First, it really prejudges the record of evidence and the standing of law in that case when we're not necessarily competent to do that. That is a decision the prosecutors ought to make. Secondly, I think, although it's not the intention of the authors, I'm sure, it belies a certain lack of confidence in our constitutional system of criminal justice.

We should be proud of our system. It's one that operates on principles of fairness, and it fairly and expeditiously determines guilt or innocence. I think to abandon that system in all cases and under all circumstances not only unwisely prejudges the facts of these cases but also unwittingly undercuts confidence in our Constitution and in our Article III courts. For that reason, I would urge a ''no'' vote on this amendment.

□ 1650

Mr. ROONEY. Mr. Chairman, may I inquire as to the time remaining.

The Acting CHAIR. The gentleman from Florida has 1 minute remaining, and the gentleman from Washington has 1 minute remaining.

Mr. ROONEY. Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Washington. Mr. Chairman, Mr. ROONEY has the right to close; is that correct?

The Acting CHAIR. The gentleman from Washington has the right to close.

Mr. SMITH of Washington. Then I will reserve the balance of my time.

The Acting CHAIR. The gentleman from Florida is recognized for 1 minute.

Mr. ROONEY. Mr. Chairman, I would just say to some of the things that have been said that I don't think that what this amendment is saying is in any way disparaging what Article III courts can do or would be successful doing. Certainly I would agree that they could be adequate in prosecuting criminals and people that do crimes in this country. What we are talking about are foreign enemy terrorist combatants, people that commit acts of war against this country in furtherance of the authorization that this Congress passed.

What we have done as a Congress is set up military commissions in ways that can protect evidence, ways that can protect witnesses and sources, and, in my opinion, in a way that the Article III courts might not be able to. I'm not saying that they couldn't. I'm saying that it is a better venue. Just like when we talked about earlier the Ranking Member Smith and Amash amendment, which would preclude the use of military tribunals. As much as the ranking member is saying that options should be on the table, we're saying the same thing.

With that, I hope my colleagues will vote for this amendment, and I yield back the balance of my time.

Mr. SMITH of Washington. Mr. Chairman, I yield myself the balance of my time.

Three quick points. I think the difference here and the reason that I drafted my amendment to say ''just in the U.S.,'' I think is a legitimate point. Overseas we do not have the same control over the investigatory process that we have here domestically. There's a clear difference between dealing with someone here domestically. That's why in the last 10 years we haven't done anything other than try people here in the U.S. under Article III courts. We haven't needed military commissions. That's why I think we should take that power away from the President because it's an extraordinary amount of power to give him that isn't necessary.

Overseas they are, in fact, taking away the options in this amendment and saying it has to be military tribunals. They are also saying that Article III courts are inadequate to do that when, in fact, they've done it repeatedly. The people who committed the bombing against the World Trade Towers in 1993 were captured overseas, brought back, and tried here in domestic courts. Article III courts work sometimes in these incidents. Their amendment takes those options away completely. I also point out that Guantanamo Bay is not an enormous facility. They already have 40 people waiting in line for military tribunals. Many more will backlog that.

But I want to come back to my amendment that will come up later. Domestically, we have proven that Article III courts are more than adequate. Overseas, we've proven that we need multiple options. So this amendment sort of is in reverse of what the facts bear out that we should be doing, and I urge opposition to it.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Florida (Mr. ROONEY).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. SMITH of Washington. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Florida will be postponed.

AMENDMENT NO. 8 OFFERED BY MR. BARTLETT

The Acting CHAIR. It is now in order to consider amendment No. 8 printed in House Report 112–485.

Mr. BARTLETT. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of subtitle A of title XXVIII, add the following new section:

SEC. 28___. USE OF PROJECT LABOR AGREEMENTS IN MILITARY CONSTRUCTION PROJECTS AND MILITARY FAMILY HOUSING PROJECTS.

(a) REQUIREMENTS.—Section 2852 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(d)(1) The Secretary of Defense and the Secretaries of the military departments, when awarding a construction contract on behalf of the Government, in any solicitations, bid specifications, project agreements, or other controlling documents, shall not—

''(A) require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations; and

''(B) discriminate against or give preference to bidders, offerors, contractors, or subcontractors based on their entering or refusing to enter into such an agreement.

''(2) Nothing in this subsection shall prohibit a contractor or subcontractor from voluntarily entering into an agreement with one or more labor organizations, as protected by the National Labor Relations Act (29 U.S.C. 151 et seq.).''.

(b) APPLICATION OF AMENDMENT.—The amendment made by subsection (a) shall not apply to construction contracts awarded before the date of the enactment of this Act.

The Acting CHAIR. Pursuant to House Resolution 661, the gentleman from Maryland (Mr. BARTLETT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Maryland.

Mr. BARTLETT. Mr. Chairman, I yield myself such time as I may consume.

This is a very simple amendment. I would first like to make two statements that I think are generally recognized facts. One of those is that only 11.8 percent of our workforce belongs to a PLA; secondly, that PLA contracts in the government on the average cost the taxpayer 12 to 18 percent more than a non-PLA contract.

Our amendment is very simple. It is not prescriptive. It is simply permissive. It says that the government will not discriminate in awarding contracts whether you're a PLA, not PLA, whether it's a mixture of PLA and non-PLA companies, that they will be considered equal and fairly. If, in fact, a PLA contractor is more efficient and does better quality work as they contend, then that will be taken into account in the award of the contract. You do not have to award to the lowest bidder. You can award on the basis of best value.

I think that this amendment is a commonsense amendment that anybody who believes in the free enterprise system ought to support, and I reserve the balance of my time.

Mr. COURTNEY. Mr. Chairman, I rise in opposition to this amendment.

The Acting CHAIR. The gentleman from Connecticut is recognized for 5 minutes.

Mr. COURTNEY. Mr. Chairman, I rise in strong opposition to my friend Mr. BARTLETT's amendment, which, in fact, does the opposite of what it was purported to do.

Presently the status quo allows the Department of Defense to have two choices: yes, they can use a project-labor commitment or a prehiring-labor agreement that establishes terms and conditions of employment, or now they can elect not to enter into a PLA. The effect of this amendment would, in fact, remove the Department's ability

to have a PLA requirement in terms of hiring terms and conditions.

The reason why those models work right now and have worked for decades is it gives the Department of Defense the opportunity to set conditions regarding security screening, apprenticeship programs, veteran hiring programs. The Helmets to Hardhats program—which is one of the most successful programs of integrating veterans returning from Iraq and Afghanistan into the building trades—is done under a PLA arrangement. It also allows local job markets to be incorporated into military construction projects. Again, the Department now presently has the option not to use PLAs. This amendment would, in fact, rob the Department of that opportunity.

With that, I reserve the balance of my time.

Mr. BARTLETT. Mr. Chairman, I yield 2 minutes to my friend from Arizona (Mr. FLAKE).

Mr. FLAKE. I thank the gentleman for yielding, and I rise in support of the Bartlett-Flake amendment.

Let me just clear something up if I can. What has happened is the President issued an executive order where he encouraged the Federal Agencies to—where they can and where appropriate—employ PLAs. That might seem fine. The problem is some of the Federal Agencies have taken that to mean that they should require PLAs, and some of them have issued guidance to that effect. So they've taken what the President said and taken it one step further.

What we're trying to do here is simply say that you cannot favor PLAs, nor can you prohibit them, and that the Federal Agencies will be neutral in this regard. To say that it would prohibit the use of PLAs is simply not true. We're simply trying to keep the President or the Federal Agencies from putting their finger on the scale in favor of PLAs or against them. That's what this amendment does, and I'm proud to support it.

Let me just say that this amendment was offered in the Appropriations Committee yesterday in the Military Construction bill, and it was passed by a voice vote. There is a recognition that the President has—unwittingly or not—put his finger on the scale in favor of PLAs or union shops, and that's just not fair. The President and the Agencies ought to be neutral in this regard.

PLAs might make sense; they might not. What we ought to do is ensure that the taxpayer gets the biggest bang for the buck. That's the purpose of this amendment, and that's why I support it.

Mr. COURTNEY. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts (Mr. LYNCH).

Mr. LYNCH. Mr. Chairman, I thank the gentleman for yielding, and I rise in strong opposition to the Bartlett-Flake amendment. This amendment would indeed seek to prohibit Agencies from using a PLA. It is not as the gentleman from Arizona has just stated.

Let me clear something up. Large-scale construction projects—look, I was an ironworker for 18 years. I've run work. I was an ironworker foreman, an ironworker general foreman. PLAs are a great advantage to have in a complex construction project.

This amendment and the PLA provision that's already in the President's executive order applies to projects that are $25 million and over. All of those projects below $25 million don't get affected by the PLA executive order. What the PLA does require, as Mr. COURTNEY has pointed out, is it does require compliance with statutory compliance with workers' comp law, statutory compliance with anti-discrimination law, with proper classification of workers, and with health and safety laws on some very dangerous job sites.

It is a good idea to reject the Bartlett-Flake amendment and allow the PLAs to be used when appropriate.

□ 1700

Mr. BARTLETT. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. WALBERG).

Mr. WALBERG. I thank the gentleman for yielding.

Mr. Chairman, I stand in strong support of this amendment, an amendment that I think speaks to a rationality in our contracting, and especially when we think of what we're talking about here in the defense world.

It's one thing to have PLAs that virtually make unfair competition for 86 percent of all of our construction contractors, because 86 percent, nationwide, don't have PLA agreements, they're nonunion, and yet have skilled workers doing the jobs they are expected.

For defense contracting to have a mandate that there must be a PLA agreement in place oftentimes will put our defense industry in the position of accepting a product that is more expensive and potentially of a lesser quality in the process.

This is not a mandate. This says choice can be made either way. And I think it needs to be made very clear that's all we're saying. It is neutral. It is not, as was described by others, that this would take PLAs out of the mix.

I stand in strong support for this, and I ask that this amendment be applied to ultimately make a stronger defense capability for our country.

Mr. COURTNEY. Mr. Chairman, I yield 1 minute to the gentlelady from Hawaii (Ms. HANABUSA), who is a member of the Armed Services Committee.

Ms. HANABUSA. I thank the gentleman from Connecticut.

I rise in opposition to the Bartlett amendment because I think the Bartlett amendment doesn't quite understand the difference between a project labor agreement and a collective bargaining agreement.

This amendment targets Executive Order 13502, which encourages the use of PLAs in construction contracts of $25 million or more. And the reason is that it's historically something that we have supported.

Ironically, in 1992, there was a Supreme Court decision that defined PLAs, called the Boston Harbor Agreement, which was under President Bush, who had a similar executive order that prohibited the use of PLAs. It was Bush's solicitor Kenneth Starr that argued for the PLAs. And he said the reason why you would use them is because of timely completion, labor peace and stability, labor supply, and for public purpose. This is the reason why you would use PLAs.

We know that historically, this has been one of the best ways to do these major construction projects. What the Bartlett amendment does is it will tie the hands of the Department of Defense.

Mr. BARTLETT. Mr. Chairman, may I inquire how much time remains?

The Acting CHAIR. The gentleman from Maryland has 1½ minutes remaining. The gentleman from Connecticut has 2 minutes remaining.

Mr. BARTLETT. I yield 1 minute to my good friend from Georgia (Mr. GINGREY).

Mr. GINGREY of Georgia. Mr. Chairman, I rise today in support of amendment No. 8, the Bartlett-Flake amendment, to H.R. 4310.

The amendment will prevent the DOD from requiring contractors to sign expensive union-favoring project labor agreements as a condition of winning Federal construction contracts for projects authorized by the bill.

Under a PLA, the construction firm must agree to sign a union collective bargaining agreement, whether it's unionized or not, before it can bid on a government project. PLAs can result in increased costs for contractors and taxpayers by as much as 18 percent and cause unnecessary procurement delays and political favoritism in the Federal procurement process.

At a time when the Department of Defense is facing devastating across-the-board cuts, it simply does not make sense to encourage PLAs. I urge my colleagues to support the amendment.

Mr. COURTNEY. Mr. Chairman, I yield 1 minute to the gentleman from Ohio (Mr. LATOURETTE).

Mr. LATOURETTE. I thank the gentleman very much for yielding.

We've seen this amendment a number of times in the 112th Congress, and, sadly, it doesn't get any better. It's based upon the misconception that somehow PLAs are costing the taxpayer money.

Definitive research was done by the Department of Veterans Affairs that concluded that it really depends on what part of the country you are in and whether you have a heavily unionized workforce in your area or you don't. They concluded that PLAs are productive and actually come in on time and under budget in areas where you have a

heavy unionized workforce and not so much in areas where you don't. And that makes sense because you have to bring people in to do the work.

The amendment, I think, is being billed as ''we just want people given a choice,'' but come on. The people that are advocating this hate PLAs. They don't want PLAs. They want to kill project labor agreements. So this was craftily drafted by the Associated Builders and Contractors to pretend that we're going to give people a choice when they really don't want people to have a choice.

Please reject this. We don't have to go out. And the President's executive order is clear. All it says is you have to consider PLAs in the mix. And I urge us to reject the amendment.

Mr. BARTLETT. Mr. Chairman, maybe it's because I am a scientist, but I'm having some trouble understanding how an amendment that specifically says that it is nondiscriminatory, that it's going to be totally agnostic to whether an organization is PLA or not PLA, somehow excludes PLAs in contention. That is certainly not what the amendment does.

I think this is a very commonsense amendment. I think that very few Americans would like to exclude nearly 90 percent of American workers in contention for Federal contracts. This is a fair, commonsense amendment, and I urge it's acceptance by both sides.

I yield back the balance of my time.

Mr. COURTNEY. Mr. Chairman, to conclude, again, there is a myth that somehow President Obama's executive order has swept through all the Federal agencies, and PLAs are now a mandated requirement. The fact of the matter is that is not the way the executive order reads. The Department of Defense has, in fact, granted only one PLA since President Obama's executive order was issued in January of 2009. As Mr. LYNCH said, that executive order exempts projects $25 million or less.

I would be happy to invite Members to my district to a military base where there has not been one PLA contract; although, we've done a number of projects on our Navy base.

So the fact is that the option exists today. This amendment would remove that option to the Department of Defense, which, again, has obviously exercised it very judiciously because they've only done one PLA since January of 2009.

Again, I urge Members to reject this amendment which handcuffs the Department of Defense to set up prehiring agreements that can help veterans, the local workforce, and apprenticeship programs for young Americans who want to get an opportunity to learn a building trade.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Maryland (Mr. BARTLETT).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. SMITH of Washington. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Maryland will be postponed.

AMENDMENT NO. 9 OFFERED BY MR. CONYERS

The Acting CHAIR. It is now in order to consider amendment No. 9 printed in House Report 112–485.

Mr. CONYERS. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of subtitle C of title I, add the following new section:

SEC. 132. TERMINATION OF THE F–35B AIRCRAFT PROGRAM.

(a) TERMINATION.—

(1) PROCUREMENT.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2013 or any year thereafter may be obligated or expended to procure an F–35B aircraft, including through advance procurement.

(2) R&D.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act or otherwide made available for fiscal year 2013 or any year thereafter may obligated or expended for research or development of F–35B aircraft.

(b) F/A–18E/F.—In accordance with section 128 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2217), as amended by section 123, the Secretary may procure an additional number of F/A–18E or F/A–18F aircraft, or combination thereof, that is equal to the number of F–35B aircraft that the Secretary planned to procure as of the date on which the budget of the President was submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal year 2013.

(c) CORRESPONDING FUNDING REDUCTION, INCREASES, AND DEFICIT REDUCTION.—

(1) REDUCTION.—

(A) PROCUREMENT.—Notwithstanding the amounts set forth in the funding tables in division D, the amounts authorized to be appropriated in section 101 for aircraft procurement, Navy, as specified in the corresponding funding table in division D, is hereby reduced—

(i) by $1,404,737,000, with the amount of the reduction to be derived from F–35B aircraft under Line 007 JSF STOVL as set forth in the table under section 4101; and

(ii) by $106,199,000, with the amount of the reduction to be derived from F–35B aircraft under Line 008 Advance Procurement (CY) as set forth in the table under section 4101.

(B) R&D.—Notwithstanding the amounts set forth in the funding tables in division D, the amount authorized to be appropriated in section 201 for research, development, test, and evaluation, Navy, as specified in the corresponding funding table in division D, is hereby reduced by $737,149,000, with the amount of the reduction to be derived from under Line 133, Program Element 0604800M, Joint Strike Fighter (JSF) - EMD, as set forth in the table under section 4101.

(2) INCREASE.—Notwithstanding the amounts set forth in the funding tables in division D, the amount authorized to be appropriated in section 101 for aircraft procurement, Navy, as specified in the corresponding funding table in division D, for Line 003 F/A–18E/F (Fighter) Hornet is hereby increased by $459,645,614.

(3) BALANCE FOR DEFICIT REDUCTION.—Of the amounts reduced pursuant to subparagraphs (A) and (B) of paragraph (1), $1,788,439,386 may not be made available for any purpose other than deficit reduction.

The Acting CHAIR. Pursuant to House Resolution 661, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I am joined on this amendment by my colleague from Minnesota, Mr. KEITH ELLISON.

This amendment is simple in that it merely terminates the most expensive weapons system of the Department of Defense in its history, that is, terminating the F–35B Joint Strike Fighter.

Well, why? Well, because there are many other planes that have capabilities that rival the F–35B and yet cost far less to buy and operate. Our amendment would save $50 billion over the life of this program.

The termination of this program has been recommended by so many groups. I will mention a few: The Project on Government Oversight, Taxpayers for Common Sense, the Cato Institute, the Center for American Progress, the Public Interest Research Group, the National Taxpayers Union, our colleague Senator TOM COBURN of Oklahoma, and the Bowles-Simpson Commission. Please join us in a very simple idea.

I reserve the balance of my time.

□ 1710

Mr. MCKEON. I rise, Mr. Chairman, to claim the time in opposition to the amendment.

The Acting CHAIR. The gentleman from California is recognized for 5 minutes.

Mr. MCKEON. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I oppose the Conyers amendment. The F–35B is a short takeoff and vertical landing variant of the F–35 stealth fighter, and it's in the final stages of development and has entered low-rate initial production. The F–35B will operate from large deck amphibious ships as well as have the capability to operate from forward operating bases and damaged air strips to support Marine Corps ground maneuver forces ashore.

The Commandant of the Marine Corps, General Amos, wrote to the committee yesterday and said:

The importance of the F–35B short takeoff vertical landing variant to the Marine Corps and the Nation cannot be overstated.

The F–35B has made significant progress in the last year, under General Amos' guidance, by completing all of the plan test points in 2011 and accomplishing 260 vertical landings. If passed, this amendment could have major negative impacts to our Nation's future combat power, increase the cost of the overall F–35 program, and negatively affect the eight international program partners in foreign military sales.