From Congressional Record
July 15, 2009

Sen. Carl Levin (D-Mich.)
Floor Statement

Mr. LEVIN. Mr. President, to explain where we are, let me take a few minutes, first of all, on the procedures. Then I want to go back and make some comments about the Levin-McCain amendment, which will come back. This is temporarily withdrawn because we could not get to a vote.

The bottom line is we were here all day yesterday. We attempted repeatedly to obtain an agreement as to when we could vote on the Levin-McCain amendment.

We had a lot of time yesterday for people to make speeches. We had time the day before. We have time anytime. But we have to get to a vote on that amendment.

The reason we were not able to get to a vote is because of the next amendment, which the majority leader indicated is going to be taken up on this bill, the so-called hate crimes amendment. We have a law relative to hate crimes. This had been an important amendment to the law to add a group who had been left out, two groups previously left out of the existing hate crimes law. It would have also had an important definition of Federal interest in this hate crimes legislation.

Hate crimes legislation is not new. This body had approved hate crimes legislation a couple years ago on the Defense authorization bill. The argument was made at that time that the hate crimes bill should not be offered on a Defense authorization bill. Senator Kennedy offered hate crimes legislation a couple years ago on the Defense authorization bill. The debate was extensive at that time as to why on this bill.

The reason it was offered on this bill is obvious. This is legislation. The Senate rules allow for amendments such as hate crimes or any other amendment to be offered on legislation that is pending before the Senate. The minority has offered many nonrelevant amendments this year on legislation. On the American Recovery and Reinvestment Act, there was an amendment relative to ACORN. On the DC voting rights bill, there were amendments relative to guns and to the fairness doctrine. On and on and on. The Senate rules permit nongermane, nonrelevant amendments to be offered to pending legislation. It is not at all new. The opportunity to do that has been taken by many of us this year, last year, the year before and, I am sure, next year. First, it is not new. It is common in the Senate to offer amendments which are not relevant to a bill that is pending. That is allowed under our rules.

The hate crimes amendment is an important amendment. I don't think anybody would deny the importance of this amendment. With hate crimes going up in the United States, it is critically important we strengthen our hate crimes law. There are Senators who oppose the amendment. That is the reason we are here, to debate, to argue for or to argue against. But I don't think one can argue it is uncommon, unusual or improper to offer nonrelevant amendments to legislation which is

pending. Regardless of one's position on hate crimes, it is very difficult to argue it is not significant legislation.

Thirdly, as Senator Kennedy so powerfully argued--and those of us who joined with him a few years ago on this amendment surely agreed--the values that are involved in this legislation, the effort to make America a better place, a place freer of hate crimes, surely is one of the values our men and women put their uniforms on and fight for. The closer we can come to a society which is freer of hate crimes, the better off we are internally, the closer we will live up to what we stand for in our basic fundamental documents and our history. It is what men and women who fight for the United States and carry out their missions are fighting for--not just physical threats to this country but for the values for which we stand, for freedom from hate, for diversity, for freedom from intimidation and violence based on one's religion, ethnicity or the other attributes listed in the hate crimes legislation.

It is important legislation. It relates to the values of this country, values which our men and women take such risks for when they go into harm's way. The rules of this body allow for it.

Somehow or other, the fact that we were going to proceed to a hate crimes amendment on this bill, even whether it was next in line or whether it was down the line in terms of amendments, the fact that it was made clear that, again, on a Defense authorization bill, as we have in the past, in the past with 60 Members of this body supporting it, the fact that that was made known in an open and honest way to Members of this body apparently precipitated a determination on the part of some that they not allow us to get to a vote on the pending Levin-McCain amendment. That prospect, that open statement that there would be a hate crimes amendment offered on this bill became the impediment, apparently, from all we can determine, to our getting agreement for a time for a vote on Levin-McCain.

The question is, How to remove that impediment. There were two choices: Either agree not to offer the hate crimes amendment or remove the impediment. We have to now remove the impediment. There is not a willingness on the part of a significant number of Senators--and I believe a majority--not to offer a hate crimes amendment. It is pending legislation that is before us.

The amendment is an important amendment. It has been offered before. There is precedent for offering it on the Defense authorization bill. The rules allow for it, so we don't need a precedent, but there is a precedent for doing so. There are dozens of precedents for offering nonrelevant amendments to legislation which is pending before the Senate.

We will come back, obviously, to the Levin-McCain amendment. The Levin-McCain amendment is a very important amendment on this bill. We have to deal with the decision of the Armed Services Committee, on a close vote, to add F-22 planes, which uniformed and civilian leaders of the military indicate they do not want and do not need and we cannot afford. We have had some debate. We had plenty of time for others to debate it. Everyone who wanted to speak on the subject, I

believe, had more than enough opportunity to do so. Last night we heard from the Senator from Georgia as to his reasons for offering the amendment in committee to add the additional F-22s. I compliment the Senator from Georgia for all the hard work he has done on our committee. It is another example of how the Armed Services Committee works together. Our Presiding Officer is a distinguished member of the committee so he knows this firsthand, how we work together, guided by one basic principle: for the good of the Nation, for the good of the men and women in the armed services. We disagree, obviously, on the Levin-McCain amendment. There is surely, however, agreement that our intentions are always to adhere to that principle--what is best for our Nation, what is best for the men and women who put on the uniform of the Nation.

So while there was committee disagreement and disagreement on this floor on the question of whether additional F-22s should be produced, the disagreement is not along party lines and rarely, if ever, is along party lines on the Armed Services Committee. I wish to, again, compliment not only the Senator from Georgia but also other members of the committee for sticking to that very important principle.

I also agree with something the Senator from Georgia said last night relative to another of our operating principles. We have the right and the duty to challenge assumptions made in the bill sent to us by any administration and to act in accordance with our best judgment about what is right and what is in the best interests of the Nation. We are not a rubberstamp to every proposal offered by the executive branch. The Congress, hopefully, never will be.

The Senator from Georgia pointed out a number of cases where we have acted as anything but a rubberstamp to a budget request. We added funds, for instance, in this bill for a larger pay raise than the executive branch requested to honor the service of the men and women in the military who have been bearing an extraordinarily heavy burden for the country fighting in Iraq and Afghanistan. We added $1.2 billion for a more mobile variant of the Mine Resistant Ambush Protected Vehicle, called the MRAP. This MRAP variant is called the MRAP all-terrain vehicle. The reason we did this is because we knew there was an emerging requirement for these new vehicles to support our forces in Afghanistan that had not been reflected in the budget request. I don't believe any member of the Armed Services Committee or any Member of this body should act as a rubberstamp for any budget request, and the evidence will show over and over again, year after year, that our committee does not act as a rubberstamp.

The question on the Levin-McCain amendment is whether we are right, that the leadership of our military, both civilian and uniformed, made a sound judgment when they, similar to their predecessors in the Bush administration, determined that we should end production of the F-22. The debate is not about whether we will have the capability of the F-22. It is a debate about how many F-22 aircraft we should have and at what cost.

We are talking about whether we will accept the recommendation of two Commanders in Chief, two Secretaries of Defense, plus the Joint Chiefs of Staff and

their chairmen, that 187 F-22s is all we need, all we can afford, and all we should buy. Senator McCain and I have made a number of arguments about why we believe stopping the F-22 program at 187 is the right thing to do. I will not repeat all those arguments now, particularly since we have temporarily withdrawn the amendment. But it is important that I clarify promptly a number of points made by the Senator from Georgia during the debate yesterday so they do not remain uncontested.

First, the Senator said that the Air Force had not been involved in any of the studies that led to determining that 187 F-22s was the correct number of aircraft to buy. A few days ago, the committee heard contrary testimony from the vice chairman of the Joint Chiefs of Staff that there are at least two studies that support the department's plans for tactical aviation, including stopping F-22 production, including a recently completed study.

This is what he said:

There is a study in the Joint Staff that we just completed and partnered with the Air Force on that, number one, said that proliferating within the United States military fifth-generation fighters to all three services was going to be more significant than having them based solidly in just one service, because of the way we deploy and because of the diversity of our deployments.

So the Vice Chairman of the Joint Chiefs referred to a recent study that led to the conclusion that Senator McCain and I support. That study was partnered with the Air Force, unlike what was stated last night by the Senator from Georgia that these studies did not have Air Force involvement.

There is a strong analytical underpinning for the decision of the administration, including the Air Force. A letter from the Secretary of the Air Force and the Chief of Staff of the Air Force on this matter is one underpinning, one of the strong evidences that that conclusion is correct. The letter is already part of the record so I will quote briefly from it. The Secretary of the Air Force and the Chief of Staff of the Air Force concluded in part, as follows:

"In summary, we assessed the F-22 decision from all angles, taking into account competing strategic priorities and complementary programs and alternatives, all balanced within the context of available resources. We did not and do not recommended that F-22s be included in the FY10 defense budget. This is a difficult decision, but one with which we are comfortable."

That is from the letter of the Secretary of the Air Force and the Chief of Staff of the Air Force, so it should make very clear what the Air Force's position is on the matter.

On another matter that was raised by the Senator from Georgia last night, listening to his arguments, one might conclude that the F-22 is the only aircraft we have or are planning to have that could operate effectively in the presence of very capable

enemy surface-to-air missile systems. But the Department has provided contrary evidence. In his letter to myself and Senator McCain on July 13, the Secretary of Defense said the following:

" ..... the F-35 is a half generation newer aircraft than the F-22, and more capable in a number of areas such as electronic warfare and combating enemy air defenses. To sustain U.S. overall air dominance, the Department's plan is to buy roughly 500 F-35s over the next five years and more than 2,400 over the life of the program."

The key words in that sentence by the Secretary of the Defense in his letter is that there will be a "more capable'' aircraft in the F-35 than the F-22 ``in a number of areas such as ..... combating enemy air defenses."

I think we all agree our military needs to maintain air dominance. But as the Secretary's letter points out, the F-22 aircraft is not the only aircraft the Department is relying upon to contribute to making that air dominance a reality. In fact, in certain areas, such as electronic warfare and combating surface-to-air missiles, the Department of Defense is counting on the F-35 fleet to meet those missions with greater effectiveness even than with the F-22.

The Senator from Georgia, last night, argued that proposing cuts in a number of areas--just like the committee 13-to-11 vote indicated and his proposal accomplished--that shifting funds to the F-22 program and shifting money from other areas was not doing any harm to other programs within the Defense Department.

I have previously talked about the specifics relative to this issue, and I wish to summarize the difference on this point very briefly, as, again, we will be coming back to this issue. It is withdrawn temporarily, but, obviously, we will return to this issue and resolve this issue prior to the determination of this bill.

First, we did not assume any first-year savings from acquisition reform or business process reengineering. Both these initiatives will yield savings. The Senator from Arizona and I, and with the support of our colleagues on the Armed Services Committee, all unanimously supported acquisition reform.

At the time we adopted that, and at the time the President signed our bill, we indicated there will be significant savings from reforming the acquisition system. But those savings do not occur in 2010. Nobody has alleged, and there is no support for any conclusion, that savings from acquisition reform are going to occur in the first year it is in effect. As a matter of fact, its main thrust is to apply to new weapons systems to make sure their technologies, for instance, are mature so we do not end up producing equipment that has technologies incorporated in it that have not been adequately tested.

So we are not going to see savings in fiscal year 2010, as the Senator from Georgia assumed in his amendment that was adopted barely by the committee to fund the

F-22 add-on. The result is $500 million he assumed from savings ends up as across-the-board real program cuts.

I also would point out that the cost estimate of S. 1390 that we just received from the Congressional Budget Office did not assume any savings from those initiatives. Those, again, were savings which helped to fund the additional F-22s--alleged savings. They are phantom savings in the first year.

Secondly, on the operation and maintenance reductions that were used to fund the F-22 add, the original committee position on this matter--O&M, operation and maintenance reductions--was developed consistent with the Government Accountability Office analysis. The reductions, however, that were taken in operation and maintenance by the Senator from Georgia when he offered this amendment in committee to add the F-22s go far beyond what was indicated by the Government Accountability Office's analysis and far beyond what is prudent.

Finally, relative to the offsets that were taken, the $400 million cut applied to the military personnel funding top line will greatly complicate the Department's ability to manage the All-Volunteer Force and to provide for bonuses and incentives that will be needed to support the force. It might even be troublesome enough that the Department of Defense would be forced to ask for a supplemental appropriations--something we wanted to get away from this year and finally have.

So one other thing is, there are some who suggest: Well, the F-35 is just a paper airplane that is the future. We have the F-22 now. The F-35 is not here yet. It is here. There are--in this budget alone, in the fiscal year 2010 budget, which is the fourth year, by the way, of production of the F-35--there are 30 F-35s being produced for the military. So this is not a future deal when we talk about F-35s. This is a here-and-now deal. We are already into low-rate initial production. There are already at least five test aircraft flying, and we have 30 F-35s funded in this bill which is before this body now.

Let me summarize the situation relative to the Levin-McCain amendment that would strike the additional funding for the F-22s, the additional planes that the military does not want, does not need, and says we cannot afford.

First, the F-22 is a very capable aircraft. There should be no doubt about it. We have them. We need them. And they are valuable.

Next, the Air Force has already bought, and will pay for, 187 F-22 aircraft. So the debate is not about whether we will have that capability of the F-22 for the next 20 years. We will. We should, and we will. The debate is over how many F-22s are enough to meet the Nation's requirements. Two Presidents--President Obama and President Bush--two Secretaries of Defense, three Chairmen of the Joint Chiefs, current members of the Joint Chiefs of Staff all agree that 187 F-22s is all we need to buy and all we should buy.

The debate also concerns what damage will be done if we do not reverse the cuts that were taken to pay for the additional F-22s--to pay for the $1.75 billion in the F-22 add. Those cuts are $400 million to military personnel accounts, $850 million to operations and maintenance accounts, and $500 million across-the-board reductions to the Department of Defense budget.

We received a letter from the President this week saying he will veto the Defense authorization bill if it includes the F-22 production.

So our amendment is a critically important amendment. It involves a lot of money, and there is a lot of principle involved as to whether we should continue to be building weapons we no longer need and we have enough of. We need the F-22. There is no doubt about that. But we have enough of the F-22, according to all our military leaders--civilian and uniformed leaders alike.

But we cannot get to a vote, and that is the fact of the matter. We have waited for an agreement to get to a vote on the Levin-McCain amendment. Repeatedly, I have asked whether we can set a time for a vote, and the answer has come back: We cannot set a time for a vote. It is clear that for some reason, which, frankly, I do not fully understand--the reason we are not permitted to get to a vote on the Levin-McCain amendment is because of the prospect, the fact that either the next amendment or somehow down the line on this bill there is going to be offered a hate crimes amendment.

How that and why that should result in a denial of an opportunity to vote on the Levin-McCain amendment escapes me, I must say. Because we are going to get to the hate crimes amendment whether we are allowed a vote on the F-22 amendment. Not allowing us a vote, not agreeing to a time for a vote on the Levin-McCain amendment does not obviate the fact there is going to be a hate crimes amendment offered. As a matter of fact, it is now the actual amendment before us.

And everyone knew that.

So I do not understand the logic behind the refusal to permit a vote on an amendment--the Levin-McCain amendment--because of objection to going to a vote on hate crimes, when we are going to that hate crimes amendment anyway and when we are going to have to come back to the Levin-McCain amendment. Everybody knows it. We are going to have to resolve both those amendments. So the decision some made to deny us an opportunity to vote at this time on Levin-McCain simply stymies this body from doing what it is going to do.

There are many people who disagree with the Levin amendment. Fine. There are many people who disagree on the hate crimes amendment. That is their right. But what is undeniable is, we are going to resolve both, one way or the other. We are going to resolve both of those and hopefully a lot of other material and a lot of other amendments. They are both going to be resolved, one way or the other, on this bill. Argue both sides, argue neither side, but you cannot argue, it seems to

me, that we should not allow a vote on the first amendment before us--Levin-McCain--because of opposition to another amendment which is going to be offered.

I know there is strong opposition to hate crimes. I understand it. I understand why people say it should not be on this bill, despite the rules which allow it. I respect the right to disagree with it. But I do not understand the logic or the strategy which denies us the opportunity to vote on an amendment which has been thoroughly debated--the Levin-McCain amendment--because there is another amendment down the line which is going to be offered which people object to, when they know it is coming up. Despite strong feelings that it should not come up, it is coming up. It is now before us. Everyone knew it was going to come up.

So now we are stymied. We are stymied from resolving an amendment which has to be resolved, one way or the other--Levin-McCain--because of objection to another amendment being offered.

I don't get the logic. I don't understand the strategy. I understand the feelings and I respect the feelings, although I disagree with people who oppose the Levin-McCain amendment and I disagree with people who oppose the hate crimes amendment. So I understand the feelings. I don't share the feelings, but I respect them, and I respect their right to fight against these amendments. But for the life of me, I do not understand why we are denied an opportunity to vote on Levin-McCain because of an objection to another amendment. All it does is slow down this body. It stymies this body from resolving issues which are going to be resolved. As certain as this body is here, this is going to be resolved. These are going to be resolved like a lot of other amendments. I don't know how they will be resolved. That is not certain; it never is. But they will be resolved because that is the nature of the Senate, to resolve these issues.

Again, I thank my good friend from Arizona. I know there are differences on the question of whether hate crimes ought to be offered on this bill. I respect him deeply, and I respect his positions and his right to hold them. While I surely disagree with the decision that has been made to not permit us to move at this time to a resolution of Levin-McCain, I nonetheless have a great understanding of the feelings here. I appreciate them and I respect them.

I yield the floor.