops in 2012 can be filled in a very bad way if we don't watch it. The Kurd-Arab problem could wind up in open warfare. The Iranian influence in Iraq is growing as we speak. We do have troops and civilian personnel in the country, and we will have a lot next year. I think out of an abundance of caution we ought to leave the tools in place that the Department of Defense says they need to finish this out.

I urge my colleagues to err on the side of giving the Department of Defense the authorization they need to protect those who will be left behind.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. PAUL. It disappoints me that President Obama opposes a formal end to the Iraq war, but it doesn't surprise me. As a candidate, he was outspoken against the war and for ending the war: He will be bringing the troops home. But this vote in this debate is not necessarily just about bringing the troops home. This is a debate over power. The executive branch wants to keep the unlimited power to commit troops to war. This is about who holds the power.

The Founding Fathers intended that Congress should hold the power. This vote is about whether we will continue to abdicate that power and give up that power to the Executive. That allows for no checks and balances. We need to have checks and balances. It is what our Founding Fathers intended.

With regard to defending ourselves, there is authorization for the President to always defend the Nation using force. There is authorization for every embassy around the world to defend the embassy. That is why we have soldiers there. We have agreements with the host country that the host military is supposed to support the embassy. If that fails, we have our own soldiers. We have these agreements around the world. There is nothing that says we cannot use force. This says we are reclaiming the power to declare war, and we will not have another war with hundreds of thousands of troops without a debate. Should not the public and Congress debate it before we commit troops to war?

This war is coming to a close. I suggest that we should be proud of it. I hope people will support this amendment.

I yield to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I rise to support Senator PAUL's amendment to revoke war authority. We have heard on the floor that the consequences of revoking authority are vague and uncertain. Indeed, my team has been seeking a reply from the Department of Defense as to whether there were any conditions we should be alerted to or whether this would create a problem. At the last minute, we appear to have a memo—which has not come to my office—that says there are possible complications.

Well, let's be clear. The executive branch never wants to hand back authority it has been granted. It always wants to retain maximum flexibility. But as my colleague has pointed out, this is an issue of constitutional authority. We had a constitutional discussion about authorizing action in Iraq and, certainly contrary to my opinion, this body supported that action. But now the President is bringing this war to an end.

Doesn't it make sense, then, that we end the authority that went with this war and call a formal end to this battle? The issue has been raised that there might be something that happens in the future. Isn't that true for every country on this planet, that something might happen in the future? Something might happen in Somalia or in Yemen or in any nation in the world. Indeed, under the War Powers Act, the President has the ability to respond immediately. He doesn't need to come to this body for 60 days. So there is extensive flexibility that would go with Iraq just as it goes with every other country, in addition to the authority that has been granted to pursue al-Qaida and associated forces around the world.

When, if not now, should we revoke this authority? Do we say that once granted, at any point in the future the administration can go back to war without the authorization of this body? It is time for us to reclaim the authority of Congress. Should the circumstances arise that the President feels the need to go back into a war mode versus many of the other uses of force that are already authorized under other provisions, then he would have 60 days. He could come back to this body and say: These are the changed circumstances. Under the Constitution, will you grant the power to renew or create a new force of war in that country? Then we can hold that debate in a responsible manner.

But this open-ended commitment under these circumstances doesn't make sense. Congress has yielded its authority under the Constitution far too often to the executive branch. So many times this body has failed to do its fair share under our constitutional framework.

This amendment before us today makes sense in the context of a withdrawal of troops and provides plenty of flexibility to undertake any security issues that might arise in the future. For that reason, I urge my colleagues to support the Paul amendment.

The PRESIDING OFFICER. Who yields time?

Mr. PAUL. Mr. President, is it appropriate to call for the yeas and nays at this point?

The PRESIDING OFFICER. It is.

Mr. PAUL. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Kentucky has 4 minutes remaining.

Mr. PAUL. I will yield back my time.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, under the previous order, I think we were going to debate both amendments and

vote in a few moments. That is what I understood.

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. How long will the Senator take?

Ms. LANDRIEU. Up to 10 minutes.

Mr. MCCAIN. All right.

AMENDMENT NO. 1115, AS MODIFIED

Ms. LANDRIEU. The Senators have done such a good job managing this bill. I appreciate the opportunity to offer this amendment and to be paired with this important amendment that the Senators from Kentucky and Oregon have offered. I will explain it briefly because a longer explanation would not be necessary.

This body is very familiar with the reauthorization of the SBIR Program. The reason I believe the chairman and ranking member allowed me to offer this amendment with Senator SNOWE is twofold. One, it has a bearing on the Department of Defense in that the Department of Defense is the largest contributor to the SBIR and STTR programs, the two most important research and development programs for small business that the Federal Government runs and operates. The Senators know full well the importance for the Department of Defense and therefore extrapolate correctly the importance of this program for all of our agencies.

We take a small portion of the research and development dollars for all Federal agencies and basically direct it to small business. There are some good reasons for that, which I will put in the RECORD. As written by one of the advocates supporting the program—and I will put this into the RECORD—she writes:

> The SBIR/STTR funding award process spawns competition among high-tech businesses. Scientists and engineers propose their best technological concepts to solve a problem of national interest. The best of the best of these technical concepts are selected for funding. Thus, this funding mechanism assures that the thinking minds continuously work on producing the most practical solutions to engineering problems.

Whether it is our soldiers in the field or our scientists at NASA or whether it is our scientists and engineers struggling to understand the oceans or better communication technology, they go to the SBIR and STTR programs and look for some of the cutting edge ideas. We invest in them, and many of those ideas go commercial for the benefit of everyone, taxpayers included.

She goes on to write:

> Small businesses develop niche products that are not mass produced overseas. Thus, it helps our employment situation [right here at home]. The employees of a high-tech company are highly educated professionals belonging to a high income group who contribute substantially to the tax pool and the economy.

Finally, she says:

> Small businesses are job creators. We hear that large companies are sitting on trillions of dollars in cash, yet not investing in job creation. Small businesses often operate on a very thin to no profit margin and hire staff on borrowed money. . . . This is because growth is the mantra for small businesses for survival.

If they don't grow, they don't survive. This small business research program is so important. The reason I am here tonight asking my colleagues to vote on this amendment on the Defense bill is that it is relevant. It is also important. We are 5 years late. This program should have been authorized 5 years ago.

I inherited this situation when I became chairman of the Small Business and Entrepreneurship Committee. As you know, I have worked diligently with colleagues on both sides of the aisle to move this debate forward and to advance the ball. That is what we are going to do tonight. We are, hopefully, going to pass this with more than the 60 votes necessary.

This bill came out of the Small Business Committee on a vote of 17 to 1. It was just broadly bipartisan in its appeal. It is sponsored by my ranking member, Senator SNOWE, who has been one of the strongest advocates for small business in the Senate—not just for this year but for many years. She sponsored this bill along with Senators SHAHEEN, BROWN, and KERRY. With Senator MCCAIN and Senator LEVIN's help, along with the cosponsors of this amendment, I ask my colleagues to vote favorably for it tonight. Again, we are 5 years overdue. It is an important program to get authorized so that the folks operating our programs at all of the departments can have some confidence that the program is going to go on, that they can even do a better job than they have been doing, and we can get these investments out to small businesses that are game changers in America, creating new technology and, most importantly, creating the jobs that America needs right here at home.

I don't see anyone else to speak on the amendment. I think that would probably be all the time that we need. I hope that is a signal that there is no opposition to the amendment. Perhaps we can do a voice vote or have a very strong vote for reauthorizing the small business research program. Again, that is so meritorious and so necessary for the investment of small business in America today.

I yield the floor and yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. LEVIN. Mr. President, first, while Senator LANDRIEU is here—because she, I know, is going to be interested in this and is right on top of this—I want to assure her it was our intention with the previous order to have the Landrieu amendment No. 1115 modified with the changes that are at the desk, and so I now ask unanimous consent that the amendment be modified with those changes, and that our previous order with respect to the vote in relation to the Landrieu amendment be modified as well.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 1115), as modified, is as follows:

At the end, add the following:

DIVISION E—SBIR AND STTR REAUTHORIZATION

SEC. 5001. SHORT TITLE.

This division may be cited as the ''SBIR/STTR Reauthorization Act of 2011''.

SEC. 5002. DEFINITIONS.

In this division—

(1) the terms ''Administration'' and ''Administrator'' mean the Small Business Administration and the Administrator thereof, respectively;

(2) the terms ''extramural budget'', ''Federal agency'', ''Small Business Innovation Research Program'', ''SBIR'', ''Small Business Technology Transfer Program'', and ''STTR'' have the meanings given such terms in section 9 of the Small Business Act (15 U.S.C. 638); and

(3) the term ''small business concern'' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

SEC. 5003. REPEAL.

Subtitle E of title VIII of this Act is amended by striking section 885.

TITLE LI—REAUTHORIZATION OF THE SBIR AND STTR PROGRAMS

SEC. 5101. EXTENSION OF TERMINATION DATES.

(a) SBIR.—Section 9(m) of the Small Business Act (15 U.S.C. 638(m)) is amended by striking ''2011'' and inserting ''2019, except as provided in subsection (cc)''.

(b) STTR.—Section 9(n)(1)(A) of the Small Business Act (15 U.S.C. 638(n)(1)(A)) is amended by striking ''2011'' and inserting ''2019''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The Continuing Appropriations Act, 2012 (Public Law 112–36), as amended by division D of the Consolidated and Further Continuing Appropriations Act, 2012 (Public Law 112–55), is amended by striking section 123.

SEC. 5102. STATUS OF THE OFFICE OF TECHNOLOGY.

Section 9(b) of the Small Business Act (15 U.S.C. 638(b)) is amended—

(1) in paragraph (7), by striking ''and'' at the end;

(2) in paragraph (8), by striking the period at the end and inserting ''; and'';

(3) by redesignating paragraph (8) as paragraph (9); and

(4) by adding at the end the following:

''(10) to maintain an Office of Technology to carry out the responsibilities of the Administration under this section, which shall be—

''(A) headed by the Assistant Administrator for Technology, who shall report directly to the Administrator; and

''(B) independent from the Office of Government Contracting of the Administration and sufficiently staffed and funded to comply with the oversight, reporting, and public database responsibilities assigned to the Office of Technology by the Administrator.''.

SEC. 5103. SBIR ALLOCATION INCREASE.

Section 9(f) of the Small Business Act (15 U.S.C. 638(f)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking ''Each'' and inserting ''Except as provided in paragraph (2)(B), each'';

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

(C) by striking subparagraph (C) and inserting the following:

''(C) not less than 2.5 percent of such budget in fiscal year 2013;

''(D) not less than 2.6 percent of such budget in fiscal year 2014;

''(E) not less than 2.7 percent of such budget in fiscal year 2015;

''(F) not less than 2.8 percent of such budget in fiscal year 2016;

''(G) not less than 2.9 percent of such budget in fiscal year 2017;

''(H) not less than 3.0 percent of such budget in fiscal year 2018;

''(I) not less than 3.1 percent of such budget in fiscal year 2019;

''(J) not less than 3.2 percent of such budget in fiscal year 2020;

''(K) not less than 3.3 percent of such budget in fiscal year 2021;

''(L) not less than 3.4 percent of such budget in fiscal year 2022; and

''(M) not less than 3.5 percent of such budget in fiscal year 2023 and each fiscal year thereafter,'';

(2) in paragraph (2)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the margins accordingly;

(B) by striking ''A Federal agency'' and inserting the following:

''(A) IN GENERAL.—A Federal agency''; and

(C) by adding at the end the following:

''(B) DEPARTMENT OF DEFENSE AND DEPARTMENT OF ENERGY.—For the Department of Defense and the Department of Energy, to the greatest extent practicable, the percentage of the extramural budget in excess of 2.5 percent required to be expended with small business concerns under subparagraphs (D) through (M) of paragraph (1)—

''(i) may not be used for new Phase I or Phase II awards; and

''(ii) shall be used for activities that further the readiness levels of technologies developed under Phase II awards, including conducting testing and evaluation to promote the transition of such technologies into commercial or defense products, or systems furthering the mission needs of the Department of Defense or the Department of Energy, as the case may be.''; and

(3) by adding at the end the following:

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the Federal agency that exceeds the amount required under paragraph (1).''.

SEC. 5104. STTR ALLOCATION INCREASE.

Section 9(n)(1)(B) of the Small Business Act (15 U.S.C. 638(n)(1)(B)) is amended—

(1) in clause (i), by striking ''and'' at the end;

(2) in clause (ii), by striking ''thereafter.'' and inserting ''through fiscal year 2012;'';

(3) by adding at the end the following:

''(iii) 0.4 percent for fiscal years 2013 and 2014;

''(iv) 0.5 percent for fiscal years 2015 and 2016; and

''(v) 0.6 percent for fiscal year 2017 and each fiscal year thereafter.''; and

(4) by adding at the end the following:

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the Federal agency that exceeds the amount required under paragraph (1).''.

SEC. 5105. SBIR AND STTR AWARD LEVELS.

(a) SBIR ADJUSTMENTS.—Section 9(j)(2)(D) of the Small Business Act (15 U.S.C. 638(j)(2)(D)) is amended—

(1) by striking ''$100,000'' and inserting ''$150,000''; and

(2) by striking ''$750,000'' and inserting ''$1,000,000''.

(b) STTR ADJUSTMENTS.—Section 9(p)(2)(B)(ix) of the Small Business Act (15 U.S.C. 638(p)(2)(B)(ix)) is amended—

(1) by striking ''$100,000'' and inserting ''$150,000''; and

(2) by striking ''$750,000'' and inserting ''$1,000,000''.

(c) ANNUAL ADJUSTMENTS.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended—

(1) in subsection (j)(2)(D), by striking ''once every 5 years to reflect economic adjustments and programmatic considerations'' and inserting ''every year for inflation''; and

(2) in subsection (p)(2)(B)(ix), as amended by subsection (b) of this section, by inserting ''(each of which the Administrator shall adjust for inflation annually)'' after ''$1,000,000,''.

(d) LIMITATION ON SIZE OF AWARDS.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended by adding at the end the following:

''(aa) LIMITATION ON SIZE OF AWARDS.—

''(1) LIMITATION.—No Federal agency may issue an award under the SBIR program or the STTR program if the size of the award exceeds the award guidelines established under this section by more than 50 percent.

''(2) MAINTENANCE OF INFORMATION.—Participating agencies shall maintain information on awards exceeding the guidelines established under this section, including—

''(A) the amount of each award;

''(B) a justification for exceeding the award amount;

''(C) the identity and location of each award recipient; and

''(D) whether an award recipient has received any venture capital investment and, if so, whether the recipient is majority-owned by multiple venture capital operating companies.

''(3) REPORTS.—The Administrator shall include the information described in paragraph (2) in the annual report of the Administrator to Congress.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prevent a Federal agency from supplementing an award under the SBIR program or the STTR program using funds of the Federal agency that are not part of the SBIR program or the STTR program of the Federal agency.''.

SEC. 5106. AGENCY AND PROGRAM FLEXIBILITY.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(bb) SUBSEQUENT PHASE II AWARDS.—

''(1) AGENCY FLEXIBILITY.—A small business concern that received an award from a Federal agency under this section shall be eligible to receive a subsequent Phase II award from another Federal agency, if the head of each relevant Federal agency or the relevant component of the Federal agency makes a written determination that the topics of the relevant awards are the same and both agencies report the awards to the Administrator for inclusion in the public database under subsection (k).

''(2) SBIR AND STTR PROGRAM FLEXIBILITY.—A small business concern that received an award under this section under the SBIR program or the STTR program may receive a subsequent Phase II award in either the SBIR program or the STTR program and the participating agency or agencies shall report the awards to the Administrator for inclusion in the public database under subsection (k).

''(3) PREVENTING DUPLICATIVE AWARDS.—Before making an award under paragraph (1) or (2), the head of a Federal agency shall verify that the project to be performed with the award has not been funded under the SBIR program or STTR program of another Federal agency.''.

SEC. 5107. ELIMINATION OF PHASE II INVITATIONS.

(a) IN GENERAL.—Section 9(e) of the Small Business Act (15 U.S.C. 638(e)) is amended—

(1) in paragraph (4)(B), by striking ''to further'' and inserting: ''which shall not include any invitation, pre-screening, pre-selection, or down-selection process for eligibility for the second phase, that will further''; and

(2) in paragraph (6)(B), by striking ''to further develop proposed ideas to'' and inserting ''which shall not include any invitation, pre-screening, pre-selection, or down-selection process for eligibility for the second phase, that will further develop proposals that''.

SEC. 5108. PARTICIPATION BY FIRMS WITH SUBSTANTIAL INVESTMENT FROM MULTIPLE VENTURE CAPITAL OPERATING COMPANIES IN A PORTION OF THE SBIR PROGRAM.

(a) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(cc) PARTICIPATION OF SMALL BUSINESS CONCERNS MAJORITY-OWNED BY VENTURE CAPITAL OPERATING COMPANIES IN THE SBIR PROGRAM.—

''(1) AUTHORITY.—Upon a written determination described in paragraph (2) provided to the Administrator and to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives not later than 30 days before the date on which an award is made—

''(A) the Director of the National Institutes of Health, the Secretary of Energy, and the Director of the National Science Foundation may award not more than 25 percent of the funds allocated for the SBIR program of the Federal agency to small business concerns that are owned in majority part by multiple venture capital operating companies through competitive, merit-based procedures that are open to all eligible small business concerns; and

''(B) the head of a Federal agency other than a Federal agency described in subparagraph (A) that participates in the SBIR program may award not more than 15 percent of the funds allocated for the SBIR program of the Federal agency to small business concerns that are owned in majority part by multiple venture capital operating companies through competitive, merit-based procedures that are open to all eligible small business concerns.

''(2) DETERMINATION.—A written determination described in this paragraph is a written determination by the head of a Federal agency that explains how the use of the authority under paragraph (1) will—

''(A) induce additional venture capital funding of small business innovations;

''(B) substantially contribute to the mission of the Federal agency;

''(C) demonstrate a need for public research; and

''(D) otherwise fulfill the capital needs of small business concerns for additional financing for the SBIR project.

''(3) REGISTRATION.—A small business concern that is majority-owned by multiple venture capital operating companies and qualified for participation in the program authorized under paragraph (1) shall—

''(A) register with the Administrator on the date that the small business concern submits an application for an award under the SBIR program; and

''(B) indicate in any SBIR proposal that the small business concern is registered under subparagraph (A) as majority-owned by multiple venture capital operating companies.

''(4) COMPLIANCE.—

''(A) IN GENERAL.—The head of a Federal agency that makes an award under this subsection during a fiscal year shall collect and submit to the Administrator data relating to the number and dollar amount of Phase I awards, Phase II awards, and any other category of awards by the Federal agency under the SBIR program during that fiscal year.

''(B) ANNUAL REPORTING.—The Administrator shall include as part of each annual report by the Administration under subsection (b)(7) any data submitted under subparagraph (A) and a discussion of the compliance of each Federal agency that makes an award under this subsection during the fiscal year with the maximum percentages under paragraph (1).

''(5) ENFORCEMENT.—If a Federal agency awards more than the percent of the funds allocated for the SBIR program of the Federal agency authorized under paragraph (1) for a purpose described in paragraph (1), the head of the Federal agency shall transfer an amount equal to the amount awarded in excess of the amount authorized under paragraph (1) to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency not later than 180 days after the date on which the Federal agency made the award that caused the total awarded under paragraph (1) to be more than the amount authorized under paragraph (1) for a purpose described in paragraph (1).

''(6) FINAL DECISIONS ON APPLICATIONS UNDER THE SBIR PROGRAM.—

''(A) DEFINITION.—In this paragraph, the term 'covered small business concern' means a small business concern that—

''(i) was not majority-owned by multiple venture capital operating companies on the date on which the small business concern submitted an application in response to a solicitation under the SBIR programs; and

''(ii) on the date of the award under the SBIR program is majority-owned by multiple venture capital operating companies.

''(B) IN GENERAL.—If a Federal agency does not make an award under a solicitation under the SBIR program before the date that is 9 months after the date on which the period for submitting applications under the solicitation ends—

''(i) a covered small business concern is eligible to receive the award, without regard to whether the covered small business concern meets the requirements for receiving an award under the SBIR program for a small business concern that is majority-owned by multiple venture capital operating companies, if the covered small business concern meets all other requirements for such an award; and

''(ii) the head of the Federal agency shall transfer an amount equal to any amount awarded to a covered small business concern under the solicitation to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency, not later than 90 days after the date on which the Federal agency makes the award.

''(7) EVALUATION CRITERIA.—A Federal agency may not use investment of venture capital as a criterion for the award of contracts under the SBIR program or STTR program.

''(8) TERMINATION.—The authority under this subsection shall terminate on September 30, 2016.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following:

''(aa) VENTURE CAPITAL OPERATING COMPANY.—In this Act, the term 'venture capital operating company' means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).''.

(c) RULEMAKING TO ENSURE THAT FIRMS THAT ARE MAJORITY-OWNED BY MULTIPLE VENTURE CAPITAL OPERATING COMPANIES ARE ABLE TO PARTICIPATE IN A PORTION OF THE SBIR PROGRAM.—

(1) STATEMENT OF CONGRESSIONAL INTENT.—It is the stated intent of Congress that the Administrator should promulgate regulations to carry out the authority under section 9(cc) of the Small Business Act, as added by this section, that—

(A) permit small business concerns that are majority-owned by multiple venture capital operating companies to participate in the SBIR program in accordance with section 9(cc) of the Small Business Act;

(B) provide specific guidance for small business concerns that are majority-owned by multiple venture capital operating companies with regard to eligibility, participation, and affiliation rules; and

(C) preserve and maintain the integrity of the SBIR program as a program for small business concerns in the United States, prohibiting large businesses or large entities or foreign-owned businesses or entities from participation in the program established under section 9 of the Small Business Act.

(2) RULEMAKING REQUIRED.—

(A) PROPOSED REGULATIONS.—Not later than 4 months after the date of enactment of this Act, the Administrator shall issue proposed regulations to amend section 121.103 (relating to determinations of affiliation applicable to the SBIR program) and section 121.702 (relating to ownership and control standards and size standards applicable to the SBIR program) of title 13, Code of Federal Regulations, for firms that are majority-owned by multiple venture capital operating companies and participating in the SBIR program solely under the authority under section 9(cc) of the Small Business Act, as added by this section.

(B) FINAL REGULATIONS.—Not later than 1 year after the date of enactment of this Act, and after providing notice of and opportunity for comment on the proposed regulations issued under subparagraph (A), the Administrator shall issue final or interim final regulations under this subsection.

(3) CONTENTS.—

(A) IN GENERAL.—The regulations issued under this subsection shall permit the participation of applicants majority-owned by multiple venture capital operating companies in the SBIR program in accordance with section 9(cc) of the Small Business Act, as added by this section, unless the Administrator determines—

(i) in accordance with the size standards established under subparagraph (B), that the applicant is—

(I) a large business or large entity; or

(II) majority-owned or controlled by a large business or large entity; or

(ii) in accordance with the criteria established under subparagraph (C), that the applicant—

(I) is a foreign business or a foreign entity or is not a citizen of the United States or alien lawfully admitted for permanent residence; or

(II) is majority-owned or controlled by a foreign business, foreign entity, or person who is not a citizen of the United States or alien lawfully admitted for permanent residence.

(B) SIZE STANDARDS.—Under the authority to establish size standards under paragraphs (2) and (3) of section 3(a) of the Small Business Act (15 U.S.C. 632(a)), the Administrator shall, in accordance with paragraph (1) of this subsection, establish size standards for applicants seeking to participate in the SBIR program solely under the authority under section 9(cc) of the Small Business Act, as added by this section.

(C) CRITERIA FOR DETERMINING FOREIGN OWNERSHIP.—The Administrator shall establish criteria for determining whether an applicant meets the requirements under subparagraph (A)(ii), and, in establishing the criteria, shall consider whether the criteria should include—

(i) whether the applicant is at least 51 percent owned or controlled by citizens of the United States or domestic venture capital operating companies;

(ii) whether the applicant is domiciled in the United States; and

(iii) whether the applicant is a direct or indirect subsidiary of a foreign-owned firm, including whether the criteria should include that an applicant is a direct or indirect subsidiary of a foreign-owned entity if—

(I) any venture capital operating company that owns more than 20 percent of the applicant is a direct or indirect subsidiary of a foreign-owned entity; or

(II) in the aggregate, entities that are direct or indirect subsidiaries of foreign-owned entities own more than 49 percent of the applicant.

(D) CRITERIA FOR DETERMINING AFFILIATION.—The Administrator shall establish criteria, in accordance with paragraph (1), for determining whether an applicant is affiliated with a venture capital operating company or any other business that the venture capital operating company has financed and, in establishing the criteria, shall specify that—

(i) if a venture capital operating company that is determined to be affiliated with an applicant is a minority investor in the applicant, the portfolio companies of the venture capital operating company shall not be determined to be affiliated with the applicant, unless—

(I) the venture capital operating company owns a majority of the portfolio company; or

(II) the venture capital operating company holds a majority of the seats on the board of directors of the portfolio company;

(ii) subject to clause (i), the Administrator retains the authority to determine whether a venture capital operating company is affiliated with an applicant, including establishing other criteria;

(iii) the Administrator may not determine that a portfolio company of a venture capital operating company is affiliated with an applicant based solely on one or more shared investors; and

(iv) subject to clauses (i), (ii), and (iii), the Administrator retains the authority to determine whether a portfolio company of a venture capital operating company is affiliated with an applicant based on factors independent of whether there is a shared investor, such as whether there are contractual obligations between the portfolio company and the applicant.

(4) ENFORCEMENT.—If the Administrator does not issue final or interim final regulations under this subsection on or before the date that is 1 year after the date of enactment of this Act, the Administrator may not carry out any activities under section 4(h) of the Small Business Act (15 U.S.C. 633(h)) (as continued in effect pursuant to the Act entitled ''An Act to extend temporarily certain authorities of the Small Business Administration'', approved October 10, 2006 (Public Law 109–316; 120 Stat. 1742)) during the period beginning on the date that is 1 year and 1 day after the date of enactment of this Act, and ending on the date on which the final or interim final regulations are issued.

(5) DEFINITION.—In this subsection, the term ''venture capital operating company'' has the same meaning as in section 3(aa) of

the Small Business Act, as added by this section.

(d) ASSISTANCE FOR DETERMINING AFFILIATES.—

(1) CLEAR EXPLANATION REQUIRED.—Not later than 30 days after the date of enactment of this Act, the Administrator shall post on the Web site of the Administration (with a direct link displayed on the homepage of the Web site of the Administration or the SBIR and STTR Web sites of the Administration)—

(A) a clear explanation of the SBIR and STTR affiliation rules under part 121 of title 13, Code of Federal Regulations; and

(B) contact information for officers or employees of the Administration who—

(i) upon request, shall review an issue relating to the rules described in subparagraph (A); and

(ii) shall respond to a request under clause (i) not later than 20 business days after the date on which the request is received.

(2) INCLUSION OF AFFILIATION RULES FOR CERTAIN SMALL BUSINESS CONCERNS.—On and after the date on which the final regulations under subsection (c) are issued, the Administrator shall post on the Web site of the Administration information relating to the regulations, in accordance with paragraph (1).

SEC. 5109. SBIR AND STTR SPECIAL ACQUISITION PREFERENCE.

Section 9(r) of the Small Business Act (15 U.S.C. 638(r)) is amended by adding at the end the following:

''(4) PHASE III AWARDS.—To the greatest extent practicable, Federal agencies and Federal prime contractors shall issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.''.

SEC. 5110. COLLABORATING WITH FEDERAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(dd) COLLABORATING WITH FEDERAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS.—

''(1) AUTHORIZATION.—Subject to the limitations under this section, the head of each participating Federal agency may make SBIR and STTR awards to any eligible small business concern that—

''(A) intends to enter into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award; or

''(B) has entered into a cooperative research and development agreement (as defined in section 12(d) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d))) with a Federal laboratory.

''(2) PROHIBITION.—No Federal agency shall—

''(A) condition an SBIR or STTR award upon entering into agreement with any Federal laboratory or any federally funded laboratory or research and development center for any portion of the activities to be performed under that award;

''(B) approve an agreement between a small business concern receiving a SBIR or STTR award and a Federal laboratory or federally funded laboratory or research and development center, if the small business concern performs a lesser portion of the activities to be performed under that award than required by this section and by the SBIR Policy Directive and the STTR Policy Directive of the Administrator; or

''(C) approve an agreement that violates any provision, including any data rights protections provision, of this section or the SBIR and the STTR Policy Directives.

''(3) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall modify the SBIR Policy Directive and the STTR Policy Directive issued under this section to ensure that small business concerns—

''(A) have the flexibility to use the resources of the Federal laboratories and federally funded research and development centers; and

''(B) are not mandated to enter into agreement with any Federal laboratory or any federally funded laboratory or research and development center as a condition of an award.''.

SEC. 5111. NOTICE REQUIREMENT.

(a) SBIR PROGRAM.—Section 9(g) of the Small Business Act (15 U.S.C. 638(g)) is amended—

(1) in paragraph (10), by striking ''and'' at the end;

(2) in paragraph (11), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(12) provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the SBIR program of the Federal agency; and''.

(b) STTR PROGRAM.—Section 9(o) of the Small Business Act (15 U.S.C. 638(o)) is amended—

(1) by striking paragraph (15);

(2) in paragraph (16), by striking the period at the end and inserting ''; and'';

(3) by redesignating paragraph (16) as paragraph (15); and

(4) by adding at the end the following:

''(16) provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the STTR program of the Federal agency.''.

SEC. 5112. EXPRESS AUTHORITY FOR AN AGENCY TO AWARD SEQUENTIAL PHASE II AWARDS FOR SBIR OR STTR FUNDED PROJECTS.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(ee) ADDITIONAL PHASE II SBIR AND STTR AWARDS.—A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive an additional Phase II SBIR award or Phase II STTR award for that project.''.

TITLE LII—OUTREACH AND COMMERCIALIZATION INITIATIVES

SEC. 5201. RURAL AND STATE OUTREACH.

(a) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended by inserting after subsection (r) the following:

''(s) FEDERAL AND STATE TECHNOLOGY PARTNERSHIP PROGRAM.—

''(1) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) APPLICANT.—The term 'applicant' means an entity, organization, or individual that submits a proposal for an award or a cooperative agreement under this subsection.

''(B) FAST PROGRAM.—The term 'FAST program' means the Federal and State Technology Partnership Program established under this subsection.

''(C) RECIPIENT.—The term 'recipient' means a person that receives an award or becomes party to a cooperative agreement under this subsection.

''(D) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

''(E) DEFINITIONS RELATING TO MENTORING NETWORKS.—The terms 'business advice and counseling', 'mentor', and 'mentoring network' have the meanings given those terms in section 34(e).

''(2) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to be known as the Federal and State Technology Partnership Program, the purpose of which shall be to strengthen the technological competitiveness of small business concerns in the States.

''(3) GRANTS AND COOPERATIVE AGREEMENTS.—

''(A) JOINT REVIEW.—In carrying out the FAST program, the Administrator and the program managers for the SBIR program and STTR program at the National Science Foundation, the Department of Defense, and any other Federal agency determined appropriate by the Administrator shall jointly review proposals submitted by applicants and may make awards or enter into cooperative agreements under this subsection based on the factors for consideration set forth in subparagraph (B), in order to enhance or develop in a State—

''(i) technology research and development by small business concerns;

''(ii) technology transfer from university research to technology-based small business concerns;

''(iii) technology deployment and diffusion benefitting small business concerns;

''(iv) the technological capabilities of small business concerns through the establishment or operation of consortia comprised of entities, organizations, or individuals, including—

''(I) State and local development agencies and entities;

''(II) representatives of technology-based small business concerns;

''(III) industries and emerging companies;

''(IV) universities; and

''(V) small business development centers; and

''(v) outreach, financial support, and technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR program or STTR program, including initiatives—

''(I) to make grants or loans to companies to pay a portion or all of the cost of developing SBIR or STTR proposals;

''(II) to establish or operate a Mentoring Network within the FAST program to provide business advice and counseling that will assist small business concerns that have been identified by FAST program participants, program managers of participating SBIR agencies, the Administration, or other entities that are knowledgeable about the SBIR and STTR programs as good candidates for the SBIR and STTR programs, and that would benefit from mentoring, in accordance with section 34;

''(III) to create or participate in a training program for individuals providing SBIR or STTR outreach and assistance at the State and local levels; and

''(IV) to encourage the commercialization of technology developed through funding under the SBIR program or the STTR program.

''(B) SELECTION CONSIDERATIONS.—In making awards or entering into cooperative agreements under this subsection, the Administrator and the program managers referred to in subparagraph (A)—

''(i) may only consider proposals by applicants that intend to use a portion of the Federal assistance provided under this subsection to provide outreach, financial support, or technical assistance to technology-based small business concerns participating in or interested in participating in the SBIR program or STTR program; and

''(ii) shall consider, at a minimum—

''(I) whether the applicant has demonstrated that the assistance to be provided would address unmet needs of small business concerns in the community, and whether it

is important to use Federal funding for the proposed activities;

''(II) whether the applicant has demonstrated that a need exists to increase the number or success of small high-technology businesses in the State or an area of the State, as measured by the number of Phase I and Phase II SBIR awards that have historically been received by small business concerns in the State or area of the State;

''(III) whether the projected costs of the proposed activities are reasonable;

''(IV) whether the proposal integrates and coordinates the proposed activities with other State and local programs assisting small high-technology firms in the State;

''(V) the manner in which the applicant will measure the results of the activities to be conducted; and

''(VI) whether the proposal addresses the needs of small business concerns—

''(aa) owned and controlled by women;

''(bb) that are socially and economically disadvantaged small business concerns (as defined in section 8(a)(4)(A));

''(cc) that are HUBZone small business concerns;

''(dd) located in areas that have historically not participated in the SBIR and STTR programs;

''(ee) owned and controlled by service-disabled veterans;

''(ff) owned and controlled by Native Americans; and

''(gg) located in geographic areas with an unemployment rate that exceeds the national unemployment rate, based on the most recently available monthly publications of the Bureau of Labor Statistics of the Department of Labor.

''(C) PROPOSAL LIMIT.—Not more than 1 proposal may be submitted for inclusion in the FAST program under this subsection to provide services in any one State in any 1 fiscal year.

''(D) PROCESS.—Proposals and applications for assistance under this subsection shall be in such form and subject to such procedures as the Administrator shall establish. The Administrator shall promulgate regulations establishing standards for the consideration of proposals under subparagraph (B), including standards regarding each of the considerations identified in subparagraph (B)(ii).

''(4) COOPERATION AND COORDINATION.—In carrying out the FAST program, the Administrator shall cooperate and coordinate with—

''(A) Federal agencies required by this section to have an SBIR program; and

''(B) entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns, including—

''(i) State and local development agencies and entities;

''(ii) State committees established under the Experimental Program to Stimulate Competitive Research of the National Science Foundation (as established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g));

''(iii) State science and technology councils; and

''(iv) representatives of technology-based small business concerns.

''(5) ADMINISTRATIVE REQUIREMENTS.—

''(A) COMPETITIVE BASIS.—Awards and cooperative agreements under this subsection shall be made or entered into, as applicable, on a competitive basis.

''(B) MATCHING REQUIREMENTS.—

''(i) IN GENERAL.—The non-Federal share of the cost of an activity (other than a planning activity) carried out using an award or under a cooperative agreement under this subsection shall be—

''(I) except as provided in clause (iii), 35 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in 1 of the 18 States receiving the fewest Phase I SBIR awards;

''(II) except as provided in clause (ii) or (iii), 1 dollar for each Federal dollar, in the case of a recipient that will serve small business concerns located in 1 of the 16 States receiving the greatest number of Phase I SBIR awards; and

''(III) except as provided in clause (ii) or (iii), 50 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in a State that is not described in subclause (I) or (II) that is receiving Phase I SBIR awards.

''(ii) LOW-INCOME AREAS.—The non-Federal share of the cost of the activity carried out using an award or under a cooperative agreement under this subsection shall be 35 cents for each Federal dollar that will be directly allocated by a recipient described in clause (i) to serve small business concerns located in a qualified census tract, as that term is defined in section 42(d)(5)(B)(ii)(I) of the Internal Revenue Code of 1986. Federal dollars not so allocated by that recipient shall be subject to the matching requirements of clause (i).

''(iii) RURAL AREAS.—

''(I) IN GENERAL.—Except as provided in subclause (II), the non-Federal share of the cost of the activity carried out using an award or under a cooperative agreement under this subsection shall be 35 cents for each Federal dollar that will be directly allocated by a recipient described in clause (i) to serve small business concerns located in a rural area.

''(II) ENHANCED RURAL AWARDS.—For a recipient located in a rural area that is located in a State described in clause (i)(I), the non-Federal share of the cost of the activity carried out using an award or under a cooperative agreement under this subsection shall be 15 cents for each Federal dollar that will be directly allocated by a recipient described in clause (i) to serve small business concerns located in the rural area.

''(III) DEFINITION OF RURAL AREA.—In this clause, the term 'rural area' has the meaning given that term in section 1393(a)(2) of the Internal Revenue Code of 1986.

''(iv) TYPES OF FUNDING.—The non-Federal share of the cost of an activity carried out by a recipient shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

''(v) RANKINGS.—For the first full fiscal year after the date of enactment of the SBIR/STTR Reauthorization Act of 2011, and each fiscal year thereafter, based on the statistics for the most recent full fiscal year for which the Administrator has compiled statistics, the Administrator shall reevaluate the ranking of each State for purposes of clause (i).

''(C) DURATION.—Awards may be made or cooperative agreements entered into under this subsection for multiple years, not to exceed 5 years in total.

''(6) ANNUAL REPORTS.—The Administrator shall submit an annual report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives regarding—

''(A) the number and amount of awards provided and cooperative agreements entered into under the FAST program during the preceding year;

''(B) a list of recipients under this subsection, including their location and the activities being performed with the awards made or under the cooperative agreements entered into; and

''(C) the Mentoring Networks and the mentoring database, as provided for under section 34, including—

''(i) the status of the inclusion of mentoring information in the database required by subsection (k); and

''(ii) the status of the implementation and description of the usage of the Mentoring Networks.

''(7) PROGRAM LEVELS.—

''(A) IN GENERAL.—There is authorized to be appropriated to carry out the FAST program, including Mentoring Networks, under this subsection and section 34, $15,000,000 for each of fiscal years 2011 through 2016.

''(B) MENTORING DATABASE.—Of the total amount made available under subparagraph (A) for fiscal years 2011 through 2016, a reasonable amount, not to exceed a total of $500,000, may be used by the Administration to carry out section 34(d).

''(8) TERMINATION.—The authority to carry out the FAST program under this subsection shall terminate on September 30, 2016.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by striking section 34 (15 U.S.C. 657d);

(2) by redesignating sections 35 through 43 as sections 34 through 42, respectively;

(3) in section 9(k)(1)(D) (15 U.S.C. 638(k)(1)(D)), by striking ''section 35(d)'' and inserting ''section 34(d)'';

(4) in section 34 (15 U.S.C. 657e), as so redesignated—

(A) in subsection (c)(1), by striking ''section 34(c)(1)(E)(ii)'' and inserting ''section 9(s)(3)(A)(v)(II)'';

(B) by striking ''section 34'' each place it appears and inserting ''section 9(s)''; and

(C) by adding at the end the following:

''(e) DEFINITIONS.—In this section, the following definitions apply:

''(1) BUSINESS ADVICE AND COUNSELING.—The term 'business advice and counseling' means providing advice and assistance on matters described in subsection (c)(2)(B) to small business concerns to guide them through the SBIR and STTR program process, from application to award and successful completion of each phase of the program.

''(2) FAST PROGRAM.—The term 'FAST program' means the Federal and State Technology Partnership Program established under section 9(s).

''(3) MENTOR.—The term 'mentor' means an individual described in subsection (c)(2).

''(4) MENTORING NETWORK.—The term 'Mentoring Network' means an association, organization, coalition, or other entity (including an individual) that meets the requirements of subsection (c).

''(5) RECIPIENT.—The term 'recipient' means a person that receives an award or becomes party to a cooperative agreement under this section.

''(6) SBIR PROGRAM.—The term 'SBIR program' has the same meaning as in section 9(e)(4).

''(7) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

''(8) STTR PROGRAM.—The term 'STTR program' has the same meaning as in section 9(e)(6).'';

(5) in section 36(d) (15 U.S.C. 657i(d)), as so redesignated, by striking ''section 43'' and inserting ''section 42'';

(6) in section 39(d) (15 U.S.C. 657l(d)), as so redesignated, by striking ''section 43'' and inserting ''section 42''; and

(7) in section 40(b) (15 U.S.C. 657m(b)), as so redesignated, by striking ''section 43'' and inserting ''section 42''.

SEC. 5202. TECHNICAL ASSISTANCE FOR AWARDEES.

Section 9(q) of the Small Business Act (15 U.S.C. 638(q)) is amended—

(1) in paragraph (1)—

(A) by inserting ''or STTR program'' after ''SBIR program''; and

(B) by striking ''SBIR projects'' and inserting ''SBIR or STTR projects'';

(2) in paragraph (2), by striking ''3 years'' and inserting ''5 years''; and

(3) in paragraph (3)—

(A) in subparagraph (A)—

(i) by inserting ''or STTR'' after ''SBIR''; and

(ii) by striking ''$4,000'' and inserting ''$5,000'';

(B) by striking subparagraph (B) and inserting the following:

''(B) PHASE II.—A Federal agency described in paragraph (1) may—

''(i) provide to the recipient of a Phase II SBIR or STTR award, through a vendor selected under paragraph (2), the services described in paragraph (1), in an amount equal to not more than $5,000 per year; or

''(ii) authorize the recipient of a Phase II SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than $5,000 per year, which shall be in addition to the amount of the recipient's award.''; and

(C) by adding at the end the following:

''(C) FLEXIBILITY.—In carrying out subparagraphs (A) and (B), each Federal agency shall provide the allowable amounts to a recipient that meets the eligibility requirements under the applicable subparagraph, if the recipient requests to seek technical assistance from an individual or entity other than the vendor selected under paragraph (2) by the Federal agency.

''(D) LIMITATION.—A Federal agency may not—

''(i) use the amounts authorized under subparagraph (A) or (B) unless the vendor selected under paragraph (2) provides the technical assistance to the recipient; or

''(ii) enter a contract with a vendor under paragraph (2) under which the amount provided for technical assistance is based on total number of Phase I or Phase II awards.''.

SEC. 5203. COMMERCIALIZATION READINESS PROGRAM AT DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—Section 9(y) of the Small Business Act (15 U.S.C. 638(y)) is amended—

(1) in the subsection heading, by striking ''PILOT'' and inserting ''READINESS'';

(2) by striking ''Pilot'' each place that term appears and inserting ''Readiness'';

(3) in paragraph (1)—

(A) by inserting ''or Small Business Technology Transfer Program'' after ''Small Business Innovation Research Program''; and

(B) by adding at the end the following: ''The authority to create and administer a Commercialization Readiness Program under this subsection may not be construed to eliminate or replace any other SBIR program or STTR program that enhances the insertion or transition of SBIR or STTR technologies, including any such program in effect on the date of enactment of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3136).'';

(4) in paragraph (2), by inserting ''or Small Business Technology Transfer Program'' after ''Small Business Innovation Research Program'';

(5) by striking paragraphs (5) and (6); and

(6) by inserting after paragraph (4) the following:

''(5) INSERTION INCENTIVES.—For any contract with a value of not less than $100,000,000, the Secretary of Defense is authorized to—

''(A) establish goals for the transition of Phase III technologies in subcontracting plans; and

''(B) require a prime contractor on such a contract to report the number and dollar amount of contracts entered into by that prime contractor for Phase III SBIR or STTR projects.

''(6) GOAL FOR SBIR AND STTR TECHNOLOGY INSERTION.—The Secretary of Defense shall—

''(A) set a goal to increase the number of Phase II SBIR contracts and the number of Phase II STTR contracts awarded by that Secretary that lead to technology transition into programs of record or fielded systems;

''(B) use incentives in effect on the date of enactment of the SBIR/STTR Reauthorization Act of 2011, or create new incentives, to encourage agency program managers and prime contractors to meet the goal under subparagraph (A); and

''(C) include in the annual report to Congress the percentage of contracts described in subparagraph (A) awarded by that Secretary, and information on the ongoing status of projects funded through the Commercialization Readiness Program and efforts to transition these technologies into programs of record or fielded systems.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 9(i)(1) of the Small Business Act (15 U.S.C. 638(i)(1)) is amended by inserting ''(including awards under subsection (y))'' after ''the number of awards''.

SEC. 5204. COMMERCIALIZATION READINESS PILOT PROGRAM FOR CIVILIAN AGENCIES.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(ff) PILOT PROGRAM.—

''(1) AUTHORIZATION.—The head of each covered Federal agency may allocate not more than 10 percent of the funds allocated to the SBIR program and the STTR program of the covered Federal agency—

''(A) for awards for technology development, testing, and evaluation of SBIR and STTR Phase II technologies; or

''(B) to support the progress of research or research and development conducted under the SBIR or STTR programs to Phase III.

''(2) APPLICATION BY FEDERAL AGENCY.—

''(A) IN GENERAL.—A covered Federal agency may not establish a pilot program unless the covered Federal agency makes a written application to the Administrator, not later than 90 days before to the first day of the fiscal year in which the pilot program is to be established, that describes a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency.

''(B) DETERMINATION.—The Administrator shall—

''(i) make a determination regarding an application submitted under subparagraph (A) not later than 30 days before the first day of the fiscal year for which the application is submitted;

''(ii) publish the determination in the Federal Register; and

''(iii) make a copy of the determination and any related materials available to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

''(3) MAXIMUM AMOUNT OF AWARD.—The head of a covered Federal agency may not make an award under a pilot program in excess of 3 times the dollar amounts generally established for Phase II awards under subsection (j)(2)(D) or (p)(2)(B)(ix).

''(4) REGISTRATION.—Any applicant that receives an award under a pilot program shall register with the Administrator in a registry that is available to the public.

''(5) REPORT.—The head of each covered Federal agency shall include in the annual report of the covered Federal agency to the Administrator an analysis of the various activities considered for inclusion in the pilot program of the covered Federal agency and a statement of the reasons why each activity considered was included or not included, as the case may be.

''(6) TERMINATION.—The authority to establish a pilot program under this section expires at the end of fiscal year 2014.

''(7) DEFINITIONS.—In this subsection—

''(A) the term 'covered Federal agency'—

''(i) means a Federal agency participating in the SBIR program or the STTR program; and

''(ii) does not include the Department of Defense; and

''(B) the term 'pilot program' means the program established under paragraph (1).''.

SEC. 5205. ACCELERATING CURES.

(a) IN GENERAL.—The Small Business Act (15 U.S.C. 631 et seq.) is amended by inserting after section 42, as redesignated by section 5201 of this Act, the following:

''SEC. 43. SMALL BUSINESS INNOVATION RESEARCH PROGRAM.

''(a) NIH CURES PILOT.—

''(1) ESTABLISHMENT.—An independent advisory board shall be established at the National Academy of Sciences (in this section referred to as the 'advisory board') to conduct periodic evaluations of the SBIR program (as that term is defined in section 9) of each of the National Institutes of Health (referred to in this section as the 'NIH') institutes and centers for the purpose of improving the management of the SBIR program through data-driven assessment.

''(2) MEMBERSHIP.—

''(A) IN GENERAL.—The advisory board shall consist of—

''(i) the Director of the NIH;

''(ii) the Director of the SBIR program of the NIH;

''(iii) senior NIH agency managers, selected by the Director of NIH;

''(iv) industry experts, selected by the Council of the National Academy of Sciences in consultation with the Associate Administrator for Technology of the Administration and the Director of the Office of Science and Technology Policy; and

''(v) owners or operators of small business concerns that have received an award under the SBIR program of the NIH, selected by the Associate Administrator for Technology of the Administration.

''(B) NUMBER OF MEMBERS.—The total number of members selected under clauses (iii), (iv), and (v) of subparagraph (A) shall not exceed 10.

''(C) EQUAL REPRESENTATION.—The total number of members of the advisory board selected under clauses (i), (ii), (iii), and (iv) of subparagraph (A) shall be equal to the number of members of the advisory board selected under subparagraph (A)(v).

''(b) ADDRESSING DATA GAPS.—In order to enhance the evidence-base guiding SBIR program decisions and changes, the Director of the SBIR program of the NIH shall address the gaps and deficiencies in the data collection concerns identified in the 2007 report of the National Academy of Science entitled 'An Assessment of the Small Business Innovation Research Program at the NIH'.

''(c) PILOT PROGRAM.—

''(1) IN GENERAL.—The Director of the SBIR program of the NIH may initiate a pilot program, under a formal mechanism for designing, implementing, and evaluating pilot programs, to spur innovation and to test new strategies that may enhance the development of cures and therapies.

''(2) CONSIDERATIONS.—The Director of the SBIR program of the NIH may consider conducting a pilot program to include individuals with successful SBIR program experience in study sections, hiring individuals with small business development experience for staff positions, separating the commercial and scientific review processes, and examining the impact of the trend toward larger awards on the overall program.

''(d) REPORT TO CONGRESS.—The Director of the NIH shall submit an annual report to Congress and the advisory board on the activities of the SBIR program of the NIH under this section.

''(e) SBIR GRANTS AND CONTRACTS.—

''(1) IN GENERAL.—In awarding grants and contracts under the SBIR program of the NIH each SBIR program manager shall emphasize applications that identify products, processes, technologies, and services that may enhance the development of cures and therapies.

''(2) EXAMINATION OF COMMERCIALIZATION AND OTHER METRICS.—The advisory board shall evaluate the implementation of the requirement under paragraph (1) by examining increased commercialization and other metrics, to be determined and collected by the SBIR program of the NIH.

''(3) PHASE I AND II.—To the greatest extent practicable, the Director of the SBIR program of the NIH shall reduce the time period between Phase I and Phase II funding of grants and contracts under the SBIR program of the NIH to 90 days.

''(f) LIMIT.—Not more than a total of 1 percent of the extramural budget (as defined in section 9 of the Small Business Act (15 U.S.C. 638)) of the NIH for research or research and development may be used for the pilot program under subsection (c) and to carry out subsection (e).''.

(b) PROSPECTIVE REPEAL.—Effective 5 years after the date of enactment of this Act, the Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by striking section 43, as added by subsection (a); and

(2) by redesignating sections 44 and 45 as sections 43 and 44, respectively.

SEC. 5206. FEDERAL AGENCY ENGAGEMENT WITH SBIR AND STTR AWARDEES THAT HAVE BEEN AWARDED MULTIPLE PHASE I AWARDS BUT HAVE NOT BEEN AWARDED PHASE II AWARDS.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(gg) REQUIREMENTS RELATING TO FEDERAL AGENCY ENGAGEMENT WITH CERTAIN PHASE I SBIR AND STTR AWARDEES.—

''(1) DEFINITION.—In this subsection, the term 'covered awardee' means a small business concern that—

''(A) has received multiple Phase I awards over multiple years, as determined by the head of a Federal agency, under the SBIR program or the STTR program of the Federal agency; and

''(B) has not received a Phase II award—

''(i) under the SBIR program or STTR program, as the case may be, of the Federal agency described in subparagraph (A); or

''(ii) relating to a Phase I award described in subparagraph (A) under the SBIR program or the STTR program of another Federal agency.

''(2) PERFORMANCE MEASURES.—The head of each Federal agency that participates in the SBIR program or the STTR program shall develop performance measures for any covered awardee relating to commercializing research or research and development activities under the SBIR program or the STTR program of the Federal agency.''.

SEC. 5207. CLARIFYING THE DEFINITION OF ''PHASE III''.

(a) PHASE III AWARDS.—Section 9(e) of the Small Business Act (15 U.S.C. 638(e)) is amended—

(1) in paragraph (4)(C), in the matter preceding clause (i), by inserting ''for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program'' after ''phase'';

(2) in paragraph (6)(C), in the matter preceding clause (i), by inserting ''for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program'' after ''phase'';

(3) in paragraph (8), by striking ''and'' at the end;

(4) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following:

''(10) the term 'commercialization' means—

''(A) the process of developing products, processes, technologies, or services; and

''(B) the production and delivery of products, processes, technologies, or services for sale (whether by the originating party or by others) to or use by the Federal Government or commercial markets;''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) in section 9 (15 U.S.C. 638)—

(A) in subsection (e)—

(i) in paragraph (4)(C)(ii), by striking ''scientific review criteria'' and inserting ''merit-based selection procedures'';

(ii) in paragraph (9), by striking ''the second or the third phase'' and inserting ''Phase II or Phase III''; and

(iii) by adding at the end the following:

''(11) the term 'Phase I' means—

''(A) with respect to the SBIR program, the first phase described in paragraph (4)(A); and

''(B) with respect to the STTR program, the first phase described in paragraph (6)(A);

''(12) the term 'Phase II' means—

''(A) with respect to the SBIR program, the second phase described in paragraph (4)(B); and

''(B) with respect to the STTR program, the second phase described in paragraph (6)(B); and

''(13) the term 'Phase III' means—

''(A) with respect to the SBIR program, the third phase described in paragraph (4)(C); and

''(B) with respect to the STTR program, the third phase described in paragraph (6)(C).'';

(B) in subsection (j)—

(i) in paragraph (1)(B), by striking ''phase two'' and inserting ''Phase II'';

(ii) in paragraph (2)—

(I) in subparagraph (B)—

(aa) by striking ''the third phase'' each place it appears and inserting ''Phase III''; and

(bb) by striking ''the second phase'' and inserting ''Phase II'';

(II) in subparagraph (D)—

(aa) by striking ''the first phase'' and inserting ''Phase I''; and

(bb) by striking ''the second phase'' and inserting ''Phase II'';

(III) in subparagraph (F), by striking ''the third phase'' and inserting ''Phase III'';

(IV) in subparagraph (G)—

(aa) by striking ''the first phase'' and inserting ''Phase I''; and

(bb) by striking ''the second phase'' and inserting ''Phase II''; and

(V) in subparagraph (H)—

(aa) by striking ''the first phase'' and inserting ''Phase I'';

(bb) by striking ''second phase'' each place it appears and inserting ''Phase II''; and

(cc) by striking ''third phase'' and inserting ''Phase III''; and

(iii) in paragraph (3)—

(I) in subparagraph (A)—

(aa) by striking ''the first phase (as described in subsection (e)(4)(A))'' and inserting ''Phase I'';

(bb) by striking ''the second phase (as described in subsection (e)(4)(B))'' and inserting ''Phase II''; and

(cc) by striking ''the third phase (as described in subsection (e)(4)(C))'' and inserting ''Phase III''; and

(II) in subparagraph (B), by striking ''second phase'' and inserting ''Phase II'';

(C) in subsection (k)—

(i) by striking ''first phase'' each place it appears and inserting ''Phase I''; and

(ii) by striking ''second phase'' each place it appears and inserting ''Phase II'';

(D) in subsection (l)(2)—

(i) by striking ''the first phase'' and inserting ''Phase I''; and

(ii) by striking ''the second phase'' and inserting ''Phase II'';

(E) in subsection (o)(13)—

(i) in subparagraph (B), by striking ''second phase'' and inserting ''Phase II''; and

(ii) in subparagraph (C), by striking ''third phase'' and inserting ''Phase III'';

(F) in subsection (p)—

(i) in paragraph (2)(B)—

(I) in clause (vi)—

(aa) by striking ''the second phase'' and inserting ''Phase II''; and

(bb) by striking ''the third phase'' and inserting ''Phase III''; and

(II) in clause (ix)—

(aa) by striking ''the first phase'' and inserting ''Phase I''; and

(bb) by striking ''the second phase'' and inserting ''Phase II''; and

(ii) in paragraph (3)—

(I) by striking ''the first phase (as described in subsection (e)(6)(A))'' and inserting ''Phase I'';

(II) by striking ''the second phase (as described in subsection (e)(6)(B))'' and inserting ''Phase II''; and

(III) by striking ''the third phase (as described in subsection (e)(6)(A))'' and inserting ''Phase III'';

(G) in subsection (q)(3)—

(i) in subparagraph (A)—

(I) in the subparagraph heading, by striking ''FIRST PHASE'' and inserting ''PHASE I''; and

(II) by striking ''first phase'' and inserting ''Phase I''; and

(ii) in subparagraph (B)—

(I) in the subparagraph heading, by striking ''SECOND PHASE'' and inserting ''PHASE II''; and

(II) by striking ''second phase'' and inserting ''Phase II'';

(H) in subsection (r)—

(i) in the subsection heading, by striking ''THIRD PHASE'' and inserting ''PHASE III'';

(ii) in paragraph (1)—

(I) in the first sentence—

(aa) by striking ''for the second phase'' and inserting ''for Phase II'';

(bb) by striking ''third phase'' and inserting ''Phase III''; and

(cc) by striking ''second phase period'' and inserting ''Phase II period''; and

(II) in the second sentence—

(aa) by striking ''second phase'' and inserting ''Phase II''; and

(bb) by striking ''third phase'' and inserting ''Phase III''; and

(iii) in paragraph (2), by striking ''third phase'' and inserting ''Phase III''; and

(I) in subsection (u)(2)(B), by striking ''the first phase'' and inserting ''Phase I''; and

(2) in section 34(c)(2)(B)(vii) (15 U.S.C. 657e(c)(2)(B)(vii)), as redesignated by section 5201 of this Act, by striking ''third phase'' and inserting ''Phase III''.

SEC. 5208. SHORTENED PERIOD FOR FINAL DECISIONS ON PROPOSALS AND APPLICATIONS.

(a) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended—

(1) in subsection (g)(4)—

(A) by inserting ''(A)'' after ''(4)'';

(B) by adding ''and'' after the semicolon at the end; and

(C) by adding at the end the following:

''(B) make a final decision on each proposal submitted under the SBIR program—

''(i) not later than 90 days after the date on which the solicitation closes; or

''(ii) if the Administrator authorizes an extension for a solicitation, not later than 180 days after the date on which the solicitation closes;''; and

(2) in subsection (o)(4)—

(A) by inserting ''(A)'' after ''(4)'';

(B) by adding ''and'' after the semicolon at the end; and

(C) by adding at the end the following:

''(B) make a final decision on each proposal submitted under the STTR program—

''(i) not later than 90 days after the date on which the solicitation closes; or

''(ii) if the Administrator authorizes an extension for a solicitation, not later than 180 days after the date on which the solicitation closes;''.

(b) NIH PEER REVIEW PROCESS.—

(1) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(hh) NIH PEER REVIEW PROCESS.—The Director of the National Institutes of Health may make an award under the SBIR program or the STTR program of the National Institutes of Health if the application for the award has undergone technical and scientific peer review under section 492 of the Public Health Service Act (42 U.S.C. 289a).''.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Section 105 of the National Institutes of Health Reform Act of 2006 (42 U.S.C. 284n) is amended—

(A) in subsection (a)(3)—

(i) by striking ''A grant'' and inserting ''Except as provided in section 9(hh) of the Small Business Act (15 U.S.C. 638(hh)), a grant''; and

(ii) by striking ''section 402(k)'' and all that follows through ''Act)'' and inserting ''section 402(l) of such Act''; and

(B) in subsection (b)(5)—

(i) by striking ''A grant'' and inserting ''Except as provided in section 9(hh) of the Small Business Act (15 U.S.C. 638(hh)), a grant''; and

(ii) by striking ''section 402(k)'' and all that follows through ''Act)'' and inserting ''section 402(l) of such Act''.

TITLE LIII—OVERSIGHT AND EVALUATION

SEC. 5301. STREAMLINING ANNUAL EVALUATION REQUIREMENTS.

Section 9(b) of the Small Business Act (15 U.S.C. 638(b)), as amended by section 5102 of this Act, is amended—

(1) in paragraph (7)—

(A) by striking ''STTR programs, including the data'' and inserting the following: ''STTR programs, including—

''(A) the data'';

(B) by striking ''(g)(10), (o)(9), and (o)(15), the number'' and all that follows through ''under each of the SBIR and STTR programs, and a description'' and inserting the following: ''(g)(8) and (o)(9); and

''(B) the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns and firms with venture capital investment (including those majority-owned by multiple venture capital operating companies) under each of the SBIR and STTR programs;

''(C) a description of the extent to which each Federal agency is increasing outreach and awards to firms owned and controlled by women and social or economically disadvantaged individuals under each of the SBIR and STTR programs;

''(D) general information about the implementation of, and compliance with the allocation of funds required under, subsection (cc) for firms owned in majority part by venture capital operating companies and participating in the SBIR program;

''(E) a detailed description of appeals of Phase III awards and notices of noncompliance with the SBIR Policy Directive and the STTR Policy Directive filed by the Administrator with Federal agencies; and

''(F) a description''; and

(2) by inserting after paragraph (7) the following:

''(8) to coordinate the implementation of electronic databases at each of the Federal agencies participating in the SBIR program or the STTR program, including the technical ability of the participating agencies to electronically share data;''.

SEC. 5302. DATA COLLECTION FROM AGENCIES FOR SBIR.

Section 9(g) of the Small Business Act (15 U.S.C. 638(g)) is amended—

(1) by striking paragraph (10);

(2) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

(3) by inserting after paragraph (7) the following:

''(8) collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k), including—

''(A) whether an awardee—

''(i) has venture capital or is majority-owned by multiple venture capital operating companies, and, if so—

''(I) the amount of venture capital that the awardee has received as of the date of the award; and

''(II) the amount of additional capital that the awardee has invested in the SBIR technology;

''(ii) has an investor that—

''(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States, and if so, the name of any such individual; or

''(II) is a person that is not an individual and is not organized under the laws of a State or the United States, and if so the name of any such person;

''(iii) is owned by a woman or has a woman as a principal investigator;

''(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator;

''(v) received assistance under the FAST program under section 34, as in effect on the day before the date of enactment of the SBIR/STTR Reauthorization Act of 2011, or the outreach program under subsection (s);

''(vi) is a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); or

''(vii) is located in a State described in subsection (u)(3); and

''(B) a justification statement from the agency, if an awardee receives an award in an amount that is more than the award guidelines under this section;''.

SEC. 5303. DATA COLLECTION FROM AGENCIES FOR STTR.

Section 9(o) of the Small Business Act (15 U.S.C. 638(o)) is amended by striking paragraph (9) and inserting the following:

''(9) collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from applicants and awardees as is necessary to assess the STTR program outputs and outcomes, including information necessary to maintain the database described in subsection (k), including—

''(A) whether an applicant or awardee—

''(i) has venture capital or is majority-owned by multiple venture capital operating companies, and, if so—

''(I) the amount of venture capital that the applicant or awardee has received as of the date of the application or award, as applicable; and

''(II) the amount of additional capital that the applicant or awardee has invested in the SBIR technology;

''(ii) has an investor that—

''(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States, and if so, the name of any such individual; or

''(II) is a person that is not an individual and is not organized under the laws of a State or the United States, and if so the name of any such person;

''(iii) is owned by a woman or has a woman as a principal investigator;

''(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator;

''(v) received assistance under the FAST program under section 34 or the outreach program under subsection (s);

''(vi) is a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); or

''(vii) is located in a State in which the total value of contracts awarded to small business concerns under all STTR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2008, based on the most recent statistics compiled by the Administrator; and

''(B) if an awardee receives an award in an amount that is more than the award guidelines under this section, a statement from the agency that justifies the award amount;''.

SEC. 5304. PUBLIC DATABASE.

Section 9(k)(1) of the Small Business Act (15 U.S.C. 638(k)(1)) is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(F) for each small business concern that has received a Phase I or Phase II SBIR or STTR award from a Federal agency, whether the small business concern—

''(i) has venture capital and, if so, whether the small business concern is registered as majority-owned by multiple venture capital operating companies as required under subsection (cc)(4);

''(ii) is owned by a woman or has a woman as a principal investigator;

''(iii) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator;

''(iv) received assistance under the FAST program under section 34, as in effect on the day before the date of enactment of the

SBIR/STTR Reauthorization Act of 2011, or the outreach program under subsection (s); or

''(v) is owned by a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).''.

SEC. 5305. GOVERNMENT DATABASE.

Section 9(k) of the Small Business Act (15 U.S.C. 638(k)) is amended—

(1) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking ''Not later'' and all that follows through ''Act of 2000'' and inserting ''Not later than 90 days after the date of enactment of the SBIR/STTR Reauthorization Act of 2011'';

(B) by striking subparagraph (C);

(C) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(D) by inserting before subparagraph (B), as so redesignated, the following:

''(A) contains, for each small business concern that applies for, submits a proposal for, or receives an award under Phase I or Phase II of the SBIR program or the STTR program—

''(i) the name, size, and location, and an identifying number assigned by the Administration of the small business concern;

''(ii) an abstract of the project;

''(iii) the specific aims of the project;

''(iv) the number of employees of the small business concern;

''(v) the names of key individuals that will carry out the project;

''(vi) the percentage of effort each individual described in clause (iv) will contribute to the project;

''(vii) whether the small business concern is majority-owned by multiple venture capital operating companies; and

''(viii) the Federal agency to which the application is made, and contact information for the person or office within the Federal agency that is responsible for reviewing applications and making awards under the SBIR program or the STTR program;'';

(E) by redesignating subparagraphs (D), and (E) as subparagraphs (E) and (F), respectively;

(F) by inserting after subparagraph (C), as so redesignated, the following:

''(D) includes, for each awardee—

''(i) the name, size, location, and any identifying number assigned to the awardee by the Administrator;

''(ii) whether the awardee has venture capital, and, if so—

''(I) the amount of venture capital as of the date of the award;

''(II) the percentage of ownership of the awardee held by a venture capital operating company, including whether the awardee is majority-owned by multiple venture capital operating companies; and

''(III) the amount of additional capital that the awardee has invested in the SBIR technology, which information shall be collected on an annual basis;

''(iii) the names and locations of any affiliates of the awardee;

''(iv) the number of employees of the awardee;

''(v) the number of employees of the affiliates of the awardee; and

''(vi) the names of, and the percentage of ownership of the awardee held by—

''(I) any individual who is not a citizen of the United States or a lawful permanent resident of the United States; or

''(II) any person that is not an individual and is not organized under the laws of a State or the United States;'';

(G) in subparagraph (E), as so redesignated, by striking ''and'' at the end;

(H) in subparagraph (F), as so redesignated, by striking the period at the end and inserting ''; and''; and

(I) by adding at the end the following:

''(G) includes a timely and accurate list of any individual or small business concern that has participated in the SBIR program or STTR program that has committed fraud, waste, or abuse relating to the SBIR program or STTR program.''; and

(2) in paragraph (3), by adding at the end the following:

''(C) GOVERNMENT DATABASE.—Not later than 60 days after the date established by a Federal agency for submitting applications or proposals for a Phase I or Phase II award under the SBIR program or STTR program, the head of the Federal agency shall submit to the Administrator the data required under paragraph (2) with respect to each small business concern that applies or submits a proposal for the Phase I or Phase II award.''.

SEC. 5306. ACCURACY IN FUNDING BASE CALCULATIONS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and every year thereafter until the date that is 5 years after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a fiscal and management audit of the SBIR program and the STTR program for the applicable period to—

(A) determine whether Federal agencies comply with the expenditure amount requirements under subsections (f)(1) and (n)(1) of section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act;

(B) assess the extent of compliance with the requirements of section 9(i)(2) of the Small Business Act (15 U.S.C. 638(i)(2)) by Federal agencies participating in the SBIR program or the STTR program and the Administration;

(C) assess whether it would be more consistent and effective to base the amount of the allocations under the SBIR program and the STTR program on a percentage of the research and development budget of a Federal agency, rather than the extramural budget of the Federal agency; and

(D) determine the portion of the extramural research or research and development budget of a Federal agency that each Federal agency spends for administrative purposes relating to the SBIR program or STTR program, and for what specific purposes, including the portion, if any, of such budget the Federal agency spends for salaries and expenses, travel to visit applicants, outreach events, marketing, and technical assistance; and

(2) submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the audit conducted under paragraph (1), including the assessments required under subparagraphs (B) and (C), and the determination made under subparagraph (D) of paragraph (1).

(b) DEFINITION OF APPLICABLE PERIOD.—In this section, the term ''applicable period'' means—

(1) for the first report submitted under this section, the period beginning on October 1, 2005, and ending on September 30 of the last full fiscal year before the date of enactment of this Act for which information is available; and

(2) for the second and each subsequent report submitted under this section, the period—

(A) beginning on October 1 of the first fiscal year after the end of the most recent full fiscal year relating to which a report under this section was submitted; and

(B) ending on September 30 of the last full fiscal year before the date of the report.

SEC. 5307. CONTINUED EVALUATION BY THE NATIONAL ACADEMY OF SCIENCES.

Section 108 of the Small Business Reauthorization Act of 2000 (15 U.S.C. 638 note) is amended by adding at the end the following:

''(e) EXTENSIONS AND ENHANCEMENTS OF AUTHORITY.—

''(1) IN GENERAL.—Not later than 6 months after the date of enactment of the SBIR/STTR Reauthorization Act of 2011, the head of each agency described in subsection (a), in consultation with the Small Business Administration, shall cooperatively enter into an agreement with the National Academy of Sciences for the National Research Council to, not later than 4 years after the date of enactment of the SBIR/STTR Reauthorization Act of 2011, and every 4 years thereafter—

''(A) continue the most recent study under this section relating to—

''(i) the issues described in subparagraphs (A), (B), (C), and (E) of subsection (a)(1); and

''(ii) the effectiveness of the government and public databases described in section 9(k) of the Small Business Act (15 U.S.C. 638(k)) in reducing vulnerabilities of the SBIR program and the STTR program to fraud, waste, and abuse, particularly with respect to Federal agencies funding duplicative proposals and business concerns falsifying information in proposals;

''(B) make recommendations with respect to the issues described in subparagraph (A)(ii) and subparagraphs (A), (D), and (E) of subsection (a)(2); and

''(C) estimate, to the extent practicable, the number of jobs created by the SBIR program or STTR program of the agency.

''(2) CONSULTATION.—An agreement under paragraph (1) shall require the National Research Council to ensure there is participation by and consultation with the small business community, the Administration, and other interested parties as described in subsection (b).

''(3) REPORTING.—An agreement under paragraph (1) shall require that not later than 4 years after the date of enactment of the SBIR/STTR Reauthorization Act of 2011, and every 4 years thereafter, the National Research Council shall submit to the head of the agency entering into the agreement, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives a report regarding the study conducted under paragraph (1) and containing the recommendations described in paragraph (1).''.

SEC. 5308. TECHNOLOGY INSERTION REPORTING REQUIREMENTS.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(ii) PHASE III REPORTING.—The annual SBIR or STTR report to Congress by the Administration under subsection (b)(7) shall include, for each Phase III award made by the Federal agency—

''(1) the name of the agency or component of the agency or the non-Federal source of capital making the Phase III award;

''(2) the name of the small business concern or individual receiving the Phase III award; and

''(3) the dollar amount of the Phase III award.''.

SEC. 5309. INTELLECTUAL PROPERTY PROTECTIONS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the SBIR program to assess whether—

(1) Federal agencies comply with the data rights protections for SBIR awardees and the

technologies of SBIR awardees under section 9 of the Small Business Act (15 U.S.C. 638);

(2) the laws and policy directives intended to clarify the scope of data rights, including in prototypes and mentor-protégé relationships and agreements with Federal laboratories, are sufficient to protect SBIR awardees; and

(3) there is an effective grievance tracking process for SBIR awardees who have grievances against a Federal agency regarding data rights and a process for resolving those grievances.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the study conducted under subsection (a).

SEC. 5310. OBTAINING CONSENT FROM SBIR AND STTR APPLICANTS TO RELEASE CONTACT INFORMATION TO ECONOMIC DEVELOPMENT ORGANIZATIONS.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(jj) CONSENT TO RELEASE CONTACT INFORMATION TO ORGANIZATIONS.—

''(1) ENABLING CONCERN TO GIVE CONSENT.—Each Federal agency required by this section to conduct an SBIR program or an STTR program shall enable a small business concern that is an SBIR applicant or an STTR applicant to indicate to the Federal agency whether the Federal agency has the consent of the concern to—

''(A) identify the concern to appropriate local and State-level economic development organizations as an SBIR applicant or an STTR applicant; and

''(B) release the contact information of the concern to such organizations.

''(2) RULES.—The Administrator shall establish rules to implement this subsection. The rules shall include a requirement that a Federal agency include in the SBIR and STTR application a provision through which the applicant can indicate consent for purposes of paragraph (1).''.

SEC. 5311. PILOT TO ALLOW FUNDING FOR ADMINISTRATIVE, OVERSIGHT, AND CONTRACT PROCESSING COSTS.

(a) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(kk) ASSISTANCE FOR ADMINISTRATIVE, OVERSIGHT, AND CONTRACT PROCESSING COSTS.—

''(1) IN GENERAL.—Subject to paragraph (2), for the 3 full fiscal years beginning after the date of enactment of this subsection, the Administrator shall allow each Federal agency required to conduct an SBIR program to use not more than 3 percent of the funds allocated to the SBIR program of the Federal agency for—

''(A) the administration of the SBIR program or the STTR program of the Federal agency;

''(B) the provision of outreach and technical assistance relating to the SBIR program or STTR program of the Federal agency, including technical assistance site visits and personnel interviews;

''(C) the implementation of commercialization and outreach initiatives that were not in effect on the date of enactment of this subsection;

''(D) carrying out the program under subsection (y);

''(E) activities relating to oversight and congressional reporting, including the waste, fraud, and abuse prevention activities described in section 313(a)(1)(B)(ii) of the SBIR/STTR Reauthorization Act of 2011;

''(F) targeted reviews of recipients of awards under the SBIR program or STTR program of the Federal agency that the head of the Federal agency determines are at high risk for fraud, waste, or abuse, to ensure compliance with requirements of the SBIR program or STTR program, respectively;

''(G) the implementation of oversight and quality control measures, including verification of reports and invoices and cost reviews;

''(H) carrying out subsection (cc);

''(I) carrying out subsection (ff);

''(J) contract processing costs relating to the SBIR program or STTR program of the Federal agency; and

''(K) funding for additional personnel and assistance with application reviews.

''(2) PERFORMANCE CRITERIA.—A Federal agency may not use funds as authorized under paragraph (1) until after the effective date of performance criteria, which the Administrator shall establish, to measure any benefits of using funds as authorized under paragraph (1) and to assess continuation of the authority under paragraph (1).

''(3) RULES.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall issue rules to carry out this subsection.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended—

(A) in subsection (f)(2)(A), as so designated by section 5103(2) of this Act, by striking ''shall not'' and all that follows through ''make available for the purpose'' and inserting ''shall not make available for the purpose''; and

(B) in subsection (y), as amended by section 203—

(i) by striking paragraph (4);

(ii) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(2) TRANSITIONAL RULE.—Notwithstanding the amendments made by paragraph (1), subsection (f)(2)(A) and (y)(4) of section 9 of the Small Business Act (15 U.S.C. 638), as in effect on the day before the date of enactment of this Act, shall continue to apply to each Federal agency until the effective date of the performance criteria established by the Administrator under subsection (kk)(2) of section 9 of the Small Business Act, as added by subsection (a).

(3) PROSPECTIVE REPEAL.—Effective on the first day of the fourth full fiscal year following the date of enactment of this Act, section 9 of the Small Business Act (15 U.S.C. 638), as amended by paragraph (1) of this section, is amended—

(A) in subsection (f)(2)(A), by striking ''shall not make available for the purpose'' and inserting the following: ''shall not—

''(i) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

''(ii) make available for the purpose''; and

(B) in subsection (y)—

(i) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(ii) by inserting after paragraph (3) the following:

''(4) FUNDING.—

''(A) IN GENERAL.—The Secretary of Defense and each Secretary of a military department may use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program for payment of expenses incurred to administer the Commercialization Pilot Program under this subsection.

''(B) LIMITATIONS.—The funds described in subparagraph (A)—

''(i) shall not be subject to the limitations on the use of funds in subsection (f)(2); and

''(ii) shall not be used to make Phase III awards.''.

SEC. 5312. GAO STUDY WITH RESPECT TO VENTURE CAPITAL OPERATING COMPANY INVOLVEMENT.

Not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall—

(1) conduct a study of the impact of requirements relating to venture capital operating company involvement under section 9(cc) of the Small Business Act, as added by section 5108 of this Act; and

(2) submit to Congress a report regarding the study conducted under paragraph (1).

SEC. 5313. REDUCING VULNERABILITY OF SBIR AND STTR PROGRAMS TO FRAUD, WASTE, AND ABUSE.

(a) FRAUD, WASTE, AND ABUSE PREVENTION.—

(1) GUIDELINES FOR FRAUD, WASTE, AND ABUSE PREVENTION.—

(A) AMENDMENTS REQUIRED.—Not later than 90 days after the date of enactment of this Act, the Administrator shall amend the SBIR Policy Directive and the STTR Policy Directive to include measures to prevent fraud, waste, and abuse in the SBIR program and the STTR program.

(B) CONTENT OF AMENDMENTS.—The amendments required under subparagraph (A) shall include—

(i) definitions or descriptions of fraud, waste, and abuse;

(ii) a requirement that the Inspectors General of each Federal agency that participates in the SBIR program or the STTR program cooperate to—

(I) establish fraud detection indicators;

(II) review regulations and operating procedures of the Federal agencies;

(III) coordinate information sharing between the Federal agencies; and

(IV) improve the education and training of, and outreach to—

(aa) administrators of the SBIR program and the STTR program of each Federal agency;

(bb) applicants to the SBIR program or the STTR program; and

(cc) recipients of awards under the SBIR program or the STTR program;

(iii) guidelines for the monitoring and oversight of applicants to and recipients of awards under the SBIR program or the STTR program; and

(iv) a requirement that each Federal agency that participates in the SBIR program or STTR program include the telephone number of the hotline established under paragraph (2)—

(I) on the Web site of the Federal agency; and

(II) in any solicitation or notice of funding opportunity issued by the Federal agency for the SBIR program or the STTR program.

(2) FRAUD, WASTE, AND ABUSE PREVENTION HOTLINE.—

(A) HOTLINE ESTABLISHED.—The Administrator shall establish a telephone hotline that allows individuals to report fraud, waste, and abuse in the SBIR program or STTR program.

(B) PUBLICATION.—The Administrator shall include the telephone number for the hotline established under subparagraph (A) on the Web site of the Administration.

(b) STUDY AND REPORT.—

(1) STUDY.—Not later than 1 year after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall—

(A) conduct a study that evaluates—

(i) the implementation by each Federal agency that participates in the SBIR program or the STTR program of the amendments to the SBIR Policy Directive and the STTR Policy Directive made pursuant to subsection (a);

(ii) the effectiveness of the management information system of each Federal agency that participates in the SBIR program or STTR program in identifying duplicative SBIR and STTR projects;

(iii) the effectiveness of the risk management strategies of each Federal agency that participates in the SBIR program or STTR program in identifying areas of the SBIR program or the STTR program that are at high risk for fraud;

(iv) technological tools that may be used to detect patterns of behavior that may indicate fraud by applicants to the SBIR program or the STTR program;

(v) the success of each Federal agency that participates in the SBIR program or STTR program in reducing fraud, waste, and abuse in the SBIR program or the STTR program of the Federal agency; and

(vi) the extent to which the Inspector General of each Federal agency that participates in the SBIR program or STTR program effectively conducts investigations of individuals alleged to have submitted false claims or violated Federal law relating to fraud, conflicts of interest, bribery, gratuity, or other misconduct; and

(B) submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business of the House of Representatives, and the head of each Federal agency that participates in the SBIR program or STTR program a report on the results of the study conducted under subparagraph (A).

SEC. 5314. INTERAGENCY POLICY COMMITTEE.

(a) ESTABLISHMENT.—The Director of the Office of Science and Technology Policy (in this section referred to as the ''Director''), in conjunction with the Administrator, shall establish an Interagency SBIR/STTR Policy Committee (in this section referred to as the ''Committee'') comprised of 1 representative from each Federal agency with an SBIR program or an STTR program and 1 representative of the Office of Management and Budget.

(b) COCHAIRPERSONS.—The Director and the Administrator shall serve as cochairpersons of the Committee.

(c) DUTIES.—The Committee shall review, and make policy recommendations on ways to improve the effectiveness and efficiency of, the SBIR program and the STTR program, including—

(1) reviewing the effectiveness of the public and government databases described in section 9(k) of the Small Business Act (15 U.S.C. 638(k));

(2) identifying—

(A) best practices for commercialization assistance by Federal agencies that have significant potential to be employed by other Federal agencies; and

(B) proposals by Federal agencies for initiatives to address challenges for small business concerns in obtaining funding after a Phase II award ends and before commercialization; and

(3) developing and incorporating a standard evaluation framework to enable systematic assessment of the SBIR program and STTR program, including through improved tracking of awards and outcomes and development of performance measures for the SBIR program and STTR program of each Federal agency.

(d) REPORTS.—The Committee shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Science and Technology and the Committee on Small Business of the House of Representatives—

(1) a report on the review by and recommendations of the Committee under subsection (c)(1) not later than 1 year after the date of enactment of this Act;

(2) a report on the review by and recommendations of the Committee under subsection (c)(2) not later than 18 months after the date of enactment of this Act; and

(3) a report on the review by and recommendations of the Committee under subsection (c)(3) not later than 2 years after the date of enactment of this Act.

SEC. 5315. SIMPLIFIED PAPERWORK REQUIREMENTS.

Section 9(v) of the Small Business Act (15 U.S.C. 638(v)) is amended—

(1) in the subsection heading, by striking ''SIMPLIFIED REPORTING REQUIREMENTS'' and inserting ''REDUCING PAPERWORK AND COMPLIANCE BURDEN'';

(2) by striking ''The Administrator'' and inserting the following:

''(1) STANDARDIZATION OF REPORTING REQUIREMENTS.—The Administrator''; and

(3) by adding at the end the following:

''(2) SIMPLIFICATION OF APPLICATION AND AWARD PROCESS.—Not later than one year after the date of enactment of this paragraph, and after a period of public comment, the Administrator shall issue regulations or guidelines, taking into consideration the unique needs of each Federal agency, to ensure that each Federal agency required to carry out an SBIR program or STTR program simplifies and standardizes the program proposal, selection, contracting, compliance, and audit procedures for the SBIR program or STTR program of the Federal agency (including procedures relating to overhead rates for applicants and documentation requirements) to reduce the paperwork and regulatory compliance burden on small business concerns applying to and participating in the SBIR program or STTR program.''.

TITLE LIV—POLICY DIRECTIVES

SEC. 5401. CONFORMING AMENDMENTS TO THE SBIR AND THE STTR POLICY DIRECTIVES.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator shall promulgate amendments to the SBIR Policy Directive and the STTR Policy Directive to conform such directives to this Act and the amendments made by this Act.

(b) PUBLISHING SBIR POLICY DIRECTIVE AND THE STTR POLICY DIRECTIVE IN THE FEDERAL REGISTER.—Not later than 180 days after the date of enactment of this Act, the Administrator shall publish the amended SBIR Policy Directive and the amended STTR Policy Directive in the Federal Register.

TITLE LV—OTHER PROVISIONS

SEC. 5501. RESEARCH TOPICS AND PROGRAM DIVERSIFICATION.

(a) SBIR PROGRAM.—Section 9(g) of the Small Business Act (15 U.S.C. 638(g)) is amended—

(1) in paragraph (3)—

(A) in the matter preceding subparagraph (A), by striking ''broad research topics and to topics that further 1 or more critical technologies'' and inserting ''applications to the Federal agency for support of projects relating to nanotechnology, rare diseases, security, energy, transportation, or improving the security and quality of the water supply of the United States, and the efficiency of water delivery systems and usage patterns in the United States (including the territories of the United States) through the use of technology (to the extent that the projects relate to the mission of the Federal agency), broad research topics, and topics that further 1 or more critical technologies or research priorities'';

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

(C) by adding at the end the following:

''(C) the National Academy of Sciences, in the final report issued by the 'America's Energy Future: Technology Opportunities, Risks, and Tradeoffs' project, and in any subsequent report by the National Academy of Sciences on sustainability, energy, or alternative fuels;

''(D) the National Institutes of Health, in the annual report on the rare diseases research activities of the National Institutes of Health for fiscal year 2005, and in any subsequent report by the National Institutes of Health on rare diseases research activities;

''(E) the National Academy of Sciences, in the final report issued by the 'Transit Research and Development: Federal Role in the National Program' project and the report entitled 'Transportation Research, Development and Technology Strategic Plan (2006–2010)' issued by the Research and Innovative Technology Administration of the Department of Transportation, and in any subsequent report issued by the National Academy of Sciences or the Department of Transportation on transportation and infrastructure; or

''(F) the national nanotechnology strategic plan required under section 2(c)(4) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(c)(4)) and in any report issued by the National Science and Technology Council Committee on Technology that focuses on areas of nanotechnology identified in such plan;''; and

(2) by adding after paragraph (12), as added by section 5111(a) of this Act, the following:

''(13) encourage applications under the SBIR program (to the extent that the projects relate to the mission of the Federal agency)—

''(A) from small business concerns in geographic areas underrepresented in the SBIR program or located in rural areas (as defined in section 1393(a)(2) of the Internal Revenue Code of 1986);

''(B) small business concerns owned and controlled by women;

''(C) small business concerns owned and controlled by veterans;

''(D) small business concerns owned and controlled by Native Americans; and

''(E) small business concerns located in a geographic area with an unemployment rates that exceed the national unemployment rate, based on the most recently available monthly publications of the Bureau of Labor Statistics of the Department of Labor.''.

(b) STTR PROGRAM.—Section 9(o) of the Small Business Act (15 U.S.C. 638(o)), as amended by section 5111(b) of this Act, is amended—

(1) in paragraph (3)—

(A) in the matter preceding subparagraph (A), by striking ''broad research topics and to topics that further 1 or more critical technologies'' and inserting ''applications to the Federal agency for support of projects relating to nanotechnology, security, energy, rare diseases, transportation, or improving the security and quality of the water supply of the United States (to the extent that the projects relate to the mission of the Federal agency), broad research topics, and topics that further 1 or more critical technologies or research priorities'';

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

(C) by adding at the end the following:

''(C) the National Academy of Sciences, in the final report issued by the 'America's Energy Future: Technology Opportunities, Risks, and Tradeoffs' project, and in any subsequent report by the National Academy of

Sciences on sustainability, energy, or alternative fuels;

''(D) the National Institutes of Health, in the annual report on the rare diseases research activities of the National Institutes of Health for fiscal year 2005, and in any subsequent report by the National Institutes of Health on rare diseases research activities;

''(E) the National Academy of Sciences, in the final report issued by the 'Transit Research and Development: Federal Role in the National Program' project and the report entitled 'Transportation Research, Development and Technology Strategic Plan (2006–2010)' issued by the Research and Innovative Technology Administration of the Department of Transportation, and in any subsequent report issued by the National Academy of Sciences or the Department of Transportation on transportation and infrastructure; or

''(F) the national nanotechnology strategic plan required under section 2(c)(4) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(c)(4)) and in any report issued by the National Science and Technology Council Committee on Technology that focuses on areas of nanotechnology identified in such plan;'';

(2) in paragraph (15), by striking ''and'' at the end;

(3) in paragraph (16), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(17) encourage applications under the STTR program (to the extent that the projects relate to the mission of the Federal agency)—

''(A) from small business concerns in geographic areas underrepresented in the STTR program or located in rural areas (as defined in section 1393(a)(2) of the Internal Revenue Code of 1986);

''(B) small business concerns owned and controlled by women;

''(C) small business concerns owned and controlled by veterans;

''(D) small business concerns owned and controlled by Native Americans; and

''(E) small business concerns located in a geographic area with an unemployment rates that exceed the national unemployment rate, based on the most recently available monthly publications of the Bureau of Labor Statistics of the Department of Labor.''.

(c) RESEARCH AND DEVELOPMENT FOCUS.—Section 9(x) of the Small Business Act (15 U.S.C. 638(x)) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraph (3) as paragraph (2).

SEC. 5502. REPORT ON SBIR AND STTR PROGRAM GOALS.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(ll) ANNUAL REPORT ON SBIR AND STTR PROGRAM GOALS.—

''(1) DEVELOPMENT OF METRICS.—The head of each Federal agency required to participate in the SBIR program or the STTR program shall develop metrics to evaluate the effectiveness, and the benefit to the people of the United States, of the SBIR program and the STTR program of the Federal agency that—

''(A) are science-based and statistically driven;

''(B) reflect the mission of the Federal agency; and

''(C) include factors relating to the economic impact of the programs.

''(2) EVALUATION.—The head of each Federal agency described in paragraph (1) shall conduct an annual evaluation using the metrics developed under paragraph (1) of—

''(A) the SBIR program and the STTR program of the Federal agency; and

''(B) the benefits to the people of the United States of the SBIR program and the STTR program of the Federal agency.

''(3) REPORT.—

''(A) IN GENERAL.—The head of each Federal agency described in paragraph (1) shall submit to the appropriate committees of Congress and the Administrator an annual report describing in detail the results of an evaluation conducted under paragraph (2).

''(B) PUBLIC AVAILABILITY OF REPORT.—The head of each Federal agency described in paragraph (1) shall make each report submitted under subparagraph (A) available to the public online.

''(C) DEFINITION.—In this paragraph, the term 'appropriate committees of Congress' means—

''(i) the Committee on Small Business and Entrepreneurship of the Senate; and

''(ii) the Committee on Small Business and the Committee on Science and Technology of the House of Representatives.''.

SEC. 5503. COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is amended by adding at the end the following:

''(mm) COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.—All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.''.

Mr. LEVIN. Mr. President, while I have the floor, and while Senator LANDRIEU is here, let me add my voice of thanks and gratitude to Senator LANDRIEU for the energy she shows as chair of our Small Business Committee. I am honored to be a member of that committee and to sit at her side. I know how long and hard she has worked on this SBIR Program, how many years we have fought hard for this program, with her as our leader.

The same thing is true with the technology program—the Small Business Technology Transfer Program—which is part of this amendment. This bill is going to help 30 million small businesses to invest in technology research to help grow their businesses, spur innovation, and create jobs. Small business technology firms that receive SBIR funds have produced 38 percent of America's patents—13 times more than large businesses—and employ 40 percent of America's scientists and engineers, and the Defense Department is the biggest user of these programs. So this is very appropriate on this bill, and we are very grateful for the determination of Senator LANDRIEU and her cosponsors.

If I am not already a cosponsor of the amendment, I would ask unanimous consent to be added as a cosponsor.

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

Mr. LEVIN. Mr. President, this has made it possible for us to be here tonight, and I wanted to say that while Senator LANDRIEU was on the floor and to express what I think is, if not the unanimous, certainly the near unanimous gratitude of this body, because I expect this will have an overwhelming vote.

By the way, Mr. President, I ask unanimous consent also that our Presiding Officer, Senator CASEY, be added as a cosponsor to our counterfeit parts amendment, No. 1092. It took us too many weeks to do this, but as I see the Presiding Officer in the chair, I am making up for lost time and asking unanimous consent that he be added as a cosponsor.

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

Mr. LEVIN. I yield the floor.

AMENDMENT NO. 1064

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

Under the previous order, the question is on agreeing to amendment No. 1064 offered by the Senator from Kentucky, Mr. PAUL.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) and the Senator from New Hampshire (Mrs. SHAHEEN) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

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

The result was announced—yeas 30, nays 67, as follows:

The result was announced—yeas 30, nays 67, as follows:

[Rollcall Vote No. 211 Leg.]

YEAS—30

Baucus	Gillibrand	Murray
Bingaman	Harkin	Nelson (NE)
Boxer	Heller	Paul
Brown (OH)	Klobuchar	Rockefeller
Cantwell	Lautenberg	Sanders
Cardin	Leahy	Snowe
DeMint	Manchin	Tester
Durbin	McCaskill	Udall (CO)
Feinstein	Menendez	Udall (NM)
Franken	Merkley	Wyden

NAYS—67

Akaka	Graham	Mikulski
Alexander	Grassley	Moran
Ayotte	Hagan	Nelson (FL)
Barrasso	Hatch	Portman
Bennet	Hoeven	Pryor
Blumenthal	Hutchison	Reed
Blunt	Inhofe	Reid
Boozman	Inouye	Risch
Brown (MA)	Isakson	Roberts
Burr	Johanns	Rubio
Carper	Johnson (SD)	Schumer
Casey	Johnson (WI)	Sessions
Chambliss	Kerry	Shelby
Coats	Kirk	Stabenow
Coburn	Kohl	Thune
Cochran	Kyl	Toomey
Collins	Landrieu	Vitter
Conrad	Lee	Warner
Coons	Levin	Webb
Corker	Lieberman	Whitehouse
Cornyn	Lugar	Wicker
Crapo	McCain	
Enzi	McConnell	

NOT VOTING—3

Begich	Murkowski	Shaheen

The PRESIDING OFFICER (Mr. BENNET). On this vote the yeas are 30; the nays are 67. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is rejected.

The majority leader.

Mr. REID. This will be the last vote of this evening. Tomorrow we will have a vote around 11 a.m. on cloture on this bill, and we will work with the managers to see how they are going to work through the germane amendments.

AMENDMENTS NO. 1115, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Landrieu amendment.

Ms. LANDRIEU. Mr. President, thank you very much. We will only take a minute. I would like to yield the majority of my time to the ranking member who has worked so hard on this bill.

I would like to thank the cosponsors and thank all of my colleagues for supporting a very balanced extension of the SBIR Program. This is 5 years overdue, and I yield the remainder of my time to the ranking member from the State of Maine.

Ms. SNOWE. Mr. President, I thank the chairman of the Small Business Committee, Chairman LANDRIEU, for her leadership, and I commend her for that.

I thank all of the Members of the Senate for supporting these two vital programs. We had much debate on these programs back in March for 5 weeks. There has been broad bipartisan support. They are vital job creators and innovators. They have provided more than 25 percent of the innovations that have occurred over this last decade and are certainly vital to the Defense Department as we are setting aside existing Federal research dollars for small business firms.

I urge my colleagues to support this amendment, which is nearly identical to legislation that passed the Senate unanimously last December and which passed our Committee by a vote of 18 to 1 in March of this year.

It is critical that we focus like a laser on job creation, and encourage an environment in which America's small businesses—our Nation's job generators—can once again flourish. We know that small businesses will lead us out of our economic morass. They employ more than half of all private sector employees and have created 64 percent of the net new jobs over the past 15 years. Ninety percent of that job creation is concentrated in four to five percent of all companies, commonly known as ''gazelles,'' or high-impact firms. The SBIR Program is designed to assist exactly these types of companies.

Together, these vital job creation programs have provided small firms with over $28 billion during their lifespans. They have been front and center in improving our Nation's capacity to innovate. According to a report by the Information Technology and Innovation Foundation, SBIR-backed firms have been responsible for roughly 25 percent of the Nation's most crucial innovations over the past decade plus—''a powerful indication that the SBIR Program has become a key force in the innovation economy of the United States.'' And the SBIR Program has played a critical role in providing the Department of Defense—our nation's largest SBIR agency—with the technology and components it requires. From night vision goggle simulators, to sensors which provide intelligence about battlefield events like anti-aircraft artillery and rocket launches to our brave men and women in the field, technologies borne from a small infusion of SBIR funding have helped make our military more efficient, cost-effective, and safer.

Simply put, these programs have helped America's entrepreneurs create businesses, jobs, and innovations for a wide range of applications in our daily lives. Regrettably, SBIR has been subject to 14 short-term extensions since it was slated to expire in September 2008, and STTR has been a part of 11 of those since September 2009. This uncertainty is of concern to both program managers, who are never sure if they will have the funding for small business awardees, and to the small business applicants themselves.

Furthermore, our amendment would reauthorize these programs for 8 years—which has been done twice before for SBIR in 1992 and 2000, the last two reauthorizations. A long-term reauthorization of SBIR and STTR is critical to the effectiveness of these initiatives. Simply stated, an SBIR or STTR recipient's lifecycle in the program is longer than 2 years. A Phase I award lasts for 6 months, while a Phase II lasts for 2 years. This does not take into account the time required for agencies to issue solicitations and companies to apply for awards, including between Phases I and II, as well as a company's time in Phase III commercializing its product or technology. Short-term reauthorizations dissuade promising small businesses from applying to the programs, and makes agencies hesitant to fund projects when they are uncertain for which they will have follow-on funding in the future.

The 2-year extension that some members have been discussing would jeopardize the compromise reached in this legislation and remove the certainty the bill provides. In particular, it has the ability to unravel the ''venture capital'' compromise, which was negotiated for nearly 6 years between Members of Congress, the small business community, and the Biotechnology Industry Organization, BIO. This compromise—which allows firms majority owned by multiple venture capital operating companies to be eligible for up to 25 percent of SBIR funds at the National Institutes of Health, National Science Foundation, and Department of Energy, and up to 15 percent of the funds at remaining agencies—includes the backing of a number of critical organizations, like BIO, the National Venture Capital Association, NVCA, the U.S. Chamber of Commerce, and the National Small Business Association.

A 2-year authorization would force us to relitigate this issue immediately, before we have the ability to analyze how the compromise is working. Indeed, our legislation requires the Government Accountability Office to review the impact of the venture capital compromise on the programs 3 years after the bill is enacted, and every 3 years thereafter. We need time to understand how well this change is working before reconsidering it.

Furthermore, it would put at risk some of the key provisions in our bill—most noticeably the allocation increases for SBIR from 2.5 to 3.5 percent over 10 years, and for STTR from 0.3 to 0.6 percent over 5 years. Because these allocations are spread out over several years, and not immediate, they could be stunted by a short-term reauthorization, prohibiting small businesses from accessing critical funding to help develop their promising technologies.

I would note that as the U.S. Chamber of Commerce has noted in support of our legislation, ''[e]ven though this important program for small business has a proven track record of success, its full potential has been held hostage by a series of short-term reauthorizations which has created uncertainty for SBIR program managers and limitations for potential small business grant recipients.'' It is high time for us to unleash the potential of these critical firms by ensuring that these initiatives have the requisite stability that they have been lacking in recent years due to Congressional inaction.

In its October Interim Report, the President's Council on Jobs and Competitiveness urged Congress to ''. . . permanently affirm and fully authorize Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) funding for the long term, rather than for short-term re-authorizations.'' It is long beyond time for us to pass a comprehensive, long-term reauthorization of these critical programs. Our amendment provides us with this opportunity.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader.

Mr. REID. Mr. President, since there is bipartisan support, why do we need a rollcall vote? Do we have to have a rollcall vote?

The PRESIDING OFFICER. The unanimous consent agreement requires 60 votes.

Mr. REID. I ask unanimous consent that order be vitiated.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 1115), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, if it is in order, I would like to speak on the bill. Last evening we passed the Leahy-Graham amendment, which would, by law,

make the head of the National Guard Bureau a member of the Joint Chiefs of Staff. As we go forward in our deliberations with respect to this bill, particularly the conference committee——

Mr. CARPER. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order. Please take your conversations from the well.

The Senator from Rhode Island is once again recognized.

Mr. REED. Mr. President, I thank you, and I thank the Senator from Delaware.

As I have indicated, I would like to make some comments about how I think we can improve and clarify the legislation that was adopted last evening by unanimous consent. But, first, let me begin by recognizing, obviously, the extraordinary contributions of the men and women of our National Guard. I speak from the experience of just a few weeks ago having visited members of the 43rd Military Police Brigade of the Rhode Island National Guard who have the responsibility for the detention facility in Bagram, Afghanistan. Under the able leadership of BG Charles Petrarca, they are doing an extraordinary job.

I also was able to talk with some of the members of our Air National Guard, the 143rd Airlift Wing. This is the finest C–130–J wing in the entire U.S. Air Force—National Guard or Active or Reserve, in my estimate. They are doing remarkable work. They are doing remarkable work. In fact, we could not continue the operations in Iraq, Afghanistan, or our homeland security obligations, without the men and women of the National Guard.

I wish to also just say coincidentally that I had the great opportunity to sit down with my Adjutant General Kevin McBride. General McBride and his staff are extraordinarily effective professionals. I first got the chance to see him literally in action when he commanded the 43rd Military Police Brigade in Iraq, where they also had detention responsibilities.

So we are talking about now a component of our military forces that are professionals, superbly qualified, complete patriots, and dedicated to the success of the mission and the success of this Nation. There is the saying ''One Army'', as there is ''One Air Force,'' and it truly is. I can recall serving on Active Duty when there was at least a perception of disparity between Reserve, National Guard, and Active-Duty forces. That perception no longer exists. The reality is that these are superb professionals doing their job. So I think that is the starting point to consider this legislation.

What I would like to suggest in terms of an improvement to the legislation is clarifying the role and responsibility of the Chief of the National Guard Bureau as a member of the Joint Chiefs of Staff. If he has statutory responsibilities, those responsibilities should be specified.

As General McKinley, who is the current Chief of the National Guard Bureau and a superb professional, pointed out at the committee hearing:

The Chief of the National Guard Bureau still does not have an institutional position from which [he] can advise the President, the NSC, the Homeland Security Council, and Congress on non-federalized National Guard forces that are critical to homeland defense and civil support missions.

If this is the purpose of appointing and confirming the Chief of the National Guard Bureau as a member of the Joint Chiefs of Staff, that purpose should be laid out. If that is the role he or she is expected to play—to provide advice to the Chairman and advice to the President on the non-federalized National Guard forces critical to homeland defense and civil support missions—it should be spelled out. I hope it is spelled out as we go forward with the process of conferencing this legislation.

He went on to say:

Adding the Chief of the National Guard Bureau to the JCS, in my opinion, would ensure that in the post-9/11 security environment the National Guard's non-federalized role in homeland defense and civil support missions will be fully represented in all JCS deliberations.

I think this is very important. Let me suggest why—because one of the essentials of any military organization is unity of command. The National Guard Bureau has two separate services which it represents: the Army National Guard and the Air National Guard. We do not want, particularly at the level of the Joint Chiefs of Staff, to confuse who speaks for the services—who speaks for the Army, who speaks for the Air Force. I think in order to do this—to preserve the unity of command, to make it very clear that at the deliberations of the Joint Chiefs of Staff, the Chief of Staff of the Air Force speaks for the Air Force and the Chief of Staff of the Army speaks for the Army—we have to make it clear what the Chief of the National Guard Bureau is speaking to.

I hope as we go forward we can make it very clear as General McKinley made it very clear in his testimony that his perspective, his point of view, his position on the Joint Chiefs is related, as he said repeatedly, to those non-federalized functions of the National Guard, particularly with respect to homeland security and civil support missions. I think this would enhance and clarify the role of the Chief of the National Guard Bureau, and I also think it would avoid even the appearance of a lack of unity of command within the services.

I think these are important points. These points can be and should be approached in the conference. I hope that at the end of the day, when the President is prepared to sign this bill—and there may be other improvements to this legislation—that this particular aspect of the legislation is incorporated.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I ask permission to speak for 20 minutes in morning business, but it will probably be less than that.

Mr. LEVIN. Mr. President, reserving the right to object, and I won't, I have two unanimous consent requests that will take just a couple of moments.

Mr. GRASSLEY. Yes, go ahead.

AMENDMENT NO. 1174

Mr. LEVIN. Mr. President, I call for the regular order with respect to amendment No. 1174.

The PRESIDING OFFICER. The amendment is now pending.

AMENDMENTS NOS. 1260 AND 1262 WITHDRAWN

Mr. LEVIN. Secondly, there are two colloquies between myself and Senator SHERROD BROWN. At the end of these colloquies, in both cases, Senator BROWN withdraws the amendments referred to in the colloquies, amendments Nos. 1260 and 1262.

So I ask unanimous consent that those two amendments he then withdraws at the end of the colloquies in fact be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 1260

Mr. BROWN of Ohio. I rise to discuss my amendment No. 1260 with the chairman of the Senate Armed Services Committee. This amendment would strike section 846 of the bill, which would establish a new exception to the requirement to purchase specialty metals that are produced in the United States.

Over the last several months, a number of concerns have been raised about this provision. In particular:

The provision is not needed, because domestic titanium is cost-competitive with foreign titanium and the cost of titanium has not been a major cost driver in DOD weapon systems.

No specific case has been raised in which U.S. companies have lost contracts or manufacturing jobs as a result of a price difference between U.S. and foreign titanium.

If the new exception in section 846 were abused, it could undermine the preference for domestic titanium and result in the loss of U.S. jobs.

Administering the new exception could create significant burdens on both defense contractors and the Department of Defense; and the Department's existing authority to make Domestic Non-Availability Determinations (DNADs) already gives it the flexibility it would need to address a significant price differential, should it arise at some point in the future.

Is the chairman of the Armed Services Committee aware of these concerns?

Mr. LEVIN. I am aware of the concerns raised by the Senator from Ohio, and I assure him that I will give careful consideration to those concerns as

we go to conference with the House of Representatives on this provision.

Mr. BROWN of Ohio. I appreciate the Senator's assurance, and I withdraw the amendment on that basis.

AMENDMENT NO. 1262

Mr. BROWN of Ohio. I rise to discuss my amendment No. 1262 regarding the definition of specialty metals produced in the United States.

Under section 2533b of title 10, U.S. Code, specialty metals included in weapon systems purchased by DOD must be produced in the United States. This requirement has been in place for more than 30 years and for most of that time, the Department interpreted the requirement to apply to metals that are ''melted'' in the United States.

After Congress re-codified the requirement in the National Defense Authorization Act for Fiscal Year 2009, however, DOD decided that a metal is produced in the United States if any part of the production process takes place in this country. That includes finishing processes such as rolling, heat treatment, quenching, or tempering. This is a substantial change to the definition that has a direct impact on domestic production and American jobs, which I know the ,Chairman has defended throughout his career.

My amendment would restore the long-standing definition of what it means for a metal to be ''produced'' in this country—that it must be ''melted'' here.

Is the Chairman of the Armed Services Committee familiar with this issue?

Mr. LEVIN. I am aware of the issue, and of the concerns raised by the Senator from Ohio about this definition. Section 823 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 directed the Secretary of Defense to review the definition of the term ''produced'' and to ensure that it complies with the requirements of law and is consistent with congressional intent.

It is my understanding that this review is currently ongoing. I believe that we should have the informed input of the Department of Defense before we act on this issue. For that reason, I believe that the amendment is premature. However, the review required by section 823 is already several weeks overdue. I understand that DOD is not always able to meet our reporting deadlines, but this is an issue on which we need DOD's input and we need it soon. I assure the Senator from Ohio that we will carefully review the findings of the DOD review and revisit the issue in light of those findings, if necessary. If the Department fails to meet its statutory duty to address this issue, we will take that into consideration as well.

Mr. BROWN of Ohio. I appreciate the Senator's assurance, and I withdraw the amendment on that basis.

AMENDMENT NO. 1419

Mr. MCCAIN. Mr. President, amendment No. 1419 would correct an unintended staff error in the new Division D funding tables that the Senate Armed Services Committee voted to adopt Tuesday, November 15, 2011. This error unintentionally reduced the President's budget request for the line 154, RDTE AF, JSTARS account by $33 million. This amendment would correct this error and restore the RDTE AF JSTARS account back to the level requested in the President's budget request and approved in the June 22, 2011, SASC-passed version of the National Defense Authorization Act. Both the majority and minority staff directors have acknowledged that this was an unintended staff error and have requested that this be corrected by restoring full funding of the RDTE AF JSTARS account to $121,610,000. Chairman LEVIN and I agree.

EELV

Mr. President, as I mentioned when the National Defense Authorization Act for Fiscal Year 2012 was first brought up on the floor, I wanted to focus on, in the course to the Senate's consideration of this bill, the issue of military space procurement. There can be no doubt that how the Department of Defense procures satellites and space-related capability has gotten unacceptably out of control.

In the impending environment of fiscal austerity, the situation has become nothing less than severe.

One need not look further than the Space-Based Infrared System High, SBIRS-HIGH, program as a good example of how bad things have gotten. This program has been a problem since its inception in 1996. In fact, 5 years into the program—in 2001—an independent review cited the program as ''too immature to enter the system design and development phase'' and observed that the program was based on faulty and overly optimistic assumptions with respect to, among others things, ''management stability and the level of understanding of requirements.'' The independent review also highlighted a breakdown in execution and management resulting from those overly optimistic assumptions and unclear requirements that essentially ''overwhelmed'' government and contractor management.

That was 2001, when it was determined that total program cost growth could exceed $2 billion, a 70 percent increase in cost. And, here we are today, 10 years later, and the system still has not achieved its objectives. In fact, it was just launched—for the first time—recently, on May 7, 2011.

Originally estimated to cost $2.4 billion, it is now expected to cost nearly $16 billion, roughly 7 times the original estimate. With SBIRS' having been launched finally, we will see if it has overcome its continuing software issues and delivers its improved ballistic missile-monitoring capability as promised. I am, however, not optimistic: the satellite was launched even though the flight system software was not ready, and the ground control software needed to exploit the satellite's full capabilities is still lagging.

It is worth bearing in mind that the Government Accountability Office's latest March 9, 2011, report on major defense acquisition programs notes that SBIRS has the odious distinction of breaching the ''Nunn-McCurdy'' law on cost growth a record four times—the most of any major weapons program. It's a hall-of-famer.

By the way, the DOD just recently reported to Congress that the next pair of these satellites, built by Lockheed Martin, could cost $438 million more than previously estimated and could be delivered a year late. Unacceptable.

SBIRS is, however, not the only space program that has been facing these types of problems. Over the past decade, most—I repeat, most—of the DOD's space programs have been over cost and behind schedule. Their delays have in fact been so significant that we now face potential gaps in capabilities in vital areas dependent on space procurement such as weather monitoring and ultra-high frequency communications.

After years of spiraling costs and under the specter of diminishing budgets, the Air Force now says it wants to buy space assets in bulk to save money. Only in Washington could programs with the kind of history of mismanagement and unparalleled cost-growth and schedule-delays we have seen in large military satellite and launch programs—which in the most egregious cases have yet to see a single day of operational performance or demonstrate intended capability—be proposed for economic savings by buying its related components in bulk.

Until the Air Force overhauls how it buys its biggest and most expensive military space assets—more than simply doubling down on bad bets—these kinds of programs will continue to be painful case studies of how problematic our overall system for acquiring major weapons remains.

One program that I chose to focus on in particular in this bill is the Air Force's Evolved Expendable Launch Vehicle, EELV, program. On this program, I have filed two amendments, which have either already been adopted or are awaiting adoption without opposition.

My first amendment would require the EELV program to report to Congress and to the Office of the Secretary of Defense on how it is doing in terms of cost, schedule and performance as if it were designated as a major defense acquisition program, MDAP, not in sustainment.

This sounds pretty simple, but why this amendment is in fact necessary is striking.

In 2006, the unit cost of the EELV program, which provides the DOD and other government agencies the launch capability to get large satellites into orbit, breached the cost thresholds under the Nunn-McCurdy law. Under that law, the Department is required to

report to Congress if there is a significant or critical increase in unit cost over the program's baseline cost.

In this case, EELV's unit costs unexpectedly grew because of a change in the acquisition strategy warranted by a decrease in the demand for EELV launches. And, that was due to, among other things, satellite program development delays and cancellations.

But rather than restructure the program to make sure that it provides launch capability affordably; rebaseline its unit cost estimate to a more realistic number; and certify, after careful deliberation and an analysis of alternatives, that the program must continue—all of which is required under Nunn-McCurdy—something else happened.

In 2007, the program was basically taken out of the defense acquisition management system, otherwise known as the ''milestone system,'' and put in ''sustainment.'' The decision to do so significantly reduced EELV's reporting requirements to the Office of the Secretary of Defense and to Congress, particularly on the program's cost and status. And, that limited both the OSD and Congress' ability to oversee the program going forward.

Ordinarily, such a decision is made when a program has completed its development and production phases. But, this wasn't the case for EELV. Even to this day, the program faces maturity issues based on the fact that the DOD has yet to launch all EELV variants in sufficient numbers to ensure design and production maturity.

According to the Government Accountability Office in 2008, the decision to put EELV on sustainment may have been influenced by other factors, namely, avoiding the imminent Nunn-McCurdy unit cost breach.

One thing is clear: this decision should never have been made.

And, Congress' and the OSD's oversight of this large program has been hampered ever since.

Against this backdrop, my amendment would require that the DOD either move the program back to a major defense acquisition program (MDAP) not in sustainment or otherwise have the program provide, as appropriate, Congress or the OSD updates of the program's cost and status using the criteria set forth for other MDAPs.

This, frankly, should have been done years ago.

My second amendment is required because of more recent developments in the EELV program. That amendment would require the Air Force to explain, by a time certain, exactly how its new EELV acquisition strategy for the balance of rocket cores beyond its immediate purchase implements each of GAO's recommendations in its recent report on the program.

Unsurprisingly, the increasing cost of launching satellites into space has become a major problem. And, with defense dollars likely to decline for as far as the eye can see, driving down the cost of space launch is tough because, with regard to ''EELV''-class rockets, only one company provides the U.S. government with the ''heavy'' launch capability it needs—the United Launch Alliance, ULA, comprised of former competitors Lockheed Martin and Boeing.

There can be no doubt that, at the end of the day, only competition can meaningfully drive down costs. As GAO recently noted, competition for space launch missions provides the government with an unprecedented opportunity to control costs under the EELV program. I strongly agree. Largely because of the lack of competition and the DOD's reliance on a monopoly incumbent provider, by some estimates, EELV costs may increase by more than 50 percent over the next 5 years. This is neither desirable nor affordable.

But, in an effort to procure heavy-launch capability affordably, the Air Force, which serves as the Executive Agent for space at the DOD, originally came up with a strategy to sole-source from ULA as much as eight boosters over 5 years. This so-called ''Block-40 strategy'' would, however, have effectively locked-up the government into a large block purchase with ULA and foreclosed the possibility of competition over time.

Thankfully, GAO looked into this acquisition strategy. And, its report, which came out just a few weeks ago, was scathing. In it, GAO found that, despite statements by the Air Force to the contrary, the Air Force's Block-40 strategy was unsupported by the necessary data and analysis—most notably, certified cost and pricing data, analysis on the health of the industrial base and the cost-effectiveness of mission assurance.

This amendment would require the Air Force to explain when it submits its budget next year how it implemented each of GAO's recommendations. Those recommendations include, among other things, independently assessing the health of the U.S. launch industrial base and reassessing the proposed block buy contract quantity and length.

On October 21, 2011, I brought this issue to Secretary Panetta's attention, with Chairman LEVIN. While we only recently received a response, which I would like to be made part of this record, the question as to whether GAO's recommendations have been and will be complied with remains open. So, notwithstanding the letter, this amendment remains ripe and necessary.

Once again, I believe both of these provisions have been or will be adopted into the bill without opposition. And, I thank my colleagues for their cooperation. The area of how the Department of Defense procures space assets and capabilities is something we all have to focus on more than we have been. Particularly in these times of fiscal hardship and austerity, looking the other way and hoping for the best is an option we cannot afford.

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

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

DEPARTMENT OF DEFENSE,
SECRETARY OF THE AIR FORCE,
Washington, DC.

Hon. JOHN MCCAIN,
Ranking Member, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: Thank you for your October 21, 2011, letter regarding the recently completed Government Accountability Office (GAO) report on the Evolved Expendable Launch Vehicle (EELV) program. In your letter, you asked the Department to pause ''all activities in furtherance of . . . negotiations with United Launch Alliance (ULA) for follow-on EELV launches'' and ''all activities intended to finalize the Air Force's Block 40 acquisition strategy'' until the Department has: 1 ''completed a full review of the concerns raised by GAO'' in its recent report; and (2) ''taken appropriate steps to ensure that prices are fair and reasonable, including obtaining cost and pricing data, and complying with other applicable requirements of the Federal Acquisition Regulation.'' Secretary Panetta asked me to reply in my capacity as the Department's Executive Agent for Space.

The Department and the Air Force have thoroughly reviewed the GAO report—including early drafts and the final report—and we agree additional data is needed before executing an EELV contract for FY 2013–2017. The Air Force EELV acquisition strategy is fundamentally based on gathering more and better information before pursuing any specific contract. The strategy is part of a series of steps the Air Force is taking to control cost growth in the EELV program, including efforts to facilitate opportunities for proven launch providers to compete for EELV-class launches. The Air Force and the Department see competition as a critical element of our long term efforts to reduce launch costs.

The GAO completed their audit prior to most of the work on the revised EELV acquisition strategy. Consequently, some of the concerns highlighted have been addressed. For example, in March 2011, when the drafting of the GAO report was nearly complete, the Air Force created a new executive position, the Program Executive Officer for Space Launch (PEO/SL). The PEO/SL was established to enhance executive management of the EELV program, with the near-term focus of driving down costs and spearheading the effort to craft a new EELV acquisition strategy. The new PEO has led several efforts to implement specific cost reduction efforts based on a detailed Should Cost Review that I directed as Secretary of the Air Force. The PEO has also taken steps to gain additional knowledge to inform the acquisition strategy, including independent cost estimates for the large cost drivers for launch. These efforts and the data they yielded are the key building blocks for the EELV acquisition strategy. The United Launch Alliance supplier survey data described and questioned in the GAO report was made available to review teams examining the EELV program, but was not relied upon in the PEO's development of the acquisition strategy.

The Air Force EELV acquisition strategy entails an evaluation of an economic order quantity of EELV booster cores, but there is no commitment to a specific contract quantity or duration. Instead, the first phase of the strategy will require the incumbent contractor to provide their best price offers on a quantity range of six to ten booster cores per

year over contract periods ranging from three to five years. This data will allow the Air Force to balance the rate and commitment decision with our fundamental priorities: operational requirements, price, budget, and enabling competition.

The Air Force will not pursue any negotiations with ULA until they have submitted the cost and price data we need, and ULA's submissions will be audited as they would in any contracting process. The citations in the GAO report to Defense Contracting Audit Agency standards for sufficient cost and price information refer to prices associated with some subcontractor ULA orders that were placed in a commercial environment and thus did not require certified cost and pricing data. For the FY 2013–2017 proposal, the prime contractor will be required to certify the data submitted is current, accurate, and complete.

With the recently released New Entrant Certification Strategy, the Air Force, NASA, and the NRO are working to facilitate the certification of new entrants who want to compete for EELV-class missions. By examining a range of contract options and terms for EELV procurement, and by examining progress from new entrants in the coming months, the Air Force will be well-positioned to identify the best balance of these priorities and the best value for the taxpayer. Only at that point, with additional information in hand, will the Air Force move to negotiate a new contract.

Thank you again for your letter and your continued support of national security space. I look forward to continuing to work in partnership with you to maintain assured access to space for the Nation. A similar letter has been sent to the Chairman of your committee.

Sincerely,

MICHAEL B. DONLEY,
DoD Executive Agent for Space.

Mr. LEVIN. I thank my friend from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

HEALTH CARE

Mr. GRASSLEY. Mr. President, when the Congress passed the health care law, it imposed a mandate on individuals who lacked health insurance to purchase it. Since then, a number of courts have held that the individual mandate exceeds the power of Congress to regulate interstate commerce.

The Supreme Court will soon hear a case on this question.

The Supreme Court, which usually gives a case 1 hour of oral argument, is giving the various issues in this case 5½ hours. This is a modern record.

The Supreme Court should exercise its powers of judicial review carefully. One of its major principles of judicial restraint is that an act of Congress is presumed to be constitutional. But this is a presumption that can be rebutted. It derives from the respect that one branch of government gives when reviewing the actions of another.

If Congress has made a determination that a statute is constitutional, the Supreme Court should give that finding some level of deference.

But the presumption rests on a premise that Congress has made a considered judgment on the constitutionality of the laws it passes. In the case of the health care bill, this did not happen. Republicans raised a constitutional challenge to the individual mandate that was brushed aside by Democrats who favored the bill as a policy matter, and were not going to let a serious constitutional issue get in the way of passing the law.

In fact, we know that there was no Congressional consideration of the constitutionality of this unprecedented restriction of the freedom of American citizens.

I mean unprecedented literally. Congress has never before discovered or exercised this power in more than 200 years of this country's history. And since Congress has never before imposed a requirement to purchase a product, no Supreme Court precedent has ever found that Congress may do so.

Instead, apart from the regulation of items such as navigable waterways or communication lines, the Supreme Court has always discussed the subjects that Congress may regulate under the Commerce Clause as ''activities.'' The Court has never held that Congress can use its Commerce Clause power to regulate inactivity—or require people to engage in commerce. The Court has found that Congress cannot regulate intrastate economic activities that in combination do not affect commerce. And Congress cannot regulate non-economic activities, such as carrying a gun in a school zone.

So it should be clear that Congress cannot regulate inactivity—such as a thought or a decision not to purchase health insurance.

Congress has great power under the Commerce Clause to reduce individual freedom. In 1942, the Court ruled in Wickard v. Filburn that a farmer could be penalized for exceeding a quota on the amount of wheat he could produce, even when the excess went for providing food for his own farm and its livestock.

And that Commerce Clause decision has allowed Congress to pass many significant regulatory laws, such as environmental laws, drug laws, and the public accommodation provisions of the civil rights laws.

But in every such case, the regulated person retained the freedom to avoid being regulated. A person who did not want to comply with environmental laws could stop engaging in the activity that fell under the environmental laws. A person who did not want to be subject to the drug laws could avoid transporting drugs.

And a person who did not want to adhere to the public accommodation laws could leave the public accommodation business.

The individual mandate is different. The mandate requires action. And there is no escape. A person cannot opt out of the activity that triggers the regulation because the mandate applies even to inactivity. If the person is alive, then he or she has to buy health insurance. That is a serious and novel threat to individual freedom.

Congress has offered incentives to change people's behavior.

But it is hard to see why Congress would do that if it had the power it now claims to force people to buy particular goods and services. Under this logic, Congress could require people to buy new GM cars, so it would not have enacted Cash for Clunkers. Similarly, this supposed power would allow Congress to order people to pay money to third parties rather than raising taxes. And a decision upholding the mandate would permit Congress to keep beef prices high by requiring vegetarians to buy beef.

Members of Congress could use this supposed Commerce Clause power to entrench themselves in office. They could require people to buy houses or cars or other products in areas where their political party has its base of support.

Despite the arguments of the Obama Administration, the power it claims that Congress can use to compel people to buy goods and services is not unique to health care. The judges who are honest recognize that if Congress can force people to buy insurance, Congress can force the purchase of any product or service.

It can regulate inactivity because that can affect interstate commerce.

This conclusion is consistent with the opinion of the Congressional Budget Office. In a 1994 memo, CBO wrote that ''a mandate-issuing government'' could lead ''in the extreme'' ''to a command econom[y] in which the President and the Congress dictated how much each individual and family spent on all goods and services.''

In June of this year, the Supreme Court unanimously decided in the Bond case that an individual—not only a State—could challenge the constitutionality of a Federal statute as exceeding the power of Congress to enact under the 10th Amendment. The Court wrote, ''By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. When government acts in excess of its lawful powers, that liberty is at stake.''

The case now before the Supreme Court raises first principles about our republic. The people are the sovereign in our country. The government serves the people, not the other way around. That is enforced through a Constitution that gives the Congress limited powers. In the Federalist Papers, James Madison wrote that the powers of the Federal Government are few and defined, and the powers of the States are many and undefined. Although there is much more interstate commerce in today's economy than there was in 1787, the power is still limited.

If Congress can require Americans to purchase goods and services that Congress chooses, without a limiting principle, then there is no limited Federal Government. There would be no issue that Congress could not address at the