America. This transformation is not without enormous dangers and challenges, but consider how much worse it would have been if a pro-bin Laden movement were fueling this transformation.

It is plain we need more of what we had post-9/11 now. I am not naive. I know it cannot be conjured up or wished into existence. But if we are optimistic, if we are inspired by the Americans who died here, if we truly understand our shared history and the sacred place compromise and rationality hold at the very center of the formation of our Nation and the structure of our Constitution, then we can again take up the mantle of shared sacrifice and common purpose that we wore after 9/11 and apply some of those behaviors to the problems we now confront.

The reality of our current political climate is that both sides are off in their corners; the common enemy is faded. Some see Wall Street as the enemy many others see Washington, DC, as the enemy and to still others any and all government is the enemy.

I believe the greatest problem we face is the belief that we can no longer confront and solve the problems and challenges that confront us; the fear that our best days may be behind us; that, for the first time in history, we fear things will not be as good for our kids as they are for us. It is a creeping pessimism that cuts against the can-do and will-do American spirit. And, along with the divisiveness in our politics, it is harming our ability to create the great works our forbears accomplished: building the Empire State building in the teeth of the Great Depression, constructing the Interstate Highway System and the Hoover Dam, the Erie Canal, and so much more.

While governmental action is not the whole answer to all that faces us, it is equally true that we cannot confront the multiple and complex challenges we now face with no government or a defanged government or a dysfunctional government.

As we approach the 10th anniversary of 9/11, the focus on what happened that day intensifies—what we lost, who we lost, and how we reacted—it becomes acutely clear that we need to confront our current challenges imbued with the spirit of 9/11 and determine to make our government and our politics worthy of the sacrifice and loss we suffered that day.

To return to de Tocqueville, he also remarked that:

> The greatness of America lies not in being more enlightened than any other nation, but rather in her ability to repair her faults.

So, like the ironworkers and operating engineers and trade workers who miraculously appeared at the pile hours after the towers came down with blowtorches and hard hats in hand, let's put on our gloves, pick up our hammers and get to work fixing what ails the body politic. It is the least we can do to honor those we lost.

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

The PRESIDING OFFICER (Mr. BROWN of Ohio). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

LEAHY-SMITH AMERICA INVENTS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1249, which the clerk will report by title.

The assistant legislative clerk read as follows:

> An Act (H.R. 1249) to amend title 35, United States Code, to provide for patent reform.

AMENDMENT NO. 600

Mr. SESSIONS. Mr. President, I ask unanimous consent to call up my amendment No. 600, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Alabama [Mr. SESSIONS], for himself, Mr. MANCHIN, Mr. COBURN, and Mr. LEE, proposes an amendment numbered 600.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 600

> (Purpose: To strike the provision relating to the calculation of the 60-day period for application of patent term extension)
>
> On page 149, line 20, strike all through page 150, line 16.

Mr. SESSIONS. Mr. President, the amendment that I have offered is a very important amendment. It is one that I believe is important to the integrity of the U.S. legal system and to the integrity of the Senate. It is a matter that I have been wrestling with and objecting to for over a decade. I thought the matter had been settled, frankly, but it has not because it has been driven by one of the most ferocious lobbying efforts the Congress maybe has seen.

The House patent bill as originally passed out of committee and taken to the floor of the House did not include a bailout for Medco, the WilmerHale law firm, or the insurance carrier for that firm, all of whom were in financial jeopardy as a result of a failure to file a patent appeal timely.

I have practiced law hard in my life. I have been in court many times. I spent 12 years as a U.S. Attorney and tried cases. I am well aware of how the system works. The way the system works in America, you file lawsuits and you are entitled to your day in court. But if you do not file your lawsuit in time, within the statute of limitations, you are out.

When a defendant raises a legal point of order—a motion to dismiss—based on the failure of the complaining party to file their lawsuit timely, they are out. That happens every day to poor people, widow ladies. And it does not make any difference what your excuse is, why you think you have a good lawsuit, why you had this idea or that idea. Everyone is required to meet the same deadlines.

In Alabama they had a situation in which a lady asked a probate judge when she had to file her appeal by, and the judge said: You can file it on Monday. As it turned out, Monday was too late. They went to the Alabama Supreme Court, and who ruled: The probate judge—who does not have to be a lawyer—does not have the power to amend the statute of limitations. Sorry, lady. You are out.

Nobody filed a bill in the Congress to give her relief, or the thousands of others like her every day. So Medco and WilmerHale seeking this kind of relief is a big deal. To whom much has been given, much is required. This is a big-time law firm, one of the biggest law firms in America. Medco is one of the biggest pharmaceutical companies in the country. And presumably the law firm has insurance that they pay to insure them if they make an error. So it appears that they are not willing to accept the court's ruling.

One time an individual was asking me: Oh, JEFF, you let this go. Give in and let this go. I sort of as a joke said to the individual: Well, if WilmerHale will agree not to raise the statute of limitations against anybody who sues their clients if they file a lawsuit late, maybe I will reconsider. He thought I was serious. Of course WilmerHale is not going to do that. If some poor person files a lawsuit against someone they are representing, and they file it one hour late, WilmerHale will file a motion to dismiss it. And they will not ask why they filed it late. This is law. It has to be objective. It has to be fair.

You are not entitled to waltz into the U.S. Congress—well connected—and start lobbying for special relief.

There is nothing more complicated about that than this. So a couple of things have been raised. Well, they suggest, we should not amend the House patent bill, and that if we do, it somehow will kill the legislation. That is not so. Chairman LEAHY has said he supports the amendment, but he doesn't want to vote for it because it would keep the bill from being passed somehow.

It would not keep it from being passed. Indeed, the bill that was

brought to the House floor didn't have this language in it. The first vote rejected the attempt to put this language in it. It failed. For some reason, in some way, a second vote was held, and it was passed by a few votes. So they are not going to reject the legislation if we were to amend it.

What kind of system are we now involved in in the Senate if we can't undo an amendment? What kind of argument is it to say: JEFF, I agree with your amendment, and I agree it is right that they should not get this special relief, but I can't vote for it because it might cause a problem? It will not cause a problem. The bill will pass. It should never have been put in there in the first place.

Another point of great significance is the fact that this issue is on appeal. The law firm asserted they thought—and it is a bit unusual—that because it came in late Friday they had until Monday. We can count the days to Monday—the 60 days or whatever they had to file the answer. I don't know if that is good law, but they won. The district court has ruled for them. It is on appeal now to the court of appeals.

This Congress has no business interfering in a lawsuit that is ongoing and is before an appeals court. If they are so confident their district court ruling is correct, why are they continuing to push for this special relief bill, when the court of appeals will soon, within a matter of months, rule?

Another point: We have in the Congress a procedure to deal with special relief. If this relief is necessary at all, it should go through as a special relief bill. I can tell you one reason it is not going there now: you can't ask for special relief while the matter is still in litigation, it is still on appeal. Special relief also has procedures that one has to go through and justify in an objective way, which I believe would be very healthy in this situation.

For a decade, virtually—I think it has been 10 years—I have been objecting to this amendment. Now we are here, I thought it was out, and all of a sudden it is slipped in by a second vote in the House, and we are told we just can't make an amendment to the bill. Why? The Senate set up the legislation to be brought forward, and we can offer amendments and people can vote for them or not.

This matter has gotten a lot of attention. The Wall Street Journal and the New York Times both wrote about it in editorials today. This is what the New York Times said today about it:

> But critics who have labeled the provision "The Dog Ate My Homework Act" say it is really a special fix for one drug manufacturer, the Medicines Company, and its powerful law firm, WilmerHale. The company and its law firm, with hundreds of millions of dollars in drug sales at stake, lobbied Congress heavily for several years to get the patent laws changed.

That is what the Wall Street Journal said in their editorial. The Wall Street Journal understands business reality and litigation reality. They are a critic of the legal system at times and a supporter at times. I think they take a principled position in this instance. The Wall Street Journal editorial stated:

> We take no pleasure in seeing the Medicine Company and WilmerHale suffer for their mistakes, but they are run by highly paid professionals who know the rules and know that consistency of enforcement is critical to their businesses. Asking Congress to break the rules as a special favor corrupts the law.

I think that is exactly right. It is exactly right. Businesses, when they are sued by somebody, use the statute of limitations every day. This law firm makes hundreds of millions of dollars in income a year. Their partners average over $1 million a year, according to the New York Times. That is pretty good. They ought to be able to pay a decent malpractice insurance premium. The New York Times said WilmerHale reported revenues of $962 million in 2010, with a profit of $1.33 million per partner.

Average people have to suffer when they miss the statute of limitations. Poor people suffer when they miss the statute of limitations. But we are undertaking, at great expense to the taxpayers, to move a special interest piece of legislation that I don't believe can be justified as a matter of principle. I agree with the Wall Street Journal that the adoption of it corrupts the system. We ought not be a part of that.

I love the American legal system. It is a great system, I know. I have seen judges time and time again enter rulings based on law and fact even if they didn't like it. That is the genius and reliability and integrity of the American legal system. I do not believe we can justify, while this matter is still in litigation, passing a special act to give a wealthy law firm, an insurance company, and a health care company special relief. I just don't believe we should do that. I oppose it, and I hope my colleagues will join us.

I think we have a real chance to turn this back. Our Congress and our Senate will be better for it; we really will. The Citizens Against Government Waste have taken an interest in this matter for some time. They said:

> Congress has no right to rescue a company from its own mistakes.

Companies have a right to assert the law. Companies have a right to assert the law against individuals. But when the time comes for the hammer to fall on them for their mistake, they want Congress to pass a special relief bill. I don't think it is the right thing to do.

Mr. President, let's boil it down to several things. First, if the company is right and the law firm is right that they did not miss the statute of limitations, I am confident the court of appeals will rule in their favor, and it will not be necessary for this Senate to act. If they do not prevail in the court of appeals and don't win their argument, then there is a provision for private relief in the Congress, and they ought to pursue that. There are special procedures. The litigation will be over, and they can bring that action at that time.

That is the basic position we ought to be in. A bill that comes out of the Judiciary Committee ought to be sensitive to the legal system, to the importance of ensuring that the poor are treated as well as the rich. The oath judges take is to do equal justice to the poor and the rich.

How many other people in this country are getting special attention today on the floor of the Senate? How many? I truly believe this is not good policy. I have had to spend far more hours fighting this than I have ever wanted to when I decided 10 years ago that this was not a good way to go forward. Many battle this issue, and I hope and trust that the Members of the Senate who will be voting on this will allow it to follow the legitimate process. Let the litigation work its way through the system.

If they do not prevail in the litigation, let a private relief bill be sought and debated openly and publicly to see if it is justified. That would be the right way to do it—not slipping through this amendment and then not voting to remove it on the basis that we should not be amending a bill before us. We have every right to amend the bill, and we should amend the bill. I know Senator GRASSLEY, years ago, was on my side. I think it was just the two of us who took this position.

I guess I have more than expressed my opinion. I thank the chairman for his leadership. I thank him and Senator GRASSLEY for their great work on this important patent bill. I support that bill. I believe they have moved it forward in a fair way.

The chairman did not put this language into the bill; it was put in over in the House. I know he would like to see the bill go forward without amendments. I urge him to think it through and see if he cannot be willing to support this amendment. I am confident it will not block final passage of the legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I will speak later about the comments made by the distinguished Senator from Alabama. He has been very helpful in getting this patent bill through. He is correct that this amendment he speaks to is one added in the other body, not by us. We purposely didn't have it in our bill. I know Senator GRASSLEY will follow my remarks.

There is no question in my mind that if the amendment of the Senator from Alabama were accepted, it in effect will kill the bill. Irrespective of the merits, it can come up on another piece of legislation or as freestanding legislation. That is fine. But on this bill, after 6 years of effort to get this far, this bill would die because the other body will not take it up again.

HURRICANE IRENE

Mr. LEAHY. Mr. President, I will use my time to note some of the things happening in my own very special State of Vermont, the State in which I was born.

As Vermonters come together and continue to grapple with the aftermath of storm damage from Irene, I wish to focus today on the agriculture disaster that has hit us in Vermont and report to the Senate and our fellow citizens across the Nation about how the raging floodwaters wreaked havoc on our farming lands and infrastructure in Vermont.

It was 12 days ago now that this enormous, slow-moving storm hit Vermont and turned our calm, scenic brooks and creeks into raging gushers. In addition to our roads and historic covered bridges that were destroyed or carried away, we had barns, farmhouses, crops, parts of fields, and livestock washed away in the rising floodwaters. I recall the comments of one farmer who watched his herd of cows wash down the river, knowing they were going to die in the floodwaters.

Now the cameras have begun to turn away, but the cleanup and urgent repairs are underway. For major parts of Vermont's economy, the worst effects of this storm are yet to come. For our dairy farmers, who are the bedrock of our economy and keystones of our communities, the toll of this disaster has been heavy and the crises has lasted longer as they have struggled to take care of their animals while the floodwaters recede.

This is a photograph of East Pittsford, VT, taken by Lars Gange just over a week ago. The water we see is never there. It is there now. Look at this farm's fields, they are destroyed. Look at homes damaged and think what that water has done.

As I went around the state with our Governor and Vermont National Guard General Dubie the first couple of days after the storm hit, we went to these places by helicopter and I cannot tell you how much it tore at my heart to see the state, the birthplace to me, my parents, and grandparents. To see roads torn up, bridges that were there when my parents were children, washed away. Historic covered bridges, mills, barns, businesses just gone and what it has done to our farmers, it is hard. I cannot overstate it.

Our farmers have barns that are completely gone, leaving no shelter for animals. They are left struggling to get water for their animals, to rebuild fencing, to clean up debris from flooded fields and barns, and then to get milk trucks to the dairy farms. Remember, these cows have to be milked every single day. We also have farmers who do not have any feed or hay for their animals because it all washed away. As one farmer told me, the cows need to be milked two or three times every day, come hell or high water. This farmer thought he had been hit with both, hell and high water.

While reports are still coming in from the farms that were affected, the list of damages and the need for critical supplies, such as feed, generators, fuel, and temporary fencing is on the rise. As we survey the farm fields and communities, we know it will be difficult to calculate the economic impacts of this violent storm on our agriculture industry in Vermont.

Many of our farmers were caught by surprise as the unprecedented, rapidly rising floodwaters inundated their crops, and many have had to deal with the deeply emotional experience of losing animals to the fast-moving floodwaters. We have farms where whole fields were washed away and their fertile topsoil sent rushing down river. The timing could not have been worse. Corn, which is a crucial winter feed for dairy cows, was just ready for harvest, but now our best corn is in the river bottoms and is ruined. Other farms had just prepared their ground to sow winter cover crops and winter greens; they lost significant amounts of topsoil.

River banks gave way, and we saw wide field buffers disappear overnight, leaving the crops literally hanging on ledges above rivers, as at the Kingsbury farm in Warren, VT. Vegetable farming is Vermont's fastest growing agricultural sector, and, of course, this is harvest season. Our farmers were not able to pick these crops, this storm picked many fields clean.

Many Vermonters have highly productive gardens that they have put up for their families to get through the winter by canning and freezing. Those too have been washed away or are considered dangerous for human consumption because of the contaminated floodwaters. Vermont farmers have a challenging and precarious future ahead of them as they look to rebuild and plan for next year's crops, knowing that in our State it can be snowing in 1½ or 2 months.

I have been heartened, however, by the many stories I have heard from communities where people are coming together to help one another. For instance, at the Intervale Community Farm on the Winooski River, volunteers came out to harvest the remaining dry fields before the produce was hit by still rising floodwaters.

When the rumors spread that Beth and Bob Kennett at Liberty Hill Farm in Rochester had no power and needed help milking—well, people just started showing up. By foot, on bike, all ready to lend a hand to help milk the cows. Fortunately for them and for the poor cows, the Vermont Department of Agriculture had managed to help get them fuel and the Kennetts were milking again, so asked the volunteer farm hands to go down the road, help somebody else and they did.

Coping with damage and destruction on this scale is beyond the means and capability of a small State such as ours, and Federal help with the rebuilding effort will be essential to Vermont, as it will be to other States coping with the same disaster. I worry the support they need to rebuild may not be there, as it has been in past disasters, when we have rebuilt after hurricanes, floods, fires and earthquakes to get Americans back in their homes, something Vermonters have supported even though in these past disasters Vermont was not touched.

So I look forward to working with the Appropriations Committee and with all Senators to ensure that FEMA, USDA and all our Federal agencies have the resources they need to help all our citizens at this time of disaster, in Vermont and in all our states. Unfortunately, programs such as the Emergency Conservation Program and the Emergency Watershed Protect Program have been oversubscribed this year, and USDA has only limited funds remaining. We also face the grim fact that few of our farms had bought crop insurance and so may not be covered by USDA's current SURE Disaster Program.

But those are the things I am working on to find ways to help our farmers and to move forward to help in the commitment to our fellow Americans. For a decade, we have spent billions every single week on wars and projects in far-away lands. This is a time to start paying more attention to our needs here at home and to the urgent needs of our fellow citizens.

I see my friend from Iowa on the floor, and I yield the floor.

The PRESIDING OFFICER. The senior Senator from Iowa.

AMENDMENT NO. 600

Mr. GRASSLEY. Mr. President, I rise to rebut the points Senator SESSIONS made, and I do acknowledge, as he said on the floor, that 2 or more years ago I was on the same page he is on this issue. What has intervened, in the meantime, that causes me to differ from the position Senator SESSIONS is taking? It is a district court case giving justice to a company—as one client—that was denied that sort of justice because bureaucrats were acting in an arbitrary and capricious way.

Senator SESSIONS makes the point you get equal justice under the law from the judicial branch of government and that Congress should not try to override that sort of situation. Congress isn't overriding anything with the language in the House bill that he wants to strike because that interest was satisfied by a judge's decision; saying that a particular entity was denied equal justice under the law because a bureaucrat, making a decision on just exactly what counts as 60 days, was acting in an arbitrary and capricious way. So this language in the House bill has nothing to do with helping a special interest. That special interest was satisfied by a judge who said an entity was denied equal justice under the law because a bureaucrat was acting in an arbitrary and capricious manner.

This amendment is not about a special interest. This amendment is about

uniformity of law throughout the country because it is wrong—as the judge says—for a bureaucracy to have one sort of definition of when 60 days begins—whether it is after business hours, if something goes out, or, if something comes in, it includes the day it comes in. So we are talking about how we count 60 days, and it is about making sure there is a uniform standard for that based upon law passed by Congress and not upon one judge's decision that applies to one specific case.

I would say, since this case has been decided, there are at least three other entities that have made application to the Patent Office to make sure they would get equal justice under the law in the same way the entity that got help through the initial decision of the judge. So this is not about special relief for one company. This is about what is a business day and having a uniform definition in the law of the United States of what a business day is, not based upon one district court decision that may not be applied uniformly around our Nation.

So it is about uniformity and not about some bailout, as Senator SESSIONS says. It is not about some ferocious lobbying effort, as Senator SESSIONS has said. It is not just because one person was 1 hour late or 1 day late, because how do you know whether they are 1 hour late or 1 day late if there is a different definition under one circumstance of when 60 days starts and another definition under other circumstances of when a 60-day period tolls?

Also, I would suggest to Senator SESSIONS that this is not Congress interfering in a court case that is under appeal because the government lost this case and the government is not appealing. Now, there might be some other entity appealing for their own interests to take advantage of something that is very unique to them.

But just in case we have short memories, I would remind my colleagues that Congress does sometimes interject itself into the appeal process, and I would suggest one time we did that very recently, maybe 6 years ago—and that may not be very recent, but it is not as though we never do it—and that was the Protection of Lawful Commerce Act of 2005, when Congress interjected itself into an issue to protect gun manufacturers from pending lawsuits. It happens that 81 Senators supported that particular effort to interject ourselves into a lawsuit.

So, Mr. President, in a more formal way, I want to repeat some of what I said this past summer when I came to the Senate floor and suggested to the House of Representatives that I would appreciate very much if they would put into the statutes of the United States a uniform definition of a business day and not leave it up to a court to maybe set that standard so that it might not be applied uniformly and, secondly, to make sure it was done in a way that was treating everybody the same, so everybody gets equal justice under the law, they know what the law is, and they don't have to rely upon maybe some court decision in one part of the country that maybe they can argue in another part of the country, and also to tell bureaucrats, as the judge said, that you can't act in an arbitrary and capricious way. But bureaucrats might act in an arbitrary and capricious way, in a way unknown to them, if we don't have a uniform definition of what a business day is.

So I oppose the effort to strike section 37 from the patent reform bill for the reasons I have just given, but also for the reasons that were already expounded by the chairman of this committee that at this late date, after 6 years of trying to get a patent reform bill done—and we haven't had a patent reform bill for over a decade, and it is badly needed—we shouldn't jeopardize the possible passage of this bill to the President of the United States for his signature by sending it back to the other body and perhaps putting it in jeopardy. But, most important, I think we ought to have a clear signal of what is a business day, a definition of it, and this legislation and section 37 makes that very clear.

This past June, I addressed this issue in a floor statement, and I want to quote from that because I wanted my colleagues to understand why I hoped the House-passed bill would contain section 37 that was not in our Senate bill but that was passed out of the House Judiciary Committee unanimously. Speaking as ranking member of the Senate Judiciary Committee now and back in June when I spoke, I wanted the House Judiciary Committee to know that several Republican and Democratic Senators had asked me to support this provision as well.

Section 37 resulted from a recent Federal court case that had as its genesis the difficulty the FDA—the Food and Drug Administration—and the Patent Office face when deciding how to calculate Hatch-Waxman deadlines. The Hatch-Waxman law of the 1980s was a compromise between drug patent holders and the generic manufacturers. Under the Waxman-Hatch law, once a patent holder obtains market approval, the patent holder has 60 days to request the Patent Office to restore the patent terms—time lost because of the FDA's long deliberating process eating up valuable patent rights.

The citation to the case I am referring to is in 731 Federal Supplement 2nd, 470. The court found—and I want to quote more extensively than I did back in June. This is what the judge said about bureaucrats acting in an arbitrary and capricious way and when does the 60 days start.

> The Food and Drug Administration treats submissions to the FDA received after its normal business hours differently than it treats communications from the agency after normal business hours.

Continuing to quote from the decision:

> The government does not deny that when notice of FDA approval is sent after normal business hours, the combination of the Patent and Trademark Office's calendar day interpretation and its new counting method effectively deprives applicants of a portion of the 60-day filing period that Congress expressly granted them . . . Under PTO's interpretation, the date stamped on the FDA approval letter starts the 60-day period for filing an application, even if the Food and Drug Administration never sends the letter . . . An applicant could lose a substantial portion, if not all, of its time for filing a Patent Trademark Extension application as a result of mistakes beyond its control . . . An interpretation that imposes such drastic consequences when the government errs could not be what Congress intended.

So the judge is telling us in the Congress of the United States that because we weren't precise, there is a question as to when Congress intended 60 days to start to toll. And the question then is, If it is treated one way for one person and another way for another person, or if one agency treats it one way and another agency treats it another way, is that equal justice under the law? I think it is very clear that the judge said it was not. I say the judge was correct. Congress certainly should not expect nor allow mistakes by the bureaucracy to up-end the rights and provisions included in the Hatch-Waxman Act or any other piece of legislation we might pass.

The court ruled that when the Food and Drug Administration sent a notice of approval after business hours, the 60-day period requesting patent restoration begins the next business day. It is as simple as that.

The House, by including section 37, takes the court case, where common sense dictates to protect all patent holders against losing patent extensions as a result of confused counting calculations. Regrettably, misunderstandings about this provision have persisted, and I think you hear some of those misunderstandings in the statement by Senator SESSIONS.

This provision does not apply to just one company. The truth is that it applies to all patent holders seeking to restore the patent term time lost during FDA deliberations—in other words, allowing what Hatch-Waxman tries to accomplish: justice for everybody. In recent weeks, it has been revealed that already three companies covering four drug patents will benefit by correcting the government's mistake.

It does not cost the taxpayers money. The Congressional Budget Office determined that it is budget-neutral.

Section 37 has been pointed out as maybe being anticonsumer, but it is anything but anticonsumer. I would quote Jim Martin, chairman of the 60–Plus Association. He said:

> We simply can't allow bureaucratic inconsistencies to stand in the way of cutting-edge medical research that is so important to the increasing number of Americans over the age of 60. This provision is a common-sense response to a problem that unnecessarily has ensnared far too many pharmaceutical companies and caused inexcusable delays in drug innovations.

We have also heard from prominent doctors from throughout the United States. They wrote to us stating that section 67 ''is critically important to medicine and patients. In one case alone, the health and lives of millions of Americans who suffer from vascular disease are at stake . . . Lives are literally at stake. A vote against this provision will delay our patients access to cutting-edge discoveries and treatments. We urgently request your help in preserving section 37.''

So section 37 improves our patent system fairness through certainty and clarity, and I urge my colleagues to join me in voting to preserve this important provision as an end in itself, but also to make sure we do not send this bill back to the House of Representatives and instead get it to the President, particularly on a day like today when the President is going to be speaking to us tonight about jobs. I think having an updated patent law will help invention, innovation, research, and everything that adds value to what we do in America and preserve America's greatness in invention and the advancement of science.

In conclusion, I would say it is very clear to me that the court concluded that the Patent and Trademark Office, and not some company or its lawyers, had erred, as is the implication here. A consistent interpretation ought to apply to all patent holders in all cases, and we need to resolve any uncertainty that persists despite the court's decision.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished Senator from Iowa for his words, and I join with the Senator from Iowa in opposing the amendment for two reasons. First, as just simply as a practical matter, the amendment would have the effect, if it passed, of killing the bill because it is not going to be accepted in the other body, and after 6 years or more of work on the patent bill, it is gone. But also, on just the merits of it, the provision this amendment strikes, section 37 of H.R. 1249, simply adopts the holding of a recent district court decision codifying existing law about how the Patent and Trademark Office should calculate 5 days for the purpose of considering a patent term extension. So those are the reasons I oppose the amendment to strike it.

The underlying provision adopted by the House is a bipartisan amendment on the floor. It was offered by Mr. CONYERS, and it has the support of Ms. PELOSI and Mr. BERMAN on the Democratic side and the support of Mr. CANTOR, Mr. PAUL, and Mrs. BACHMANN on the Republican side. I have a very hard time thinking of a wider range of bipartisan support than that.

The provision is simply about how they are calculating filing dates for patent extensions, although its critics have labeled it as something a lot more. A patent holder on a drug is entitled by statute to apply for an extension of its patent term to compensate for any delay the Food and Drug Administration approval process caused in actually bringing the drug to market. The patent holder not only has to file the extension within 60 days beginning on the date the product received permission for marketing, but there is some ambiguity as to when the date is that starts the clock running.

Only in Washington, DC, could the system produce such absurd results that the word ''date'' means not only something different between two agencies—the PTO and the FDA—but then it is given two different constructions by the FDA. If this sounds kind of esoteric, it is. I have been working on this for years and it is difficult to understand. But the courts have codified it. Let's not try to change it yet again.

What happens is that the FDA treats submissions to it after normal hours as being received the next business day. But the dates of submissions from the FDA are not considered the next business day, even if sent after hours. To complicate matters, the PTO recently changed its own method of defining what is a ''date.''

If this sounds confusing even in Washington, you can imagine how it is outside of the bureaucracy. Confusion over what constitutes the ''date'' for purposes of a patent extension has affected several companies. The most notable case involves the Medicines Company's ANGIOMAX extension application request.

The extension application was denied by the PTO because of the difference in how dates are calculated. MedCo challenged the PTO's decision in court, and last August the federal district court in Virginia held the PTO's decision arbitrary and capricious and MedCo received its patent term extension.

Just so we fully understand what that means, it means PTO now abides by the court's ruling and applies a sensible ''business day'' interpretation to the word ''date'' in the statute. The provision in the America Invents Act simply codifies that.

Senator GRASSLEY has spoken to this. As he said a few weeks ago, this provision ''improves the patent system fairness through certainty and clarity.''

This issue has been around for several years and it was a controversial issue when it would have overturned the PTO's decision legislatively. For this reason Senator GRASSLEY and others opposed this provision when it came up several years ago. But now that the court has ruled, it is a different situation. The PTO has agreed to accept the court's decision. The provision is simply a codification of current law.

Is there anyone who truly believes it makes sense for the word ''date'' to receive tortured and different interpretations by different parts of our government rather than to have a clear, consistent definition? Let's actually try to put this issue to bed once and for all.

The provision may solidify Medco's patent term extension, but it applies generally, not to this one company, as has been suggested. It brings common sense to the entire filing system.

However, if the Senate adopts the amendment of the Senator from Alabama, it will lead to real conflict with the House. It is going to complicate, delay, and probably end passage of this important bipartisan jobs-creating legislation.

Keep in mind, yesterday I said on the floor that each one of us in this body could write a slightly different patent bill. But we do not pass 100 bills, we pass 1. This bill is supported by both Republicans and Democrats across the political spectrum. People on both sides of the aisle have been working on this issue for years and years in both bodies. We have a piece of legislation. Does everybody get every single thing they want? Of course not. I am chairman of the Senate Judiciary Committee. I don't have everything in this bill I want, but I have tried to get something that is a consensus of the large majority of the House and the Senate, and we have done this.

In this instance, in this particular amendment, the House expressly considered this matter. They voted with a bipartisan majority to adopt this provision the amendment is seeking to strike. With all due respect to the distinguished Senator from Alabama, who contributed immensely to the bill as ranking member of the committee last Congress, I understood why he opposed this provision when it was controversial and would have had Congress override the PTO. But now that the PTO and court have resolved the matter as reflected in the bill, it is not worth delaying enactment of much-needed patent reform legislation. It could help create jobs and move the economy forward.

We will have three amendments on the floor today that we will vote on. This one and the other two I strongly urge Senators, Republicans and Democrats, just as the ranking member has urged, to vote them down. We have between 600,000 and 700,000 patents applications that are waiting to be taken care of. We can unleash the genius of our country and put our entrepreneur class to work to create jobs that can let us compete with the rest of the world. Let's not hold it up any longer. We have waited long enough. We debated every bit of this in this body and passed it 95 to 5. On the motion to proceed, over 90 Senators voted to proceed. It has passed the House overwhelmingly. It is time to stop trying to throw up roadblocks to this legislation.

If somebody does not like the legislation, vote against it. But this is the product of years of work. It is the best we are going to have. Let us get it done. Let us unleash the ability and inventive genius of Americans. Let us go forward.

We have a patent system that has not been updated in over a half century, yet we are competing with countries around the world that are moving light years ahead of us in this area. Let's catch up. Let's put America first. Let's get this bill passed.

I yield the floor.

AMENDMENT NO. 595

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Washington.

Ms. CANTWELL. Madam President, I call up Cantwell amendment No. 595.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Ms. CANTWELL] proposes an amendment numbered 595.

Ms. CANTWELL. Madam President, I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To establish a transitional program for covered business method patents)

On page 119, strike line 21 and all that follows through page 125, line 11, and insert the following:

SEC. 18. TRANSITIONAL PROGRAM FOR COVERED BUSINESS-METHOD PATENTS.

(a) REFERENCES.—Except as otherwise expressly provided, wherever in this section language is expressed in terms of a section or chapter, the reference shall be considered to be made to that section or chapter in title 35, United States Code.

(b) TRANSITIONAL PROGRAM.—

(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Director shall issue regulations establishing and implementing a transitional post-grant review proceeding for review of the validity of covered business-method patents. The transitional proceeding implemented pursuant to this subsection shall be regarded as, and shall employ the standards and procedures of, a post-grant review under chapter 32, subject to the following exceptions and qualifications:

(A) Section 321(c) and subsections (e)(2), (f), and (g) of section 325 shall not apply to a transitional proceeding.

(B) A person may not file a petition for a transitional proceeding with respect to a covered business-method patent unless the person or his real party in interest has been sued for infringement of the patent or has been charged with infringement under that patent.

(C) A petitioner in a transitional proceeding who challenges the validity of 1 or more claims in a covered business-method patent on a ground raised under section 102 or 103 as in effect on the day prior to the date of enactment of this Act may support such ground only on the basis of—

(i) prior art that is described by section 102(a) (as in effect on the day prior to the date of enactment of this Act); or

(ii) prior art that—

(I) discloses the invention more than 1 year prior to the date of the application for patent in the United States; and

(II) would be described by section 102(a) (as in effect on the day prior to the date of enactment of this Act) if the disclosure had been made by another before the invention thereof by the applicant for patent.

(D) The petitioner in a transitional proceeding, or his real party in interest, may not assert either in a civil action arising in whole or in part under section 1338 of title 28, United States Code, or in a proceeding before the International Trade Commission that a claim in a patent is invalid on any ground that the petitioner raised during a transitional proceeding that resulted in a final written decision.

(E) The Director may institute a transitional proceeding only for a patent that is a covered business-method patent.

(2) EFFECTIVE DATE.—The regulations issued pursuant to paragraph (1) shall take effect on the date that is 1 year after the date of enactment of this Act and shall apply to all covered business-method patents issued before, on, or after such date of enactment, except that the regulations shall not apply to a patent described in section 6(f)(2)(A) of this Act during the period that a petition for post-grant review of that patent would satisfy the requirements of section 321(c).

(3) SUNSET.—

(A) IN GENERAL.—This subsection, and the regulations issued pursuant to this subsection, are repealed effective on the date that is 4 years after the date that the regulations issued pursuant to paragraph (1) take effect.

(B) APPLICABILITY.—Notwithstanding subparagraph (A), this subsection and the regulations implemented pursuant to this subsection shall continue to apply to any petition for a transitional proceeding that is filed prior to the date that this subsection is repealed pursuant to subparagraph (A).

(c) REQUEST FOR STAY.—

(1) IN GENERAL.—If a party seeks a stay of a civil action alleging infringement of a patent under section 281 in relation to a transitional proceeding for that patent, the court shall decide whether to enter a stay based on—

(A) whether a stay, or the denial thereof, will simplify the issues in question and streamline the trial;

(B) whether discovery is complete and whether a trial date has been set;

(C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and

(D) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.

(2) REVIEW.—A party may take an immediate interlocutory appeal from a district court's decision under paragraph (1). The United States Court of Appeals for the Federal Circuit shall review the district court's decision to ensure consistent application of established precedent, and such review may be de novo.

(d) DEFINITION.—For purposes of this section, the term ''covered business method patent'' means a patent that claims a method or corresponding apparatus for performing data processing operations utilized in the practice, administration, or management of a financial product or service, except that the term shall not include patents for technological inventions. Solely for the purpose of implementing the transitional proceeding authorized by this subsection, the Director shall prescribe regulations for determining whether a patent is for a technological invention.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as amending or interpreting categories of patent-eligible subject matter set forth under section 101.

Ms. CANTWELL. Madam President, simply my amendment restores section 18 of the language that was passed out of the Senate. Basically it implements the Senate language.

I come to the floor today with much respect for my colleague Chairman LEAHY, who has worked on this legislation for many years, and my colleagues on the other side of the aisle who have tried to work on this important legislation and move it forward. I am sure it has been challenging. I mean no offense to my colleagues about this legislation. It simply is my perspective about where we need to go as a country and how we get there.

I am excited that we live in an information age. In fact, one of the things that I count very fortunate in my life is that this is the age we live in. I often think if I lived in the agrarian age, maybe I would be farming. That is also of great interest, given the State of Washington's interests in agriculture. Maybe I would live in the industrial age when new factories were being built. That would be interesting. But I love the fact that whether you are talking about agriculture, whether you are talking about automotive, whether you are talking about health care, whether you are talking about software, whether you are talking about communications, whether you are talking about space travel, whether you are talking about aviation, we live in an information age where innovation is created every single day. In fact, we are transforming our lives at a much more rapid pace than any other generation because of all that transformation.

I love the fact that the United States has been an innovative leader. I love the fact that the State of Washington has been an innovative leader. If there is one thing I pride myself on, it is representing a State that has continued to pioneer new technology and innovations. So when I look at this patent bill, I look at whether we are going to help the process of making innovation happen at a faster rate or more products and services to help us in all of those industries I just mentioned or whether we are going to gum up the wheels of the patent process. So, yes, I joined my colleagues who have been out here on the Senate floor, such as Senator FEINSTEIN and others who debated this issue of changing our patent system to the ''first to file,'' which will disadvantage inventors because ''first to file'' will lead to big companies and organizations getting the ability to have patents and to slow down innovation.

If you look at what Canada and Europe have done, I don't think anybody in the world market today says: Oh, my gosh, let's change to the Canadian system because they have created incredible innovation or let's look to Europe because their ''first to file'' has created such innovation.

In fact, when Canada switched to this ''first to file'' system, that actually slowed down the number of patents filed. So I have that concern about this legislation.

But we have had that discussion here on the Senate floor. I know my colleague is going to come to the floor and talk about fee diversion, which reflects the fact that the Patent Office actually

collects money on patents. That is a very viable way to make the Patent Office effective and efficient because it can take the money it collects from these patents and use it to help speed up the process of verifying these patents and awarding them. But the Senate chose good action on this issue, and good measure, and simply said that the money collected by the Patent Office should stay in the Patent Office budget.

But that is not what the House has done. The House has allowed that money to be diverted into other areas of appropriations, and the consequence will be that this patent reform bill will basically be taking the economic engine away from the Patent Office and spreading it out across government. So the reform that we would seek in patents, to make it a more expeditious process, is also going to get down.

I could spend my time here today talking about those two things and my concerns about them, but that is not even why I am here this morning. I am here to talk about how this legislation has a rifleshot earmark in it for a specific industry, to try to curtail the validation of a patent by a particular company. That is right, it is an earmark rifleshot to try to say that banks no longer have to pay a royalty to a particular company that has been awarded a patent and that has been upheld in court decisions to continue to be paid that royalty.

That is why I am here this morning. You would say she is objecting to that earmark, she is objecting to that personal approach to that particular industry giveaway in this bill. Actually, I am concerned about that, but what I am concerned about is, given the way they have drafted this language to benefit the big banks of America and screw a little innovator, this is basically drafted so broadly that I am worried that other technology companies are going to get swept up in the definition and their patents are also going to be thrown out as invalid. That is right. Every State in the United States could have a company that, under this language, could now have someone determine that their patent is no longer viable even though the Patent Office has awarded them a patent. Companies that have revenue streams from royalties that are operating their companies could now have their bank financing, everything pulled out from under them because they no longer have royalty streams. Businesses could lay off people, businesses could shut down, all because we put in broad language in the House version that exacerbates a problem that was in the Senate version to begin with.

Now I could say this is all a process and legislation follows a process, but I object to this process. I object to this language that benefits the big banks but was never debated in the committee of jurisdiction, the Judiciary Committee. It was not debated. It was not voted on. It was not discussed there. It was put into the managers' amendment which was brought to the Senate floor with little or no debate because people wanted to hurry and get the managers' amendment adopted.

Now, I objected to that process in driving this language because I was concerned about it. I sought colloquy at that point in time and was not able to get one from any of my colleagues, and I so opposed this legislation. Well, now this legislation has been made even worse in the House of Representatives by saying that this language, which would nullify patents—that is right. The Senate would be participating in nullifying patents that the Patent Office has already given to companies, and it can now go on for 8 years—8 years is what the language says when it comes back from the House of Representatives.

All I am asking my colleagues to do today is go back to the Senate language they passed. Go back to the Senate language that at least says this earmark they are giving to the big banks so they can invalidate a patent by a company because they don't like the fact they have to pay a royalty on check imaging processing to them—I am sorry you don't like to pay the royalty. But when somebody innovates and makes the technology, they have the right to charge a royalty. You have been paying that royalty. I am sorry, big banks, if you don't like paying that royalty anymore. You are making a lot of money. Trying to come to the Senate with an earmark rifle shot to X out that competition because you don't want to pay for that technology—that is not the way the Senate should be operating.

The fact that the language is so broad that it will encompass other technologies is what has me concerned. If all my colleagues want to vote for this special favor for the big banks, go ahead. The fact that my colleagues are going to basically pull us in to having other companies covered under this is a big concern.

The section I am concerned about is business method patents, and the term ''covered business method patent'' means patents or claims or method or corresponding apparatus for performing data processing or other operations. What does ''or other operations'' mean? How many companies in America will have their patents challenged because we don't know what ''or other operations'' means? How many? How many inventors will have their technology basically found null and void by the court process or the Patent Office process because of this confusing language?

I am here to ask my colleagues to do a simple thing: revert to the Senate language. It is not a perfect solution. If I had my way, I would strip the language altogether. If I had my way, I would have much more clarity and predictability to patent lawyers and the Patent Office so the next 3 or 4 years will not be spent in chaos between this change in the patent business method language and the whole process that is going to go on. Instead, we would be moving forward with predictability and certainty.

I ask my colleagues to just help this process. Help this process move forward by going back to the Senate language. I know my colleagues probably want to hurry and get this process done, but I guarantee this language with the Senate version could easily go back to the House of Representatives and be passed. What I ask my colleagues to think about is how many companies are also going to get caught in this process by the desire of some to help the big banks get out from under something the courts have already said they don't deserve to get out of.

I hope we can bring closure to this issue, and I hope we can move forward on something that gives Americans the idea that people in Washington, DC, are standing up for the little guy. We are standing up for inventors. We are standing up for those kinds of entrepreneurs, and we are not spending our time putting earmark rifle shot language into legislation to try to assuage large entities that are well on their way to taking care of themselves.

I hope if my colleagues have any questions on this language as it relates to their individual States, they would contact our office and we would be happy to share information with them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SCHUMER. Madam President, I rise today to urge this body to complete the extensive work that has been done on the Leahy-Smith America Invents Act and send this bill to the President for signature.

The America Invents Act has been years in the making. The time has come to get this bill done once and for all.

The importance of patent law to our Nation has been evidenced since the founding. The Constitution sets control over patent law as one of the enumerated powers of the Congress. Specifically, it gives the Congress the power ''To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.''

Today we take an important step toward ensuring that the constitutional mandate of Congress is met as we modernize our patent system. This bill is the first major overhaul of our patent laws in literally decades.

My colleagues have spoken at length about the myriad ways the America Invents Act will bring our patent law

into the 21st century. What I want to focus on, of course, is jobs.

The America Invents Act is fundamentally a jobs bill. Innovation and intellectual property has always been and always will be at the heart of the American economy. By rewarding innovators for inventing newer and better products, we keep America's creative and therefore economic core healthy.

Over the last few decades, however, innovation has outpaced our patent system. We have an enormous backlog at the PTO. The result of this backlog is that it is much harder for creators to obtain the property rights they deserve in their inventions. That challenge in turn makes it harder for inventions to be marketed and sold, which reduces the incentive to be innovative. Eventually, this vicious cycle becomes poisonous.

The America Invents Act cuts this cycle by making our patent system more efficient and reliable. By providing the Patent and Trademark Office the resources it needs to reduce the backlog of nearly 700,000 patent applications, the bill will encourage the innovation that will create and protect American jobs. In addition, the bill streamlines review of patents to ensure that the poor-quality patents can be weeded out through administrative review rather than costly litigation.

I am especially pleased that H.R. 1249 contains the Schumer-Kyl provisions that we originally inserted in the Senate to help cut back on the scourge of business method patents that have been plaguing American businesses. Business method patents are anathema to the protection that the patent system provides because they apply not to novel products or services but to abstract and often very common concepts of how to do business. Often business method patents are issued for practices that have been in widespread use for years, such as check imaging or one-click checkout. Imagine trying to patent the one-click checkout long after people have been using it.

Because of the nature of the business methods, these practices aren't as easily identifiable by the PTO as prior art, and bad patents are issued. Of course, this problem extends way beyond the financial services industry. It includes all businesses that have financial practices, from community banks to insurance companies to high-tech startups. Section 18, the Schumer-Kyl provision, allows for administrative review of those patents so businesses acting in good faith do not have to spend the millions of dollars it costs to litigate a business method patent in court.

That is why the provision is supported not only by the Financial Services Roundtable and the Community Bankers, but by the Chamber of Commerce, the National Retail Foundation, and in my home State by the Partnership for a Greater New York.

Madam President, I ask unanimous consent that letters in support of section 18 from all of these organizations be printed in the RECORD.

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

INDEPENDENT COMMUNITY BANKERS OF AMERICA,
Washington, DC, June 14, 2011.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR MEMBER OF CONGRESS: On behalf of ICBA's nearly 5,000 community bank members, I write to voice strong support for Section 18 of the America Invents Act (H.R. 1249), which addresses the issue of poor-quality business-method patents. I strongly urge you to oppose efforts to strike or weaken the language in Section 18, which creates a program to review business-method patents against he best prior art.

Poor-quality business-method patents represent an extremely problematic aspect of the current system for granting, reviewing and litigating patents. The problems with low-quality patents are well documented and beyond dispute. On an escalating basis, financial firms are the target of meritless patent lawsuits brought by non-practicing entities. Such entities exploit flaws in the current system by bringing action in friendly venues, where they wring money from legitimate businesses by asserting low-quality business-method patents.

Section 18 addresses this problem by establishing an oppositional proceeding at the United States Patent and Trademark Office (PTO), where business-method patents can be re-examined, using the best prior art, as an alternative to costly litigation. This program applies only to business-method patents, which are defined using suggestions proffered by the PTO. Concerns about the scope of the definition have been addressed by exclusion of technological innovations. Additionally, it has been well-settled law for over 25 years that post-grant review of patent validity by the PTO is constitutional. The Federal Circuit explained that a defectively examined and therefore erroneously granted patent must yield to the reasonable Congressional purpose of facilitating the correction of governmental mistakes. This Congressional purpose is presumptively correct and constitutional. Congress has given the PTO a tool to ensure confidence in the validity of patents. Section 18 furthers this important public purpose by restoring confidence in business-method patents.

I urge you to oppose changes to Section 18, including changes that would create a loophole allowing low-quality business-method patent holders to wall off their patents from review by the PTO. Congress should ensure that final patent-reform legislation addresses the fundamental, and increasingly costly, problem of poor-quality business-method patents.

Sincerely,

CAMDEN R. FINE,
President and CEO.

CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA,
Washington, DC, June 14, 2011.

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES: The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, supports H.R. 1249, the ''America Invents Act,'' which would encourage innovation and bolster the U.S. economy. The Chamber believes this legislation is crucial for American economic growth, jobs, and the future of U.S. competitiveness.

A key component of H.R. 1249 is section 22, which would ensure that fees collected by the U.S. Patent and Trademark Office (PTO) fund the office and its administration of the patent system. PTO faces significant challenges, including a massive backlog of pending applications, and this backlog is stifling domestic innovators. The fees that PTO collects to review and approve patent application are supposed to be dedicated to PTO operation. However, fee diversion by Congress has hampered PTO's efforts to hire and retain a sufficient number of qualified examiners and implement technological improvements necessary to ensure expeditious issuance of high quality patents. Providing PTO with full access to the user fees it collects is an important first step toward reducing the current backlog of 1.2 million applications waiting for a final determination and pendency time of 3 years, as well as to improve patent quality.

In addition, the legislation would help ensure that the U.S. remains at the forefront of innovation by enhancing the PTO process and ensuring that all inventors secure the exclusive right to their inventions and discoveries. The bill shifts the U.S. to a first-inventor-to-file system that we believe is both constitutional and wise, ending expensive interference proceedings. H.R. 1249 also contains important legal reforms that would help reduce unnecessary litigation against American businesses and innovators. Among the bill's provisions, Section 16 would put an end to frivolous false patent marking cases, while still preserving the right of those who suffered actual harm to bring actions. Section 5 would create a prior user right for those who first commercially use inventions, protecting the rights of early inventors and giving manufacturers a powerful incentive to build new factories in the United States, while at the same time fully protecting universities. Section 19 also restricts joinder of defendants who have tenuous connections to the underlying disputes in patent infringement suits. Section 18 of H.R. 1249 provides for a tailored pilot program which would allow patent office experts to help the court review the validity of certain business method patents using the best available prior art as an alternative to costly litigation.

The Chamber strongly opposes any amendments to H.R. 1249 that would strike or weaken any of the important legal reform measures in this legislation, including those found in Sections 16, 5, 19 and 18. The Chamber supports H.R. 1249 and urges the House to expeditiously approve this necessary legislation.

Sincerely,

R. BRUCE JOSTEN,
Executive Vice President,
Government Affairs.

NATIONAL RETAIL FEDERATION,
Washington, DC, June 21, 2011.

HON. LAMAR S. SMITH,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

HON. JOHN CONYERS, JR.,
Ranking Member, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN SMITH AND RANKING MEMBER CONYERS: I am writing in support of Section 18 of H.R. 1249, the American Invents Act of 2010. This provision would provide the Patent and Trademark Office (PTO) the ability to re-examine qualified business method patents against the best prior art.

As the world's largest retail trade association, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and

generated 2010 sales of $2.4 trillion. Retailers have been inundated by spurious claims, many of which, after prolonged and expensive examination, are subsequently found to be less than meritorious.

Increasingly, retailers of all types are being sued by non-practicing entities for infringing low-quality business method patents which touch all aspects of our business: marketing, payments, and customer service to name a few aspects. A vast majority of these cases are brought in the Eastern District of Texas where the statistics are heavily weighted against defendants forcing our members to settle even the most meritless suits.

Section 18 moves us closer to a unified patent system by putting business method patents on par with other patents in creating a post-grant, oppositional proceeding that is a lower cost alternative to costly patent litigation. The proceeding is necessary to help ensure that the revenues go to creating jobs and bringing innovations to our customers, not paying litigation costs in meritless patent infringement litigation.

We appreciate the opportunity to support this important section and oppose any efforts to strike or weaken the provision. Please do not hesitate to contact me with any questions.

Best regards,

DAVID FRENCH,
Senior Vice President,
Government Relations.

Mr. SCHUMER. A patent holder whose patent is solid has nothing to fear from a section 18 review. Indeed, a good patent will come out of such a review strengthened and validated. The only people who have any cause to be concerned about section 18 are those who have patents that shouldn't have been issued in the first place and who were hoping to make a lot of money suing legitimate businesses with these illegitimate patents. To them I say the scams should stop.

In fact, 56 percent of business patent lawsuits come in to one court in the Eastern District of Texas. Why do they all go to one court? Not just because of coincidence. Why do people far and wide seek this? Because they know that court will give them favorable proceedings, and many of the businesses that are sued illegitimately spend millions of dollars for discovery and everything else in a court they believe they can't get a fair trial in, so they settle. That shouldn't happen, and that is what our amendment stops. It simply provides review before costly litigation goes on and on and on.

Now, my good friend and colleague, Senator CANTWELL, has offered an amendment that would change the section 18 language and return to what the Senate originally passed last March. Essentially, Senator CANTWELL is asking the Senate to return to the original Schumer-Kyl language. Of course, I don't have an inherent problem with the original Schumer-Kyl language. However, while I might ordinarily be inclined to push my own version of the amendment, I have to acknowledge that the House made some significant improvements in section 18.

First, H.R. 1249 extends the transitional review program of section 18 from 4 to 8 years in duration. This change was made to accommodate industry concerns that 4 years was short enough, that bad actors would just wait out the program before bringing their business method patent suits. The lying-in-wait strategy would be possible under the Cantwell amendment because section 18 only allows transitional review proceedings to be initiated by those who are facing lawsuits.

On a 20-year patent, it is not hard to wait 4 years to file suit and therefore avoid scrutiny under a section 18 review. It would be much harder, however, to employ such an invasive maneuver on a program that lasts 8 years.

Second, the Cantwell amendment changes the definition of business method patents to eliminate the House clarification that section 18 goes beyond mere class 705 patents. Originally, class 705 was used as the template for the definition of business method patents in section 18. However, after the bill passed the Senate, it became clear that some offending business method patents are issued in other sections. So the House bill changes the definition only slightly so that it does not directly track the class 705 language.

Finally, the Cantwell amendment limits who can take advantage of section 18 by eliminating access to the program by privies of those who are sued. Specifically, H.R. 1249 allows parties who have shared interests with a sued party to bring a section 18 proceeding. The Cantwell amendment would eliminate that accommodation.

All of the House changes to section 18 of the Senate bill are positive, and I believe we should keep them. But to my colleagues I would say this in closing: The changes Senator CANTWELL has proposed do not get to the core of the bill, and the most profound effect they would have is to delay passage of the bill by requiring it to be sent back to the House, which is something, of course, we are all having to deal with on all three of the amendments that are coming up.

I urge my colleagues to remember that this bill and the 200,000 jobs it would create are too important to delay it even another day because of minor changes to the legislation. I urge my colleagues to vote against the amendment of my good friend MARIA CANTWELL and move the bill forward.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I rise to express my continued support for the America Invents Act. We have been working on patent reform legislation for several years now—in fact, almost the whole time I have been in the Senate—so it is satisfying to see the Senate again voting on this bipartisan bill.

It is important to note that this bill before us is the same one that was passed by the Republican-controlled House of Representatives in June. I commend House Judiciary chairman LAMAR SMITH for his leadership on this monumental legislation. He has worked hard on this for many years, and I wish to pay a personal tribute to him.

I also wish to recognize the efforts of my colleague from Vermont, Senate Judiciary Committee chairman PATRICK LEAHY. Over the years, he and I have worked tirelessly to bring about long overdue reform to our Nation's patent system, and I personally appreciate PAT for his work on this matter.

I also wish to recognize the efforts of Senate Judiciary Committee ranking member CHUCK GRASSLEY of Iowa, as well as many other Senate colleagues who have been instrumental in this legislative process.

The Constitution is the supreme law of the land and the shortest operating Constitution in the world. America's Founders put only the most essential provisions in it, listing the most essential rights of individuals and the most essential powers the Federal Government should have. What do we think made it on to that short list? Raising and supporting the Army and maintaining the Navy? No question there. Coining money? That one is no surprise. But guess what else made the list. Here is the language: The Founders granted to Congress the power ''To promote the Progress of Science and useful Arts, by securing for . . . Authors and Inventors the exclusive Right to their Respective Writing and Discoveries.''

In other words, the governance of patents and copyrights is one of the essential, specifically enumerated powers given to the Federal Government by our Nation's Founders. In my view, it is also one of the most visionary, forward-looking provisions in the entire U.S. Constitution.

Thomas Jefferson understood that giving people an exclusive right to profit from their inventions would give them ''encouragement . . . to pursue ideas which may produce utility.'' Yet Jefferson also recognized the importance of striking a balance when it came to granting patents—a difficult task. He said:

I know well the difficulty of drawing a line between the things which are worth to the public the embarrassment of an exclusive patent and those which are not.

As both an inventor and a statesman, he understood that granting a person an exclusive right to profit from their invention was not a decision that should be taken lightly.

This bill is not perfect, but I am pleased with the deliberative process that led to its development, and I am confident that Congress followed Jefferson's lead in striking a balanced approach to patent reform.

There can be no doubt that patent reform is necessary, and it is long overdue. Every State in the country has a vested interest in an updated patent system. When patents are developed commercially they create jobs, both for the company marketing products and for their suppliers, distributors,

and retailers. One single deployed patent affects almost all sectors of our economy.

Utahns have long understood this relationship. Ours is a rich and diverse and inventive legacy. In the early 1900s, a young teenager approached his teacher after class with a sketch he had been working on. It was a drawing inspired by the rows of dirt in a potato field the teenager had recently plowed. After examining the sketch, the teacher told the young student that he should pursue his idea, and he did. That teenager was Philo Farnsworth, a Utah native who went on to patent the first all-electronic television.

Farnsworth had to fight for many years in court to secure the exclusive rights to his patent, but he continued to invent, developing and patenting hundreds of other inventions along the way.

Another Utah native developed a way to amplify sound after he had trouble hearing in the Mormon Tabernacle. His headphones were later ordered by the Navy for use during World War I. His name was Nathaniel Baldwin.

William Clayton, an early Mormon pioneer, grew tired of manually counting and calculating how far his wagon company had traveled each day. So, in the middle of a journey across the plains, he and others designed and built a roadometer, a device that turned screws and gears at a set rate based on the rotation of the wagon wheel. It worked based on the same principles that power modern odometers.

John Browning, the son of a pioneer, revolutionized the firearm, securing his inventions through a patent. He is known all over the world for the work he did.

Robert Jarvik, who worked at the University of Utah—a wonderful doctor whom I know personally—invented the first successful permanent artificial heart while at the University of Utah.

These and countless other stories illustrate the type of ingenuity that was required by the men and women who founded Utah, the type of ingenuity that has been exemplified in every generation since.

Last year, Utah was recognized as one of the most inventive States in the Union. Such a distinction did not surprise me, especially since the University of Utah recently logged the university's 5,000th invention disclosure and has over 4,000 patent applications filed to date. This impressive accomplishment follows on the heels of news that the University of Utah overtook MIT in 2009 to become America's No. 1 research institution for creating start-up companies based on university technology.

A group of students at Brigham Young University recently designed a circuit that was launched with the shuttle Endeavour, and another group developed a prosthetic leg that costs $25 versus the $10,000 a prosthetic leg may typically cost. Utah inventors contribute to everything from electronic communications, to biotechnology, to computer games.

Like my fellow Utahns, citizens across the country recognize that technological development is integral to the well-being of our economy and the prosperity of our families and communities. As technology advances, it is necessary at times to make adjustments that will ensure Congress is promoting the healthy progress of science and useful arts.

The America Invents Act will improve the patent process, giving inventors in Utah and across the country greater incentives to innovate. Strengthening of our patent system will not only help lead us out of these tough economic times, but it will help us maintain our competitive edge both domestically and abroad. Take, for example, the transition to a first-inventor-to-file system and the establishment of a post-grant review procedure. These changes alone will decrease litigation costs so that small companies and individuals will not be dissuaded from protecting their patent rights by companies with greater resources.

This bill provides the USPTO with rulemaking authority to set or adjust its own fees for 7 years without requiring a statutory change every time an adjustment is needed. Providing the USPTO with the ability to adjust its own fees will give the agency greater flexibility and control, which, in the long run, will benefit inventors and businesses.

The legislation enables patent holders to request a supplemental examination of a patent if new information arises after the initial examination. By establishing this new process, the USPTO would be asked to consider, reconsider, or correct information believed to be relevant to the patent.

Further, this provision does not limit the USPTO's authority to investigate misconduct or to sanction bad actors. I am confident this new provision will remove the uncertainty and confusion that defines current patent litigation, and I believe it will enhance patent quality.

The America Invents Act creates a mechanism for third parties to submit relevant information during the patent examination process. This provision will provide the USPTO with better information about the technology and claimed invention by leveraging the knowledge of the public. This will also help the agency increase the efficiency of examination and the quality of patents.

This bill would create a reserve fund for user fees that exceed the amount appropriated to the USPTO. I prefer the language in the Senate-passed bill, which created a new revolving fund for the USPTO separate from annual appropriations. Certainty is important for future planning, but the appropriations process is far from reliable.

While conceptually I understand why our House counterparts revised the Senate-passed language—and I am in agreement about maintaining congressional oversight—I believe this is one area that should be reconsidered. It is just that important. That is why I support Senator TOM COBURN's amendment. If passed, his amendment will preserve congressional oversight and give the USPTO the necessary flexibility to operate during these critical times.

The House-passed compromise language is a step in the right direction, especially since the chairman of the House Appropriations Committee has committed that all fees collected by the USPTO in excess of its annual appropriated level will be available to the USPTO. However, I remain concerned that the budget uncertainties that exist today may negatively impact the USPTO and its ability to implement many of the new responsibilities required by the America Invents Act.

I remain concerned about some provisions the House either expanded or added. On balance, however, the positives of this legislation far outweigh the negatives, and I am confident it will contribute to the greater innovation and productivity our economy demands. It provides essential improvements to our patent system, such as changes to the best mode disclosure requirement; expansion of the prior user rights defense to affiliates, with an exemption for university-owned patents; incentives for government laboratories to commercialize inventions; restrictions on false marking claims; removal of restrictions on the residency of Federal circuit judges; clarification of tax strategy patents; providing assistance to small businesses through a patent ombudsman program and establishing additional USPTO satellite offices.

We all know every piece of legislation has its shortcomings. That is the reality of our legislative process. However, taken as a whole, the America Invents Act further builds upon our country's rich heritage of intellectual property protections—a cornerstone provided by article I, section 8 of the Constitution.

Passage of the America Invents Act will update our patent system, help strengthen our economy, and provide a springboard for further improvements to our intellectual property laws. I urge all of my colleagues to join in this monumental undertaking, and I appreciate those who have worked so hard on these programs. Again, I mentioned with particularity the Congressman from Texas, LAMAR SMITH, and also my friend and colleague, Senator LEAHY, and others as well, Senator GRASSLEY especially. There are others as well whom I should mention, but I will leave it at that for this particular time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. COONS). Without objection, it is so ordered.

THE ECONOMY

Mr. HOEVEN. Mr. President, I rise today to speak on a matter of great importance to our country, and that is jobs and our economy. I know the President will be speaking this evening. I want to emphasize the importance that we focus on a long-term strategy to get our economy going. By that I mean a pro-jobs, progrowth economic strategy for our country.

The things that go into that include building the best possible business climate. We have got to have a business climate that will stimulate private investment, that will stimulate entrepreneurship, ingenuity, that will stimulate job creation by businesses small and large across our economy. We need to build a strong business climate. We need a long-term, progrowth economic strategy to do that.

We also need to control our spending and live within our means. We need a comprehensive energy policy. All three of these things go into the right kind of long-term comprehensive approach this country needs to get our economy growing and get people back to work.

I wish to start by taking a minute to look at our current situation, to talk about where we are. If you look at unemployment, unemployment is more than 9 percent, and it has been more than 9 percent for an extended period of time. Weekly jobless claims: more than 400,000. We have more than 14 million people who are out of work. That does not include people who are underemployed or people who are no longer looking for work because they have been discouraged and are not included in the workforce—14 million people we need to get back to work.

We also have a tremendous deficit problem. If you look at our revenues today, we have revenues of about $2.2 trillion. Our spending is at a rate of $3.7 trillion. That is a $1.5 trillion deficit. That is adding up to more than a $14 trillion dollar debt—a $14 trillion debt that weighs on our economy. If we do not deal with it, it is a debt our children will have to pay. That is not acceptable for us and we have to deal with it at the same time we get this economy going.

If you look at our current situation, we are borrowing 40 cents of every dollar we spend, and deficit and our debt is growing at $4 billion a day. I brought some graphs so we can look at it graphically. Here you see revenues and spending.

Unfortunately, the spending line is the red line along the top here. Spending is more than $3.7 trillion a year. At the same time, our revenues are $2.2 trillion. That gap is a $1.5 trillion budget deficit we are accumulating on an annual basis. As I say, it is now leading to a debt that is more than $14 trillion.

If you look at this next chart, we talk about unemployment. Here you see annual unemployment. Currently we are at 9.1 percent. We have been there for an extended period of time. Again, that represents more than 14 million people who are unemployed that we need to get back to work.

The other thing you will notice on this chart is the blue line. This blue line is the chart for my home State. There you will see our unemployment is about 3.2 to 3.3 percent. For the last decade in our State, we have focused on a progrowth, pro-jobs economic strategy. By that I mean building the best possible business climate, making sure we live within our means, and building a comprehensive energy approach to develop all of our energy resources. There is no reason we cannot do the same thing at the Federal level. In fact, we need to do exactly that at the Federal level. So I am here today to talk about some of the things we need to do to make that happen.

The first is that I emphasize by building a good business climate, I mean a legal, tax, and regulatory certainty so businesses know the rules of the road so they can invest. They can invest shareholders' dollars so entrepreneurs can start new businesses, so existing businesses can expand. But to do that, they need to know the rules of the road. They need to know what our tax policy is. Right now we have a tax policy that expires at the end of the next year. So how do you as a business person go out there and start making investments when you do not know what the tax policy is going to be beyond the end of next year? We need tax reform.

How about regulation? We have an incredible regulatory burden. How do you go out there and make an investment, get a business going, hire people, if you do not know what the regulatory requirements are? We need to reduce that regulatory burden.

We need to pass trade agreements so our companies can sell not just here in the United States but they can sell globally. If you look at the history of our country, that is how we have grown this economy, how we have become the most dynamic economic engine in the world. It is through that private investment, that entrepreneurship, that American ingenuity.

The role of government is to create a business climate that unleashes that potential. We have got to roll back the regulatory burden. We have got to create clear, understandable rules and tax policy to follow so these companies can make these investments, get those 14-plus million people back to work, get a growing economy, at the same time that we get a grip on our spending and start living within our means. That is how we not only raise our standard of living and our quality of life, but we make sure we do not pass on a huge debt to our children and our grandchildren.

Let me talk about some of the kinds of laws and legislation we need to pass to make sure that happens.

Not too long ago, President Obama issued an Executive order. I hope it is something he talks about this evening in his address to the joint session of Congress. In that Executive order, he said all of the agencies—all of the Federal agencies—need to look at their regulations, at their existing regulations and any regulations they are putting out, and make sure that if those regulations are costly, burdensome, if they do not make sense, if they are outmoded or outdated, they are eliminated, they are stripped away, so we empower people and companies throughout this great country to do business. He said in that Executive order make sure all of our agencies look at their regulations and eliminate those that do not make sense, that are costly, and that are burdensome, so we can stimulate economic activity and job creation in this country. I think we need to do exactly that. In fact, let's make it a law. Let's make it the law that all of the regulatory agencies need to look at their existing regulations and any regulations they are looking at putting out, to make darn sure they are clear, straightforward, understandable, that they are workable, and not only that our regulations are clear and understandable, that the regulators work with Americans and American companies to make sure they understand them and they are able to meet them so they can pursue their business plans, their business growth, their business investment, and that they hire and put people back to work. That is how it is supposed to work.

Together, Senator PAT ROBERTS of Kansas, myself, and others have put forward the Regulatory Responsibility for Our Economy Act. That is just what it says. How much more bipartisan can we get than that? The President puts out an Executive order saying we need to roll back some of these regulations that are burdening our business base, and we as Republican Senators say: Okay, here is an act to put that Executive order into law. Let's work together in a bipartisan way to reduce this regulatory burden that is stifling economic growth and job creation in our country.

That is what Congress is supposed to do. That is what we need to do. That is what the people of this country want us to do on a bipartisan basis.

When the President comes to the Capitol this evening and talks about how we get business going, let's get it going by reducing this regulatory burden so private investment can get people back to work in this country. It is not about more government spending, it is about private investment and initiative. We have to create the framework to make it happen. We can do it, and we can do it on a bipartisan basis.

Another example is that the United States has been the leader in aviation throughout its history. Throughout the

history of aviation, since Kitty Hawk, the United States has led the world in aviation, in invention, development, and innovation, and all the things that have gone into the development of aviation. Again, throughout its history, the United States has been the leader. One of the key areas for growth in aviation right now is UAS, unmanned aerial systems or unmanned aircraft. They call them remotely piloted aircraft. Our military uses them to tremendous benefit in Iraq, Afghanistan, and around the world.

Even though our military flies UAS all over the globe, we can't fly them here in the United States together with manned aircraft. Yet if we are going to continue to lead the world in aviation innovation, we have to find a way to fly both manned and unmanned aircraft together in our airspace in the United States.

Others and I have been talking to the FAA and working with the FAA, saying that you have to promulgate rules, set the rules of the road—or, in this case, the rules of the air—so we can fly both manned and unmanned aircraft together in the U.S. airspace. The FAA has been working on this for I don't know how long but a long period of time. As of yet, they have not come out with those rules so we can fly both manned and unmanned aircraft in our airspace. But we need to, because if we don't, other countries will, and they will move ahead of us—maybe not in military aviation, where we are flying unmanned aircraft all over the world, but how about in commercial and general aviation and all the other applications it will have for unmanned aircraft.

The FAA bill, which we are now working to complete—a version was passed in the House and a version was passed in the Senate, and we are trying to reconcile the two versions. Again, we need to do this in a bipartisan way. I have included language that authorizes—in fact requires—that the FAA set up airspace in the United States so that manned and unmanned aircraft can be flown concurrently. Again, it is about making sure that we not only maintain our lead in aviation but create those exciting, good-paying jobs of the future. If the agency isn't going to take that step, we as the Congress have to make sure we take that step and move the aviation industry forward.

Another example is how we have to create the environment, the forum that encourages that type of innovation, entrepreneurship, and investment in job creation. That is our role, our responsibility, in this most important of all issues, which is getting the economy going and getting people back to work.

On the free trade agreements, we have three of them pending—one with South Korea, the U.S.-South Korea Free Trade Agreement, another is the Panama Free Trade Agreement, and the other is with Colombia. Those trade agreements have been negotiated for some time. For three years those trade agreements have been pending. It is time to take them from pending to being passed. We need the administration to bring those free trade agreements to the Senate and to the House and we will pass them. We have worked across the aisle in a bipartisan way to make sure that whatever issues needed to be dealt with to bring them to the Congress—whether it is trade adjustment authority or whatever, we have worked together in a bipartisan way to say, look, we have addressed the issues. Now the administration needs to bring the free trade agreements to the Senate floor. We will pass them.

With just one of those free trade agreements—for example, if we take the South Korea free trade agreement—we are talking about more than $10 billion in trade every year for our U.S. companies.

These free trade agreements reduce tariffs on the order of 85 percent. We are talking more than a quarter of a million jobs that will be created if we pass these agreements. For every 4-percent increase in trade, we are talking about 1 million American jobs that we can create. Again, it is about creating the environment that empowers investment, empowers our entrepreneurs in this country, and empowers businesses large and small to invest and get our economy going.

At the same time we get this economy growing, we have to start living within our means. Right now, as I indicated, we have a $1.5 trillion deficit and a debt that is closing in on $14.5 trillion. So at the same time we get the economy growing, which will grow our revenues—not higher taxes, but grow revenues from a growing economy, and with tax reform that empowers that economic growth, at the same time, we have to get control of our spending and live within our means.

Along with some fellow Senators, we have sponsored a number of pieces of legislation that I believe we can pass in a bipartisan way to make sure we get spending under control. The first is a balanced budget amendment. I come from a State where I was Governor for 10 years. We have a balanced budget amendment. Every year, we are required by our Constitution to balance the budget. States have a balanced budget requirement, and businesses and families and communities all have to live within their means. Our Federal Government has to live within its means.

If you think about it, a balanced budget amendment gets everybody involved. We not only have to pass it in the Senate and in the House with a two-thirds majority, but then it goes out to the States for ratification. What better way to get everybody throughout the country directly involved in making sure that we control our spending. Every State has to deal with a balanced budget amendment. So it is all of us working together as Americans, and it is the Congress going to the people of this great country and saying: Here is a balanced budget amendment, you tell us what you think. Again, what a great way to get everybody involved, the way we should get everybody involved in making sure we live within our means not only today but tomorrow and throughout future generations.

At the same time, we need to pass other tools that can help us get control of our spending. For example, the Reduce Unnecessary Spending Act. This is a bipartisan act that I think was originally sponsored by Senator TOM CARPER, a former Governor, a Democrat from Delaware, and Senator JOHN MCCAIN. I am proud to be a cosponsor. One of the key provisions is to give the President a line-item veto. Reaching across the aisle, we are giving our President a tool—a line-item veto—to make sure we cut out waste, fraud, and abuse, and that we control our spending. As a Governor, the most effective tool I had was the line-item veto. We need to make sure our President has it as well.

I think we also need to look at a biennial budget, so that we pass a budget on a two-year cycle—make sure we get it passed and the next year we can come back and make the adjustments we have to make; but at the same time we have time for oversight and making sure spending is going in accordance with the directive of the Congress, and whether it is waste, fraud, abuse, or duplication, that we cut it out. Again, this is absolutely what the American people want us to do.

The third area I will touch on for a minute—and I will go to the next chart—is building the right kind of energy plan, a comprehensive energy policy that will help this country develop all of its energy resources. We did it in North Dakota. I know we can do it at the Federal level.

If you think about it, energy development in this country is an incredible opportunity. It is an opportunity to produce more energy more cost effectively, with better environmental stewardship that will enable all of our industries to compete in a global high-tech economy. In addition, what a great opportunity it is to create high-paying jobs. Again, I go back to what I said before. For our energy companies looking to invest hundreds of millions and billions of dollars, they need to know the rules of the road. It comes back to creating a comprehensive energy policy that sets up those rules of the road so they know what their tax situation is and what the regulation and regulatory requirements are. When they make those investments to produce more energy more cost effectively, with good environmental stewardship, they have to know they are going to be able to get a return. They have to know they can meet the regulatory requirements. Those investments may last 40 and 50 years, and they know they are going to have to be able to recoup those investments.

This first chart gives an example of some of the energy development in our

State. Out West, there is oil and gas. North Dakota is now the fourth largest oil-producing State in the country. We have passed Oklahoma and Louisiana, and people don't realize it. Every State has some kind of energy. If you look at this map, we have oil, gas, coal, and wind. We are in the top 10 wind producers. We have biofuels, biomass, solar—we have all of them. Different States have different strengths. A lot of States have oil, gas, coal, or certainly wind, or they can develop the biofuels.

It comes down to creating that environment that stimulates private investment so companies will come in and do exactly what I am talking about—at the Federal level, as well as at the State level.

This next chart shows what is actually happening at the Federal level. This chart is the cost of major new regulations. What it shows over the last three decades is the cost of regulation by year, over the last 30 years. When the cost of regulation is high, if you go back and check, you will see our economy wasn't doing very well. When the cost of regulation was low, you will see that it was doing much better. Look at the cost of regulation today. It was $26.5 billion in 2010, the cost of meeting the regulatory requirements. That is what I am talking about. That is what is impeding job growth and economic growth and business investment. We have to address that. We have to roll back the regulatory burdens our companies and entrepreneurs face today.

This last chart gives one example of some of the new regulations EPA is putting out that somebody who wants to develop energy has to meet. If you are an energy company or a young person with a good idea to develop a new type of energy, or existing type of energy with a new technology, can you meet all of these requirements? Can you even begin to understand them? Do you have a big enough legal team and scientific team, or a deep enough wallet to try to figure that all out before you put your money or your shareholders' money at risk? That is what is impeding economic growth in our country, and we have to deal with it. Congress has to deal with it.

Again, this is not rocket science, and it is not about spending more Federal dollars. We have to create an environment that will encourage, stimulate, and empower private investment. It is that private investment throughout this land that will get our economy going and get people back to work. We can do it. It has to be a long-term strategy. It can't be a few stopgap measures that we put into place now for the next 90 days or for 1 year at a time. It has to be on a long-term sustained basis. I believe that is what the people want to hear this evening. I think they want to hear that kind of commitment to a long-term strategy, a progrowth, pro-jobs economic strategy that will get this economy going now, tomorrow, and for the long term. It has to be done in a bipartisan way to get it through this Congress and signed by the President. But it is that kind of vision we need for our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BARRASSO. Mr. President, U.S. job creation in this country, as you know, has come to a halt. The Labor Department reported last Friday that zero jobs were created in August. The economic recovery that was hoped for failed to materialize, and unemployment remains at 9.1 percent.

Hope is not enough. Our economy is stagnant. The President's latest pivot to jobs is anchored on blaming the previous administration, which is now nearly 3 years past. Yet, despite repeated assurances of improvement, President Obama's own economic policies have failed. The President's stimulus plan failed to produce the 3.5 million jobs he promised. His ''green jobs'' initiative gave us more red ink but never came close to the 5 million new jobs he predicted it would. All the while the Federal bureaucracy he controls churns out expansive and expensive new regulations that amount to an assault on private sector job creation.

The facts are inescapable. Since President Obama took office, America has lost approximately 2.3 million jobs. We are in an economic crisis—a crisis that extends to America's confidence in the President to do anything that will change the current course. What the American people want is a plan, a plan that will yield results. They want leadership, and they have rejected the President's insistence that the only way forward is through more spending.

Today, western Members of the Senate and House are calling on the President to accept a new way—a progrowth plan to create jobs in the West that will lead to broader economic recovery all across the country. The western caucus Jobs Frontier report was produced by Members of the Senate and congressional western caucuses. It contains legislative proposals already introduced in both Houses of Congress, and these are proposals that create jobs now.

The proposals we support speak largely to the economic challenges faced by Western States. They are also aimed at ruinous regulations and reliance on foreign energy and lawsuit abuse that continues to stifle our entire economy. These bills are ready to pass. They are ready to create jobs today.

Any serious job creation proposal has to start with serious steps to increase affordable American energy. For decades, westerners have worked in high-paying energy jobs, and these jobs have good benefits. Since taking office, the Obama administration has consistently pushed extreme policies and heavy-handed regulations that make it harder to develop American energy. Very simply: Fewer energy projects mean fewer American jobs. Members of the Senate and House western caucuses have proposed a wide range of proposals to increase the number of red, white, and blue jobs all across the country.

Encouraging the development of all-of-the-above energy resources will create thousands of jobs in the West and make our country less dependent on foreign energy. This administration has consistently shut down offshore energy exploration. It has arbitrarily canceled existing leases, and it continues to try to impose additional hurdles to onshore production, such as redundant environmental reviews, burdensome permitting review requirements, and delays in processing of applications.

Our bills—the ones in this report—will streamline the permitting process and break down the barriers imposed by President Obama. This will make it cheaper and easier—cheaper and easier—for the private sector to create jobs.

Westerners recognize we cannot pick and choose which forms of energy to support. When it comes to energy, we need it all, and we need it now. That is why we need a bill that will let energy producers tap existing resources of American oil and natural gas. Our plan has a bill that will do that. It is called the Domestic Jobs, Domestic Energy, and Deficit Reduction Act. It has been introduced by both Representative ROB BISHOP of Utah and Senator DAVID VITTER of Louisiana.

This bill would force the Department of the Interior to stop blocking offshore energy exploration. That department's stall tactics have gone so far that even President Bill Clinton has called them ridiculous. The Domestic Jobs, Domestic Energy, and Deficit Reduction Act would force the Obama administration to quit stalling.

The barrage of new regulations coming out of Washington continues to be a big wet blanket—a big wet blanket—thrown over the job creators in our country. In July of 2011, this administration issued 229 rules, and it finalized 379 additional rules that are going to cost our job creators over $9.5 billion. That is in July alone.

Our plan includes a bill I have introduced, called the Employment Impact Act. This bill forces Washington regulators to look before they leap when it comes to regulations that could hurt American jobs. Under the bill I have introduced, every regulatory agency would be required to prepare a jobs impact statement. They would have to do it with every new rule they propose. That statement would include a detailed assessment of the jobs that would be lost or gained or sent overseas by any given rule. It would consider whether new rules would have a bad impact on our job market in general.

The administration has also attempted to drastically increase wilderness areas, to expand Washington's jurisdiction on private waters, and to misuse the Endangered Species Act.

Western lawmakers are proposing to reassert congressional authority to ensure a proper balance between job creation and conservation. Our bills in this report will increase transparency and stop any administration from issuing regulations without considering the local economic impact.

Throughout our Nation's history, American farmers and ranchers have provided an affordable, abundant, and safe domestic supply of food and energy. In recent years, America's agricultural and forestry industries have been increasingly threatened by the surge of regulations coming from Washington—especially those from the Environmental Protection Agency. Our plan is going to push back. We will strengthen these industries and their ability to meet the world's growing food and energy needs.

Westerners also recognize the mining sector is vital to our economic recovery. We know manufacturing jobs cannot be created without the raw materials needed to produce goods. Since the Obama administration will not break down barriers to American minerals, our Nation is growing increasingly dependent on foreign minerals—countries such as China and Russia. This inaction is unacceptable and it is inexcusable.

Our plan includes Senator MURKOWSKI's bill, the Critical Minerals Policy Act, which will ensure long-term viability of American mineral production. Her bill requires the U.S. Geological Survey to establish a list of minerals critical to the U.S. economy and then provide a comprehensive set of policies to address each economic sector that relies upon those critical minerals. It also creates a high-level interagency working group to optimize the efficiency of permitting in order to facilitate increased exploration and production of domestic critical minerals.

These are just some of the ideas included in our jobs frontier plan. As it says: ''Breaking Down Washington's Barriers to America's Red, White and Blue Jobs.'' We eliminate back-door cap-and-tax regulations. Finally, we will take on excessive lawsuits against Federal agencies that have increased dramatically and destroyed jobs in the West.

Every single one of the bills in the Republican jobs plan has been written and introduced in one or both Houses of Congress. This is a plan that can be implemented now. This is a plan that will work to create jobs. This is a plan that will reduce the cost of energy and restart the economy.

There is a lot that needs to be done to fix our ailing economy. These are some ideas—western ideas—that come from the lawmakers that know best how our rural communities are suffering and how we can get folks back to work. Many of these proposals come from the States. They have the support of our western Governors and legislators. These are ideas not born in Washington.

Recent jobless numbers confirm the current approach from Washington has failed. If the President is serious about incorporating the ideas of every American in every part of the country, then he needs to look beyond Washington.

I thank every Member of the Senate and congressional western caucuses for their work and their expertise on this report. I look forward to turning these ideas into policies and in that way putting all of America back to work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AFGHANISTAN AND AID TO PAKISTAN

Mr. KIRK. Mr. President, I want to take some time today to talk about my views on Afghanistan and why we should rethink aid to Pakistan.

I just completed my third 2-week reserve assignment in Afghanistan. While many Members of Congress get a firsthand look at the situation on factfinding missions, my time provided me a more indepth view, with a focus on the counternarcotics objectives of NATO's ISAF mission.

Now, first, the good news. The work of our soldiers, marines, sailors and airmen is nothing short of amazing. Serving in one of the poorest, roughest, and most remote parts of the globe, they have crushed al-Qaida's training bases, they have driven the Taliban from government, they have fostered a new elected government, and welded 47 allies into a force for human rights, development, and education—especially for girls.

Now, 42 percent of Afghans live on just $1 a day. Only one in four can read. Malnutrition is a serious problem, and infant mortality is the third highest of any country. According to the United Nations, nearly 40 percent of Afghan children under 3 are moderately or severely underweight, and more than 50 percent of children under 3 experience stunted growth. Afghanistan has more than twice the population of Illinois, but its electricity generation for the entire year is less than 2 percent of the electricity generated in Illinois just for the month of May.

The nearly 30 million people of Afghanistan are victimized by a number of terrorist groups beyond just the Taliban, such as the HIG, the ETIM, and a new threat called the Haqqani network, which I will go into detail about. But the Afghans are mostly victimized by their neighbors, the Pakistanis.

I served as a reservist in Afghanistan for the first time in 2008, and I believed then that Pakistan was complicated; that we have many issues there and that we should advance our own interests diplomatically. I no longer agree with that.

Pakistan has now become the main threat to Afghanistan. Pakistan's intelligence service is the biggest danger to the Afghan Government. Pakistan also poses a tremendous threat to the lives of American troops. Let me be clear: Many Americans died in Afghanistan because of Pakistan's ISI.

Sitting in our commander's briefs for 2 weeks and talking to our headquarters' leaders and spending a few days in the field, it became clear to me if we were working in Afghanistan alone we would have had a much better chance to turn that country around more quickly, restoring it to its status as an agricultural economy with a loose government and a high degree of autonomy given to each tribe or region. But we are not alone.

While our military reduced al-Qaida in Afghanistan to a shadow of its former self, a new force is emerging. On the 10th anniversary of 9/11, al-Qaida, I must report, is still armed and dangerous, but it is far less numerous or capable than it once was. But al-Qaida is not the most potent force that is arrayed against us.

The new face of terror is called the Haqqani network. Built around its founder Jalaluddin Haqqani and his son Siraj, it has become the most dangerous, lethal, and cancerous force in Afghanistan.

One other thing. As much as Pakistani officials claim otherwise, the Haqqanis are backed and protected by Pakistan's own intelligence service. Statements by Pakistani Government officials to the contrary are direct lies. The Haqqani network kills Americans, it attacks the elected Government of Afghanistan, and remains protected in its Pakistani headquarters of Miriam Shah. Without that Pakistani safe haven, the Haqqani network would suffer the same fate as al-Qaida. Afghan and U.S. special operations teams take out many Taliban and al-Qaida commanders, and these operators operate each night also against numerous Haqqani leaders. But the Haqqanis are able to spend all day planning attacks on Afghans and Americans and then sleeping soundly in their beds in Pakistan.

In such an environment, with our deficits and debt, military aid to Pakistan seems naive at best and counterproductive at worst. I am seriously thinking we should reconsider assistance to the Pakistani military.

Recently, our President chose to withdraw 33,000 American troops from the Afghan battle. General Petraeus and Admiral Mullen did not choose this option. Nevertheless, I think our new commander, General Allen, can withdraw the first 10,000 American troops by Christmas without suffering a military reversal in Afghanistan. Afghanistan's Army and police are growing in size—now numbering over 300,000—and capability. Despite recent reports of desertions, Afghan security forces will soon reach a level where some of our troops may safely leave the country. As we withdraw, we should consider enablements, such as a pay raise for Afghan troops, to improve their retention and morale.

I spoke with General Allen about a commander's assessment that should be delivered at the end of the year. After withdrawing 10,000 troops, I hope

he will clearly define when the next 23,000 can come out.

In the United States, politically there is little difference between withdrawing at the end of the year and withdrawing at the end of the fiscal year, but militarily there is a world of difference. The fighting season in Afghanistan runs through October. If General Allen is ordered to withdraw his troops by September 30, then many of his forces will disappear during the Taliban's key offensive months. But if the troops leave in November-December, we will guarantee another bad military year for the Taliban and the Haqqanis and an even stronger Afghan Army in the long term.

I hope the President sets an end-of-year deadline rather than an end-of-fiscal-year deadline. It is right to do militarily and politically. If he does this, he reduces the chance of a radical Islamic extremist victory on the Afghan battlefield in 2012.

While in Afghanistan, I worked to help update and rewrite ISAF's counternarcotics plan. Afghanistan is the source of over 80 percent of the world's heroin and opium. The drug economy fuels the insurgency and corruption of the Afghan Government itself. From 2001–09, Secretary Rumsfeld and then-Ambassador Holbrooke blocked ISAF from doing much about narcotics. This left a huge funding source for the insurgency untouched.

ISAF was able to change direction slightly in 2009 and 2010 by supporting interdiction and eradication and alternative livelihoods for Afghan farmers. While commendable, these programs didn't work and the size of the Afghan poppy crop is likely to go up.

The plan I worked on advocates a shift in ISAF to apply its military strength of intelligence, helicopters, and special operations to support Afghan decisions to arrest the top drug lords of Afghanistan, starting with the ones who heavily financially back the insurgency. We joined in 2005 to arrest bin Laden's banker Haji Bashir Noorzai, and we should do it again.

I strongly back the Afghan Counternarcotics Ministry idea to announce a top 10 drug lord list to emulate the early success of J. Edgar Hoover when he established the reputation of the FBI. In our remaining 2 years in Afghanistan, we can do a lot to cripple the insurgency and help the 2014 elections by removing a number of key bad actors from the battlefield.

What about the future? The President says our formal current mission will end in 2014. Much of his vision will be approved at the Chicago NATO summit in May of 2012. By 2014, I believe Afghans will be able to do nearly all of the conventional fighting, with some U.S. special operations support remaining.

But remember, while the Afghan Army is likely to win, its budget for this year is $11 billion. The Afghan Government collected only $1 billion in tax revenue in 2010. We will have to help. Without regular U.S. combat troops, we risk a Taliban-Haqqani-ISI alliance winning unless we do help that Afghan military.

On the 10th anniversary of 9/11, we should all agree that Afghanistan should never become a major threat to American families again. Should Pakistan not change its ways, we can do one other thing: an American tilt toward India, to encourage the world's largest democracy to bankroll an Afghan Government that fights terror and the ISI. Given the outright lying and duplicity of Pakistan, it appears a tilt toward India will allow us to reduce our forces in Afghanistan, knowing India will help bankroll an Afghan Government. This would allow us to reduce our troops while also reducing the possibility of Afghanistan once again becoming a terrorist safe haven.

Pakistanis would object to this pro-Indian outcome, but they will only have their own ISI to blame. September 11 teaches us that neither the United States nor India can tolerate a new formal Afghan terror state. It is too bad Pakistan has chosen to back the losing side—the terrorists—against the Afghan people and the two largest democracies on Earth.

Finally, a word about our troops. Each night they combat the most dangerous narco-insurgents on Earth, and many 19- and 20-year-old Americans volunteer to serve over 7,000 miles from home. Their generation is named after September 11, but these Americans in uniform not only carry their generation's label, they are personally employed in risking their lives to ensure that all Americans will never again witness another September 11.

They are America's best hope, and I hope to God when I am older some of them run for President. From my own nursing home, I know the country would be in good hands if one of these young Americans were to guide our Nation's destiny.

I am lucky to know many of their names. MAJ Fred Tanner, U.S. Army; LT Doug McCobb, Air Force; MG Mick Nicholson, Army; and our allies, Wg Cdr Howard Marsh, Royal Air Force; GEN Renee Martin, French Army; RADM Tony Johnstone-Brute, Royal Navy; and COL Robin Vickers, British Army. I honor them and their younger comrades, wishing all the military personnel of ISAF's 47 nations a very good day as they awake in Afghanistan tomorrow morning for another hard day's work on one of the toughest battlefields in the world.

I yield back.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I wish to talk about an amendment, but also I had one of my colleagues who was sitting in your position as President pro tempore notice an error I made on July 27. Senator WHITEHOUSE questioned my numbers and, in fact, he was right. I said $115 million in regard to the savings on limousines. It was $11.5 million per year, not $115 million. It was $115 million over 10 years. So I wish to stand to put that in the RECORD that I was in error and Senator WHITEHOUSE as a cordial colleague questioned me on it and I thank him for his accountability.

We have before the Senate now a patent bill. There is no question there is a lot of work we need to do on patents. I know the President pro tempore sits on the committee that I do and we have spent a lot of time on this. But I am very concerned, I have to say, about what we are hearing in the Senate about why we wouldn't do the right thing that everybody agrees we should be doing because somebody doesn't want us to do that in the House, and I think it is the worst answer we could ever give the American people.

When we have a 12-percent approval rating, and the Republicans have worse than that, why would we tell the American people we are not going to do the right thing for the right reason at the right time because somebody in the House doesn't want us to and that we are going to say we are not going to put these corrections into a patent bill that are obviously important and we are going to say it is going to kill the bill when, in fact, it is not going to kill the bill? But that is what we use as a rationalization. So let me describe for a minute what has gone on over the years and what has not happened.

The first point I would make is there has not been one oversight hearing of the Patent Office by the Appropriations Committee in either the House or the Senate for 10 years. So they haven't even looked at it. Yet the objection to, and what we are seeing from an appropriations objection is—and even our chairman of our Committee on the Judiciary, who is an appropriator, supports this amendment but isn't going to vote for it because somebody in the House is going to object to it.

But the point is, we have money that people pay every day. From universities to businesses to individual small inventors, they pay significant dollars into the Patent Office. Do you know what has happened with that money this year? Eighty-five million dollars that was paid for by American taxpayers for a patent examination and first looks didn't go to the Patent Office. Yet we have over 1 million patents in process at the Patent Office, and over 700,000 of those haven't ever had their first look.

So when we talk about our economy and we talk about the fact that we want to do what enhances intellectual property in our country—which is one of our greatest assets—and then we don't allow the money that people actually pay for that process to go for that process and we have backlogged for years now patent applications, we have done two things. One is we have limited the intellectual property we can capture. No. 2 is we have allowed people to take those same patents,

when we have limited ability, especially some of our smaller organizations, and patent them elsewhere. So the lack of a timely approach on that is lacking.

The process is broken. Since 1992, almost $1 billion has been taken out of the Patent Office. So we wonder, why in the world is the Patent Office behind?

The Patent Office is behind because we will not allow them to have the funds the American taxpayers who are trying to get ideas and innovations, copyrights, trademarks, and patents done—we will not allow the Patent Office to have the money.

The amendment I am going to be offering—and I have a modification on it that is trying to be cleared on the other side, and I will not actually call up the amendment at this time until I hear whether that has been accepted. The amendment I have says we will no longer divert the money that American businesses, American inventors, American universities pay to the Patent Office to be spent somewhere else; that it has to be spent on clearing their patents.

I ask unanimous consent to have printed in the RECORD—and I will submit a copy at this time—a letter I received August 1 from the head of the Patent Office.

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

UNITED STATES
PATENT AND TRADEMARK OFFICE,
Alexandria, VA, Aug. 1, 2011.

Hon. TOM COBURN,
U.S. Senate,
Washington, DC.

DEAR SENATOR COBURN: Per your request, I am writing today to follow up on our discussion last week regarding United States Patent and Trademark Office (USPTO) funding.

As you know, the House-passed version of the America Invents Act (H.R. 1249) replaces a key funding provision that would have created the USPTO Public Enterprise Fund—effectively sheltering the USPTO from the uncertainties of the appropriations process and ensuring the agency's ability to access and spend all of the fees it collects—with a provision creating the Patent and Trademark Reserve Fund. This provision keeps the USPTO in the current appropriations process, but requires that all fees collected in excess of the annual appropriated amount be deposited into the Reserve Fund, where they will be available to the extent provided for in appropriations acts. In a June 22, 2011 letter to Speaker Boehner, House Appropriations Committee Chairman Rogers committed to ensuring that the Committee on Appropriations carry language providing that all fees collected in excess of the annual appropriated amount would be available until expended only to the USPTO for services in support of fee-paying patent and trademark applicants. I was pleased to see that the fiscal year 2012 appropriations bill reported by the Committee did in fact carry this language.

I would like to reiterate how crucial it is for the USPTO to have access to all of the fees it collects. This year alone, we anticipate that the agency will collect approximately $80 million in fees paid for USPTO services that will not be available for expenditure in performing those services. Quite clearly, since the work for which these fees were paid remains pending at USPTO, at some point in the future we will have to collect more money in order to actually perform the already-paid-for services. If USPTO had received the authority to expend these funds, we would have paid for activities such as overtime to accelerate agency efforts to reduce the backlog of nearly 700,000 patent applications, as well as activities to improve our decaying IT systems, which are a constant drag on efficiency. As history has demonstrated, withholding user fees from USPTO is a recipe for failure. Effecting real reforms at the USPTO requires first and foremost financial sustainability. Ensuring that the agency has consistent access to adequate funding is a key component of achieving this.

Further, the unpredictability of the annual appropriations cycle severely hinders USPTO's ability to engage in the kind of multi-year, business-like planning that is needed to effectively manage a demand-driven, production-based organization. The only way we will be able to effectively implement our multi-year strategic plan, and achieve our goals of reducing the patent backlog and pendency to acceptable levels, is through an ongoing commitment to ensuring the USPTO has full access to its fee collections—not just in fiscal year 2012, but for each and every year beyond FY 2012. Only this assurance will enable the agency to move forward with the confidence that we are basing critical multi-year decisions about staffing levels, IT investment, production, and overtime on an accurate and reliable funding scenario.

Along these lines, if America is to maintain its position as the global leader in innovation, it is essential that American businesses and inventors not suffer the adverse effects of drawn-out continuing resolutions (CR), which have become common in recent years. The constant stops and starts associated with the CR cycle can have disastrous consequences, especially for a fee-based agency with a growing workload, as is the case for USPTO. The challenges presented by the pending patent reform legislation will be particularly difficult to undertake if the agency is not allowed to grow along a steady path to address our increasing requirements. As such, we must be assured that the USPTO will have full access to its fees throughout the year—not just after a full year appropriations act is enacted. Therefore, a commitment to include language in future continuing resolutions that will address the USPTO's unique resource needs is paramount.

As outlined in our Strategic Plan and in our FY 2012 budget submission, USPTO has a multi-year plan in place to reduce patent pendency to 10 months first action and 20 months final action pendency, and to reduce the patent application backlog to 350,000. During the next three to four years, we will continue and accelerate implementation of a series of initiatives to streamline the examination process, including efforts to improve examination efficiency and provide a new, state-of-the-art end-to-end IT system, which will support each examiner's ability to process applications efficiently and effectively.

While efficiency gains are essential, we will not reach our goals without also increasing the capacity of our examination core. As outlined in the FY 2012 budget, we plan to hire an additional 1,000 patent examiners in FY 2012, with another 1,000 examiner hires planned for FY 2013. This added capacity, combined with full overtime, will allow us to bring the backlog and pendency down to an acceptable level.

Let me also be clear that while these enhancements are necessary to allow the USPTO to tackle the current backlog, the agency is not planning to continue growing indefinitely. An important part of our multi-year plan is an eventual moderation of our workforce requirements, once we have achieved a sustainable steady state.

At the same time that USPTO is working to achieve these goals, we will also be working to restructure our fees to ensure that the agency is recovering adequate costs to sustain the organization. Once our fees have been set, we will continually monitor our collections over the next several years to ensure that our operating reserve does not grow to unacceptably high levels at the expense of USPTO's stakeholders.

Thank you again for your support and your superb leadership on this important issue. With the continued commitment of the House and Senate Committees on Appropriations to ensuring the USPTO's ongoing ability to utilize its fee collections, we can put the agency on a path to financial sustainability, and enable it to deliver the services paid for and deserved by American innovators.

Sincerely,

DAVID J. KAPPOS,
Under Secretary and Director.

Mr. COBURN. I must tell you that we are so fortunate that we have Director Kappos. We have a true expert in patents, with great knowledge, who has made tremendous strides in making great changes at our Patent Office. But he requires a steady stream of money, and he requires the ability to manage the organization in a way where he can actually accomplish what we have asked him to do.

Frankly, I have spent a lot of time working with the Patent Office—not with everybody else who wants an advantage in the patent system but with the Patent Office—and I am convinced we have great leadership there.

In his letter, he talks about their inability to update their IT because the money is not there because we will not let him have the money—their money, the money from the American taxpayers.

Let me give a corollary. If, in fact, you drive your car into the gas station, you give them $100 for 25 or 28 gallons of gas, and they only give you 12 gallons of gas and they say: Sorry, the Appropriations Committee said you couldn't have all the gas for the money you paid, you would be outraged. If you go to the movie, you pay the fee to go to the movie and you buy a ticket, you walk in, and halfway through the movie they stop the projection and say: Sorry, we are not going to give you the second half of the movie even though you paid for it—inventors in this country have paid the fees to have their patents examined and evaluated and reviewed. Yet we, because of the power struggle, have decided we are not going to let that money go to the Patent Office. The amendment I have says we are going to allow that to happen. If money is paid and it goes into a proper fund that is allocatable only to the Patent Office, it cannot be spent anywhere else and has to go to the Patent Office.

Some of the objections, especially from the House Appropriations Committee, are that there is no oversight.

The reason there is no oversight is because they have not done any oversight and neither have we, so you cannot claim that as an excuse as to why you are afraid. This patent bill will give an authorization for 7 years for the fees. We can change that if we want, but the fact is that we are never going to know if we need to change it if we never do oversight, which we have not done. Nobody has done oversight on patents. I am talking aggressive oversight: What did you start? What was your end? How much did you spend? Where did you spend the money? What is your employee turnover? What is your employee productivity? What should we expect?

None of that has been asked. I believe it is probably pretty good based on the fact that I have a lot of confidence in the management at the Patent Office, especially what I have seen in terms of performance for the last couple of years versus before that, but the fact is that oversight has not been done.

It is not just the Patent Office. It hasn't been done anywhere. Very little oversight has been done by the Senate, and it is one of the biggest legitimate criticisms that can be made of us as a body, that we are lazy in our oversight function. Of the $3.7 trillion that is going to be spent, we are going to have oversight of about $100 billion of the total.

The amendment does a couple of things. Let me kind of detail that for a moment. One of the things is that by returning the money to the Patent Office, the Director thinks he can actually cut the backlog in half. In other words, we have over 700,000 patents that have never been looked at sitting at the Patent Office now, and he believes that in a very short period of time they could cut that to 350,000.

From 1992 through 2011, $900 million has been taken from the PTO. In 2004 Congress diverted $100 million, in 2007 it diverted $12 million, last year it diverted $53 million, and it is $80 million to $85 million that is going to be diverted this year. In 4 years out of the last 10, Congress gave the Patent Office all the money because it was so slow, so lethargic in terms of meeting the needs of inventors. The only thing we have in the current bill is the promise of a Speaker and the promise of a chairman that they will do that. There is nothing in law that forces them to do it. There is nothing that will make sure the money is there. No matter how good we fix the patent system in this country, if there is not the money to implement it, we will not have solved the problems.

In June of 2000, the House debated the PTO funding, and an interesting exchange took place between Representative ROYBAL-ALLARD and Representative ROGERS, who was a cardinal at the time. Representative ALLARD discussed the problem of PTO fee diversion and the need for user fees to pay for the work of the agency. She asked—in the documentation of the CONGRESSIONAL RECORD, she asked Chairman ROGERS if 100 percent of the user fees would go to the PTO, and Mr. ROGERS stated that the fees would not be siphoned off for any other agency or purpose and remain in the account for future years. But according to the PTO, in fiscal year 2000, $121 million was, in fact, diverted. So when we have the chairman of the committee say we should not doubt the word of the Appropriations Committee, yet we have in the RECORD the exact opposite of what the Appropriations Committee said was going to happen, we should be concerned and we should fix it to where the money for patent examination goes for patent examination. So we have a clear record of a statement that says it was not going to happen, and, in fact, $121 million was diverted from the Patent Office.

Finally, from 1992 to 2007, $750 million more in patent and trademark fees was collected than was allowed to be spent by the Patent and Trademark Office. Had they had that money, we would have a backlog of about 100,000 patents right now, not 750,000. We would have intellectual property as a greater value in our country, with greater advantage over our trading partners because that money would have been effectively used.

On July 12, former CBO Director Douglas Holtz-Eakin wrote to Senators REID and MCCONNELL noting:

> The establishment of the Patent and Trademark reserve fund in H.R. 1249 would be ineffective in stopping the diversion of the fees from the U.S. Patent Office.

In other words, what is in this bill now will not stop the diversion of the fees.

Just so people think I am not just picking on one area, this is a bad habit of Congress. It is not just in the Patent and Trademark Office that we tell people to pay a fee to get something done and we steal the money and use it somewhere else. For example, in the Nuclear Waste Fund at the Department of Energy, utility payments by individual consumers pay for a nuclear waste fee. That money has been spent on tons of other things through the years rather than on the collection and management of nuclear waste. To the tune of $25 billion has been spent on other things.

The Securities and Exchange Commission is a fee-based agency. Since the SEC was established, it has collected money via user fees, charged for various transactions in order to cover the cost of its regulation. The primary fees are for sales of stock, registration of a new stock, mergers, tender offers. It also collects fees for penalty fines, for bad behavior. They go into the Treasury's general fund, and amounts collected above the SEC budget were diverted to other government programs.

In 2002, Congress changed the treatment of the fees of the SEC so they would only go to a special appropriation account solely for the SEC. SEC would not have access to the fees, however, should it collect more than its appropriation.

In the Dodd-Frank bill, Congress again changed the treatment of the fees and required some of the fees to go to the General Treasury and others to the reserve fund. As a result, lots of complaints with the SEC, and they still do not have access to their funds. Thus, like the PTO, if Congress chooses not to provide all the funds in the initial appropriation, they will not have them.

In the 2012 budget justification from the Securities and Exchange Commission, they noted it had significant challenges maintaining a staffing level sufficient to carry out its core mission. From 2005 to 2077, SEC had frozen or reduced budgets that forced reduction of 10 percent of their staff and 50 percent of technology investment. What happened in 2007 in this country? What were the problems? So the diversion of the money from the SEC actually contributed to the problems we had in this country. So it does not work.

Finally, one that is my favorite and that I have fought against every year that I have been here is the Crime Victims Fund, and that is a fund where people who are criminals actually have to pay into a fund to do restitution for criminal victims, and we have stolen billions of dollars from that fund. They are not taxes, they are actually restitution moneys, but the Congress has stolen it and spent it on other areas. The morality of that I don't think leads anybody to question that that is wrong.

AMENDMENT NO. 599, AS MODIFIED

Now, if I may, let me call up amendment 599. I ask that the pending amendment be set aside and ask that the amendment be modified with the changes at the desk.

The PRESIDING OFFICER (Mr. SANDERS). Is there objection?

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Oklahoma has the floor.

Is there objection?

Mr. LEAHY. Reserving the right to object, the Senator from Oklahoma knows that the basic thing he is trying to do is something I had supported. As he knows, I put it in the managers' package. He also is aware that my belief is—obviously we disagree—my belief is that the acceptance of his amendment will effectively kill the bill. Even today the leadership in the House told me they would not accept that bill with it. I say this only because tactically it would be to my advantage to object to the amendment. But the distinguished Senator is one of the hardest working members of the Judiciary Committee. He is always there when I need a quorum. Out of respect for him, I will not object.

Mr. COBURN. I thank the Senator for this. This is a minor technical correction.

The PRESIDING OFFICER. Without objection, the clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN], for himself, Mr. DEMINT, Mrs. FEINSTEIN, Mrs. BOXER, Mr. UDALL of Colorado, Mr. ENZI, and Mr. BURR, proposes an amendment (No. 599), as modified.

The amendment is as follows:

(Purpose: To amend the provision relating to funding the Patent and Trademark Office by establishing a United States Patent and Trademark Office Public Enterprise Fund, and for other purposes)

On page 137, line 1, strike all through page 138, line 9, and insert the following:

SEC. 22. PATENT AND TRADEMARK OFFICE FUNDING.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) DIRECTOR.—The term ''Director'' means the Director of the United States Patent and Trademark Office.

(2) FUND.—The term ''Fund'' means the public enterprise revolving fund established under subsection (c).

(3) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

(4) TRADEMARK ACT OF 1946.—The term ''Trademark Act of 1946'' means an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the ''Trademark Act of 1946'' or the ''Lanham Act'').

(5) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Commerce for Intellectual Property.

(b) FUNDING.—

(1) IN GENERAL.—Section 42 of title 35, United States Code, is amended—

(A) in subsection (b), by striking ''Patent and Trademark Office Appropriation Account'' and inserting ''United States Patent and Trademark Office Public Enterprise Fund''; and

(B) in subsection (c), in the first sentence—

(i) by striking ''To the extent'' and all that follows through ''fees'' and inserting ''Fees''; and

(ii) by striking ''shall be collected by and shall be available to the Director'' and inserting ''shall be collected by the Director and shall be available until expended''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the later of—

(A) October 1, 2011; or

(B) the first day of the first fiscal year that begins after the date of the enactment of this Act.

(c) USPTO REVOLVING FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund to be known as the ''United States Patent and Trademark Office Public Enterprise Fund''. Any amounts in the Fund shall be available for use by the Director without fiscal year limitation.

(2) DERIVATION OF RESOURCES.—There shall be deposited into the Fund [and recorded as offsetting recipts] on or after the effective date of subsection (b)(1)—

(A) any fees collected under sections 41, 42, and 376 of title 35, United States Code, provided that notwithstanding any other provision of law, if such fees are collected by, and payable to, the Director, the Director shall transfer such amounts to the Fund, provided, however, that no funds collected pursuant to section 9(h) of this Act or section 1(a)(2) of Public Law 111–45 shall be deposited in the Fund; and

(B) any fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113).

(3) EXPENSES.—Amounts deposited into the Fund under paragraph (2) shall be available, without fiscal year limitation, to cover—

(A) all expenses to the extent consistent with the limitation on the use of fees set forth in section 42(c) of title 35, United States Code, including all administrative and operating expenses, determined in the discretion of the Under Secretary to be ordinary and reasonable, incurred by the Under Secretary and the Director for the continued operation of all services, programs, activities, and duties of the Office relating to patents and trademarks, as such services, programs, activities, and duties are described under—

(i) title 35, United States Code; and

(ii) the Trademark Act of 1946; and

(B) all expenses incurred pursuant to any obligation, representation, or other commitment of the Office.

(d) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, the Under Secretary and the Director shall submit a report to Congress which shall—

(1) summarize the operations of the Office for the preceding fiscal year, including financial details and staff levels broken down by each major activity of the Office;

(2) detail the operating plan of the Office, including specific expense and staff needs for the upcoming fiscal year;

(3) describe the long term modernization plans of the Office;

(4) set forth details of any progress towards such modernization plans made in the previous fiscal year; and

(5) include the results of the most recent audit carried out under subsection (f).

(e) ANNUAL SPENDING PLAN.—

(1) IN GENERAL.—Not later than 30 days after the beginning of each fiscal year, the Director shall notify the Committees on Appropriations of both Houses of Congress of the plan for the obligation and expenditure of the total amount of the funds for that fiscal year in accordance with section 605 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109–108; 119 Stat. 2334).

(2) CONTENTS.—Each plan under paragraph (1) shall—

(A) summarize the operations of the Office for the current fiscal year, including financial details and staff levels with respect to major activities; and

(B) detail the operating plan of the Office, including specific expense and staff needs, for the current fiscal year.

(f) AUDIT.—The Under Secretary shall, on an annual basis, provide for an independent audit of the financial statements of the Office. Such audit shall be conducted in accordance with generally acceptable accounting procedures.

(g) BUDGET.—The Fund shall prepare and submit each year to the President a business-type budget in a manner, and before a date, as the President prescribes by regulation for the budget program.

(h) SURCHARGE.—Notwithstanding section 11(i)(1)(B), amounts collected pursuant to the surcharge imposed under section 11(i)(1)(A) shall be credited to the United States Patent and Trademark Office Public Enterprise Fund.

Mr. COBURN. I thank the chairman of the Judiciary Committee. I noted earlier, before I came to the floor, he supported it in principle and we have a difference in principle about what would happen to the bill. This is a minimal technical correction that was recommended to us, and I appreciate the Senator for allowing that to be considered.

Let me spend a moment talking about the chairman and his belief that this will not go anywhere. This is a critical juncture for our country, when we are going to make a decision to not do what is right because somebody is threatening that they do not agree with doing what is right and that they will not receive it. In my life of 63 years, that is how bullies operate, and the way you break a bully is you challenge a bully.

The fact is, I have just recorded into the history of the House the statements by the chairman of the Appropriations Committee in the House in terms of his guarantee for protecting the funds for PTO, which he turned around and took $121 million out of the funds that very same year that he guaranteed on the floor that he wouldn't do. So what I would say is we ought not worry about idle threats. What we ought to be worried about is doing what is best and right for our country. What is best and right is to give the money to the Patent Office that people are paying for so the patents will get approved and our technological innovations will be protected. I don't buy the idea the House is not going to take this if we modify it.

Actually, what 95 percent of the people in this country would agree to is that the Patent Office ought to get the money we are paying for patent fees, just as the FDA should get the money paid by drug companies for new applications, just as the Park Service should put the money for the camping sites—the paid-for camping sites—back into the camping sites. Why would we run away from doing the right thing?

I find it very difficult when we rationalize down doing the correct thing that everybody agrees should be done but we will not do it for the right reasons. That is why we have a 12-percent approval rating. That is why people don't have confidence in Congress—because we walk away from the tough challenges of bullies who say they won't do something if we do what is right. I am not going to live that way. I am not going to be a Senator that way. I am going to stand on the position of principle.

This is a principle with which 95 Senators in this body agree. We are going to have several of our leaders try to get them not to do that on the basis of rationalization to a bully system that says: We will not do the oversight, but we still want to be in control.

In fact, in the process of that, America loses because we have 750,000 patents that are pending right now, and there should only be about 100,000.

The bullies have won in the past, and I am not going to take it anymore. I am going to stand up and challenge it every time. I am going to make the argument that if a person pays a fee for something in this country for the government to do, that money ought to be spent doing what it was paid to the government to do. It is outside of a tax; it is a fee. It is immoral and close

to being criminal to not correctly spend that money from that fee.

If our body decides today we are going to table this amendment, the question the American people have to ask is, Where is the courage in the Senate to do what is best for our country? Why are the Senators here if they are not going to do what is best for the country? Why are they going to play the game of rationalization and extortion on principles that matter so much to our future? I will not do that anymore. Everybody knows this is the right thing to do. We are babysitting some spoiled Members of Congress who don't want to carry out their responsibilities in an honorable way and do the oversight that is necessary. What they want to do is complain that they do not have control.

Well, this bill authorizes funds for 7 years. We can change that number of years. We can actually change the actual amount of fees if, in fact, they are not doing a good job. But right now, as already put in the RECORD, there is no history of significant oversight to the Patent Office, so they would not know in the first place. So what we are asking is to do what is right, what is transparent, what is morally correct and give the Patent Office the opportunity to do for America what it can do for them instead of handcuffing us and handicapping us where we cannot compete on intellectual property in our country.

I have said enough. I will reserve the remainder of my time when I finish talking about one other item.

There is an earmark in this patent bill for The Medicines Company. It ought not be there. This is something that is being adjudicated in the courts right now. Senator SESSIONS has an amendment that would change it. I believe it is inappropriate to specify one company, one situation on a drug that is significant to this country, and we are fixing the wrong problem. We probably would not win that amendment. I think it is something the American people ought to look at and say: Why is this here? Why is something in this big bill that is so important to our country?

I agree with our chairman. He has worked months, if not years, over the last 6 years trying to get to this process, and now we have this put in. We did not have it in ours. The chairman did not have it in ours. It came from the House.

We ought to ask the question Why is it there? Why are we interfering in something that is at the appellate court level right now? Why are we doing that? None of us can feel good about that. None of us can say it is the right thing to do. Why would we tolerate it?

It is this lack of confidence in America; it is about a lack of confidence in us. When people know and find out what has happened here, they are going to ask the question. The powerful and the wealthy advantage themselves at the expense of everybody else. They have access. Those who are lowly, those who are minimal in terms of their material assets do not. It is the type of thing that undermines the confidence we need to have.

I just wanted to say I am a cosponsor of Senator SESSIONS' amendment. I believe he is accurate. I think they have won this in court. It is on appeal. They will probably win it on appeal. This will end up being necessary, and there is a way for us to fix it if, in fact, they lose, if it is appropriate to do that. I believe it is inappropriate at this time.

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

Mr. MCCAIN. Mr. President, I rise in support of the Sessions amendment which seeks to remove an egregious example of corporate welfare and blatant earmarking, to benefit a single interest, in the otherwise worthwhile patent reform bill before the Senate. Needed reform of our patent laws should not be diminished nor impaired by inclusion of the shameless special interest provision, dubbed "The Dog Ate My Homework Act" that benefits a single drug manufacturer, Medicines & Company, to excuse their failure to follow the drug patent laws on the books for over 20 years.

The President tonight will deliver another speech to tell us that unemployment is too high and that we need to get America back to work to turn around our near stagnant economy. While it may end up being more of the same policies that have not worked for the last 2½ years, I look forward to hearing what he has to say. But, look at what is going on here today, just a couple hours before the President tells us how he proposes to fix the economy, there are 14 million Americans out of work and a full day of the Senate's time is being spent debating a bailout of a prominent law firm and a drug manufacturer. I think the American people would be justified in wondering if they were in some parallel universe.

Patent holders who wish to file an extension of their patent have a 60-day window to make the routine application. There is no ambiguity in this timeframe. In fact, there is no reason to wait until the last day. A patent holder can file an extension application any time within the 60-day period. Indeed, hundreds and hundreds of drug patent extension applications have been filed since the law was enacted. Four have been late. Four!

Why is this provision in the patent reform bill? One reason: special interest lobbying to convince Congress to relieve the company and its law firm from their mistakes. Millions of dollars in branded drug profits are at stake for a single company who will face generic competition much earlier than if a patent extension would have been filed on time.

Let me read from the Wall Street Journal Editorial page today:

As blunders go, this was big. The loss of patent rights means that generic versions of Angiomax might have been able to hit pharmacies since 2010, costing the Medicines Co. between $500 million and $1 billion in profits.

If only the story ended there.

Instead, the Medicines Co. has mounted a lobbying offensive to get Congress to end run the judicial system. Since 2006, the Medicines Co. has wrangled bill after bill onto the floor of Congress that would change the rules retroactively or give the Patent Office director discretion to accept late filings. One version was so overtly drawn as an earmark that it specified a $65 million penalty for late filing for "a patent term extension . . . for a drug intended for use in humans that is in the anticoagulant class of drugs."

. . . no one would pretend the impetus for this measure isn't an insider favor to save $214 million for a Washington law firm and perhaps more for the Medicines Co. There was never a problem to fix here. In a 2006 House Judiciary hearing, the Patent Office noted that of 700 patent applications since 1984, only four had missed the 60-day deadline. No wonder critics are calling it the Dog Ate My Homework Act.

The stakes are also high for patients in our health care system. Let me read an excerpt from the Generic Pharmaceutical Association letter dated July 20, 2011:

The Medicines Company amendment adopted during House consideration of H.R. 1249 modifies the calculation of the 60-day period to apply for a patent term extension and applies that new definition to ongoing litigation. We are deeply concerned about the precedent of changing the rules of the patent extension process retroactively, which appears to benefit only one company—The Medicines Company, which missed the filing deadline for a patent extension for its patent on the drug Angiomax.

If enacted into law, this provision would change the rules to benefit one company that, by choice, waited until the last minute to file a simple form that hundreds of other companies have filed in a timely manner since the enactment of the Hatch-Waxman Act in 1984. In doing so, the amendment would ultimately cost consumers and the government hundreds of millions of dollars by delaying the entry of safe, affordable generic medications. . . .

The rules and regulations that govern patents and exclusivity pertaining to both generic and brand drugs are important public policy. While it is Congress's prerogative to change or clarify statutory filing deadlines, we strongly urge you to do so in a manner that does not benefit one company's litigating position. GPhA urges you to strike section 37 from H.R. 1249.

Passing the Sessions amendment and removing the provision from the bill is not detrimental to passing the patent reform bill. The bailout provision was not included in the Senate-passed patent bill earlier this year. It was added in the House. The provision can and should be stripped in this vote today. The House can easily re-pass the bill without the bailout provision and send it to the President.

Support the Sessions amendment and send a loud signal to the American public, who are watching what we do, that laws matter and that this kind of business has no place in Congress.

Mr. LEAHY. Mr. President, this is an amendment that can derail and even kill this bill—a bill that would otherwise help our recovering economy, unleash innovation and create the jobs

that are so desperately needed. I have worked for years against Patent Office fee diversion, but oppose this amendment at this time. Its formulation was rejected by the House of Representatives, and there is no reason to believe that the House's position will change. Instead, for ideological purity, this amendment can sink years of effort and destroy the job prospects represented by this bill. So while I oppose fee diversion, I also oppose the Coburn amendment.

I kept my commitment to Senator COBURN and included his preferred language in the managers' amendment which the Senate considered last March. The difference between then and now is that the Republican leadership of the House of Representatives rejected Senator COBURN's formulation. They preserved the principle against fee diversion but changed the language.

The language in the bill is that which the House devised and a bipartisan majority voted to include. It was worked out by the House Republican leadership to satisfy House rules. The provision Senator COBURN had drafted and offers again with his amendment today apparently violates House Rule 21, which prohibits converting discretionary spending into mandatory spending. So instead of a revolving fund, the House established a reserve fund. That was the compromise that the Republican House leadership devised between Chairmen SMITH, ROGERS and RYAN. Yesterday I inserted in the RECORD the June letter for Congressmen ROGERS and RYAN to Chairman SMITH of the House Judiciary Committee. Today I ask consent to insert into the RECORD the commitment letter from Chairman ROGERS to Speaker BOEHNER.

The America Invents Act, as passed by the House, continues to make important improvements to ensure that fees collected by the U.S. Patent and Trademark Office (USPTO) are used for Patent and Trademark Office activities. That office is entirely fee-funded and does not rely on taxpayer dollars. It has been and continues to be subject to annual appropriations bills. That allows Congress greater opportunity for oversight.

The legislation that passed the Senate in March would have taken the Patent and Trademark Office out of the appropriations process, by setting up a revolving fund that would have allowed the office to set fees and collect and spend money without appropriations legislation and congressional oversight. Instead of a revolving fund, the House formulation against fee diversion establishes a separate account for the funds and directs that they be used for U.S. Patent and Trademark Office. The House Appropriations Chairman has committed to abide by that legal framework.

The House forged a compromise. Despite what some around here think, that is the essence of the legislative process. The Founders knew that when they wrote the Constitution and included the Great Compromise. Ideological purity does not lead to legislative enactments. This House compromise can make a difference and make real progress against fee diversion. It is something we can support and there are many, many companies and organizations that do support this final workout in order to get the bill enacted without further delay, as do I.

The America Invents Act, as passed by the House, creates a new Patent and Trademark Fee Reserve Fund (the ''Reserve Fund'') into which all fees collected by the USPTO in excess of the amount appropriated in a fiscal year are to be deposited. Fees in the Reserve Fund may only be used for the operations of the Patent and Trademark Office. Through the creation of the Reserve Fund, as well as the commitment by House appropriators, H.R. 1249 makes important improvements in ensuring that user fees collected for services are used by the Patent and Trademark Office for those services.

Voting for the Coburn amendment is a vote to kill this bill. It could kill the bill over a formality—the difference between a revolving fund and a reserve fund. It would require the House to reconsider the whole bill again. They spent days and weeks working out their compromise in good faith. And it was worked out by the House Republican leadership. There is no reason to think they will reconsider and allow the original Coburn language to violate their rules and avoid oversight. They have already rejected that language, the very language proposed by the Coburn amendment.

We should not kill this bill over this amendment. We should reject the amendment and pass the bill. The time to put aside individual preferences and ideological purity is upon us and we need to legislate. That is what the American people elected us to do and expect us to do. The time to enact this bill is now. Vote no on the Coburn amendment.

I have listened to the Senator from Oklahoma, and no matter what we say about it, his is an amendment that can derail and even kill this bill. He expresses concern as to why the bill should be sought because somebody objects to the bill. I sometimes ask myself that question. Of course, the distinguished Senator from Oklahoma has objected to many items going forward on his own behalf, but this is an amendment that could derail or even kill the bill. This is a bill that would otherwise help our recovering economy to unleash innovation, create the jobs so desperately needed.

I probably worked longer in this body than anybody against Patent Office fee diversion. As the Senator from Oklahoma knows, I put a provision in the managers' package to allow the fees to go to the Patent Office. Now it is a lobby to keep that in in the other body. Its formulation was rejected by the House of Representatives.

There is no reason to believe the House position will change. I checked with both the Republican and Democratic leaders over there. There is no reason to believe their position will change, but we insist on ideological purities—including something I would like. The amendment would take years of effort, destroy the job prospects represented by this bill. While I oppose the fee diversion, I also oppose this amendment.

Does this bill have every single thing in it I want? No. We could write 100 patent reform legislations in this body where each one of us has every single thing we want, and we would have 100 different bills. We only have one. It does not have all the things I like, but that is part of getting legislation passed.

I did keep my commitment to Senator COBURN. I kept his language in the managers' amendment, and I caught a lot for doing that—I am a member of the Appropriations Committee—but I kept it in there. The difference between then and now is that the Republican leadership of the House of Representatives rejected Senator COBURN's formulation. They preserved the principle against fee diversion but changed the language. In doing that, however, it is not a total rejection. They actually tried to work out a compromise. The language of the bill, which the House devised—a bipartisan majority voted to include—was worked out by the House Republican leadership to satisfy the House rules.

The provision that Senator COBURN has drafted and offers, again, with his amendment today apparently violates House rule 21 which prohibits converting discretionary spending into mandatory spending.

What the House did—and actually accomplished what both Senator COBURN and I and others want—instead of a revolving fund was to establish the reserve fund. That was the compromise that the Republican House leadership devised between Chairman SMITH, Chairman ROGERS, and Chairman RYAN.

Yesterday, I inserted into the RECORD the June letter from Congressmen ROGERS and RYAN to Chairman SMITH to the House Judiciary Committee.

I ask unanimous consent to have printed in the RECORD the commitment letter from Chairman ROGERS to Speaker BOEHNER.

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

COMMITTEE ON APPROPRIATIONS,
Washington, DC, June 22, 2011.

Hon. JOHN BOEHNER,
Speaker of the House, House of Representatives, Washington, DC.

Hon. ERIC CANTOR,
Majority Leader, House of Representatives, Washington, DC.

DEAR SPEAKER BOEHNER AND LEADER CANTOR: I write regarding provisions in H.R. 1249, The America Invents Act, affecting funding of the Patent Trademark Office (PTO). Following constructive discussions with Chairman Smith of the Judiciary Committee, this legislation now includes language that will preserve Congress' ''power of