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Senate

The Senate met at 11 a.m. and was called to order by the Honorable MICHAEL F. BENNET, a Senator from the State of Colorado.

PRAYER

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

Let us pray.

O Lord, our Saviour, Your word reminds us that to whom much is given, much will be required. Look with favor upon our lawmakers today. May they endeavor this and every day to be what You command. Give them ears to hear the inner voice of Your holy spirit, who searches the depths of their hearts, in order to lead them to Your truth. Imbue them with wisdom to face every challenge with grateful dependence upon You. Lord, let Your creative power touch them so that they will find solutions to the problems that beset our land. Free them from anxiety and fear, as they discover the independence which comes from trusting Your sovereignty.

We pray in the Redeemer's Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MICHAEL F. BENNET led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 11, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MICHAEL F. BENNET, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will proceed to a period of morning business until 11:30 a.m., with Senators permitted to speak for up to 10 minutes each. The Republicans will control all the morning business time; that is, until 11:30. Following morning business, the Senate will proceed to executive session to consider the nomination of David Ogden, to be Deputy Attorney General. The time until 4:30 p.m. will be equally divided and controlled between the two leaders or their designees. Under an agreement reached last night, the vote on the confirmation of the Ogden nomination will occur at a time to be agreed upon tomorrow.

We are also working on a number of other nominations. We are going to spend this week on nominations—at least the next day or so. We are working on Thomas Perrelli to be Associate Attorney General and a number of others. We hope the Republicans will work with us on getting some of these nominations cleared. We are glad we got a couple of the Council of Economic Advisers done last night. I appreciate that good work. We will see what happens as the day proceeds.

This is a day with no votes. Certainly, I think we deserve that, based on what we have been through in the last several weeks. We are going to have our annual meeting with the Supreme Court Justices tonight. I remind all Senators of that. It is one of the rare times when the two branches of Government meet in a social setting where we will have the Supreme Court Justices and the Senators there in the Supreme Court. It has been very helpful in years past, and I am confident it will be a very nice event tonight.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 11:30 a.m., with Senators permitted to speak for up to 10 minutes each, with the time controlled by the Republicans.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, I ask unanimous consent to speak for 15 minutes.

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

PRESIDENT'S BUDGET

Mr. GREGG. Mr. President, I wish to address, again, the issue of the budget as proposed by the President of the United States, which is about to be

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

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taken up by the Budget Committees of the Senate and the House, and its implications for us as a nation because the implications of it are rather dramatic.

Now, I understand—and all of us on our side of the aisle understand—the last election was won by the President and his party, that the Democratic Party now controls both the House and the Senate and the administration and, therefore, they have absolute responsibility and the right to send us a budget which reflects their priorities. But I think we ought to have openness as to what the implications of that budget are relative to the future of our Nation, and they are dramatic.

As you look at the budget that has been proposed by this administration, it represents the largest expansion of Government in our history. It is a proposal which is essentially moving the Government into arenas with an aggressiveness that has never been seen before. It has in it the largest tax increase in history, as well as the fastest increase in the debt of our Nation in history.

The taxes go up by $1.4 trillion under this budget. Discretionary spending, which is spending that is not entitlement spending, goes up by $725 billion. Entitlement spending—which are things such as health care—goes up by $1.2 trillion. Yet there is no effort to save money in this budget to reduce the cost of spending and the cost of the Government. Instead, there is an expansion of the Government in this rather aggressive way.

The practical effect of this is that within 5 years the debt of the United States held by the public will double. That means in the first 5 years of this administration—presuming it is reelected—they will have increased the debt more than the debt was increased since the founding of the Republic all the way through the Presidency of George W. Bush; they will have doubled the debt of the country.

In 10 years, because of this massive expansion in the size of the Government, they will triple the debt of the country.

What does ''debt'' mean? What does tripling the debt from $5.8 trillion to $15 trillion in 10 years mean? Well, basically, it means Americans coming into the workforce, Americans of the next generation, and the generation that follows that generation, will bear a burden from our generation—that the costs of today are being offloaded onto our children. The result of that is very simple. Our children and our grandchildren will have a country which will not give them as much opportunity as our country has given us because the burden from our generation will be weighing them down. The costs we have run up as a generation and passed on to them will set them behind the starting line. They will end up having less opportunity to buy a house, send their kids to college, live a quality of life we have lived because they will start out with a debt and a burden of a government which exceeds, in many instances, their ability to pay.

We are, under this proposal, heading the Nation into an untenable situation. In the area of deficits, which translates into debt—a deficit is what happens at the end of the year when your bills come in. If you have more bills than you have income, you end up with a deficit. That, then, becomes debt.

In the area of deficits, this budget takes us up dramatically in the next 2 years to an all-time high—a number that is hardly even contemplatable—a $1.7 trillion deficit this coming year. That is 28 percent of gross national product being spent by the Federal Government.

Now, I am willing to accept this number and not debate it because we are in a recession. It is necessary for the Government to step in and be aggressive, and the Government is the last source of liquidity. So one can argue that this number, although horribly large, is something we will simply have to live with. What one can't accept is what happens in the outyears—rather than bringing this deficit down to a reasonable number, a number which would be sustainable for our children to bear—because the President is proposing to expand the Government dramatically, its size and its cost. He is proposing deficits as far as the eye can see of 3 to 4 percent of gross domestic product.

What does that mean, 3 to 4 percent of gross domestic product? Well, historically, the deficit of the United States over the last 20 years has been 1.9 percent of gross domestic product. It means every year we are adding so much more debt than we can afford to our Nation that our children, again, will have less opportunity to succeed.

To put it in numbers terms, historically, the debt of the Federal Government has been about 40 percent of gross domestic product. In these outyears—ignoring this situation which is driven by the very severe recession—in these outyears, the public debt compared to the gross domestic product will stay at about 67 percent of gross domestic product, not 40 percent, which is sustainable but 67 percent. Those are numbers which, if we were in another part of the world, would be described as a Banana Republic because they are not sustainable and they drive us up to a cost which is not affordable. Those are the numbers which are driving the tripling of the national debt in 10 years.

One may say, well, where does that all come from, all this expansion of debt that is going to be put on our children's backs? It comes, quite simply, from spending. This administration has proposed the largest increase in the size of the Federal Government in our history, a massive shift to the left of the Government.

This is a chart which shows the historical spending of the Federal Government as a percent of GDP. Historically, this line right here reflects the mean, which has been somewhere around 20 percent of gross national product. That is a big chunk of the gross national product to be spending on the Federal Government, but that is what we have been doing. With the recession, obviously, it spikes up to 28 percent, but the point is that this administration doesn't plan to bring it down to historical levels; rather, they intend to keep spending at around 22 to 23 percent of gross national product. That is not affordable. It is not sustainable.

Why is it not sustainable? Because they don't increase taxes to that level. If they did, they would basically be creating a confiscatory situation for young people who are going into the workforce; rather, they simply run up debt to try to cover that difference at a catastrophically fast rate. We have to bring this spending line down if we are going to have a responsible budget.

Now, why does this go up so much? Why does this spending level go up so much? Well, it goes up so much because essentially they are planning to nationalize large segments of the economy; to have the Government take over the responsibility for large segments of the economy. The most specific area they do this in is in educational loans, where today we have what is known as the public-private balance, where some people get their loans directly from the Federal Government and some people get their loans from the private sector. They are going to end that policy, and they are going to have the Federal Government take over all lending. That is the most specific. However, if you look at their health care policy, they are moving in that direction there too. They have suggested in this budget that we should increase health care spending as a downpayment for $634 billion. That is a downpayment. The actual number of the increase is closer to $1.2 trillion in new health care spending.

What does that really mean? Well, essentially we as a government and we as a nation spend 17 percent of our gross national product on health care. That is much more than any other industrialized nation in the world spends. The next closest nation spends about 12 or 11 percent. So it isn't that we are not spending enough on health care in this country; it is that we don't use it very well—the money. We don't allocate it very well, and we don't use it efficiently.

What the administration suggests is that we should expand that spending in the area of health care by another $1.2 trillion, as they move the Federal Government into the role of basically deciding how health care should be managed in this country, in a much more direct way. That is one of the reasons this spending line stays up so high.

At the same time, they are suggesting massive new tax increases—massive new tax increases—the largest tax increases in history. Now, this has been covered with the argument that, oh, this is just going to tax the

wealthy; the rich among us are going to be the ones who pay these taxes. Well, that is a canard. That is a straw dog. When you start increasing taxes at the rate they are proposed to be increased in this budget—$1.4 trillion of new taxes—you are going to hit everybody. You are going to hit everybody pretty hard.

There is in this budget proposal something that is euphemistically called a carbon tax. That is a term of art to cover up what it really is. It is a national sales tax on your electrical bill. It is estimated by MIT, a fairly objective institution, that this national sales tax on your electrical bill will raise around $300 billion a year. That is $300 billion a year that will be added to your electrical bill. The administration says it is $64 billion, but the same program they are talking about when looked at by an objective group at MIT, they concluded the real cost would be $300 billion. Whether it is $64 billion or $300 billion, it is a huge tax that is going to affect every American when they get their electrical bill.

In addition, they have this tax which they call the wealthy tax. People making over $250,000, they are essentially going to nationalize their income and say: If you make more than $250,000 we are going to raise your tax rate up to an effective rate of 42 percent. Well, I guess if you don't make that type of money, it probably doesn't bother you, but think about the people who are making $250,000. For the most part, they are small business people. They run a restaurant. They run a small software company. They run a small manufacturing firm. They are the people who create jobs in this country. Most small businesses are sole proprietorships or subchapter S corporations. The money they make is taxed to the individual who runs the small company. Whether it is a restaurant or a software company or a small manufacturer, it is taxed to them personally.

What do they do with that money? They take it and they invest it in their small business. Where are jobs created in this Nation? They are created by small business. This is a tax on small business. Then, of course, they raise the capital gains rates. They raise the dividend rates. Aren't we in a recession? Why would you raise taxes on the productive side of the economy when you are in a recession? Is that constructive to getting out of the recession? No. In fact, the stock markets are saying exactly that. They are looking at this budget and saying: Wow, this is the largest increase in the Government ever proposed, and it is going to be borne by the people who are the entrepreneurs and the small business people.

So do we really want to invest in America? Do we really want to put our money into the effort to try to make this country grow? Second thoughts. That is what is happening in the stock market. It is not constructive to economic growth.

Tax policy has to be constructed in a way that creates an incentive for people to go out and take risks. It creates an incentive for people to be willing to take their money and invest in something that is going to create jobs. When it is said to someone we are going to take 40 cents of the next dollar they make and throw State and local taxes on top of that—for example, in New York, it would amount to almost 60 percent of the next dollar they make—people start to think: Well, why should I invest in something that is a taxable event? Let me invest in something that is not a taxable event.

So instead of getting an efficient use of capital, people are running around investing their money to try to avoid taxes. As a result, we don't create more jobs; we just create more tax attorneys. Well, maybe that is jobs. I used to be a tax attorney, so I shouldn't pick on tax attorneys, but as a practical matter, it is not an efficient way to use capital.

We saw over the last 7 years prior to this recession—and granted, this recession has created an aberration for everything that is economic—we had a tax policy which saw the largest increase in revenues for 4 straight years that this country has ever experienced. We saw a tax policy which basically stood on its head the idea that if we maintain a low tax burden in capital gains, we would collect less taxes. In fact, it did just the opposite. We collected much more taxes from capital gains. In fact, over the last 7 years, because of the tax policy that was in place, the Tax Code became more progressive. The top 20 percent of income producers in this country ended up paying 85.7 percent of the income taxes in the country. That was compared with the Clinton years when the top 20 percent of income producers in this country paid 82 percent of the taxes.

At the same time, the bottom 40 percent of people receiving income in this country ended up getting twice as much back because they don't pay income taxes and they get a rebate in many instances through the EITC. They ended up getting twice as much back than during the Clinton years. So you actually had in the last 7 years a tax policy that encouraged growth, encouraged entrepreneurship, encouraged job creation, which was generating more revenues to the Federal Treasury, and yet being more progressive than during the period of the Clinton years.

What the administration has suggested is, we should not only go back to the Clinton years, we should do even more by taking an effective rate that will even go above the rate of the Clinton years to 42 percent, 41 percent. It makes no sense, especially in a time of recession, to basically have that sort of attack on small business and job producers in our Nation.

So this budget is a statement of policy which is pretty definitive, and I don't believe it is very constructive. It is a statement of policy which says we are going to radically expand the spending in this country. We are going to radically expand the size of Government in this country. We are going to end up after 5 years with Government we can't afford, that is spending more than at any time in our history, and that is running up deficits which are going to compound the problems for our children. It is not constructive, in my opinion. I think we can do a lot better, and we can do it this year rather than wait.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia is recognized.

THE ECONOMY

Mr. ISAKSON. Mr. President, first of all, I wish to commend the distinguished Senator from New Hampshire. As a Member of the Senate, there are many people I look to for wisdom and knowledge, and JUDD GREGG is one of them. In my hometown of Atlanta, GA, there is another person I look to for wisdom and knowledge, and that is my barber, Tommy.

I got a haircut, as you can probably tell, on Saturday. I was at Tommy's Barbershop on West Paces Ferry Road and Northside Drive in Atlanta. While in that barbershop, I talked to a real estate broker, a stock broker, a pension fund manager, and a good old, average, everyday American retiree trying to figure out how he is going to make it on what the markets have done to him in the last year or so.

It is ironic—and I had no plan to make this speech behind JUDD GREGG—but they talked to me about only two things. The first one was debt because last Saturday was just a week after the announcement of a $3.6 trillion budget, a 20-percent increase; an increase in taxes and concern because at a time of economic peril America is bearing more and more and more.

The other thing is what I rise to talk about today. We have looked into the mirror to look for the enemy, but we have avoided looking at ourselves. For a second I wish to talk through regulatory policy. I am talking about both administrations: the end of the Bush administration and the beginning of the Obama administration. I think we have been missing the mark. I wish to share some real-life stories about real-life Georgians that indicate where mark-to-market accounting is going in the United States of America, the businesses of the United States of America, and the people of the United States of America.

Some of my colleagues have watched television and watched the AFLAC duck commercials. I think they are the best commercials on television. I also think AFLAC is one of the finest companies in the United States of America. When we consider AFLAC and Dan Amos, the CEO of AFLAC, he put in stockholder consent and stockholder advice on his compensation and repealed his own golden parachute. All of

those things we all complain about CEOs doing, he did it right. But stock has plummeted in AFLAC. Do you know why? Because of the FASB rules on mark to market, his core asset base, which is long-term assets, held to maturity, to protect against insurance commitments AFLAC has made, are now being marked to market, meaning assets worth something are being marked worth nothing.

So the stock has gone down because the evaluators say the footings on the asset side of the ledger sheet aren't looking as good because of the mark to market. Let me explain the best I can what that really means.

Mortgage-backed securities are one investment a lot of life companies and other industries bought to put on their asset sheet to offset obligations they have off into the future because those securities have maturities corresponding with the maturities of the loans embedded within them of anywhere from 7 to 30 years. When the subprime market started failing last year, Merrill Lynch, in a crisis mode last July, sold its subprime securities to get rid of them; it financed the sale and sold them for 22 cents on the dollar. Under the FASB rules, assets worth 70 or 80 or 90 percent were marked down to 22 percent. That lowered the asset side of the ledger and made the stability of the company look—and I underline that word ''look''—worse, when, in fact, those assets, held to maturity, would not be anywhere near the value.

Here is a good example of that: Let's just say I bought a mortgage-backed security, a subprime mortgage-backed security, backed 100 percent by 30-year mortgage loans made in the State of Nevada—every one a subprime loan. Nevada has the highest foreclosure rate of any State on subprime paper. Seventy percent of those loans in Nevada today are paying right on time; 30 percent are in default. Yet, because of mark to market, that security is not marked at 70 percent, which it is performing at, but at zero because at a given point in time today you can't sell it. It is being held by the institution as an offsetting asset to a liability over a term of maturity.

At Tommy's Barber Shop, I ran into a pension fund man and an insurance guy, and they said: Why in the world don't we look for accounting on mark to market like we looked at the pension crisis in 2004?

We have short memories in the Senate. In 2004, because of the declining stock market in 2001 and 2002, there were a number of defined benefit plans in America that underfunded. Because of the accounting rules that were being enforced at the time, those institutions were asked to write checks to fully fund the pension funds when, in fact, not everybody is going to retire the same day but over a number of years.

What did we do in the Congress? With Senators KENNEDY, ENZI, myself, and others, we passed the Pension Protection and Reform Act. We said: If your pension fund's corpus becomes underfunded, if you cannot meet your obligation, we will let you smooth that investment, or amortize it, over 4 to 6 years. In the case of Delta, which was in trouble at the time, they had a $900 million shortfall in their pension fund. But because of smoothing, instead of having to put $900 million in in 1 year, they did $150 million over 6 years. Delta is the most profitable airline in the United States today. They would not exist today had it not been for the smoothing.

The ACTING PRESIDENT pro tempore. The time for morning business has expired.

Mr. ISAKSON. Mr. President, I ask unanimous consent for another minute.

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

Mr. ISAKSON. Mr. President, in conclusion, I hope everyone will visit their ''Tommy's Barber Shop'' and look at what we are doing that may have the unintended consequences of exacerbating the economic problem for the average American today and for Tommy the barber.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. President, I am going to proceed on my leader time.

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

THE BUDGET

Mr. MCCONNELL. Mr. President, we have seen the numbers. Unemployment is at a 25-year high. Millions are worried about holding on to their jobs and their homes. With every passing day, Americans are waiting for the administration to offer its plan to fix the banking crisis that continues to paralyze our economy. Every day, it seems, the administration officials are unveiling one new plan after another on everything from education to health care. Meanwhile, the details of a banking plan to address our main problem have yet to emerge.

We need reforms in health care and education and in many other areas. But Americans want the administration to fix the economy first. Unfortunately, the budget avoids the issue entirely. It simply assumes this enormously complex problem will be fixed, and then it proposes massive taxes, spending, and borrowing to finance a massive expansion of Government. It assumes the best of times, and, as millions of Americans will attest, these are not the best of times.

Over the next few weeks, the Senate will debate the details of this budget. One thing is already certain: It spends too much, it taxes too much, and it borrows too much. This budget would be a stretch in boom times. In a time of hardship and uncertainty, it is exactly the wrong approach. The budget's $3.6 trillion price tag comes on top of a housing plan that went into effect last week that could cost a quarter of a trillion dollars, a financial bailout that could cost another $1 trillion to $2 trillion, and a stimulus bill that will cost, with interest, more than a trillion dollars. Some are now talking about yet another stimulus. The national debt is more than $10 trillion, and yesterday we passed a $410 billion Government spending bill that represented an increase in Government spending over last year of twice the rate of inflation. In just 50 days, Congress has voted to spend about $1.2 trillion between the stimulus and the omnibus. To put that into perspective, that is about $24 billion a day or about $1 billion an hour—most of it, of course, borrowed. There is simply no question that Government spending has spun out of control.

Given all this spending and debt, the cost of the budget might not seem like much to some people. But this is precisely the problem. To most people, it seems that lawmakers in Washington have lost the perspective of the taxpayer. It is long past time we started to think about the long-term sustainability of our economy, about creating jobs and opportunity for future generations. That will require hard choices. The omnibus bill avoided every one, and, unfortunately, so does the budget.

Stuart Taylor of the National Journal recently praised the President in two consecutive columns. Yet he was shocked by the President's budget. Here is what Taylor said about the budget:

> ''. . . Not to deny that the liberal wish list in Obama's staggering $3.6 trillion budget would be wonderful if we had limitless resources,'' Mr. Taylor wrote. ''But in the real world, it could put vast areas of the economy under permanent government mismanagement, kill millions of jobs, drive investors and employers overseas, and bankrupt the nation.''

There is no question, in the midst of an economic crisis, this budget simply spends far too much. In order to pay for all this spending, the budget anticipates a number of rosy scenarios. It doesn't explain how the economic recovery will come about, it simply assumes that it will. It projects sustained growth beginning this year and continuing to grow 3.2 percent in 2010.

Let me say that again. It projects sustained growth beginning this year and continuing to grow 3.2 percent in 2010, 4 percent in 2011, and 4.6 percent in 2012. While we all hope to soon return to this growth, we cannot promise the growth we hope to have, especially when this growth is far from likely, particularly given a host of new policy proposals in the budget itself that are certain to tamp down growth even more. There is simply no question that this budget spends too much.

But even if this growth does occur, it would not be enough to support the

spending proposals. That is why the budget calls for a massive tax hike. In fact, this budget calls for the largest tax increase in history, including a new energy tax that will be charged to every single American who turns on a light switch, drives a car, or buys groceries. Unless you are living in a cave, this new energy tax will hit you like a hammer.

During the campaign, the President said his plan for an energy tax will ''cause utility rates to skyrocket.'' He was right. The new energy tax will cost every American household. I can't imagine how increasing the average American's annual tax bill will lift us out of the worst recession in decades.

There is more. A new tax related to charitable giving would punish the very organizations Americans depend on more and more during times of distress. One study suggests that the President's new tax on charitable giving could cost U.S. charities and educational institutions up to $9 billion a year—money that will presumably be redirected to the 250,000 new Government workers the budget is expected to create. There is no question that this budget taxes too much.

Remarkably, the largest tax increase in history and a new energy tax still aren't enough to pay for all the programs this budget creates. To pay for everything else, we will have to borrow—borrow a lot. This budget calls for the highest level of borrowing ever.

Now, if there is one thing Americans have learned the hard way over the past several months, it is that spending more than you can afford has serious, sometimes tragic, consequences. Yet Government doesn't seem ready to face that reality—not when it is spending other people's money and not when it is borrowing from others to fund its policy dreams.

It is not fair to load future generations with trillions and trillions of dollars in debt at a moment when the economy is contracting, millions are losing jobs, and millions more are worried about losing homes. It is time the Government realized that it is a steward of the people's money, not the other way around, and that it has a responsibility not only to use tax dollars wisely but to make sure the institutions of Government are sustainable for generations to come.

I don't know anybody who would borrow money from people thousands of miles away for things they don't even need. Yet this is precisely what our Government is doing every single day by asking countries such as Saudi Arabia, Japan, and China to finance a colossal budget in the midst of an economic crisis.

The administration has said it intends to be bold, and I have no doubt this budget reflects their honest attempt to implement what they believe to be the best prescription for success. We appreciate that effort. We simply see it differently. A $3.6 trillion budget that spends too much, taxes too much, and borrows too much in a time of economic hardship may be bold, but the question is, Is it wise? Most of the people who have taken the time to study this budget have concluded it is not wise. Republicans will spend the next few weeks explaining why to the American people.

Americans want serious reforms. But in the midst of a deepening recession, they are looking at all this spending, taxing, and borrowing, and they are wondering whether, for the first time in our Nation's history, we are actually giving up on the notion that if we work hard, our children will live better lives and have greater opportunities than ourselves.

Americans are looking at this spending, taxing, and borrowing, and they are wondering whether we are reversing the order—whether we are beginning to say with our actions that we want everything now—and putting off the hard choices, once again, for future generations to make. That would be a most important question in this upcoming budget debate.

It is important, once again, to sum up the core problem with the budget we will be voting on in a few weeks: It spends too much, taxes too much, and it borrows too much.

POLITICAL EXPRESSION WITHOUT FEAR

Mr. MCCONNELL. Mr. President, I wish to address the so-called card check legislation which was introduced in both the House and Senate yesterday.

As Americans, we expect to be able to vote on everything from high school class president to President of the United States in private. Workers expect the same right in union elections. This legislation goes against that fundamental right of political expression without fear of coercion.

We have had the secret ballot in this country for 100 years—130 years, at least—and it was common even before then. We have said to other countries around the world: If you want to have a democracy, you have to have a secret ballot. And yet this measure, to put it simply, would be better called the ''Employee No Choice Act.'' It is totally undemocratic. To approve it would be to subvert the right to bargain freely over working terms and conditions. It would strip members of a newly organized union of their right to accept or reject a contract.

In addition, this bill ushers in a new scheme of penalties which are antiworker and which apply only to employers and not to unions. Even though Americans have regarded secret ballot elections as a fundamental right—as I indicated earlier, for more than a century—some Democrats seem determined to strip that right away from American workers.

If this were not bad enough, a study released last week by economist Dr. Anne Layne-Farrar showed that if enacted, card check legislation could cost 600,000 American jobs—600,000 American jobs potentially lost. At a time when all of us are looking to stimulate the economy and put Americans back to work, we are threatening to undermine those efforts with this job-killing bill.

Republicans will oppose any legislation which attempts to undermine job creation, and we will oppose the effort to take away a worker's right to a secret ballot.

Mr. President, I yield the floor.

EXECUTIVE SESSION

NOMINATION OF DAVID W. OGDEN TO BE DEPUTY ATTORNEY GENERAL

The PRESIDING OFFICER (Mr. CASEY). Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of David W. Ogden, of Virginia, to be Deputy Attorney General.

The PRESIDING OFFICER. Under the previous order, the time until 4:30 p.m. will be equally divided and controlled between the leaders or their designees.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I am opening this debate in my capacity not only as a Senator from Vermont but as chairman of the Judiciary Committee.

We are here today to consider President Obama's nomination of David Ogden to be Deputy Attorney General, the number two position at the Department of Justice. This is a picture, incidentally, of David Ogden. I had hoped we could vote on this nomination soon—although apparently, because of objections on the other side, we will not be able to vote until tomorrow. This is unfortunate. Every day we delay the appointment of the Deputy Attorney General is a day we are not enhancing the security of the United States.

In this case, we have a nominee who I had hoped to have confirmed weeks ago. Mr. Ogden is a highly qualified nominee who has chosen to leave a very successful career in private practice—one I might say parenthetically pays considerably more than the Department of Justice does—to return to the Department, where he served with great distinction. His path in many ways reflects that of the Attorney General, Eric Holder, who, of course, also was a highly successful and respected partner in one of the major law firms in Washington. And he left to become Attorney General of the United States at the request of President Obama to serve his Nation. Mr. Ogden is doing the same thing.

Interestingly enough, once Mr. Ogden's nomination was announced, the letters of support started to come

in from leading law enforcement organizations across the country. Let me put a few of these up on this chart. As you can see, Mr. Ogden's nomination received support from leading law enforcement organizations; children's advocates; civil rights organizations; and former Government officials from both Republican and Democratic administrations.

Indeed, Larry Thompson, the former Deputy Attorney General under President George W. Bush, a highly respected former public official, has endorsed David Ogden to be Deputy Attorney General.

The Boys and Girls Clubs of America, an organization I have spent a lot of time with and one I highly respect. This organization provides alternative programs and a great mentoring system for children in many cities to keep them out of trouble. And this fine organization has endorsed David Ogden.

A dozen retired military officers who serve as Judge Advocates General have endorsed Mr. Ogden's nomination.

The Fraternal Order of Police and the Federal Law Enforcement Officers Association, two major law enforcement organizations, have endorsed him.

The Major Cities Chiefs Association have endorsed him.

The National Center for Missing and Exploited Children, another organization I have worked a great deal with, and one that has done such wonderful things to help in the case of missing and exploited children, has also endorsed him.

The National Association of Police Organizations has endorsed David Ogden.

The National District Attorneys Association has endorsed him, which I was particularly pleased to see. I once served as vice president of the National District Attorneys Association. As an aside, I should note that I gave up the honor and glory of becoming president of the National District Attorneys Association for the anonymity of the Senate.

The National Narcotics Officers' Associations' Coalition has endorsed David Ogden.

The National Sheriffs' Association has endorsed David Ogden.

The Police Executive Research Forum has endorsed David Ogden.

The National Center for Victims of Crime has endorsed David Ogden.

Why have they endorsed him? Because he is an immensely qualified nominee, and he has the obvious priorities that we want in a Deputy Attorney General. His priorities will be the safety and security of the American people and to reinvigorate the traditional work of the Justice Department in protecting the rights of all Americans. That is why he will be a critical asset to the Attorney General. He will help us remember it is the Deputy Attorney General of the United States, and it is the Department of Justice for all Americans.

With all of these endorsements, including all of the major law enforcement groups endorsing him, and all the endorsements from both Republicans and Democrats, what is astonishing for all these law enforcement organizations wanting him there is that Republicans threatened to filibuster this nomination. They refused to agree to this debate and a vote on the nomination, and they required the majority leader to file a cloture motion, which he did on Monday. For more than a week we were told that Republicans would not agree to a debate and vote and would insist on filibustering this nomination.

It is amazing. I don't know if Republicans are aware of what is going on in this country—the rising crime rates which began rising in the last year or so and the critical nature working families are facing. And yet they want to filibuster a nominee, one of the best I have seen for this position in my 35 years in the Senate.

I noted that development and the threat of a filibuster at a Judiciary Committee business meeting last Thursday, after a week of fruitless efforts to try to move this nomination forward by agreement and obviate the need for a filibuster. I noted my disappointment that, despite the bipartisan majority vote in favor of the nomination by Republicans and Democrats on the committee, despite the support from law enforcement groups, despite the support from children's advocates, and despite the support from former Government officials for Republican and Democratic administrations, we have been stalled in our ability to move forward to consider this nomination. And, of course, the Justice Department, which is there to represent all Americans—Republicans and Democrats, Independents, and everybody—is left without a deputy for another week.

Quite frankly, I found the news of an imminent Republican filibuster incomprehensible. I could not think of any precedent for this during my 35 years in the Senate. A bipartisan majority—14 to 5—voted to report this nomination from the Judiciary Committee to the Senate. The ranking Republican member of the committee, Senator SPECTER, voted to support this nomination. The assistant Senate Republican leader, Senator KYL, and the senior Senator from South Carolina, Mr. GRAHAM, voted in favor of Mr. Ogden. And yet, in spite of this bipartisan support, someone or a group of Senators on the Republican side of the aisle were intent on filibustering this nominee to stop us from having a Deputy Attorney General who might actually be there to help fight crime in America.

Why there was this attempt of filibustering President Obama's nomination for Deputy Attorney General of the United States, and depriving law enforcement in this country of his support, I cannot not understand.

Two weeks ago, we debated and voted on the nomination in the Judiciary Committee. Those who opposed the nomination had the opportunity to explain their negative vote. I urge all Senators to reject these false and scurrilous attacks that have been made against Mr. Ogden. I also held out hope that they would reject applying an obvious double standard when it comes to President Obama's nominees. Remember, these are the same people who voted unanimously for one of the worst attorneys general in this Nation's history, former Attorney General Gonzales.

I am glad some semblance of common sense has finally prevailed on the Republican side of the aisle. I guess somebody looked at the facts and said: ''This makes absolutely no sense whatsoever, and there is no way of justifying this to Americans, other than to the most partisan of Americans,'' and they reversed their position. They now say they will not filibuster this nomination.

It was disturbing to see the President's nomination of Mr. Ogden to this critical national security post being held up this long by Senate Republicans apparently on some kind of a partisan whim.

I voted for all four of the nominees that the Senate confirmed and President Bush nominated to serve as the Deputy Attorney General during the course of his Presidency. In fact, each of the four was confirmed by voice vote. Not a single Democratic Senator voted against them and some may not have been the people we would have chosen had it been a Democratic President. But we respected the fact the American people elected a Republican President and he deserved a certain amount of leeway in picking his nominees.

Of course, we heard the same preaching from the Republican side. Suddenly their position has now changed since the American people, by a landslide, elected a Democratic President. What Republicans are essentially saying is President Obama does not get the same kind of credit that President Bush did. That amounts to a double standard, especially after every Republican Senator supported each of President Bush's nominees, as they did the nomination of Alberto Gonzales.

Today, however, there will be no more secret and anonymous Republican holds. Any effort to oppose the President's nominees—executive or judicial—will have to withstand public scrutiny. There can be no more anonymous holds. We can turn at last to consideration of President Obama's nomination of David Ogden to be Deputy Attorney General, the No. 2 position at the Department.

Let me tell you a little bit about David Ogden. As a former high-ranking official at both the Defense Department and the Justice Department, he is the kind of serious lawyer and experienced Government servant who understands the special role the Department of Justice must fulfill in our democracy. It is no surprise that his

nomination has received strong support from leading law enforcement organizations, children's advocates, civil rights organizations, and former Government officials from Republican and Democratic administrations.

The confirmation of Mr. Ogden to this critical national security post should not be further delayed. The Deputy Attorney General is too important a position to be made into a partisan talking point for special interest politics.

Now, I understand some people want to do fundraising as they talk about their ability to block nominations of President Obama. I wonder if they know how critical the situation is in this country. This is not the time for partisan political games. This is a time where all of us have a stake in the country getting back on track and we ought to be working to do that. Stop the partisan games. The Deputy Attorney General is needed to manage the Justice Department with its many divisions, sections, and offices and tens of thousands of employees. As Deputy Attorney General, Mr. Ogden would be responsible for the day-to-day management of the Justice Department, including the Department's critical role of keeping our Nation safe from the threat of terrorism.

I want to thank Mark Filip, the most recent Deputy Attorney General and a Republican. Judge Filip came from Chicago last year motivated by public service. He had a lifetime appointment as a Federal judge where he served with distinction as a conservative Republican. He gave up his lifetime appointment after the scandals of the Gonzalez Justice Department, where not only did the Attorney General resign but virtually everybody at the top echelon of the Department of Justice resigned because of the outrageous scandals at that time. I urged his fast and complete confirmation and he was confirmed just over one year ago, unanimously, by voice vote.

Now, are Judge Filip and I different politically? Yes, of course we are. We differ in many areas. Yet, I saw a man dedicated to public service. He gave up his dream of a lifetime position on the Federal bench. He saw the scandals of the former Attorney General and all the people who had to be replaced by President Bush because of the scandalous conduct, and he came in for the good of the country to help right it. I admire him for that. I was chairman of the committee that unanimously endorsed his nomination. As chairman of the committee, I came to the floor of the Senate and urged his support.

On February 4, after 11 months of dedicated and commendable service to us all he left the Justice Department. It is time, over a month later, that his replacement be confirmed by the Senate.

The Senate's quick consideration of Mr. Filip's nomination was reflective of how Senate Democrats approached the confirmations of nominees for this critical position. President Bush's first nominee to serve as Deputy Attorney General, Larry Thompson, received similar treatment. At the beginning of a new President's term, it is common practice to expedite consideration of Cabinet and high level nominees. I remember that nomination very well. I was the ranking Democrat on the committee at that time. His hearing was just 2 weeks after his nomination. He was reported by the Judiciary Committee unanimously. Every Democratic Senator voted in favor of reporting his nomination. And he was confirmed that same day by voice vote by the Senate. No shenanigans. No partisanship. No posturing for special interests.

His replacement was James Comey. He, like Mr. Ogden, was a veteran of the Department of Justice. The Democratic Senators in the Senate minority did not filibuster, obstruct or delay that nomination. We knew how important it was. We cooperated in a hearing less than 2 weeks after he was nominated. He was reported from the committee unanimously in a 19–0 vote, and he was confirmed by the Senate in voice vote.

Even when President Bush nominated a more contentious choice, a nominee with a partisan political background, Senate Democrats did not filibuster. Paul McNulty was confirmed to serve as the Deputy Attorney General in 2006 in a voice vote by the Senate. While there were concerns, there was no filibuster. As it turned out, Mr. McNulty resigned in the wake of the U.S. attorney firing scandal, along with Attorney General Gonzales and so many others in leadership positions at the Department of Justice.

I voted for all four of the nominees that the Senate confirmed and President Bush appointed to serve as the Deputy Attorney General during the course of his presidency. In fact, each of the four was confirmed by voice vote. Not a single Democratic Senator voted against them. And, of course, every Republican Senator supported each of those nominees as they did the nomination of Alberto Gonzales and the other nominations of President Bush to high ranking positions at the Justice Department.

I bring up this history to say let us stop playing partisan games. Mr. Ogden's nomination to be Deputy Attorney General, a major law enforcement position, is supported by Republicans and Democrats, at a time when we need the best in our law enforcement in this country.

The Justice Department is without a confirmed deputy at a time when we face great threats and challenges. Indeed, one of the recommendations of the bipartisan 9/11 Commission was that after Presidential transitions, nominees for national security appointments, such as Mr. Ogden, be accelerated. In particular, the 9/11 Commission recommended:

A president-elect should submit the nominations of the entire new national security team, through the level of undersecretary of cabinet departments, not later than January 20.

The commission also recommended that the Senate:

should adopt special rules requiring hearings and votes to confirm or reject national security nominees within 30 days of their submission.

President Obama did his part when he designated Mr. Ogden to be the Deputy Attorney General on January 5, more than 2 months ago. We now are at March 11. It is time for the Senate to act. Stop the partisan games, stop the holding up, stop the holds and the threats of filibusters and all the rest. The problems and threats confronting the country are too serious to continue to delay and to play partisan games, no matter which fundraising letter somebody wants to send out. Forget the fundraising letters for a moment; let us deal with the needs of our Nation.

Scurrilous attacks against Mr. Ogden have been launched by some on the extreme right. David Ogden is a good lawyer and a good man. He is a husband and a father. The chants that David Ogden is somehow a pedophile and a pornographer are not only false, they are so wrong. Senators know better than that. Forget the fundraising letters, let us talk about a decent family man, an exceptional lawyer. Let us talk about somebody who answered every question at his confirmation hearing, not only about those he represented legally but about his personal views.

I questioned Mr. Ogden at his hearing and he gave his commitment to vigorously enforce Federal law, regardless of the positions he may have taken on behalf of his clients in private practice. I asked him if he had the right experience to be Deputy Attorney General and he pointed out his extensive experience managing criminal matters at the Department and in private practice. I asked him to thoroughly review the practice of prosecutors investigating and filing law suits on the eve of elections, and he said he would. I asked him to work with me on a mortgage and financial fraud law, and he was agreeable. I asked about his experience in the type of national security matters that have become more than ever before central to the mission of the Justice Department, and he highlighted his extensive national security experience and lessons he learned as General Counsel for the Department of Defense. On all these matters he was candid and reassuring.

That is why Mr. Ogden's nomination has received dozens of letters of support, including strong endorsements from Republican and Democratic former public officials and high-ranking veterans of the Justice Department, from the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America, and from nearly every major law enforcement organization.

As one who began his public career in law enforcement, I would not stand

here and endorse somebody for such a major law enforcement position if I did not feel it was a person who should do this. Larry Thompson, a former Deputy Attorney General himself, and somebody I worked with on law enforcement matters when he was here as a Republican nominee, described Mr. Ogden as

> A brilliant and thoughtful lawyer who has the complete confidence and respect of career attorneys at Main Justice. David will be a superb Deputy Attorney General.

Chuck Canterbury, who is the national president of the Fraternal Order of Police, wrote that Mr. Ogden

> . . . possesses the leadership and experience the Justice Department will need to meet the challenges which lay before us.

A dozen retired military officers who served as judge advocates general have endorsed Mr. Odgen's nomination, calling him

> . . . a person of wisdom, fairness, and integrity, a public servant vigilant to protect the national security of the United States, and a civilian official who values the perspective of uniformed lawyers in matters within their particular expertise.

I know something about law enforcement, not only from my past career but the 35 years I have served in this body, most of that time on the Senate Judiciary Committee dealing with law enforcement matters. I know that David Ogden is an immensely qualified nominee whose priorities would be the safety and security of the American people, but also to reinvigorate the traditional work of the Justice Department in protecting the rights of Americans—all Americans. We do not want to go back to the scandalous time of a former Attorney General, where the rights of only certain Americans were protected, and political and partisan decisions were made about whose rights would be protected. This is the Department of Justice. It is the Deputy Attorney General of the United States. It is not the Deputy Attorney General of the Republican Party or the Democratic Party, but the Deputy Attorney General for all of us. That is why he is going to be a critical asset to the Attorney General.

I urge all Senators to support him. Give the same kind of support to Mr. Ogden as Democrats did to Judge Filip when he came in to try to clean up the mess created by a former Attorney General.

One of the joys of being chairman of the Senate Judiciary Committee are the people I get to serve with. Over the years, I have served with numerous Senators, including the father of one of our current Senators. For a lawyer, it is an intellectually exhilarating committee to serve on, but again because of some of the great people who serve here.

The Senator from Delaware is the newest member of the committee because the former Senator from Delaware—whom I served with for well over 30 years on that committee. Part of the time he was chairman and part of the time he was ranking member; part of the time I was chairman and part of the time he was ranking member—has left the Senate to be involved in the Senate now only as the presiding officer, because he went on to become Vice President of the United States. His replacement, Senator KAUFMAN of Delaware, moved into that seat on the Senate Judiciary Committee as though he had served there for all those decades. In a way, he did, as a key person working for former Senator BIDEN.

I have often joked that Senators are merely constitutional impediments or constitutional necessities to the staff, who do all the work. Now we have somebody who has both the expertise of having been one of the finest staff people I have ever served with and now one of the best Senators I have served with, and a great addition to the Senate Judiciary Committee.

So as not to embarrass him further, I will yield to the distinguished Senator from Delaware.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, people have asked me what it is like to be a Senator as opposed to being chief of staff, and one of the great things is getting to work with a chairman such as Chairman LEAHY on the Judiciary Committee; someone who knows what he is about, knows the Senate, and is a former prosecutor. We are truly fortunate to have him as chair and also to have a truly great staff on the Senate Judiciary Committee, led by Bruce Cohen. So it is a great and a genuine pleasure. Pleasure is used a lot of times on the floor. Sometimes it is not too pleasurable. But this is truly pleasurable, to work with the chairman and the staff of the Judiciary Committee, but especially the chairman. So I thank the chairman for his kind remarks.

I do agree with so much of what he has to say about David Ogden for Deputy Attorney General. I, along with him, am deeply disappointed that the nomination of David Ogden for Deputy Attorney General has been so needlessly delayed. This has real consequences for the administration of law in our country during a challenging time. Depriving the Department of Justice of senior leadership at this critical juncture is much more than unfortunate.

As we saw from his confirmation hearings in the Judiciary Committee more than a month ago, David Ogden has excellent academic credentials and broad experience in law and government. He fully understands the special role of the Department of Justice and is deeply committed to the rule of law. He has broad support from lawyers of all political and judicial philosophies.

President Obama designated Mr. Ogden be Deputy Attorney General on January 5, which seems like an eternity ago—over 2 months ago. We held his confirmation hearing in the Judiciary Committee over a month ago and, on February 26, after thorough consideration, a bipartisan majority of the committee, 14 to 5, voted to report his nomination. The ranking member, the Senate minority whip and the well-respected senior Senator from South Carolina, voted in favor of his nomination.

Despite that bipartisan vote and broad support from law enforcement groups, children's advocates, civil rights organizations, former Democratic and Republican officials, his nomination has faced unwarranted delay. This delay is unfortunate in itself, particularly when the nominee has impeccable credentials and broad support. However, as important, this delay has come at a critical time for the Department of Justice. Without a Deputy Attorney General, the Department is forced to deal with some of the most important issues facing this Nation with one hand tied behind its back.

The Deputy Attorney General holds the No. 2 position at the Department of Justice and, as we all know, is responsible for the day-to-day management of the Department, including critical national security responsibilities. The Deputy Attorney General, for example, signs FISA applications. These are essential to ensuring that our intelligence services get the information they need to protect us from terrorism and other national security threats. The Deputy Attorney General will also play an important role in overseeing the Guantanamo Bay detainee review, to make sure we assess each of the remaining detainees and make sure they are safely and appropriately transferred—I know an issue that everyone in this body shares a concern about.

One of the recommendations of the bipartisan 9/11 Commission was that after Presidential transitions, nominations for national security appointments, such as Mr. Ogden's, be accelerated. The delay we are seeing now, to put it mildly, is not helping those who are sworn to protect our country. The Deputy Attorney General manages the criminal division of the FBI, which helps keep Americans safe, not only from violent crime but also from financial fraud. In the aftermath of the financial fraud meltdown that has thrown the American economy into a serious recession, we must ensure that lawbreakers will be identified and prosecuted for financial fraud. Punishing complex financial crimes and deterring future fraud are vital in restoring confidence in our decimated financial markets. How can people be expected to go back in the market again when they do not know or cannot have confidence that the people who perpetrated these crimes are not still there but are in jail? This is important. As we know in dealing with crime, the sooner you deal with it after the crime happens the better your chance of catching the people involved. Getting the Deputy Attorney General involved as soon as possible is essential for our financial well-being.

The Deputy Attorney General also oversees efforts to fight waste and corruption in Federal programs by means of the False Claims Act. As we expend vast sums in two wars and work to stimulate the economic recovery, we must do everything we can to make sure the taxpayer dollars are well spent. Along the same line, the Deputy Attorney General oversees the distribution of billions of dollars in economic recovery funds in support of critical State and local law enforcement initiatives. Everyone agrees that to fulfill the promise of the economic recovery package, we need to get the funds out the door quickly. Again, depriving the Department of Justice of senior leadership at this critical time is bad policy.

The American people need a Deputy Attorney General in place now, to meet all these critical efforts. The problems and threats confronting the country are too serious to delay.

We know David Ogden is extraordinarily well qualified. We know the Judiciary Committee fully vetted his background, experience and judgment and reported out his nomination with a bipartisan majority. We know the Attorney General needs his second in command as well as other members of his leadership team in place and working as soon as possible. We know further delay in this crucial nomination is inexcusable.

I hope on this nomination, and going forward, we do better.

I yield the floor, suggest the absence of a quorum, and ask the time be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mr. SPECTER. Madam President, at the outset in addressing the Chair, may I note that it is my distinguished colleague, Senator CASEY from Pennsylvania. Nice to see you acting as Vice President, Senator CASEY.

May I just say that in the 2 years plus that you have been here, I have admired your work and found it very gratifying to be your colleague in promoting the interests of our State and our Nation.

I have sought recognition to comment on the nomination of David W. Ogden to be Deputy Attorney General. In reviewing the pending nomination, I have noted Mr. Ogden's academic and professional qualifications. I have also noted certain objections that have been raised by a number of organizations. As a matter of fact, some 11,000 contacts in opposition to the nomination have been received by our Judiciary Committee offices.

As to Mr. Ogden's background, his resume, his education, and his professional qualifications—he received his undergraduate degree from the University of Pennsylvania in 1976, Phi Beta Kappa, and his law degree from Harvard, magna cum laude, where he was an editor of the Law Review.

I know it is difficult to get a Phi Beta Kappa key at the University of Pennsylvania. I know that being on the Law Review at a school like Harvard is an accomplishment. He then clerked for Judge Sofaer on the United States District Court for the Southern District of New York. I came to know Judge Sofaer when he was counsel to the New York Department of State. I have a very high regard for him.

Mr. Ogden then clerked for Harry Blackmun on the Supreme Court. That is a distinguished achievement. Then he worked for Ennis Friedman Bersoff & Ewing and became a partner there. Then he was a partner at Jenner & Block and was an adjunct professor at Georgetown University Law Center from 1992 to 1995. He then had a string of prestigious positions in the Department of Justice: Associate Deputy Attorney General, Counselor to the Attorney General, Chief of Staff to the Attorney General, Acting Assistant Attorney General for the Civil Division, and Assistant Attorney General for the Civil Division—all during the administration of President Clinton.

We have seen quite a series of nominees come forward when the current administration selects people from a prior administration. There have been quite a few people who served in President Reagan's administration who later served in President George H.W. Bush's administration. Then some of those individuals served in the administration of President George W. Bush. Similarly, individuals from President Carter's administration came back with President Clinton, and the people from President Clinton are now serving in President Obama's administration. So it is a usual occurrence.

Contrasted to the resume Mr. Ogden has, I have noted the objections raised by the Family Research Council headed by Mr. Tony Perkins, who wrote the committee expressing his concerns about Mr. Ogden's nomination because, as Mr. Perkins puts it:

> Mr. Ogden has built a career on representing views and companies that most Americans find repulsive . . . Mr. Ogden has also profited from representing pornographers and in attacking legislation designed to ban child pornography.

It was also noted by those opposing his nomination that a brief filed by Mr. Ogden in Planned Parenthood v. Casey argued that ''women who have had abortions suffer no detrimental consequences and instead should feel 'relief and happiness' after aborting a child.'' Fidelis, a Catholic-based organization, Concerned Women of America, Eagle Forum, and the Alliance Defense Fund have also written the committee in opposition to Mr. Ogden's nomination based on similar concerns; specifically, his representation of several entities in the pornography industry and organizations that oppose restrictions on abortions.

As I noted earlier, the committee has received an unprecedented number of opposition phone calls and letters for a Department of Justice nominee. In total, the committee has received over 11,000 contacts in opposition to the nomination.

The objections raised call into focus the issue as to whether an attorney ought to be judged on the basis of arguments he has made in the representation of a client. I believe it is accurate to say that the prevailing view is not to bind someone to those arguments. I note an article published by David Rivkin and Lee Casey, who served in the Justice Department under President Reagan and President George H.W. Bush, that advances the thesis that a lawyer is not necessarily expressing his own views when he represents a client. They point out how Chief Justice Roberts' nomination to serve on the U.S. Court of Appeals for the District of Columbia Circuit was vociferously opposed by pro-choice groups based upon briefs he had filed when he served as Deputy Solicitor General under President George H.W. Bush and the arguments for restrictions of abortion rights contained in those briefs. I recollect that NARAL had a commercial opposing then-Judge Roberts. I spoke out at that time on the concern I had about their inference that those were necessarily his own views. As I recollect, NARAL withdrew the commercial.

The article by Mr. Rivkin and Mr. Casey notes the objections of the Family Research Council, Focus on the Family, and Concerned Women for America, and comes to the conclusion that a persons's representation of a client does not necessarily state what a person's views are on an issue.

I further note that Mr. Ogden has been endorsed by very prominent people from Republican administrations: Deputy Attorney General Larry Thompson, former Assistant Attorney General Peter Keisler, former Assistant Attorney General Rachel Brand, and former Acting Assistant Attorney General Daniel Levin.

Professor of law Orin Kerr at George Washington University Law School noted that he disagreed with arguments that Mr. Ogden had made, but despite his disagreement with Mr. Ogden's arguments, he believed those arguments should not be held against him.

In the consideration of nominees who are now pending before the Judiciary Committee, we are taking a very close look at all of them. I think it appropriate to note at this point that the nomination of Harvard Law School dean Elena Kagan is being analyzed very carefully. Without going into great detail at this time because her nomination, which has been voted out of committee, will be on the floor at a later date, I and others voted to pass

on Ms. Kagan because we are not satisfied with answers to questions that she has given.

I ask unanimous consent to put in the RECORD a letter that I wrote to Dean Kagan, February 25, 2009, and her reply to me on March 2, 2009.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 25, 2009.

Dean ELENA KAGAN,
Harvard Law School,
Cambridge, MA.

DEAR DEAN KAGAN: I write to express my dissatisfaction with many of the answers you provided to the Committee in response to my written questions following your confirmation hearing. I believe these answers are inadequate for confirmation purposes.

In a 1995 review of a book entitled The Confirmation Mess, you made a compelling case for senatorial inquiry into a nominee's judicial philosophy and her views on specific issues. You stated, ''when the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public.'' You further asserted that the Senate's inquiry into the views of executive nominees, as compared to Supreme Court nominees, should be even more thorough, stating, ''the Senate ought to inquire into the views and policies of nominees to the executive branch, for whom 'independence' is no virtue.'' I agree with the foregoing assessment, and, therefore, am puzzled by your responses, which do not provide clear answers concerning important constitutional and legal issues.

For example, in response to several questions related to the constitutionality of the imposition of the death penalty, you offer only the following: ''I do not think it comports with the responsibilities and role of the Solicitor General for me to say whether I view particular decisions as wrongly decided or whether I agree with criticisms of those decisions. The Solicitor General must show respect for the Court's precedents and for the general principle of stare decisis. If I am confirmed as Solicitor General, I could not frequently or lightly ask the Court to reverse one of its precedents, and I certainly would not do so because I thought the case wrongly decided.'' You repeatedly provide this answer verbatim, or a similarly unresponsive answer, to numerous questions regarding the First and Second Amendments, property rights, executive power, habeas corpus rights of detainees, the use of foreign law in constitutional and statutory analysis, and the Independent Counsel statute, among others. I think you would agree that, given the gravity of these issues and the significance of the post for which you are nominated, this Committee is entitled to a full and detailed explanation of your views on these matters.

Please provide the Committee with adequate answers to these questions so that I may properly evaluate your nomination and determine whether any supplemental questions are necessary.

Sincerely,

ARLEN SPECTER.

HARVARD LAW SCHOOL,
OFFICE OF THE DEAN,
Cambridge, MA, March 2, 2009.

Senator ARLEN SPECTER
U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR SPECTER: I am writing in response to your letter of February 25. I am sorry that you believe some of my answers to written questions to be inadequate. I wish to respond to your request for additional information as fully as possible while still meeting the obligations attendant to a nominee for the Solicitor General's office.

Let me first say how much I respect the Senate and its institutional role in the nominations process. As the members of a coequal branch of government charged with the ''advice and consent'' function, you and your colleagues have a right and, indeed, a duty to seek necessary information about how a nominee will perform in her office. By the same token, each nominee has a responsibility to address senatorial inquiries as fully and candidly as possible. But some questions—and these questions will be different for different positions—cannot be answered consistently with the responsible performance of the job the nominee hopes to undertake. For that reason, some balance is appropriate, as I remarked to Senator Hatch at my nomination hearing and as you quoted approvingly in the introduction to your written questions.

I endeavored to strike that proper balance in responding to your and other senators' written questions. I answered in full every question relating to the Solicitor General's role and responsibilities, including how I would approach specific statutes and areas of law. I also answered in detail every question relating to my own professional career, including my relatively extensive writings and speeches. Finally, I answered many questions relating to general legal issues. In short, I did my best to provide you and the rest of the Committee with a good sense of who I am and of how I would approach the role of Solicitor General. The only matters I did not address substantively were my personal views (if any) regarding specific Supreme Court cases and constitutional doctrines. These personal views would play no role in my performance of the job, which is to represent the interests of the United States; and expressing them (whether as a nominee or, if I am confirmed, as Solicitor General) might undermine my and the Office's effectiveness in a variety of ways.

In answering these questions as I did, I was cognizant of the way other nominees to the position of Solicitor General have replied to inquiries from senators. For example, in answering a question about his views of the use of foreign law in legal analysis, Paul Clement wrote: ''As Solicitor General, my role would be to advance the interests of the United States, and previous statements of my personal views might be used against the United States' interests, either to seek my recusal, to skew my consideration of what position the United States should take, or to impeach the arguments eventually advanced by the United States.'' Similarly, Seth Waxman stressed in responding to questions about his understanding of a statute that ''[i]t is the established practice of the Solicitor General not to express views or take positions in advance of presentation of a concrete case'' and prior to engaging in extensive consultation within and outside the office. The advice I received from former Solicitors General of both parties prior to my nomination hearing was consistent with what the transcripts of their hearings reveal: all stressed the need to be honest and forthcoming, but also the responsibility to protect the interests of the office and of the United States. In my hearing and in my responses to written questions, I believe I have provided at least as much information to the Committee as any recent nominee.

As you noted to me when we met, I have lived my professional life largely in the public eye. I have written and spoken widely, so the Committee had the opportunity to review many pages of my law review articles and many hours of my remarks. I tried to answer every question put to me at my hearing completely and forthrightly. I met with every member of the Committee who wished to do so in order to give all of you a more personal sense of the kind of person and lawyer I am. I submitted letters from numerous lawyers, who themselves hold views traversing the political and legal spectrum, indicating how I approach legal issues. And as noted above, I answered many written questions from you and other members of the Committee.

In all, I did my best to provide you and the other members of the Committee with a complete picture of who I am and how I would approach the role of Solicitor General, consistently with the responsibilities of that office and the interests of the client it serves. But I am certainly willing to do anything else I can to satisfy your concerns, including meeting with you again.

Thank you for your consideration of this letter.

Sincerely,

ELENA KAGAN.

Mr. SPECTER. The comments that are in Ms. Kagan's letter require further analysis. She has, as a generalization, stated that she does not think it appropriate to answer certain questions about her views because she has the ability as an advocate to disregard her own personal views and to advocate with total responsibility to the law, even though she may have some different point of view. I think as a generalization, that is valid. However, as I discussed at her hearing, some of her points of view raise a question as to whether, given the very strongly held views she has expressed, she can totally put those views aside. When her nomination was before the committee for a vote, I passed. I agreed it ought to go to the floor, and we ought not to delay; but I wanted to have another talk with her. I have scheduled a meeting for tomorrow to go over Dean Kagan's record because I think it is important to take a very close look at it.

I also think it is relevant to comment about the pending nomination of Dawn Johnsen for Assistant Attorney General in charge of the Office of Legal Counsel. That is the Assistant Attorney General who passes on legal questions, a very important position. They all are important, whether it is Deputy Attorney General or Solicitor General or Assistant Attorney General for the various divisions. But the Office of Legal Counsel, OLC as it is called, is especially important. We now have challenges in dealing with opinions on the torture issue by people who held leadership positions in the Office of Legal Counsel under President George W. Bush—whether they were given in good faith and whether they went far beyond the law as to what interrogation tactics were appropriate.

With respect to Ms. Johnsen's nomination, she has equated limiting a woman's right to choose with slavery in violation of the 13th amendment. While I personally believe, as did Senator Goldwater, that we ought to keep the Government out of our pocketbooks, off our backs, and out of our bedrooms, I am not going to raise the contention that abortion restrictions are a violation of the 13th amendment and that it constitutes slavery. Her nomination is being subjected to very careful analysis, especially the part of her testimony where she disclaimed making that the connection between abortion restrictions and the 13th amendment because the records and a footnote suggest the contrary.

I talk about the nominations of Dean Kagan and Ms. Johnsen briefly, when considering the nomination of Mr. Ogden, to point out that there is very careful scrutiny given to these very important positions. I am looking forward to meeting Dean Kagan tomorrow to examine further her capabilities to be the Solicitor General and advance arguments with the appropriate adversarial zeal. We have an adversarial system. We put lawyers on opposite sides of the issue and we postulate that, from the adversarial system, the truth is more likely to emerge. An advocate has to pursue the cause within the range of advocacy. With Ms. Johnsen, we are going to be considering further her qualifications in light of her statements to which I have referred.

But coming back to Mr. Ogden, my net conclusion is that he ought to be confirmed. I say that based upon a resume that is very strong, both academically and professionally. I think it is important to note that when questioned about some of his positions, Mr. Ogden has, one might say, backed off some of his earlier views. When asked about some of the things he had written, he criticized a 1983 memo he wrote when he was a law clerk to Justice Blackmun that referred to the defenders of a challenged law in a way that disparagingly suggested their insincerity. He told the committee that after maturing, he had some different views.

In a 1990 tribute to Justice Blackmun, he expressed agreement with the Justice's endorsement of affirmative action programs that entailed setasides or quotas. At his hearing, he said he now believes that such an approach was inappropriate and instead believes that consideration of race, as he put it, ''in limited circumstances'' should be one of many factors in affirmative action programs.

Mr. Ogden also stated he no longer agrees with the position he took in a 1980 case comment that ''state expansion of speech rights at the expense of property rights does not constitute a taking.'' That case comment involved the issue of whether there was an unlimited right of speech on private property. So he has maintained a little different position. It is fair to raise a question about whether statements made in the confirmation amount to a confirmation conversion. That has been an expression used from time to time that you have to take statements at a confirmation with a grain of salt because of the motivation to be confirmed. That has to be taken into account. But I listened to what Mr. Ogden had to say, and I think he is entitled to modify his views over a substantial period of time from what he did in 1983 and 1990, with a maturation process.

Then there is the consideration that the President is entitled to select his appointees within broad limits. The Deputy Attorney General, while important, is not a lifetime appointment as a judge. I had a call from the Attorney General who raised the issue that he does not have any deputies and the Department of Justice has now been functioning for more than a month and a half. It is a big, important department, and we ought to give appropriate latitude to President Obama and appropriate latitude to Attorney General Holder and move ahead with Mr. Ogden's confirmation.

For all of those factors, I intend to vote in favor of Mr. Ogden. I think those who have raised objections have done so, obviously, in good faith. They are entitled to have their objections considered and to know that the Judiciary Committee is giving very careful analysis to their facts and will do so, as I have outlined, on the consideration of other nominees.

Madam President, I ask unanimous consent that the full text of an article I referred to from Mr. Rivkin and Mr. CASEY be printed in the CONGRESSIONAL RECORD, along with the résumé of Mr. Ogden.

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

DON'T BLAME THE LAWYER

(By David B. Rivkin Jr. and Lee A. Casey)

President Barack Obama's selection of David Ogden as deputy attorney general has drawn fire from conservative family values groups, including the influential Family Research Council, Focus on the Family, and Concerned Women for America. Conservative talk show hosts including Fox News' Bill O'Reilly, have highlighted the story, and there appears to be a real effort under way to derail the nomination.

This effort undoubtedly has not escaped notice on Capitol Hill, and several Republican senators on the Judiciary Committee—including Orrin Hatch (Utah), Jon Kyl (Ariz.), and Jeff Sessions (Ala.)—have pressed Ogden on some of the issues raised by these groups.

Unfortunately, much of this opposition from the family values groups is based upon Ogden's representation of controversial clients and the positions he has argued on their behalf. This tactic has been used against conservatives in the past, including Chief Justice John Roberts Jr. Punishing lawyers for who they represent and what they argue before the courts is not in the interest of justice and makes for bad public policy.

''FROM PLAYBOY''?

Among the principal objections to Ogden's nomination is that he has represented adult magazine, book, and film producers, including Playboy and Penthouse, on whose behalf he has argued for a broad interpretation of First Amendment protections.

Ogden also represented a number of library directors who filed an amicus brief supporting the American Library Association's challenge to the Children's Internet Protection Act of 2000, which among other things required the use of Internet filtering software by public libraries.

In addition, as noted by the Family Research Council, ''Ogden worked for the ACLU and filed a brief in the landmark abortion case Planned Parenthood v. Casey that denied the existence of adverse mental health effects of abortion on women:''

His participation and arguments in cases involving parental notification, the Pentagon's ''don't ask, don't tell'' policy, and gay rights has also raised conservative hackles. According to the president of an important Catholic values organization, ''David Ogden is a hired gun from Playboy and the ACLU. He can't run from his long record of opposing common-sense laws protecting families, women, and children.''

ZEALOUS REPRESENTATION

The premise of this opposition is a familiar one—that lawyers must be presumed to agree with, or be sympathetic to, the clients they represent or, at a minimum, that they should be held accountable for the arguments they advance on a client's behalf. In fact, of course, lawyers represent clients for many and varied reasons—for money or fame, out of a sense of duty, an interest in a particular subject matter, or for professional growth and development. Sometimes lawyers are motivated by all of the above, and more.

It is simply inaccuracy to attribute to a lawyer his or her client's beliefs. That is just not the way our legal system works—at least not all the time.

Sometimes, of course, lawyers do personally agree with the client's substantive views and the legal positions they advance. There is no doubt that lawyers are often drawn to a pardcular area of practice, or undertake to represent particular clients—especially on a pro bono basis—because they do believe in the client's cause. It is possible, however, to believe in a client's cause—a broad application of free speech rights, for example—and not to approve of the client's personal behavior or business model.

And, just as a lawyer's character cannot be judged based on a client list, neither can a lawyer's policy preferences easily be divined by reading his or her briefs. Lawyers must represent their clients zealously, and this means they often must deploy legal arguments with which they personally disagree.

SUBVERTING THE SYSTEM

Moreover, even in cases where a lawyer does share the client's opinions, or where he or she personally believes that the law means, or should mean, what the briefs say, there are very good reasons why this should not disqualify such individuals from high government office.

Lawyers are human beings, and punishing them in this way would result in many avoiding controversial clients and causes. Indeed, this is often the purpose and intent of such opposition, but it also is subversive of our legal system. That system is adversarial and works only if both sides of an issue are adequately represented. If there are clients or causes, be they the adult entertainment industry, tobacco companies, or Guantánamo detainees, that are classified as being so disreputable or radioactive that their lawyers are later personally held to account for representing them, the quality of justice will suffer.

Conservatives and Republicans who are tempted in that direction now that a liberal

Democrat is in office should recall that similar arguments about supposedly disreputable clients and unacceptable arguments have been raised against their own nominees in the past. For example, now-Chief Justice Roberts' nomination to serve on the U.S. Court of Appeals for the D.C. Circuit was vociferously opposed by pro-choice groups based upon briefs he had filed—and the arguments for restriction of abortion rights they contained—when he served as deputy solicitor general under President George H.W. Bush.

CLEARLY QUALIFIED

Although there are many issues on which conservatives can and should disagree with Ogden as ideological matters, those disagreements are not good reasons why he should not be confirmed as deputy attorney general. His views of the law and legal policy are certainly legitimate topics of inquiry and debate, both for the Senate and the public in general, but only in the context of what they may mean about Obama's own beliefs and plans.

Like his presidential predecessors, Obama is entitled to select the men and women who will run the federal government, including the Justice Department, exercising the executive authority vested in him as president by the Constitution.

It is entirely appropriate that Obama's appointees share his policy preferences and ideological inclinations. If their legal views are considered by some to be out of the ''mainstream,'' that is the president's problem. If they push for extreme policies, it will be up to Obama to curtail them. If not, there will be another election in 2012, at which time the country can call him to account.

In the meantime, so long as the individuals Obama chooses to serve in the executive branch have sufficient integrity, credentials, and experience to perform the tasks they will be assigned, they should be confirmed.

This is the case with Ogden. He is clearly qualified for the job. His training and experience are outstanding, including a Harvard law degree and a Supreme Court clerkship. Ogden has practiced at one of the country's premier law firms. He served as Attorney General Janet Reno's chief of staff and as assistant attorney general in charge of the Justice Department's Civil Division—its largest litigating unit—in the Clinton administration. This service is important. The deputy attorney general is, in large part, a manager, and Ogden clearly understands the Justice Department, its role in government, its career lawyers, and its foibles.

Significantly, his nomination has been endorsed by a number of lawyers who served in the Reagan and two Bush administrations, including one who preceded, and one who succeeded, Ogden as head of the Civil Division. They are right; he should be confirmed.

DAVID W. OGDEN

DEPUTY ATTORNEY GENERAL

Birth: 1953; Washington, DC.

Legal Residence: Virginia.

Education: B.A., summa cum laude, University of Pennsylvania, 1976, Phi Beta Kappa; J.D., magna cum laude, Harvard Law School, 1981, Editor, Harvard Law Review.

Employment: Law Clerk, Hon. Abraham D. Sofaer, U.S. District Court Judge for the Southern District of New York, 1981–1982; Law Clerk, Hon. Harry A. Blackmun, U.S. Supreme Court, 1982–1983; Associate, Ennis, Friedman, Bersoff & Ewing, 1983–1985, Partner and Attorney, 1986–1988; Partner and Attorney Jenner & Block, 1988–1994; Adjunct Professor, Georgetown University Law Center, 1992–1995; Deputy General Counsel and Legal Counsel, Department of Defense, 1994–1995; Department of Justice, 1995–2001, Associate Deputy Attorney General, 1995–1997, Counselor to the Attorney General, 1997–1998, Chief of Staff to the Attorney General, 1998–1999, Acting Assistant Attorney General for the Civil Division, 1999–2000, Assistant Attorney General for the Civil Division, 2000–2001; Partner and Attorney, Wilmer Cutler Pickering Hale and Dorr LLP, 2001–present; Agency Liaison for the Department of Justice, Presidential Transition Team, 2008–2009.

Selected Activities: Member, American Bar Association, 1983–present, Ex officio member and governmental representative, Council of the Section of Litigation, 1998–2001; Member, First Amendment Lawyers Association, 1991–1994; Fellow, American Bar Foundation, 2002–present; Member of Advisory Board, Bruce J. Ennis Foundation, 2002–2009; Member of Advisory Board, Washington Project for the Arts, 2004–2007; Member, Senior Legal Coordinating Committee, Barack Obama's Presidential Campaign, 2007–2008.

Mr. SPECTER. I thank the Chair and yield the floor to my distinguished colleague from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I ask unanimous consent that I be allowed to speak as in morning business and that the time be charged against the time under the control of the majority on the nomination.

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

HEALTH CARE REFORM

Mr. BAUCUS. Mr. President, on February 24, President Obama said:

> [N]early a century after Teddy Roosevelt first called for reform, the cost of our health care has weighed down our economy and the conscience of our nation long enough. So let there be no doubt: Health care reform cannot wait, it must not wait, and it will not wait another year.

I could not agree more with our President. Our next big objective is health care reform. Comprehensive health care reform is no longer simply an option, it is an imperative. If we delay, the problems we face today will grow even worse. If we delay, millions more Americans will lose their coverage. If we delay, premiums will rise even further out of reach. And if we delay, Federal health care spending will soak up an even greater share of our Nation's income.

In the Finance Committee, we have now held 11 hearings preparing for health care reform. We held our latest hearing yesterday. The Director of the Office of Management and Budget, Dr. Peter Orszag, testified to the Finance Committee about the President's health care budget.

Yesterday, Director Orszag told the committee the cost of not enacting health care reform is enormous. He said:

> The cost of doing nothing is a fiscal trajectory that will lead to a fiscal crisis over time.

Director Orszag said if we do not act, then we will further perpetuate a system in which workers' take-home pay is unnecessarily reduced by health care costs. Director Orszag said if we do not act, then 46 million uninsured Americans will continue to be denied adequate health care. According to the Center for American Progress, the ranks of the uninsured grow by 14,000 people every day—14,000 more people uninsured every day. And Director Orszag said if we do not act, then a growing burden will be placed on State governments, with unanticipated consequences. For example, health care costs will continue to crowd out State support of higher education. That would have dire consequences for the education of our Nation's young people.

We must move forward. Senator GRASSLEY and I have laid out a schedule to do just that. Our schedule calls for the Finance Committee to mark up a comprehensive health care reform bill in June. We should put a health care bill on the President's desk this year.

The President's budget makes a historic downpayment on health care reform. Over the next 10 years, the President's budget invests $634 billion to reform our health care system.

Reforming health care means making coverage affordable over the long run. It means improving the quality of the care. And I might say, our quality is not as good as many Americans think it is, certainly compared to international norms. It means expanding health insurance to cover all Americans. We need fundamental reform in cost, quality, and coverage. We need to address all three objectives at the same time. They are interconnected. If you do not address them together, you will never really address any one of them alone.

Costs grow too rapidly because the system pays for volume, not quality. Quality indicators such as lifespan and infant mortality remain low. Why? Because too many are left out of the system. Families do not get coverage because health costs grow faster than wages. And without coverage, health insurance costs increase because providers shift the cost of uncompensated care to their paying customers. It is a vicious cycle. Each problem feeds on the others.

We need a comprehensive response. Let us at long last deliver on the dream of reform Teddy Roosevelt called for nearly a century ago. Let us at long last lift the burden of health care costs on our economy and on the conscience of our Nation. And let us at long last enact health care reform this year.

Madam President, I suggest the absence of a quorum and ask unanimous consent that the time consumed during the quorum call be charged equally against both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Madam President, I would like to say a few words in opposition to the nomination of David Ogden to be Deputy Attorney General at the U.S. Department of Justice.

There is no doubt that Mr. Ogden is an experienced lawyer. However, I have serious concerns about Mr. Ogden's views and some of the cases he has argued. Mr. Ogden is an attorney who has specialized in first amendment cases, in particular pornography and obscenity cases, and has represented several entities in the pornography industry. He has argued against legislation designed to ban child pornography, including the Children's Internet Protection Act of 2000 and the Child Protection and Obscenity Enforcement Act of 1998. These laws were enacted to protect children from obscene materials in public libraries and to require producers of pornography to personally verify that their models are not minors. I supported both these important pieces of legislation.

In addition, Mr. Ogden authored a brief in the 1993 case Knox v. United States, where he advocated for the same arguments to shield child pornography under the first amendment that the Senate unanimously rejected by a vote of 100 to 0 and the House rejected by a vote of 425 to 3. In the Knox case, the Bush I Justice Department successfully had prosecuted Knox for violating Federal antipornography laws; but on appeal to the U.S. Supreme Court, the Clinton Justice Department reversed course and refused to defend the conviction. After significant public outrage, President Clinton publicly chastised the Solicitor General, and Attorney General Reno overturned the position. At the time, I was involved in the congressional effort opposing this switch in the Justice Department's position on child pornography.

Mr. Ogden also has filed briefs opposing parental notification before a minor's abortion, opposing spousal notification before an abortion, and opposing the military's policy against public homosexuals serving in uniform.

Significant concerns have been raised in regard to Mr. Ogden's nomination. I have heard from a very large number of Iowa constituents, including the Iowa Christian Alliance, who are extremely concerned with Mr. Ogden's ties to the pornography industry and the positions he has taken against protecting women and children from this terrible scourge. The Family Research Council, Concerned Women of America, Eagle Forum, Fidelis, the Alliance Defense Fund, and the Heritage Foundation, among others, have all expressed serious concerns about Mr. Ogden's advocacy against restrictions on pornography and obscenity.

The majority of Americans support protecting children from pornography exploitation, protecting children from Internet pornography in libraries, and allowing for parental notification before a minor's abortion. So do I. I feel very strongly about protecting women and children from the evils of pornography. I have always been a strong supporter of efforts to restrict the dissemination of pornography in all environments. As a parent and grandparent, I am particularly concerned that children will be exposed to pornographic images while pursing educational endeavors or simply using the Internet for recreational purposes. Throughout my tenure in Congress I have supported bills to protect children from inappropriate exposure to pornography and other obscenities in the media, and I support the rights of parents to raise children and to be active participants in decisions affecting their medical care. Mr. Ogden has consistently taken positions against these child protection laws and this troubles me.

Because of my concerns, I must oppose the nomination of David Ogden.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Madam President, I didn't make a complete request, as I should have, for a quorum, so I ask unanimous consent that the time be evenly divided.

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

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Madam President, I ask unanimous consent to speak in morning business for as much time as I may consume.

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

TRANSPORTATION TROUBLES

Mr. DORGAN. Last evening, I was driving from the Capitol and listening to Jim Lehrer News Hour. They had a report about transit systems in this country that are facing significant financial problems. The report was fairly interesting. It turns out to be a subject with which I am fairly familiar. The report was that there are more than a couple dozen transit agencies in some of America's largest cities that are in deep financial trouble. Why? Because they had sold their subway system or bus system to a bank in order to raise needed revenue. Under what is called a SILO, a sale in/lease out transaction, a city can sell its property to a bank, so the bank takes title to the property. The bank then leases it back to the city, and the bank gets a big tax write-off because it can depreciate the property. So the city still gets to use its subway system because they are leasing it back.

All of a sudden, a couple dozen cities discovered that this transaction they entered into, which I think is kind of a scam, landed them in huge trouble because the transaction was insured with a derivative that went through AIG. AIG's credit rating collapsed, and now the banks are calling in substantial penalties on the part of the transit system that they cannot meet. So they are in trouble.

Surprised? I am not particularly surprised. I have been on the floor of the Senate talking about what is happening with respect to these so-called sale in/lease out, SILO practices. I have talked about banks and about Wachovia Bank, by the way, which was buying German sewer systems. I will describe a couple of these transactions. These are cross-border leasing provisions, sale and lease back.

Wachovia Bank buys a sewer system in Bochum, Germany. Why? Is it because it is a sewer specialist? Do they have executives who really know about sewers in Germany? I don't think so. This is a scam. It has always been a scam. An American bank buys a sewer system in a German city so it can depreciate the assets of that sewage system and then lease it back to the German city. The Germans were scratching their heads, saying: This seems kind of dumb, but as long as we are on the receiving end of a lot of money, we are certainly willing to do it.

I am showing this example of a bank called Wachovia, which used to be First Union, that originally started some of these transactions. I believe Wachovia itself, which was in deep financial trouble, has now been acquired by Wells Fargo. First Union was involved in a cross-border lease of Dortmund, Germany, streetcars. What is an American bank doing leasing streetcars in a German city? To avoid paying U.S. taxes, that is why.

We have seen all kinds of these transactions going on. I have described them on the floor of the Senate previously.

This one is the transit system railcars in Belgium. Since many of these transactions are confidential, I don't know which American company bought Belgium National Railway cars. One of our corporations bought the Liefkenshoek Tunnel under the river in Antwerp, Belgium. Why? To save money on taxes. Some companies don't want to pay their taxes to this country.

PBS Frontline's Hedrick Smith did a piece on it. The cross-border leasing contracts appear particularly hard to justify because all the property rights remain as they were even after the deal was signed. The Cologne purification plant keeps cleaning Cologne's sewage water. In the words of Cologne's city accountant:

After all, the Americans should know themselves what they do with their money.

If they subsidize this transaction, we gratefully accept.

I mention this because the tax shelters that big American banks and some cities have discovered are unusual and, I think, raise very serious questions about whether they are fair to do.

Here is a Wall Street Journal article about how the city of Chicago actually sold Chicago's 9–1-1 emergency call system to FleetBoston Financial and Sumitomo Mitsui Banking. Why would a city sell its 9–1-1 emergency call system? Why would somebody buy it? It is in order to avoid paying U.S. taxes.

The reason I mention all of this is, last evening, I heard about the transit systems being in trouble in this country. Why? They are engaged in this. They were engaged in exactly the same thing. A transit system that is established by a city to provide transportation for folks in that city decides it wants to get involved in a transaction to sell its transit system to a bank someplace and then lease it back, allowing the bank to avoid paying U.S. taxes and, all of a sudden, they are in trouble. Do you know what? I do not have so much sympathy for people who are involved in those kinds of transactions. It reminded me, last evening, listening to this issue of cross-border leasing, SILOs and LILOs, and all these scams going on for a long time, many established by U.S. companies who apparently, in their boardrooms, are not only trying to figure out how to sell products but how to avoid taxes through very sophisticated tax engineering.

I think it raises lots of questions about the issue of economic patriotism and what each of us owes to our country. It reminded me again of another portion of this financial collapse and financial crisis that we now face in this country. It reminded me of the work that the attorney general of New York, Andrew Cuomo, is doing and something he disclosed. We should have disclosed it, but we didn't know it. We know it because Andrew Cuomo, the attorney general of New York, dug it out. Let me tell you the story.

Last year, Merrill Lynch investment bank was going belly up. So the Treasury Secretary arranged a purchase of Merrill Lynch by Bank of America in September to be consummated in January. And it happened. What we now understand and learn is that Merrill Lynch, which lost $27 billion last year, in December, just prior to it being taken over by Bank of America, paid 694 people bonuses of more than $1 million each. I will say that again. They paid 694 people bonuses of more than $1 million each, with the top four executives sharing $121 million.

Moments later—that is, in a couple of weeks—the American taxpayers, through the TARP program, put tens of billions of dollars more into the acquiring company, Bank of America. At least a portion of that would have been attributable to the takeoff of Merrill Lynch, which just lost $15 billion the previous quarter. It appears to me that this was an arrangement, and Bank of America understood it was buying Merrill Lynch. Merrill Lynch lost a ton of money—$27 billion—last year but wanted to pay bonuses to its executives. So 694 of their folks got more than $1 million each—just prior to the American taxpayer coming in and providing the backstop to the acquiring company, Bank of America, at least in part because of the purchase.

Is there any wonder the American people get furious when they read these kinds of things? The top four executives received $121 million. The top 14 received $250 million. I describe this because we didn't know this. We are the ones who are pushing TARP money. This Congress appropriated TARP money—now $700 billion. This Congress has appropriated that money, but we don't know what is going on. That is why I introduced, with Senator MCCAIN, a proposal for a select committee to investigate the narrative of what happened with respect to this financial crisis. These tax scams are just a part of it. It is the way everything was happening around here, with some of the biggest institutions in the country.

There is plenty of blame to go around. The Federal Government was running deficits that were far too large. Corporate debt was increasing dramatically. Personal debt, household debt, doubled in a relatively short time. It is not as if everybody doesn't have some culpability. Our trade deficit, $700 billion a year, is unsustainable. You cannot do that year after year. There were a lot of reasons.

Then the subprime loan scandal—this unbelievable scandal. At the same time the subprime loan scandal ratchets up, we have a circumstance where regulators, who were appointed by the previous administration, essentially advertised they were willing to be willfully blind and not look. ''Self regulation'' is what Alan Greenspan called it.

So then there grew a substantial pot of dark money that was traded outside of any exchanges. Nobody knew what they were. The development of newly engineered products, credit default swaps, CDOs—you name it, was very complicated—so complicated that many could not understand them. I was asked by a television interviewer 2 days ago: If you did a select committee to investigate all of this, with due respect, do you think Members of the Senate could understand these very complicated products?

I said: I think if your question is could we understand them as well as the heads of financial institutions who steered their companies into the ditch with these products, can we understand them as well as they did, yes, I think so. I think we are capable of figuring out what caused all this, but we would not do it without looking. We would not do it, in my judgment, without the establishment of a select committee with subpoena power to develop the narrative of what happened, who is accountable, what do we do to make sure this never happens again.

I believe we ought to go back a ways, go back to 1999, when the Congress passed something called the Financial Services Modernization Act that took apart the Glass-Steagall Act that was put in place after the Great Depression, and it separated banking from risk. It said you cannot be involved in deposit-insured banking and then involved in real estate and securities as well.

In 1999, Congress passed legislation that said that is old-fashioned. Let's get rid of Glass-Steagall. Let's abolish Glass-Steagall. Let's create big financial holding companies for one-stop financial capabilities for everybody. I was one of eight to vote no. I said on the floor of the Senate 10 years ago that I think this will result in a big taxpayer bailout. I said that during the debate, not because I knew it but because I felt it. You cannot take apart the protections that existed after the Great Depression and somehow believe you are doing the country a favor. We were not.

We have to reconnect some of those protections and separate banking from the substantial risks that are involved in things such as the derivatives and some of the complex products with great risk that now exist as something called toxic assets deep in the bowels of some of the largest financial institutions of our country.

We have a lot to do and a lot to do in a hurry to try to fix what is wrong in this country. I said before that I do not think you can fix what is wrong unless you clean up the banking system. I understand a banking system is a circulatory system for an economy. You have to have a working system of finance.

I was asked the other day: Do you believe in nationalizing the banks?

I said: That is a word that is thrown around. I don't know what words to use. But I think perhaps for the biggest banks in the country that have failed that are loaded with massive, risky toxic assets and are now saying to the American taxpayers: Bail me out, but keep me alive because I have a right to exist because I am too big to fail, I said I think instead we ought to run it through a banking carwash. Start at the front end—I know ''banking carwash'' is a goofy idea—start at the front end and when they come out new, you have gotten rid of the bad assets, keep the good assets, change the name, perhaps change their ownership, put them back up. We need banks, I understand that. But there is no inherent right with all the banks with the current names to exist if they ran into the ditch, taking on very big risks and then decide the taxpayers have to retain them because it is their inherent right to exist. I don't believe that is the case.

I do believe all of us have to find a way to put together this banking and financial system in a manner that

works because business cannot exist without credit. We have plenty of businesses out there right now that have the capability to make money, have the capability to survive and get through this but cannot find credit. We have to find a way to put that together so our financial system works.

CUBA

I wish to make a couple points about a subject I did not talk about in recent days because there was a lot of controversy on the floor of the Senate over some provisions that I included in the omnibus bill dealing with Cuba. I wish to make a couple comments because much of the discussion has been inaccurate.

Fifty year ago, Fidel Castro walked up the steps of the capitol in Havana, having come from the mountains as a revolutionary. Fidel Castro turned Cuba into a Communist country. I have no time for Fidel Castro or the Communist philosophy of Cuba. But it has always been my interest to try to understand why we treat Cuba differently than we do other Communist countries.

China is Communist, Communist China. What is our policy with China? Engagement will be constructive; allow people to travel to China; trade with China; constructive engagement will move China in the right direction. That has always been our policy with respect to Communist China. I have been to China.

Vietnam is a Communist government. What is our policy? Engagement is constructive; travel to Vietnam; trade with Vietnam; constructive engagement will move Vietnam toward better human rights and greater freedoms. I have been to Vietnam.

That is our constructive approach with respect to Communist countries. Cuba? Different, an embargo with respect to Cuba, a complete embargo, which at one time even included food and medicine which, in my judgment, is immoral. In addition to an embargo, we said: We don't like Fidel Castro; so we are going to slap around the American people as well because we are going to prevent them from traveling to Cuba. So we have people in the Treasury Department in a little organization called the Office of Foreign Assets Control, called OFAC, that at least until not long ago was spending 20 to 25 percent of its time tracking American citizens who were suspected of vacationing in Cuba.

Can you imagine that? The organization was designed to track terrorist money. But nearly a quarter of its time was spent trying to track whether Americans went to Cuba to take a vacation illegally. Let me show you some of what they have done.

This woman is named Joan Slote. I have met Joan. Joan is a senior Olympian bike rider. Joan went to Cuba to ride bicycle with a Canadian bicycling group. Canadians can go to Cuba, and she assumed it was legal for Americans also. She answered an ad in a bicycling magazine and said: Yes, I would like to bicycle in Cuba. So she went.

For going to bicycle in Cuba, she was fined $7,630 by the U.S. Government under the Trading with the Enemy Act. Think of that, the Trading with the Enemy Act. This senior citizen bicyclist was fined by her Government. Then, because her son had a brain tumor and she was attending to her son in another State, she did not get this notice. So the Government took steps to threaten to attach her Social Security check. Unbelievable. This is unbelievable, in my judgment.

This is Joni Scott, a young woman who came to see me one day. She went to Cuba with a religious group to pass out free Bibles. You can guess what happened to her. Her Government was tracking her down to try to fine her for going to Cuba to pass out free Bibles. Why? Because we decided to punish Fidel Castro by not allowing the American people to travel to Cuba.

Here is Leandro. He is a Cuban American but he could not attend his father's funeral in Cuba. President Bush, by the way, changed the circumstances that Cuban Americans living in this country could travel to Cuba so they can go only once in 3 years rather than once in 1 year. Your mother is dying? Tough luck. Your father is dying? Tough luck. You can't go there. That policy is unbelievable to me.

This is a man I met, SGT Carlos Lazo. SGT Carlos Lazo fled from Cuba on raft and went to Iraq to fight for this country. He won a Bronze Star there. He is a great soldier. His sons were living in Cuba with their mother. One of his sons was quite ill. He came back from fighting in Iraq, and was denied the opportunity see his sick son in Cuba 90 miles away from Florida. That is unbelievable to me. In fact, we even had a vote on the floor of the Senate—we did it because I forced it—whether we were going to let this soldier go to Cuba to see his sons. We fell only a few votes short of the two thirds we needed to change the law.

My point is, our policies make no sense at all. We are going to slap around the American people because we are upset with Castro and Cuba. I am upset with Castro. I am upset with Cuba's policies. But with Communist China and Communist Vietnam, we say travel there, trade with them, constructive engagement moves them in the right direction.

John Ashcroft and I, when John Ashcroft was in the Senate, passed the first piece of legislation that opened a crack for American farmers to be able to sell food and for us to sell medicine in Cuba. We opened just a crack. There was a time a few years ago when the first train carloads of dried peas from North Dakota went to a loading dock to be shipped to Cuba.

President Bush decided: I am going to tighten up all that. I am going to tighten up family visits; I am going to tighten up and try to thwart the ability of farmers to sell food into Cuba. It made no sense to me. So in this omnibus legislation, I made the changes we have been talking about and debating for years; that is, restoring the right of family visits once a year rather than once in 3 years and a couple other changes to make it easier to export food and medicine to Cuba.

But I wish to make the point that some people on the floor of the Senate have claimed this legislation that was in the omnibus would extend U.S. credit to Cuba. It is flat out not true. There is nothing in these provisions that would extend credit to Cuba. In fact, the Ashcroft-Dorgan or Dorgan-Ashcroft legislation that allowed us to sell food into Cuba explicitly prohibits U.S. financing for food sales to Cuba. They cannot purchase food from us unless it is in cash, and the payments cannot even be conducted directly through an American bank. They have to run through a European bank for a cash transaction to buy American farm products. But at least the law allows us to compete with the Canadians, the Europeans, and others who sell farm products into Cuba.

These policies, in my judgment, have been a failure, dating back to 1960. There is no evidence at all that this embargo has been helpful.

I have been to Cuba. I have been to Havana. I talked with the dissidents who take strong exception and fought the Castro regime every step of the way, and a good number of those dissidents said to me this embargo we have with respect to Cuba is Castro's best excuse. Castro says: Sure our economy is in shambles. Wouldn't it be? Wouldn't you expect it to be if the 500-pound gorilla north of here has its fist around your neck? That is what the Castro regime says to excuse its dismal record—the economy, human rights, and all of it.

I, personally, think it is long past the time to take another look. I know Senator LUGAR also published some recommendations on Cuba policy recently. Sometime soon, Senator ENZI and I and others are going to talk about legislation we have introduced on this subject. It is long past the time to take another look at this issue and begin to treat Cuba as we treat Communist China and Communist Vietnam.

I think constructive engagement is far preferable because now the only voice the Cuban people hear effectively is the Castro voice, whether it is Raul or Fidel—I guess it is now Raul. That is the only thing they hear, and they need to hear more. Hearing more from a flock of tourists who go to a country such as Cuba would, in my judgment, open a substantial amount of new dialog. So I think travel and trade will be constructive, not just with China and Vietnam. I think there is evidence in both cases—I have been to both countries—that constructive engagement has moved forward in both countries in a measurable way.

Has engagement resulted in a quantum leap with china and Vietnam? No, but it is measurable. I think the same would be true with respect to Cuba.

What persuaded me to come to the floor to talk about this today was a discussion this past week on the floor regarding the provisions I sponsored on the bill we passed last night. I didn't engage in that discussion because we needed to move the omnibus bill.

I did want the Senate RECORD to understand and show exactly what the history has been and what we have done. What we have done, I think, is a very small step in the right direction. Much more needs to be done, whether it is saying to American farmers: You have a right to compete, you have a right to sell farm products without constraints. By the way, one of the provisions in the bill authorizes a general license that would make it easier for farm groups like the Farmers Union and Farm Bureau to go to an agriculture expo in Cuba to be able to sell their products. That is not radical. That is not undermining anything. That is common sense.

The drip, drip, drip of common sense in this Chamber could be helpful over a long period of time. This is just a couple small drops of common sense that I think will help us as we address the issue of Cuba.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

THE BUDGET

Mr. ALEXANDER. Madam President, I ask the Chair to let me know when I have 2 minutes remaining. I believe we have 30 minutes allocated to us at this stage.

The PRESIDING OFFICER. The Chair will notify the Senator.

Mr. ALEXANDER. I thank the Chair.

Madam President, this is an important next 3 or 4 weeks for the United States. The President of the United States has outlined his 10-year blueprint for our country's future in the form of a budget. The budget is now before the Congress, and it is our job to consider it. We are doing that every day in hearings, and we are looking forward to the details the President will send later this month. But for the next 4 weeks, including this week, the major subject for debate in this Senate Chamber is this: Can we afford the Democrats' proposals for spending, taxes, and borrowing? And our view—the Republican view—is the answer is no.

As an example, in the 1990s, President Clinton and the Congress raised taxes, but they raised taxes to balance the budget. This proposal—and we will be discussing it more as we go along—will raise taxes to grow the government.

Not long ago, the President visited our Republican caucus, and we talked some about entitlement reform—the automatic spending that the government says we don't appropriate; mostly all of it is for Social Security, Medicare, and Medicaid—and he talked about the importance to him of dealing with entitlement spending. Senator MCCONNELL, the Republican leader, made a speech at the National Press Club to begin this Congress in which he said that he was going to say to this President: Let's work together to bring the growth in entitlement spending, automatic spending, under control. We had a summit at the White House, which we were glad to attend, about that.

But I say to Senator GREGG, the Senator from New Hampshire, who is the ranking Republican on the Budget Committee, I was disappointed to come back from the excellent meeting we had at the White House on fiscal responsibility and find, for example, that in this budget we have $117 billion more for entitlement spending on Pell grants. So my question to the Senator from New Hampshire is: Does this budget actually reform entitlement spending, or does it not?

Mr. GREGG. I thank the Senator from Tennessee. I know the Senator from Tennessee will not be surprised to learn that there is no entitlement reform in this budget; that this budget, regrettably, dramatically increases entitlement spending.

The chart I have here reflects that increase. If you would use the present baseline on entitlement spending, that would be the blue. Now that is going up pretty fast. During this period, it would go from $1.2 trillion up to almost $2.4 trillion. That is the baseline, if you did nothing. Now one would have presumed with that type of increase in entitlement spending, and the fact that this budget, as it is proposed, is going to run up a public debt which will double in 5 years and triple in 10 years, that it will create a deficit this coming year of $1.7 trillion and a deficit in the last year of the budget of $700 billion—deficits which are larger in the last years of this budget than have historically been those that we have borne as a nation over the last 20 years, and a debt which will go from $5.8 trillion to $15 trillion plus. One would have presumed that in that area where the budget is growing the fastest, and which represents the largest amount of cost, that this administration would have stepped forward and said: Well, we can't afford that; we have to try to slow the rate of growth of spending in that area, or at least not have increased it. But what the President's budget has done is they have proposed to dramatically increase the amount of spending in the entitlement accounts.

Most of this increase will come in health care. Now, people say, and legitimately so, that we have to reform our health care delivery system in this country; that we have to get better with health care in this country. But does that mean we have to spend a lot more money on it? No. We spend 17 percent of our national product, of what we produce as a nation, on health care. The closest country to us in the industrialized world only spends 11½ percent of their product on health care. So we have a massive amount of money we are spending on health care as an industrialized nation that is available to correct our health care system. We don't have to increase it even further.

What the President is proposing is to increase health care spending. As a downpayment, they are saying $600 billion, but actually what they are proposing is $1.2 trillion of new entitlement spending in health care. No control there. In addition, as the Senator from Tennessee noted, they are taking programs which have traditionally been discretionary, which have therefore been subject to some sort of fiscal discipline around here, because they are subject to what is known as spending caps on discretionary programs, and taking these programs and moving them over to the entitlement accounts. Why? Because then there is no discipline. You spend the money, and you keep spending the money, and there is no accountability. So they are taking the entire Pell program out of discretionary accounts and moving it over to entitlement accounts. As the Senator from Tennessee noted, this is over $100 billion of new entitlement spending.

If we keep this up, what is it going to do? Essentially, what it is going to do is bankrupt our country, but it will certainly bankrupt our kids. We are going to pass on to them a country which has this massive increase in debt—something our children can't afford, as I mentioned earlier—a debt which will double in 5 years because of the spending, and triple in 10 years. Almost all of this growth in debt is a function of the growth of the entitlement spending in this program. Although there is a considerable amount of growth in discretionary, the vast majority of this increase is in spending for entitlement programs.

To put it another way, and to show how much this is out of the ordinary and how much this is a movement of our government to the left—an expansion of government as a function of our society—this chart shows what historically the spending of the Federal Government has been. It has historically been about 20 percent of gross national product. That has been an affordable number. Granted, we have run deficits during a lot of this period, but at least it has been reasonably affordable. But this administration is proposing in their budget that we spike the spending radically next year, which is understandable because we are in the middle of a very severe recession and the government is the source of liquidity to try to get the economy going. So that is understandable. Maybe not that much, but maybe understandable. It is more than I would have suggested, but I will accept that. The problem is out here, when you get out to the year 2011,

2012, and 2013, when the recession is over. When the recession is over, they do not plan to control spending. They plan to continue spending on an upward path so it is about 23 percent of gross national products.

What does that mean? That means we are going to run big deficits, big debt, and all of that will be a burden and fall on the shoulders of our children. Our children are the ones who have to pay this cost.

Mr. ALEXANDER. At this point, let me ask the Senator from New Hampshire a question. I have heard you say, and I believe I said a moment ago, that in the 1990s, President Clinton raised taxes, as President Obama is planning to raise taxes, but that President Clinton used it to reduce the deficit.

Mr. GREGG. Yes. When President Clinton raised taxes in the mid 1990s, and a Republican Congress came into play, we controlled spending. He got his tax increase, the deficit went down, because the tax increase was put to reducing the deficit. What President Obama is proposing is that he increase taxes by $1.4 trillion—the largest tax increase in the history of our country. Is it going to be used to reduce the deficit? No, just the opposite. It is going to be used to grow the government and allow the government to now take 23 percent of gross national product instead of the traditional 20 percent.

So you can't close this gap. Basically, all the new taxes in this bill—and there are a lot of them. There is a national sales tax on everybody's electric bill, a tax which is basically going to hit most every small business in this country and make it harder for them to hire people; and a tax which limits the deductibility of charitable giving and of home mortgages. All these new taxes are not being used to get fiscal discipline in place, to try to bring down the debt, or limit the rate of growth of the debt, or to limit the size of the deficit. They are being used to explode—literally explode—the size of the Federal Government, with ideas such as nationalizing the educational loan system, ideas such as quasinationalization of the health care system, which is in here, and massive expansion of a lot of other initiatives that may be worthwhile but aren't affordable in the context of this agenda.

So this budget is a tremendous expansion in spending, a tremendous expansion in borrowing, and a tremendous expansion in taxes. And it is not affordable for our children.

Mr. ALEXANDER. I wonder if I may ask the Senator from New Hampshire about this. Some people may say, with some justification: You Republicans are complaining about spending, yet in the last 8 years you participated in a lot of it yourself. How would you compare the proposed spending and proposed debt over the next 10 years in this blueprint by the Obama administration with the last 8 years?

Mr. GREGG. That is a good point, and that has certainly been made by the other side of the aisle: Well, under the Bush administration all this spending was done and this debt was run up.

In the first 5 years of the Obama administration, under their budget—not our numbers, their numbers—they will spend more and they will run up the debt on the country more and on our children more than all the Presidents since the beginning of our Republic—George Washington to George Bush. Take all those Presidents and put all the debt they put on the ledger of America, and in this budget President Obama is planning to run up more debt than occurred under all those Presidents. It is a massive expansion in debt.

It is also an interesting exercise in tax policy. Now, I know we are not talking so much about taxes today, but I think it is important to point out that when you put a $1.4 trillion tax increase on the American people, you reduce productivity in this country rather dramatically. One of the unique things about President Bush's term was that he set a tax policy which actually caused us to have 4 years—prior to this massive recession, which is obviously a significant problem and a very difficult situation—but for the runup during the middle part of his term right up until this recession started, the Federal Government was generating more revenues than it had ever generated in its history. Why was that? Because we had a tax policy which basically taxed people in a way that caused them to go out and be productive, to create jobs, and to do things which were taxable events.

Unfortunately, what is being proposed here, under this administration's tax policy, is going to cause people to do tax avoidance. Instead of investing to create jobs, they will go out to invest to try to avoid taxes, and that is not an efficient way to use dollars. The practical effect is it will reduce revenues and increase the deficit. So on your point, the simple fact is, as this proposal comes forward from the administration, it increases the debt of the United States more in 5 years than all the Presidents of the United States have increased the debt since the beginning of the Republic.

Mr. ALEXANDER. I see the Senator from Arizona, who is a longtime member of the Senate Finance Committee and pays a lot of attention to Federal spending and is the assistant Republican leader. I wonder, Senator KYL, as you have watched the Congress over the years, to what do you attribute this remarkable increase in spending? We heard a lot of talk last year about change, but this may be the kind of change that produces a sticker shock. It may be a little bit more change in terms of spending than a lot of Americans were expecting.

Mr. KYL. Mr. President, I appreciate the question of my colleague from Tennessee. I also compliment the ranking member of the Budget Committee, the Senator from New Hampshire, who has tried to deal with budgets all the time he has been in the Senate.

If I could begin by just asking him one question: How would you characterize this budget proposed by the President as compared with others, in terms of the taxes and the spending and the debt created? Is there some way to compare it with all of the other budgets that you have worked with, including all of the Bush budgets?

Mr. GREGG. It has the largest increase in taxes, the largest increase in spending, and the largest increase in debt in the history of our country.

Mr. KYL. Mr. President, I first would answer my colleague from Tennessee. We ought to be spending less and taxing less and borrowing less. Our minority leader asked his staff to do some calculations. Just from the time that the new President raised his hand and was inaugurated as President, how much money have we spent? They calculated that we have spent $1 billion every hour. That is just in the stimulus legislation, this omnibus bill that was just passed last night, which is 8 percent over the stimulus bill, and we have not even added in the spending that is going to occur as a result of this budget which, as the Senator from New Hampshire said, in just the first year is a third more spending than even the previous year—$3.55 trillion.

In addition to that, it makes much of the so-called temporary spending in the stimulus bill permanent. Some of us predicted that would happen, that when they have a new program in the stimulus bill they surely wouldn't cut it off after 2 or 3 years. We said they will probably make it permanent. Sure enough, and the ranking member on the Budget Committee can speak to that better than I, but a great many of these programs are made permanent. On health care, for example, the Senator from New Hampshire talked about that, but there is no effort to control entitlements. In fact, Medicare, Medicaid, and Social Security all rise between 10 and 12 percent, Medicare itself by $330 billion. This is increased spending, and it is permanent programs.

We also wondered what would happen with respect to the Federal Government's growth as a result. According to a March 3 Washington Post article, ''President Obama's budget is so ambitious, with vast new spending on health care, energy independence, education, services for veterans, that experts say he probably will need to hire tens of thousands of new Federal Government workers to realize his goals.'' According to the article, estimates are as high as 250,000 new Government employees will have to be hired to implement all of this spending.

I know we want to create jobs in this economy, but I wonder if the American people intended that we create a whole bunch of new Government bureaucrats to spend all of this money.

This is not responsive to my colleague's question, but the one area

where we do not have high unemployment is Government jobs. The unemployment in the country is about 8 percent now. In Government jobs it is between 2 percent and 3 percent, so that is not an area we needed to grow more jobs.

Mr. ALEXANDER. I wonder if I might ask the Senator from Arizona, one might look at the chart Senator GREGG has up and say that is not too big an increase in Federal spending, but of course the United States produces about 25 percent of the world's wealth. When we go up on an annual basis by a few percentage points, it begins to change the character of the kind of country we have.

How do you see this kind of dramatic increase in spending and taxing and debt affecting the character of the country as compared with, say, countries in Europe or other countries around the world?

Mr. KYL. Mr. President, I would say that is getting to the heart of the matter. We can talk about these numbers all day. They are mind-boggling, they are very difficult to take in. But what does it all mean at the end of the day? I will respond in two ways.

First of all, it makes us look a whole lot more like the countries in Europe that have been stagnating for years because they spend such a high percent of their gross national product on government. As the Senator from New Hampshire pointed out, we are headed in that direction under this budget. It is a recipe for a lower standard of living in the United States and makes us look a lot more like Europe.

The second way goes back to the policy I think is embedded in this budget. The President has been very candid about this. He talks about it as his blueprint. He says this budget is not about numbers, it is about policies; it is about a blueprint for change. The Wall Street Journal on February 27 said:

> With yesterday's fiscal 2010 budget proposal, President Obama is attempting not merely to expand the role of the federal government but to put it in such a dominant position that its power can never be rolled back.

That is the problem. It is the growth of Government controlling all of these segments of our lives. That is what this spending is ultimately all about, as the Senator from New Hampshire said, taking over the energy policy, taking over the health care, taking over the education policy, as well as running our financial institutions. It is not just about spending more money and creating more debt and taxing in order to try to help pay for some of that. It is also about a huge increase in the growth of Government and therefore the control over our lives.

In a way, the Wall Street Journal says, ''In a way that can never be rolled back.''

Mr. ALEXANDER. I wonder if either the Senator from Arizona or New Hampshire would have a comment on the way that spending was accomplished in the stimulus bill. For example, in the Department of Education, where I used to work, the annual budget was $68 billion. But the stimulus added $40 billion per year to the department's budget for the next 2 years. There were no hearings. There was no discussion about this. No one said: Are we spending all the money we are spending now in the right way, and if we were to spend more would we give parents more choices? Would we create more charter schools? Would we, as the President said yesterday, of which I approve, spend some money to reward outstanding teachers?

What about the way this is being spent on energy, education, and Medicaid, for example?

Mr. GREGG. I think the Senator is absolutely right. The stimulus package was a massive unfocused effort by people to fund things they liked. I don't think it was directed at stimulus. It was more directed at areas where people believed there needed to be more money, people who served on the Appropriations Committee, and therefore they massively funded those areas. Between the stimulus bill and the omnibus bill, there were 21 programs which received on average an 88-percent increase in funds for 2009 compared to 2008; $155 billion more was spent on those programs for this year than last year. That is just a massive explosion in the size of the Government. It is inconsistent with what the purposes of a stimulus package should have been.

The stimulus package should have put money into the economy quickly for purposes of getting the economy going. What this bill did was basically, as you mentioned earlier, build programs that are going to be very hard to rein in. The obligations are there. They are going to have to be continued to be paid for, and, as the Senator from Arizona pointed out, that was probably the goal: to fundamentally expand the size of Government in a way that cannot be contracted.

Take simply, for example, a very worthwhile exercise which is NIH. They received an extra $10 billion, I believe, on the stimulus package, for 2 years of research. Research doesn't take 2 years. Research takes years and years and years, so you know if you put in that type of money up front you are going to have to come in behind it and fill in those dollars in the outyears.

They basically said you are going to radically expand the size of this initiative. The same thing happening in education. The same thing happening in health care. That is where this number goes up so much, 23 percent of gross national product, and it goes up from there. The only way you pay for it is basically taxing our children to the point they cannot have as high a quality of life as we have.

Mr. ALEXANDER. I heard the Senator from Arizona say it was not just a $1 trillion stimulus package, that by the time you add in all these projected costs in the future, it might be much more.

Mr. KYL. I think the number was $3.27 trillion. I believe that was the correct number over the time of the 10 years.

The Senator from Tennessee certainly knows a bit about education. It all was not spent. There were some policies that actually attempted to reduce some costs—of a program that works very well, that thousands of people in the District of Columbia depend upon to send their kids to good schools. That is the program we put into effect to give a voucher of $7,500 a year to kids to attend private schools, kids who would never have that opportunity otherwise.

If I could ask a question of my colleague from Tennessee, since as former Secretary of Education he knows something about how to make sure our kids have the best opportunities for education in this country, why, with the District of Columbia costing about $15,000 a year to educate children and not doing a very good job of it according to all of the test scores, and thousands of parents wishing their kids had an alternative choice, somewhere else to go—when we create a program that provides a few of them, less than 2,000 a year, I believe, with a voucher that returns only half of that much money to the private school—$7,500, so it doesn't cost the public anything—why, when it gives these kids such a great opportunity, would our colleagues on the other side of the aisle, and the President, whose two daughters, by the way, attend one of the schools that kids would have to be taken out of because they can't afford to go there without the voucher—why would they remove that school choice and the voucher program?

Mr. ALEXANDER. It is very hard to imagine, Senator KYL. Just to make the point we are not being personal about that, my son attended the same school that the President's daughters attend when we were here and I was Education Secretary.

School vouchers may not be the solution in every rural county in America, but in the District of Columbia, 1,700 children who are low-income children have a chance to choose among private schools, their parents are delighted with the choice, and a study is coming out this spring to assess what they are learning. I do not know the motive behind this, but I do know the National Education Association has made its reputation opposing giving low-income parents the same choices that wealthy people have. That is a poor policy and one we ought not to have stuck on an appropriations bill like that.

The President has shown good instincts on education. His Education Secretary is a good one. But had we had a chance to debate this in committee and to hear from them, perhaps we could have had a bipartisan agreement that we need to pay good teachers more, we need more charter

schools, and we need to give parents some more choices like these District of Columbia parents.

I know our time is running short. I wonder if the Senator from New Hampshire has any further thoughts about spending.

Mr. GREGG. I thank the Senator from Tennessee for taking this time. I think it all comes down to these numbers. Really, what does spending do? Sure it does a lot of good things, but in the end, if you don't pay for it, it makes it more difficult for our country to succeed and for our children who inherit the debts to succeed. When you double the debt in 5 years because of the spending, and you triple it in 10 years, you are absolutely guaranteeing that you are passing on to our children a country where they will have less opportunities to succeed than our generation. That is not fair. It is simply not fair for one generation to do this to another generation. Yet that is what this budget proposes to do: to run up bills for our generation and take them and turn them over to our children and grandchildren at a rate greater than ever before, a rate of spending greater than has ever been seen before, and a rate of increasing the debt that has never been conceived of before, that you would triple the national debt in 10 years.

It is not fair, it is not right, it is not appropriate, and it certainly is a major mistake, in my opinion.

Mr. ALEXANDER. Senator KYL, to conclude our discussion, this is the beginning of a process in the Senate in which everyone in this country can participate. We are asking that they consider: Can you afford this amount of spending, this amount of borrowing, this amount of taxes? There is a different path we could take toward the future.

Mr. KYL. Indeed. Mr. President, I thank the Senator from Tennessee. As this debate unfolds, I think our colleagues will see that Republicans have some better ideas. We want to spend less and tax less and borrow less. We believe we can accomplish great results in the field of energy, for example, in the field of education, in the field of health care—much more positively, much better results in the long run with a lot less burden on our children and our grandchildren in the future.

As this debate unfolds, we are very anxious to present our alternative views on how to accomplish these results.

The PRESIDING OFFICER (Mr. CARDIN.) The Senator is notified that 28 minutes has elapsed.

Mr. ALEXANDER. I thank the Senator from Arizona for his leadership and the Senator from New Hampshire for his views.

This is the beginning of a discussion about a 10-year blueprint offered by our new President about the direction in which our country should go. We on the Republican side believe American families cannot afford this much new spending, this many new taxes, and this much new debt. We will be suggesting why over the next 3 or 4 weeks, and in addition to that we will be offering our vision for the future. For example, on energy, some things we agree with, such as conservation and efficiency; some things we would encourage more of, such as nuclear power for carbon-free electricity.

This is the beginning of a very important debate, and the direction in which it goes will dramatically influence the future of this country and make a difference to every single family, not just today's parents but children and their children as well.

I yield the floor, and 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. ALEXANDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the time be equally charged to each side.

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

The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I rise today with great concern regarding the nomination of Mr. David Ogden to serve as the Deputy Attorney General of the United States. There is no doubt that Mr. Ogden has a long record of legal experience. He also, however, brings a long history of representation of the pornography industry and the opposition to laws designed to protect children from sexual exploitation.

He opposed the Children's Internet Protection Act of 2000 that would restrict children's exposure to explicit online content. Mr. Ogden filed an amicus brief supporting the American Library Association in a case that challenged mandatory anti-obscenity Internet filters in public libraries. He treated pornography like informative data, writing that the ''imposition of mandatory filtering on public libraries impairs the ability of librarians to fulfill the purposes of public libraries—namely, assisting library patrons in their quest for information. . . .''

Mr. Ogden also argued against laws requiring pornography producers to verify that models were over 18 at the time their materials were made. Think of that. He challenged the Child Protection and Obscenity Enforcement Act of 1988 and a companion law adopted in 1990, the Child Protection Restoration and Penalties Enhancement Act. Mr. Ogden argued that requiring pornography producers to personally verify that their models were over age 18 would ''burden too heavily and infringe too deeply on the right to produce First Amendment-protected material.''

Among the many cases in which Mr. Ogden has advocated interests of the pornography industry, none is more egregious than the position he took in Knox v. the United States.

The facts in the next case are straightforward. Steven Knox was convicted of receiving and possessing child pornography under the Child Protection Act after the U.S. Customs Service found in Mr. Knox's apartment several videotapes of partially clothed girls, some as young as age 10, posing suggestively. Serving as counsel on an ACLU effort, Mr. Ogden argued to strike down the 1992 conviction of Mr. Knox. On behalf of the ACLU and other clients, Mr. Ogden submitted a Supreme Court brief advocating the same statutory and constitutional positions as the Clinton Justice Department. Mr. Ogden's arguments stated that while nudity was a requirement for prosecution, nudity alone was insufficient for prosecutions under child pornography statutes. Put simply, Mr. Ogden argued that the defendant had been improperly convicted because the materials in his possession would only qualify as child pornography if children's body parts were indecently exposed.

In response, on November 3, 1993, the Senate, right here, passed a resolution by a vote of 100 to 0 condemning this interpretation of the law by Mr. Ogden. President Clinton then publicly rebuked the Solicitor General, and Attorney General Reno overturned his position. Now the Senate is being asked to confirm as Deputy Attorney General someone who advocated the same extreme position on a Federal child pornography statute that the Senate unanimously repudiated 16 years ago.

The Supreme Court has ''recognized that there is a compelling interest in protecting the physical and psychological well-being of minors. This interest extends to shielding minors from the influence of literature that is not obscene by adult standards.'' Pornography should not be regarded as immune from regulation simply because it is deemed ''free speech.''

Furthermore, child pornography in any form should not be tolerated. How can Mr. Ogden's clear position on the right to unfettered access to pornography not interfere with the Justice Department's responsibility to protect children from obscene material and exploitation?

When asked about this very issue at the Senate hearing on his nomination, Mr. Ogden said he hoped he would not be judged by arguments made for clients. If we cannot judge him on his past positions, what can we judge him on? Past performance is a great indicator of future action.

David Ogden is more than just a lawyer who has had a few unsavory clients. He has devoted a substantial part of his career, case after case for 20 years, in defense of pornography. Ogden has profited from representing pornographers and in attacking legislation designed to ban child pornography. Should a man with a long list of pornographers as past clients, with a

record of objection to attempts to regulate this industry in order to protect our children, be confirmed for our Nation's second highest law enforcement position? Is he the best choice to actively identify and prosecute those who seek to harm our children?

Highlights of the Department of Justice's budget request for the year 2010 indicate an increased focus on educating and rehabilitating criminals, while neglecting funding for vital child-safety programs such as the Adam Walsh Act. I believe Mr. Ogden's past positions, coupled with the Department's growing trend to prioritize criminal rehabilitation over child safety, cause me great concern this afternoon.

There is not a quick and easy solution to the problems of child exploitation, but I can state unequivocally that we need a proactive and aggressive Department of Justice to take the steps necessary to attack this problem and demonstrate that protecting our children is a top priority. I am not certain David Ogden will bring that leadership to the Department; therefore, I must oppose this nomination.

This vote is made with the belief that a person's past legal positions do mean a great deal. I think if most Americans knew what this man has worked for and whom he has willingly represented, support for his nomination would disappear. I do not believe his legal philosophy, illustrated in the clients he freely chose to represent, reflects the majority's views on the issue of child exploitation. I know certainly they do not reflect mine.

TRAGEDY IN ALABAMA

Mr. SHELBY. Mr. President, I want to get into something else you have been reading about what happened in my State of Alabama yesterday. I offer my condolences to the families and friends of the victims killed in Samson, AL.

Yesterday, my State of Alabama suffered the worst mass shooting in our State's history. As this tragedy unfolded, our law enforcement responded bravely. I commend them for their actions and efforts. I also offer my sincere sympathies to the victims, their families, and the community. This is a tragedy that did not have to happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

(The remarks of Mr. LEVIN and Mr. GRASSLEY pertaining to the introduction of S. 569 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GRASSLEY. I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWNBACK. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BROWNBACK. Madam President, I rise to speak about the nomination of David Ogden to be Deputy Attorney General of the Department of Justice. To summarize what I see in the RECORD, what I have read, I am very disappointed in the Obama administration for nominating this individual who is obviously talented but has also obviously chosen to represent, sometimes on a pro bono basis, groups that push pornography. He even represented interests against child pornography laws that we have passed by unanimous votes in the Senate.

Here is a gentleman who has taken up these causes as a lawyer. I appreciate his skill and ability as a lawyer. I appreciate his willingness to represent a client. But he has chosen to consistently represent pornography companies and groups. Even against the unanimous opinion of this body on child pornography cases, he has taken the other side. The message that sends across the country to people—when we are struggling with a huge wave of pornography, and then, at the worst end of it, child pornography—the message it sends around the rest of the country is this is a Justice Department that is not going to enforce these child pornography laws or is not concerned about this, when we have an epidemic wave of pornography, and particularly of child pornography, that is striking across the United States, and that this is harming our children. It is harming our society overall. Now, at the second to the top place of enforcement, you are putting your Deputy Attorney General who has taken on these cases, and sometimes in a pro bono manner.

I have no doubt of his legal skills. But the message this sends across the country to parents, who are struggling to raise kids, is not a good one. Our office has been receiving all sorts of calls opposed to Mr. Ogden's nomination because of that very feature—and deeply concerned calls because they are struggling within their own families to try to raise kids, to try to raise kids responsibly, and to try to raise them in a culture that oftentimes is very difficult with the amount of violent material, sexual material that is out there, and hoping their Government can kind of back them a little bit and say: These things are wrong. Child pornography is wrong. It should not take place. It should not be on the Internet. And you should not participate in it.

Instead, to then nominate somebody who has represented groups supporting that dispirits a number of parents and says: Is not even my Government and its enforcement arms going to take this on? Are they not going to be concerned about this, as I am concerned about it as a parent? I see it pop up on the Internet, on the screen, at our home way too often, and I do not want to see this continue to take place. Then along comes this nominee, who knocks the legs out from under a number of parents.

I want to give one quick fact on this that startled me when I was looking at it. It is about the infiltration of pornography into the popular culture, and particularly directly into our homes, and now it is an issue that all families grapple with, our family has grappled with. My wife and I have five children. Three of them are out of the household now. We still have two of them at home. We grapple and wrestle with this. Once relatively difficult to procure, pornography is now so pervasive that it is freely discussed on popular, prime-time television shows. The statistics on the number of children who have been exposed to pornography are alarming.

A recent study found that 34 percent of adolescents reported being exposed to unwanted—this is even unsolicited; unwanted—sexual content online, a figure that, sadly, had risen 9 percent over the last 5 years. Madam President, 9 out of 10 children between the ages of 8 and 16 who have Internet access have viewed porn Web sites—9 out of 10 children between the ages of 8 and 16 who have Internet access have viewed porn Web sites—usually in the course of looking up information for homework.

It is a very addictive situation we have today. I held a hearing several years back about the addictiveness of pornography, and we had experts in testifying that this is now the most addictive substance out in the U.S. society today because once it gets into your head, you cannot like dry off or dry out of it.

The situation is alarming on its impact on marriages. There is strong evidence that marriages are also adversely affected by addiction to sexually addictive materials. At a past meeting of the American Academy of Matrimonial Lawyers, two-thirds of the divorce lawyers who attended said that excessive interest in online pornography played a significant role in divorces in the previous year. That is two-thirds of the divorce lawyers saying this is getting to be a situation that is impacting so many of our clients and is so pervasive.

While David Ogden possesses impressive academic credentials, and he certainly is a talented lawyer, he has also represented several clients, significant clients, with views far outside the mainstream, and he has not, to my satisfaction, disavowed the views of these clients. He was given every chance to in hearings. He was trying to be pinned down by people on the committee about: What are your views? I understand your clients' views. What are your views? And he would not respond to those.

He said: Well, these are views of my clients. I understand the views of your clients. If they are pushing pornography, child pornography, want to have access to this, I understand that. What are your views? And he demurred each time and would not respond clearly.

Based on that record, I am led to believe it is highly likely David Ogden

may share the views of some of his clients—of those who have supported pornography—and I cannot trust him to enforce some of our Nation's most important antichild pornography laws—laws that he has a history of arguing are unconstitutional. That is a position he took as a lawyer: that these are unconstitutional, antichild pornography laws.

In an amicus brief David Ogden filed in United States v. American Library Association, he argued that the Children's Internet Protection Act, which requires libraries receiving Federal funds to protect children from online pornography on library computers, censored constitutionally protected material and that Congress was violating the first amendment rights of library patrons. Now, that was the position David Ogden took.

In a response to written questions submitted by Senator GRASSLEY after his confirmation hearing, David Ogden indicated he served as pro bono counsel—for people who are not lawyers, that means he did it for free—in this case, further calling into question his personal views. If you are willing to represent a client for free, it seems to me there is some discussion or possibility you may really share your client's views on this issue regarding access to online pornography at libraries.

The Children's Internet Protection Act passed this body, the Senate, by a vote of 95 to 3 back in 2000. Ninety-five Members of this body believed the Children's Internet Protection Act was an appropriate measure to protect children from Internet filth and was constitutional because our duty, as well, is to stand for the Constitution and to abide by the Constitution and uphold it.

How can we trust David Ogden to enforce this law when he argued against it as a pro bono counsel?

In another very disturbing case, Knox v. the United States, in which Stephen Knox was charged and convicted for violating antichild pornography laws—these are child pornography laws but child pornography laws which I think are in another thoroughly disgusting category—David Ogden filed a brief on behalf of the ACLU and others challenging the Federal child pornography statutes. At issue in this case was how child pornography is defined under the Federal statutes.

I am sure many of my colleagues will remember the controversy that surrounded this case. As you may recall, Stephen Knox was prosecuted by the Bush Justice Department—during the first Bush Presidency—and ultimately convicted, after U.S. Customs intercepted foreign videotapes he had ordered. By the time his conviction was appealed, however, President Clinton was in office, and the Justice Department changed its position on Knox's conviction. Drew Days, Clinton's Solicitor General at the time, chose not to defend the conviction of Knox.

The Clinton Justice Department said: Yes, he is convicted, but we are not going to prosecute this. But the Senate, by a vote of 100 to 0—which is really rare to get around this place—and the House, by a vote of 425 to 3, rejected the Clinton Justice Department's interpretation of the child porn laws. The Senate unanimously said: Prosecute this. Prosecute this child pornography case.

David Ogden was on the wrong side of this case. I urge my colleagues to consider whether a man who has taken such extreme positions on pornography, and especially child pornography, can be trusted to enforce Federal laws prohibiting this cultural toxic waste. I am not convinced that David Ogden does not share the views he advocated in the Knox case, and I am concerned that at the very least he may be sympathetic to the views of his former clients.

I hope David Ogden proves me wrong and he demonstrates a strong willingness to enforce Federal child pornography and obscenity laws. These laws are on the books. I hope he enforces them. But I cannot in good conscience vote in favor of his nomination given his past record and the positions he has taken. His past positions have been far too extreme and outside of the mainstream for me, or I think for most Americans, and certainly for most parents, to be able to support him to be No. 2 in command of the Justice Department that enforces these laws.

I realize many of my colleagues, and likely the majority, are going to cast their votes in favor of David Ogden. Before they do, I ask them to please consider the negative impact pornography has had—and particularly child pornography has had—on this society and the important role the Justice Department plays in protecting children from obscene and pornographic material, particularly child pornography.

The infiltration of pornography into our popular culture and our homes is an issue that every family now grapples with. Once relatively difficult to procure, it is now so pervasive that it is freely discussed all over. Pornography has become both pervasive and intrusive in print and especially on the Internet. Lamentably, pornography is now also a multibillion-dollar-a-year industry. While sexually explicit material is often talked about in terms of ''free speech,'' too little has been said about its devastating effects on users and their families.

According to many legal scholars, one reason for the industry's growth is a legal regime that has undermined the whole notion that illegal obscenity can be prosecuted. The Federal judiciary continues to challenge our ability to protect our families and our children from gratuitous pornographic images, and we must have a Justice Department that is committed to combating this most extreme form of pornography.

Perhaps the ugliest aspect of the pornographic epidemic is child pornography. This is where Mr. Ogden's record is most disturbing because he is outside of even the minimal consensus on pornographic prosecutions that exist. Children as young as 5 years old are being used for profit in this, regrettably, fast-growing industry. While there has been very little consensus on the prosecution of even the most hardcore adult pornography, there has been widespread agreement on the necessity of going after the purveyors of child porn. Despite this agreement, this exploitive industry continues to thrive. Every day, there are approximately 116,000 online searches for child pornography—116,000. I think we can all agree that we have a duty to protect the weakest members of our society from exploitation and from abuse.

I fear David Ogden will be a step backward—and certainly sends that signal across our society and to our parents and our families in this effort to combat this most dangerous form of pornography. For those reasons, I will be casting a ''no'' vote on his confirmation.

Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Utah is recognized.

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

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

OBAMA BUDGET

Mr. HATCH. Madam President, a couple weeks ago the Obama administration released an outline of its budget plan for fiscal year 2010. The budget is a plan that reflects the President's agenda and priorities for the fiscal year.

The document with which most of our colleagues are quite familiar with by now is entitled, ''A New Era of Responsibility—Renewing America's Promise.'' While this is a nice title for which I commend the President, it does not sound like the appropriate name for a work of fiction. Because of the impact of the policies outlined in this budget, a more fitting title might be, ''How To End America's Global Leadership and Prosperity Without Really Trying.'' Even better, it sounds more like a 1973 Disney animation entitled ''Robinhood.''

In this Oscar-nominated movie about a legendary outlaw, I think a colloquy between Little John and Robinhood sums it up best. Little John said:

> You know somethin', Robin? I was just wonderin', are we good guys or bad guys? You know, I mean our robbing the rich to give to the poor.

Robinhood responded:

> Rob? Tsk, tsk, tsk. That's a naughty word. We never rob. We just sort of borrow a bit from those who can afford it.

Simply stated, this budget declares war on American jobs and on the ability of American businesses to save or

create them. It is bitingly ironic, since on the first page of the budget message the President said that the time has come, ''not only to save and create new jobs, but also to lay a new foundation for growth.''

The only thing this budget lays the foundation of growth for is more Government spending and more taxes.

Indeed, this budget is so bad, it is hard to know where to begin to describe what is wrong with it. But let's start with the tax provisions beginning on page 122 of the budget. Right there in black and white are the administration's plans to increase taxes on American businesses—the only entities that can create and save jobs on a permanent basis—by a minimum of $1.636 trillion over 10 years. I say ''minimum'' because the total amount may be much higher, as I will explain a little later in my remarks.

This budget is a masterpiece of contradiction. For example, it promises the largest tax increases known to humankind while promising tax cuts to 95 percent of working families. In reality, the President wants to play Robinhood by redistributing trillions of dollars from those who already pay the lion's share of this Nation's income taxes and give a significant portion of it, through refundable tax credits, to those who now pay no income taxes at all.

The budget promises millions of jobs to be saved or created but takes away the very means for the private sector to perform this job creation through increases in capital gains taxes, carried interest, and the top individual rates where most business income is taxed.

The budget is also contradictory to stimulating the economy. On one hand, it claims to provide $72 billion in tax cuts for businesses, but on the other hand, the budget raises $353 billion in new taxes on businesses, not counting the hundreds of billions—perhaps trillions—more in so-called ''climate revenues.''

The budget decries the role of housing in bringing about our economic crisis. It reduces the value of millions of homes by reducing the value of the home mortgage interest deduction. The budget talks about struggling families but reduces the incentive for taxpayers with the means to donate to charity to do so.

The President claims this budget is free from the trickery and budget gimmicks that have characterized those of previous administrations, but he then assumes the extension of all the 2001 and 2003 tax relief and the AMT patch into the baseline and then eliminates some of the same tax relief and counts it as new revenue. I could go on and on about other contradictions and ironies in this budget outline, and this is likely just a preview. Wait until we get all the details.

The budget outline indicates tax increases of $990 billion over the next 10 years in so-called ''loophole closers'' and ''upper income tax provisions dedicated to deficit reduction.'' This is in addition to at least $646 billion more in so-called ''climate revenues.''

In short, President Obama is proposing to raise taxes at a time when we are in a recession. The last time we raised taxes during a recession, we went into a depression.

The President claims these tax hikes will not take effect until 2011, when he believes the economy will recover. This is in itself a huge contradiction. Why is it not a good idea to raise taxes this year, but it is OK to do so 2 years hence, when most economists believe we will just begin to recover from the most serious downturn since the 1930s? Huge new taxes in 2011 may be as dangerous to our long-term recovery as putting them in place right now. I find it very interesting that the new administration and many of our colleagues on the other side of the aisle recognize tax increases have a negative effect on economic growth. So please explain again why they would be a good idea 2 years from now. If the President believes the economy will have recovered by 2011, then why does he keep using the fear of a looming, deep recession to push forward his spending projects? Is it because he knows the economy will rebound with or without the ''Making Work Pay'' tax credit for funding for infrastructure? This budget would make the Making Work Pay tax credit permanent. If this credit, which costs the taxpayers $116 billion for just 2 years in the stimulus bill and would cost more than half a trillion dollars over 10 years in this budget, is a stimulus measure, as we were told, why is it included in the President's budget beyond 2011, when he predicts the economy to recover?

Let us take a look at the single largest tax increase proposal in the history of the world—a huge tax on middle-income people—the so-called ''climate revenues'' that are listed at $646 billion over 10 years. The proponents of this job-killing idea call it a ''cap-and-trade'' auction, but it is, in reality, nothing more than a gargantuan new tax on American businesses. Moreover, a close look at the footnotes of the tables reveals that this $646 billion is not even the extent of this new tax on American industry. The footnotes indicate this is just the portion of the new tax hike that will be used to pay for the Making Work Pay credit permanent and for clean energy initiatives. Additional revenues will be used to ''further compensate the public.'' It sounds like more income distribution to me.

In a briefing of staff last week, top administration officials admitted these revenues could be two to three times higher than the $646 billion listed in the budget. That means this tax could reach as high as $1.9 trillion—a $1.9 trillion tax increase. That is insane. So what we have in this first part is a brandnew tax increase on the industrial output of the United States of America, a tax that has never been levied before and which could raise as much as $1.9 trillion over 10 years, and this budget says it is all right because the proceeds of the new tax will go to ''compensate the public.''

Now, this $1 trillion-plus tax increase will mean businesses will have less money to hire new employees or pay salaries of existing employees. How are we going to compensate the hundreds of thousands or perhaps millions of workers who are employed by these industries when they lose their jobs because their companies can no longer compete because of this new tax? Will that be part of ''compensating the public''?

The next highest category of tax increases is almost as bad. The budget outline indicates it would raise $637 billion over 10 years by allowing some of the job-creating tax cuts from 2001 and 2003 to expire at the end of 2010. Now, these massive tax increases are touted as hitting only the so-called wealthy in our society; those who, in another part of the budget—page 14—are referred to as the few ''well off and well connected'' on whom the Government ''recklessly'' showered tax cuts and handouts over the past 8 years.

What this gross mischaracterization does not say is, many of these same individuals are the ones who have the ability to save or create the very jobs we need to turn our economy around.

What the Obama administration and many Democrats in Congress refuse to recognize is the fact that a majority of the income earned by small- and medium-sized businesses in America is taxed through the individual tax system. In other words, many of these small businesses pay their taxes as individuals, and they will thus be subject to these huge tax increases.

According to the National Federation of Independent Businesses, over half the Nation's private sector workers are employed by small businesses. Moreover, 50 percent of the owners of these businesses fall into the top two tax brackets which are the ones being targeted for big tax increases by the Obama budget. Let me repeat that. Fifty percent of the owners of these small businesses fall into the top two tax brackets, which are the ones being targeted for the big tax increases by the Obama budget.

The Small Business Administration tells us that 70 percent of all new jobs each year are created by small businesses. Why in the world would we want to harm the ability of America's job creation engines—small businesses—to help us create or save the jobs we so badly need right now? Why would we want to harm their ability? This is sheer folly.

President Obama claims he is providing tax relief to 95 percent of Americans. If you look closely, you will see that the budget raises the cost of living for lower wage earners. How? The budget raises $31 billion in taxes from domestic oil and gas companies. At a time when we are trying to decrease our dependence on foreign oil, we are

forcing oil companies to raise the price of gas at the pump. This increase in gas prices at the pump will have a greater impact on lower income wage earners than on anyone else.

I think this cartoon illustrated by David Fitzsimmons of the Arizona Daily Star, with a few of my edits, says it best: We will create 4 million jobs out of one side, and we will raise taxes on those who create those jobs on the other. That is a little harsh, but it kind of makes its point. I don't like to see our President depicted this way, but I have to admit it is a pretty good cartoon.

The budget outline also opens the door to universal health care by creating a 10-year, $634 billion ''reserve fund'' to partially pay for the vast expansion of the U.S. health care system, an overhaul that could cost as much as $1 trillion over 10 years. This expansion is financed, in part, by reducing payments to insurers, hospitals, and physicians. Already I am being deluged by hospitals and physicians. How are they going to survive if they get hammered this way? Now, most people don't have much sympathy for hospitals and physicians, but it does take money to run those outfits, and to take as much as $1 trillion over 10 years by reducing payments in part to insurers and hospitals is pretty serious. Highlights of these reductions include competitive bidding for Medicare Advantage, realigning home health payment rates, and by lowering hospital reimbursement rates for certain admissions.

Almost one-third of the health reserve fund would be financed by forcing private health plans participating in the Medicare Advantage Program to go through a competitive bidding process to determine annual payment rates. I wish to remind my colleagues that in the past, Medicare managed care plans left rural States due to low payments. Utah was one of the States that was severely impacted. I know my State was hurt by it.

Many other States were hurt as well, especially rural States. To correct this situation, Members of Congress on both sides of the aisle worked with both the Clinton and Bush administrations to address this issue in a bipartisan manner by creating statutory language to create payment floors for Medicare Advantage Plans. As a result, Medicare beneficiaries across the country have access to Medicare Advantage Plans, and 90 percent of them seem to be happy with those plans.

By implementing a competitive bidding process for Medicare Advantage, choice for beneficiaries in the Medicare Advantage program will be limited.

It is unclear whether Medicare Advantage programs will continue in rural parts of our country—areas such as Utah, where Medicare payments are notoriously low. You can go on and on with the many small States that are represented by Senators on the Finance Committee—including me.

I served as a key negotiator on the House-Senate conference that created the Medicare Advantage program. I cannot support any initiative that I believe will limit beneficiaries' choices in coverage under this program.

Another outrage and irresponsible attack on U.S. jobs is contained in the proposal the budget calls ''implement international enforcement, reform deferral, and other tax reform policies.'' This line item is estimated to raise $210 billion over 10 years. This vague description can really mean only one thing: The Obama administration plans to tax the foreign subsidiaries of all U.S.-owned businesses on their earnings whether they send the money back to the United States or keep it invested in a foreign country. This is similar to requiring individual taxpayers to pay taxes each year if the value of their home or investments goes up even if they do not sell them.

The real danger of this proposal, however, is its impact on U.S. companies and their ability to compete in the global marketplace. Almost all of our major trading partners tax their home-based businesses only on what they earn at home. The rest of the world taxes it that way. They don't tax their businesses for moneys earned overseas that don't come back. Those moneys are taxed there. The U.S. system is practically the only worldwide system in the industrialized world.

What this means is that an American company that is competing for business in some other nation—let's say India—may have competitors from France, the UK, and Germany. Because these other nations don't tax their companies on profits earned in countries other than the home country, they would enjoy a significant competitive advantage over any U.S. company, which, under the Obama proposal, would have to pay U.S. taxes on any profits earned. The result would simply be that multinational businesses would shun the United States and relocate elsewhere, as many have already done. A lot of Fortune 500 companies have left our country, in part because of tax ideas such as this. They don't want to go. U.S. firms will become ripe for international takeovers, and we would lose our global leadership, prestige, market share, jobs, and the bright future our country has enjoyed for decades.

In 1960, 18 of the world's largest companies were headquartered in the United States. Today, just eight are based in the United States. We have the largest corporate tax rates of any major country in the world. Can you imagine, if we reduced those rates, as I and other Republicans have suggested, from 35 to 25 percent, the jobs that would be automatically created? I cannot begin to tell you.

In 1960, we had 18 of the world's largest companies right here in the United States. Today, we only have eight based in the United States, partly because of these stupid, idiotic tax changes. If we pass this proposal, within a short time, there will be none. I predict that. The United States will be the last place on Earth businesses will want to locate.

I will show you this poster: Effect of Taxing U.S.-owned Subsidiaries. The United States has the second highest corporate tax rate. Again, in 1960, 18 of the world's largest companies were headquartered here. Today, only eight of the world's largest companies are headquartered in the United States. This is part of the reason.

The President believes our Tax Code includes incentives for U.S. businesses to ship jobs overseas, and this proposal is an attempt to end this practice. However, the evidence shows that our tax laws do not lead to U.S. job loss but to increases in U.S. employment when companies invest overseas.

We have all heard the accusations, time after time, right here on the Senate floor. It goes something like this: U.S. companies close their plants here, laying off all of their workers, just to move their production to a lower wage paying country, where those same goods are made with cheap labor and then shipped right back into the United States. Well, these accusations are largely unfounded. In 2006, just 9 percent of sales of U.S.-controlled corporations were made back to the United States. Our companies are not sending production jobs for U.S. products overseas. Instead, they are making products overseas for the overseas market, and they are doing it for solid business reasons, such as transportation savings, not for tax reasons.

Moreover, the evidence shows that the U.S. plants of companies without foreign operations pay lower wages than domestic plants of U.S.-owned multinational companies. This means companies that have overseas operations pay more to their U.S. workers than those that do not invest in other nations.

Studies by respected economists show that increasing foreign investment is associated with greater U.S. investment and higher U.S. wages. Overseas investment by U.S. companies is generally a good thing for the U.S. economy and for U.S. jobs. Attacking the deferral rule, as the Obama budget proposes, would do horrendous damage to our ability to compete in an increasingly global economy and will lead to our loss of world industrial leadership.

Just this week, I talked to one of the leading pharmaceutical CEOs in America. This leader and his family all came to America. They love this country. They don't want to leave. He made it very clear that if this type of tax law goes through, he is going to move to a more fair country. He will have to in order to compete. He probably will move his operations to Switzerland, where they are not treated like this. He doesn't want to do that—leave this beloved country—but to compete he would have to. All those jobs would go from here to there. I don't know who is thinking about this in the Obama administration, but they better start thinking about it.

I could go on about why this is the worst budget proposal I have seen in all of my nearly 33 years in this body. However, I will simply focus on one more reason.

President Obama has said this budget would allow us to reduce the Federal deficit by half over the next 4 years. While this is a noble goal, unfortunately, it is not one he can claim. Using the only common baseline there is, which assumes no change to current law, the deficit would decline—if we had no changes in current law—from $1.428 trillion in 2009 to $156 billion in 2013. That is including the expiring tax cuts. To put it in other words, if we do nothing, according to CBO, the deficit would decline by 90 percent over the next 4 years. Let me say that again. If we do nothing, the Federal deficit would decline by 90 percent, according to the estimates. President Obama proposes to reduce that decline to 50 percent by adding more Government spending.

I wish President Obama would follow his own lofty rhetoric. He says he wants to save and create jobs. We all do. But the way to do it is not through the job-killing policies found in this budget. He said it is time for honest and forthright budgeting. But this document is just a means for him to put forth his ultraliberal philosophy while claiming to be fiscally responsible. As you can see from this cartoon, the President talks the talk, but this budget doesn't walk the walk. Again, I know he probably laughs at these things, as I do when they do it to me. I don't want to treat the President like that, but it does make the point. He talks bipartisanship, he talks fiscal responsibility, but everything they are doing can be called irresponsible by good people who understand economics.

Look, I happen to like this President. I happen to want him to succeed. I care for the man. He is bright, articulate, and charismatic. I think that is apparent by the way the general public treats him. They want him to succeed. I do too. He doesn't write this budget himself. I don't blame him for this, except it is under his auspices that it is being touted. He has bright people around him. It is tough to find people brighter than Larry Summers; I think a lot of him. JOE BIDEN is very bright, and he knows a little bit about this. JOE admits that he is a self-confessed liberal. They are allowing this to go forward at a time when they are going to hurt this country rather than help it. I think we have to point some of these things out, and hopefully the President will see some of these things and say: Holy cow, I didn't realize this was in the budget. It is pretty hard because most people don't know what is in the budget. I doubt he has had a chance to read it. I want him to succeed, but he is not going to succeed with this kind of a budget.

This country is resilient, and maybe the country will pull out of this no matter what he does. I think we are in very trying times. This is the greatest country in the world. I don't want to see it diminished in any way. I am prepared to do things—people know that around here—to bring people together on both sides and help this President be successful. He has made overtures to me, and I very much respect him and I appreciate that. I want to help him.

I have to tell you that one of the reasons I am giving these remarks today is because I am very concerned about this type of a budget. We have put up with this kind of stuff in both Democratic and Republican administrations. It is time to quit doing it and start facing realities in this country. I see as much as a $5 trillion deficit in the near future. It is hard to even conceive of that. Yet that is where we are headed.

I want Mr. Geithner to succeed. Everybody knows I stood firmly for him in spite of all of the problems. He is a very bright guy, and I hope he succeeds. I will do what I can to help him, as a member on the Finance Committee and other committees as well.

They are not going to succeed with this type of budget. If they do, it will only be temporary. Our kids are going to pay these costs. They are going to pay for this mess. Elaine and I have 23 grandchildren I am concerned about, and 3 great-grandchildren. I don't want to stick them like this. I hope the President will get into it a little bit more, and I hope Larry Summers will get into it a little bit more. I think they have been taking advantage of a crisis to pass a huge welfare agenda that is going to hurt this country.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. 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. INHOFE. Madam President, I have been watching the nominations from President Obama with quite a bit of concern. When I go back to my State of Oklahoma, people say: What would happen to us if we didn't pay our taxes? And I thought it couldn't get much worse than that.

I am here today to make sure everyone focuses attention on a couple of nominations that I think are outrageous.

First is my opposition to the nomination of David Ogden to be the U.S. Deputy Attorney General. Last year, Congress passed a significant piece of legislation, the Protect Our Children Act, to address a growing problem of child pornography and exploitation. Both sides of the aisle hailed it as a great success. Democrats and Republicans thought that was great; we are going to protect our kids against child pornography and exploitation. While I proudly supported that legislation, I am shocked President Obama has nominated a candidate to serve in the No. 2 position in the Department of Justice who has repeatedly represented the pornography industry and its interests.

As we are witnessing a significant increase in the exploitation of children on the Internet, we do not need a Deputy Attorney General who will be dedicated to protecting children with that kind of a background. David Ogden has represented the pornography industry for a long period of time.

In United States v. American Library Association, Ogden challenged the Children's Internet Protection Act of 2000. I remember that well. We passed it here. He filed a brief with the Supreme Court opposing Internet filters that block pornography at public libraries. He challenged provisions of the Child Protection and Obscenity Enforcement Act of 1988 which seeks to prevent the exploitation of our Nation's most vulnerable population; that is, our children. He instead fought for the interests of the pornography industry.

As a grandfather of 12 grandchildren, I am confident that I stand with virtually all of the parents and grandparents around this country in opposing gross misinterpretations of our Constitution some use to justify the exploitation of women and children in the name of free speech. That is what was happening. That is David Ogden.

Some claim Ogden is simply serving his clients. Yet his extensive record in representing the pornography industry is pretty shocking, especially considering he has been nominated to serve in the Government agency that is responsible for prosecuting violations of Federal adult and children pornography laws.

Let's keep in mind, he is in the position of prosecuting the offenders of these laws, and yet he has spent his career representing the pornography industry.

Additionally, his failure to affirm the right to life gives me a great concern. I don't think that is uncharacteristic of most of the nominees of this President. No one is pro-life that I know of, that I have seen.

In the Hartigan case, Ogden coauthored a brief arguing that parental notification was an unconstitutional burden for a 14-year-old girl seeking to have an abortion. In the case of abortion, parents have the right to know.

Furthermore, as a private attorney, Ogden filed a brief in the case of Planned Parenthood v. Casey in opposition to informing women of the emotional and psychological risks of abortion. In the brief, he denied the potential mental health problems of abortion on women. This is what he wrote. The occupier of the chair is a woman. I think it is interesting when men are making their interpretation as to what feelings women have.

He wrote this. Again, this is the same person we are talking about, David Ogden. He said:

Abortion rarely causes or exacerbates psychological or emotional problems . . . she is

more likely to experience feelings of relief and happiness, and when child-birth and child-rearing or adoption may pose concomitant . . . risks or adverse psychological effects . . .

What he is saying is it is a relief. This is something he finds not offensive at all. He is actually promoting abortions.

We have to be honest. We need to talk about the mounting evidence of harmful physical and emotional effects that abortion has on women.

For these reasons, I oppose his nomination.

I also want to address my opposition to the nomination of Elena Kagan to serve as Solicitor General. Because of its great importance, quite often they talk about the Solicitor General as the tenth Supreme Court Justice and, therefore, it requires a most exemplary candidate. She served as the dean of Harvard Law School, which is no doubt an impressive credential. However, in that role, she demonstrated poor judgment on a very important issue to me.

While serving as the dean of Harvard Law School, Kagan banned the military from recruiting on campus. We have to stop and remember what happened in this case. In order to protect the rights of people to recruit—we are talking about the military now—on campuses to present their case—nothing mandatory, just having an option for the young students—Jerry Solomon—at that time I was serving in the House of Representatives with him—had an amendment that ensured that schools could not deny military recruiters access to college campuses. Claiming the Solomon amendment was immoral, she filed an amicus brief with the Supreme Court in Rumsfeld v. FAIR opposing the amendment. The Court unanimously ruled against her position and affirmed that the Solomon amendment was constitutional.

It is interesting, for a split division it might be different. This is unanimous on a diverse Court.

I also express my opposition to two other Department of Justice nominees—Dawn Johnsen and Thomas Pirelli. Dawn Johnson, who has been nominated to serve as Assistant Attorney General in the Office of Legal Counsel, has an extensive record of promoting a radical pro-abortion agenda. She has gone to great lengths to challenge pro-life provisions, including parental consent and notification laws. She has even inserted on behalf of the ACLU that ''Our position is that there is no 'father' and no 'child'—just a fetus.''

As a pro-life Senator who believes each child is the creation of a loving God, I believe life is sacred. I cannot in good conscience confirm anyone who has served as the legal director for the National Abortion and Reproductive Rights Action League. The right to life is undeniable, indisputable, and unequivocal. It is a foundational right, a moral fiber fundamental to the strength and vitality of this great Nation.

For a similar reason I can't support the nomination of Thomas Perrelli to serve as Associate Attorney General. Keep in mind now, we are talking about the four top positions in the Justice Department. And like other nominees I have discussed today, Mr. Perrelli has failed to affirm and protect the dignity of all human life, as an advocate for euthanasia, and I think we know the background of that.

I would only repeat that these are not people with just an opinion, they are extremists. We are talking about someone in the No. 2 position of the Department of Justice who actually has been involved in representing the pornography industry, and this is something that is totally unacceptable.

I think as we look at these nominations, I suggest that those individuals who are supporting these look very carefully, because people are going to ask you the question: How do you justify putting someone who supports pornography, who has worked for it and been paid by that industry, in the No. 2 position in the Justice Department?

With that, Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I ask unanimous consent to speak for up to 7 minutes.

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

Ms. KLOBUCHAR. Madam President, I am here to speak in favor of David Ogden to be the next Deputy Attorney General of the United States.

I have listened to my colleague and friend from Oklahoma, and I am not going to be able to respond to everything he said about every nominee, but I did want to talk today about Mr. Ogden. He is someone who I believe should be our next Deputy Attorney General, at a Department of Justice that is much in need of a Deputy Attorney General, and he is someone who will hit the ground running. He will beef up civil rights and antitrust enforcement. He will address white-collar crime and drug-related violence, as well as help to keep our country safe from terrorist attacks.

We know the to-do list and the demands on the next Deputy Attorney General will be great. Part of why it will be so great is something that I saw in my own State. We had a gem of a U.S. Attorney General Office in Minnesota, and we still do, but there was a period of time where I saw its destruction and rot by putting one political appointee in charge of that office. It was a huge mistake. The office was in an uproar. They got away from their regular mission. Luckily, Attorney General Mukasey put in a career prosecutor, Frank McGill, who has put the office back on track, and I thank him for that. We have suggested—recommended—a new name to the Attorney General and the President for the next U.S. Attorney in Minnesota. But I tell you that story for a reason, and that is justice is important and order is important and management is important in our criminal justice system. We went so far away from that when Alberto Gonzalez was the Attorney General. That is why it is so important to have David Ogden in there to work with Eric Holder.

David Ogden has demonstrated intelligence and judgment, leadership and strength of character and, most importantly, a commitment to the Department of Justice. He has the experience and the integrity, I say to my colleagues, to serve as the next Deputy Attorney General. One of the most important roles of a Deputy Attorney General is to make sure that the day-to-day operations of the Department run smoothly and to provide effective and competent management guided by justice. I know David Ogden can do that. His experience both as Chief of Staff and counselor to former Attorney General Reno, as well as his experience as Assistant Attorney General for the Department's civil division under President Clinton proves that David Ogden has experience and the integrity to do the job.

I have heard all these allegations made, including by my colleague. I want to tell you some of the people who are supporting David Ogden. His nomination is supported by a number of law enforcement and community groups, including among others, the Fraternal Order of Police—not exactly a radical organization. He is supported by the National District Attorneys Association, the Partnership for a Drug Free America, and the National Sheriffs' Association.

The National Center for Missing and Exploited Children is a strong supporter. In fact, they sent a letter saying they gave David Ogden their enthusiastic support. In particular, they wrote:

> . . . during Mr. Ogden's tenure as Chief of Staff and Counsel to the Attorney General, we worked closely with the Attorney General in attacking the growing phenomenon of child sexual exploitation and child pornography. As counselor to the Attorney General, Mr. Ogden was intricately involved in helping to shape the way our group responded to child victimization challenges and delivered its services.

It is seconded by the Boys and Girls Clubs of America, which also supports David Ogden's nomination. In addition to these law enforcement and child protective groups, David Ogden has received broad bipartisan support from a number of former Department officials, including Larry Thompson, a former Deputy Attorney General under President George W. Bush, and George Terwilliger, who served in the same role under President George H. W. Bush.

There are so many things on the Justice Department's plate, and we need someone to be up and running. But I want to respond specifically to some of the things we have heard today. There was a statement by one of Senators that Mr. Ogden opposed a child pornography statute that we passed in 1998.

That is simply not correct, and I hope my colleagues know that. In fact, as head of the Civil Division of the Department of Justice, he led the vigorous defense of the Child Online Protection Act of 1998 and the Child Pornography Prevention Act of 1996.

There were also mischaracterizations, for political reasons, of Mr. Ogden's record. We have already talked about how he is supported by the major police organizations in this country. Well, in addition to that, he has a general business practice, and before that he served in government. His work at the WilmerHale law firm over the past 8 years, for example, hasn't centered on first amendment litigation. He has represented corporate clients, from Amtrak to the Fireman's Fund.

They also said that somehow Mr. Ogden took some position taken by Mr. Ogden's clients, who were America's librarians and booksellers. Rather, the Senate rejected the Clinton administration's interpretation, and Mr. Ogden made clear to the Judiciary Committee that he disagreed with that interpretation. In his testimony, he made clear that he is comfortable with the ruling of the Court and agreed with the Senate resolution.

You can go on and on about some of these misstatements about Mr. Ogden's record, but let us look at what is going on here. As I mentioned before, the child protection community supports Mr. Ogden based on his strong record of protecting children. Now, I tend to believe the people who deal every day with helping families with missing children more than I believe some statement that is made in a political context. I will be honest with you, I tend to believe the Fraternal Order of Police when they give an endorsement more than I believe some statement made in a political context.

Let me tell you this. Why is this so important? Why can we not go back and forth and back and forth and have all these political partisan attacks? Well, we need a Deputy Attorney General now. We need a Deputy Attorney General right now. The Department of Justice has more than 100,000 employees and a budget exceeding $25 billion. Every single Federal law enforcement officer reports to the Deputy Attorney General, including the FBI, the DEA, the ATF, the Bureau of Prisons, and all 93 U.S. Attorney's Offices. The Attorney General needs the other members of his Justice Department leadership team in place.

Look what we are dealing with: the Madoff case and billions of dollars stolen. We are dealing with childcare cases. We are dealing with administering this $800 billion in money and making sure people aren't ripped off. We are dealing with murders and street crimes across this country. Yet people are trying to stop the Justice Department from operating? That can't happen.

I want to end by saying I was a prosecutor for 8 years, and always my guiding principle was that you put the law above politics. That is what I am asking my colleagues to do here. We need to get David Ogden in as a Deputy Attorney General. Now is the time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DURBIN. Madam President, pending before the Senate is the nomination of David Ogden to be the Deputy Attorney General. I rise to speak in support of that nomination.

The Justice Department and our Nation are fortunate that President Obama has put forward this nomination. Mr. Ogden has the experience, the talent, and the judgment needed for this critical position.

The Deputy Attorney General is the No. 2 person at the Justice Department. He is the day-to-day manager of the entire agency. This includes supervising key national security and law enforcement offices such as the FBI and our counterterrorism operations. Mr. Ogden is a graduate of Harvard Law School, former law clerk to a Supreme Court Justice, which is one of the most prestigious jobs in the legal profession. He had three senior positions in the Janet Reno Justice Department and served as her Chief of Staff, Associate Deputy Attorney General, and also served as Assistant Attorney General in the Civil Division, a position for which he received unanimous confirmation by this Senate. Mr. Ogden also served as the Deputy General Counsel at the Defense Department.

Given this excellent background, it is not surprising that David Ogden gained the support of many prominent conservatives. At least 15 former officials of the Reagan and both Bush administrations have announced their support for his nomination. They include Larry Thompson, the first Deputy Attorney General of the most recent Bush administration; Peter Keisler, former high-level Justice Department official; and Rachel Brand, another high-level Justice Department official in the Bush administration. Their words are similar. I will not read into the RECORD each of their statements, but they give the highest possible endorsement to David Ogden.

Due to a scheduling conflict, I could not attend his hearing, but I asked him to come by my office so we could have time together and I could ask my questions face to face. We talked about a lot of subjects, including criminal justice reform, human rights, and the professional responsibilities of the Department of Justice lawyers. I was impressed by Mr. Ogden's intellect, his management experience, and his commitment to restoring the Justice Department's independence and integrity.

We talked about the Senate Judiciary Committee's Subcommittee on Crime and Drugs, a subcommittee I will chair in the 111th Congress, and the issues we are going to face—including the Mexican drug cartels, which will be the subject of a hearing in just a few days, racial disparities in the criminal justice system in America, and the urgent need for prison reform. That is an issue, I might add, that is near and dear to the heart of our colleague, Senator JIM WEBB of Virginia. I am going to try to help him move forward in an ambitious effort to create a Presidential commission to look into this.

The Justice Department will play an important role in reclaiming America's mantle as the world's leading champion for human rights. Mr. Ogden and I discussed the Justice Department's role in implementing President Obama's Executive orders in relation to the closure of the Guantanamo Bay detention facilities and review of detention and interrogation policies. We discussed the investigation by the Justice Department's Office of Professional Responsibility, as to the attorneys in that Department who authorized the use of abusive interrogation techniques such as waterboarding. Senator SHELDON WHITEHOUSE of Rhode Island and I requested this investigation. Mr. Ogden committed to us that he would provide Congress with the results of the investigation as soon as possible. This is the kind of transparency and responsiveness to congressional oversight we expect from the Justice Department and something that we have been waiting for.

We also discussed the Justice Department's role in ensuring that war criminals do not find safe haven in the United States. I worked with Senator COBURN who is a Republican from Oklahoma, on the other side of the aisle. We passed legislation allowing the Justice Department to prosecute the perpetrators of genocide and other war crimes in the U.S. courts. I believe Mr. Ogden appreciates the importance of enforcing these human rights laws.

At the end of our meeting, I felt confident David Ogden will be an excellent Deputy Attorney General.

I want to make one final point. There is some controversy associated with his appointment that I would like to address directly. I am aware there has been some criticism that David Ogden represented clients whom some consider controversial. He has been criticized in his representation of libraries and bookstores who sought first amendment free speech protections, and for his representation of a client in an abortion rights case.

I would like to call to the attention of those critics a statement that was made by John Roberts, now Chief Justice of the U.S. Supreme Court, when he appeared before the Senate Judiciary Committee several years ago at his confirmation hearing.

He was asked about the positions he had advocated on behalf of his clients as an attorney. Here is what the Chief Justice told us:

It's a tradition of the American Bar Association that goes back before the founding of the country that lawyers are not identified with the positions of their clients. The most famous example probably was John Adams, who represented the British soldiers charged in the Boston Massacre. He did that for a reason, because he wanted to show that the Revolution in which he was involved was not about overturning the rule of law, it was about vindicating the rule of law.

And he went on to say:

That principle, that you don't identify the lawyer with the particular views of the client, or the views that the lawyer advances on behalf of a client, is critical to the fair administration of justice.

You practiced law, Madam President. I have too. Many times you find yourself in a position representing a client where you do not necessarily agree with their position before the court of law. But you are dutybound to bring that position before the court so the rule of law can be applied and a fair outcome would result. If we only allowed popular causes and popular people representation in this country, I am afraid justice would not be served.

Chief Justice Roberts made that point when he was being asked about his representation of legal clients. I would say to many on the other side of the aisle who are questioning David Ogden's reputation, they owe the same fairness to him that was given to Chief Justice Roberts in that hearing.

I would remind the conservative critics of Mr. Ogden, look carefully at that testimony. What is good for the goose is good for the gander.

After 8 years of a Justice Department that often put politics over principle, we now have a chance to confirm a nominee with strong bipartisan support who can help restore the Justice Department to its rightful role as guardian of our laws and the protector of our liberties.

David Ogden has the independence, integrity, and experience for the job. I urge my colleagues to join me in voting for his nomination to be Deputy Attorney General.

CLEAN COAL RESEARCH PROJECT

Mr. DURBIN. Madam President, it was about 7 years ago when the Bush administration announced what they said was the most significant coal research project in the history of the United States. The name of the project was FutureGen. The object was to do research at a facility to determine whether you could burn coal, generate electricity, and not pollute the environment. It is an ambitious undertaking.

The way they wanted to achieve it was to be able to capture the CO_2 and other emissions, virtually all of them coming out of a powerplant burning coal, and to sequester them; that is, to stick them underground, find places underground where they can be absorbed by certain geological foundations, safely held there. Of course, it was an ambitious undertaking. It had never been done on a grand scale anywhere in the country.

Well, the competition got underway and many States stepped forward to compete for this key research project on the future of coal. There were some five to seven different States involved in the competition. My State of Illinois was one of them. The competition went on for 5 years.

Each step of the way, the panel of judges, the scientists and engineers would judge the site. Is this the right place to build it? Is it going to use the right coal? Can they actually pump it underground and trap it so that it will not ever be a hazard or danger at any time in the future? Important and serious questions.

My State of Illinois spent millions of dollars to prove we had a good site. When it finally came down to a decision, there were two States left: Texas and Illinois. Well, I took a look around at our President and where he was from, and I thought, we do not have a chance. Yet the experts made the decision and came down in favor of Illinois. They picked the town of Mattoon, IL, which is in the central eastern part of our State, in Coles County, and said that is the best place to put this new coal research facility.

We were elated. After 5 years of work, we won. After all of the competition, all of the different States, all of the experts, all the visits, everything that we put into it, we won the competition.

Within 2 weeks, the Secretary of the U.S. Department of Energy, Mr. Bodman, came to my office on the third floor of the Capitol and said: I have news for you.

I said: What is that?

He said: We are canceling the project.

I said: You are cancelling it? We have been working on this for 5 years.

He said: Sorry, it cost too much money. The original estimate was that this was going to cost $1 billion. When the President first announced it, we knew inflation would add to the construction costs over some period of time. But here was Mr. Bodman saying it cost almost twice as much as we thought it would cost; therefore, we are killing the project.

Well, I was not happy about it. In fact, I thought it was totally unfair, having strung us along for 5 years, made my State and many others spend millions of dollars in this competition, go through the final competition and win, and then be told, within 2 weeks: It is over; we are not going to go forward with it.

So I said to Mr. Bodman: Well, you are going to be here about a year more, and I am going to try to be here longer. At the end of that year, when you are gone, I am going to the next President, whoever that may be, and ask them to make this FutureGen research facility a reality.

I told the people back home: Do not give up. Hold on to the land we have set aside. Continue to do the research work you can do. Bring together the members of the alliance—which are private businesses, utility companies, coal companies—not only from around the United States but around the world interested in this research and tell them: Don't give up.

So we hung on for a year, literally for a year, and a new President was elected. It happened to be a President I know a little bit about, who was my colleague in the Senate, Senator Obama. When we served together, he knew all about this project and had supported it.

So now comes the new administration and a new chance. The Obama administration has said to me and all of us interested in this project: There is one man who will make the decision: it is the Secretary of Energy, Dr. Chu. He is a noted scientist who will decide this on the merits. He is going to decide whether this is worth the money to be spent. So we made our appeal to him, we presented our case to him, and left it in his hands. We are still worried about this whole issue of cost.

BART GORDON, a Congressman from the State of Tennessee and serves on the House Science Committee, he sent the Government Accountability Office to take a look at FutureGen to find out what happened to the cost, why did it go up so dramatically.

Well, the report came out last night. Here is what the report found. The report found the Department of Energy had miscalculated the cost of the plant, overstating its cost by $500 million because they made a mathematical error—$500 million.

Taking that off the ultimate cost brings it down into the ordinary construction inflation cost. And so many of us who argued their estimate of cost was exaggerated now understand why. They made a basic and fundamental error calculating the cost of this project.

Here is what we face. Now, 53 percent of all the electricity in America is generated by coal. Burning coal can create pollution. Pollution can add to global warming and climate change, and we have to be serious about dealing with it.

This plant is going to give us a chance to do that. When the GAO took a look at the Department of Energy documentation, they also discovered a memo which said: If we kill the FutureGen coal research plant, we will set coal research back 10 years with all of the time they put into it. All of the effort they put into it would have been wasted and could not be replicated.

So that is what is at stake. The ultimate decision will be made by Dr. Chu at the Department of Energy. I trust that he will find a way to help us move forward, but I want him to do it for the right scientific reasons.

If we are successful, we will not only be able to demonstrate this technology for America but for the world. The reason why foreign countries are joining

us in this research effort is what we discover will help them. China is building a new coal-fired plant almost every week and is going to be adding more pollution to the environment than we can ever hope to take care of in the United States alone.

But if we can find a way, a technology, a scientific way, using the best engineering and capture that pollution before it goes into the air, it is a positive result not just for the United States but for the world.

From a parochial point of view, we happen to be sitting on a fantastic energy reserve right here in America. There are coal reserves all across the Midwestern United States, and almost 75 percent of my State of Illinois has coal underneath the soil. It is there to be had and used. But we want to use it responsibly.

We want to make sure at the end of the day that we can use coal and say to our kids and grandkids: We provided the electricity you needed but not at the expense of the environment you need to survive.

So this finding by the GAO has given us a new chance. We are looking forward to working with the Department of Energy. For those back in Illinois who did not give up hope, we are still very much alive, and this latest disclosure gives us a chance to bring the cost within affordable ranges. I hope the Department of Energy will decide to move forward on this critical research project.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called proceeded to call the roll.

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

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

(The remarks of Mr. WEBB pertaining to the introduction of S. 572 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

EARMARKS

Mr. WEBB. Madam President, I rise to address the recent debate we have had on the Omnibus appropriations bill with respect to earmarks. The premise seems to be, for those who have criticized the earmarks process, that this is pork. Sometimes it is; sometimes it is not. But I would start first with the Constitution.

There is nothing in the Constitution that says the executive branch of Government should appropriate funds or decide which funds should be spent. That is a procedure that has evolved over the centuries because of the complexities of Government, where the executive branch looks at its needs and comes to the Congress and asks for appropriations. Earmarks take place when individual Members of Congress, exercising their authority to appropriate under the Constitution, decide and recommend that worthwhile programs in an ideal case should be included in a budget process, programs that have not been considered or included by the executive branch or through other processes.

For instance, I was able, last year, along with Senator John Warner, now retired, to bring $5 million into a rural area of Tidewater, VA, so they could put broadband in. Broadband is something we know all Americans who want to compete for their future and contribute equally need to have. It didn't make it into anybody's bill. Who is thinking about sparsely populated areas such as rural Virginia? Yet we were able to bring a lot of benefit to those who otherwise would not have received it.

What I would ask my colleagues, particularly those who have become so adamant in their concern over the earmarks process, to consider is, let's take a look at the budget that comes to the Congress. Is there pork in the budgets that come over, pork that comes through, in some cases, unnecessary influence or individual discretion? You bet there is.

I say that as someone who spent 5 years in the Pentagon, 4 years of which I was on the Defense Resources Board where on any given day we were implementing a budget, arguing a budget in the Congress, and developing the next year's budget. I offer an example of a situation that my staff has been following for the last 10 months and use it as an invitation to colleagues to join me in looking at where there can be abuses of discretion and where there can be a lot of money that can be saved.

Ten months ago, on May 21, there was an article in the Wall Street Journal that talked about Blackwater Worldwide attempting to obtain local approval for a new training center in San Diego, CA. We all remember Blackwater. They are an independent contractor that has done more than a billion dollars of business since the Bush administration, the most recent Bush administration took office. I became curious about this project, first, because I had seen reports of what a very high percentage of the Blackwater contracts had been awarded were either noncompete or minimal compete and the high volume number, more than a billion of them. And also the fact that having at one time been Secretary of the Navy, they were apparently wanting to build a training center so they could train Active-Duty sailors how to defend themselves onboard a ship.

Having spent time in the Marine Corps, I immediately started thinking about what it would have been like to have a nonmilitary contractor teaching me how to do patrolling when I was going through basic school in Quantico all those years ago. It didn't fit.

I started asking around. The first thing I found out was, this was a contract from the Navy that was worth about $64 million. I wrote a letter to Secretary Gates. I said: Is this Blackwater program in any way authorized or funded by U.S. tax dollars? The answer came back, yes, obviously. I asked: Is there specific legislative authorization for it? Because I couldn't find any, as a member of the Armed Services Committee. The answer was no. According to Secretary Gates, this activity falls under the broad authorization provided to the Secretary of Defense and the Secretaries of the military departments to procure goods and services using appropriated funds and prescribed procedures for those procurements.

Then I asked him in this letter: Is there a specific appropriation, either in an appropriations bill or through an earmark? The answer is: No, there was no specific appropriation or earmark directing this effort.

As we started to peel this back, here is what we found. An individual, an SCS, midlevel individual in the Department of the Navy had the authority to approve this type of a program up to the value of $78 million, without even having a review by the Secretary of the Navy. This was not an authorized program. It was not an appropriated program. It was money that came out of a block of appropriated funds for operation and maintenance that then somebody in the Navy said was essential to the needs of the service, the needs of the fleet, which is a generic term.

I ask my colleagues who are so concerned about some of the pork projects or earmarks process here, which has gained a great deal of visibility since I have been here over the past 2 years and transparency, to join me in taking a look at these sorts of contracts. When a midlevel person in the Pentagon has the authority to approve a program that hasn't been authorized and hasn't been appropriated up to the value of $78 million and not even have the oversight of the Secretary of that service, that is where you see the potential for true abuse of the process. That is where we need to start focusing our energies as a Congress.

Mr. REID. Madam President, today we debate the nomination of David Ogden to be the Deputy Attorney General of the United States.

Mr. Ogden is highly qualified for this important job. He is a graduate of Harvard Law School and clerked on the Supreme Court for Justice Harry Blackmun. During the Clinton Administration, he served as the Assistant Attorney General for the Civil Division and as chief of staff to the Attorney General.

He also previously served as Deputy General Counsel at the Department of Defense, so he has a keen appreciation for the national security issues that he will face at DOJ. He has an excellent reputation among his fellow lawyers and is supported by a number of former Republican Justice Department officials.

It is surprising to me that we need to spend more than a full day debating

this obviously qualified nominee. Mr. Ogden was favorably reported by the Judiciary Committee by a vote of 14–5, so it seems clear he will be confirmed. But apparently some far-right advocates have made this nomination more controversial than it should be.

As I understand it, those who oppose this nominee disagree with positions he took on behalf of some of his clients, including media organizations. In my view, that is a very unfair basis for opposing a nominee. As a former practicing lawyer, I feel strongly that a lawyer should not be held personally responsible for the views of his clients.

President Obama deserves to have his advisors, especially members of his national security team, in place as quickly as possible. I urge confirmation of this outstanding nominee.

Mr. LEAHY. Madam President, even after abandoning their the ill-conceived filibuster of President Obama's nomination of David Ogden to be Deputy Attorney General, we still hear Republican Senators making scurrilous attacks against Mr. Ogden, launched by some on the extreme right.

As I said on the Senate Floor earlier, David Ogden is a good lawyer and a good man. He is a husband and a father. Yet, regrettably and unbelievably, we still hear chants that he is a pedophile and a pornographer. Those charges are false and they are wrong. Senators know better than that.

Special interests on the far right have distorted Mr. Ogden's record by focusing only on a narrow sliver of his diverse practice as a litigator spanning over three decades. Dating back to the 1980s, Mr. Ogden's practice has included, for example, major antitrust litigation, counseling, representation and authorship of a book on the law of trade and professional associations, international litigation and dispute resolution, False Claims Act and Export Controls Act investigations, and a significant practice in administrative law. In other words, he has been a lawyer, representing clients. For the last 8 years, since leaving Government service, Mr. Ogden has represented corporate clients in a range of industries, including transportation clients like Amtrak and Lufthansa, insurance and financial institutions like Citibank and Fireman's Fund, petrochemical companies like Shell and BP and pharmaceutical concerns like PhRMA and Merck.

Here are the facts that underlie the overheated rhetoric: As a young lawyer in a small firm with a constitutional practice, along with other lawyers in that respected DC law firm, Mr. Ogden represented a range of media clients. He represented the American Library Association, the American Booksellers Association, and Playboy Enterprises.

In the early 1990s, while at the respected firm of Jenner & Block, Mr. Ogden represented a Los Angeles County firefighter. The firefighter was being prohibited from possessing or reading Playboy magazine at the firehouse, even when on down time between responding to fires. The Federal Court reviewing the matter held that the first amendment protected the firefighter's right to possess and read the magazine. That representation does not make Mr. Ogden a pornographer, a pedophile or justify any of the other epithets that have been thrown his way.

He also challenged a prosecution strategy that threatened simultaneous indictments in multiple jurisdictions with the goal of negotiating plea agreements that put companies out of business without ever having to prove that the materials they were distributing were obscene. That sounds like the kind of overreaching prosecution strategy that Senator SPECTER and other Republican Senators would condemn, just as they have the excesses of the ''Thompson memo'' pressuring investigative targets to waive their attorney-client privilege.

Those who have argued that Mr. Ogden has consistently taken positions against laws to protect children ignore Mr. Ogden's record and his testimony. What these critics leave out of their caricature is the fact that Mr. Ogden also aggressively defended the constitutionality of the Child Online Protection Act and the Child Pornography Prevention Act of 1996 while previously serving at the Justice Department. This work has led to support and praise from the National Center for Missing and Exploited Children. He has the support of the Boys and Girls Clubs of America. In private practice he wrote a brief for the American Psychological Association in Maryland v. Craig in which he argued for protection of child victims of sexual abuse. In his personal life, he has volunteered time serving the Chesapeake Institute, a clinic for sexually abused children.

Nominees from both Republican and Democratic administrations and Senators from both sides of the aisle have cautioned against opposing nominees based on their legal representations on behalf of clients. When asked about this point in connection with his own nomination, Chief Justice Roberts testified, ''it has not been my general view that I sit in judgment on clients when they come'' and, ''it was my view that lawyers don't stand in the shoes of their clients, and that good lawyers can give advice and argue any side of a case.'' Part of the double standard being applied is that the rule Republican Senators urge for Republican nominees—that their clients not be held against them—is turned on its head under a Democratic President.

As recently as just over 1 year ago, every Senate Republican voted to confirm Michael Mukasey to be Attorney General of the United States. That showed no concern that one of his clients, and one of his most significant cases in private practice as identified in the bipartisan committee questionnaire he filed, was his representation of Carlin Communications, a company that specialized in what are sometimes called ''dial-a-porn'' services. It is more evidence of a double standard.

Senators should reject the partisan tactics and double standards from the extreme right and support David Ogden's nomination. The last Deputy Attorney nominee to be delayed by such a double standard was Eric Holder, whose nomination to be Deputy Attorney General in 1997 was delayed for three weeks by an anonymous Republican hold after being reported favorably by the Judiciary Committee before being confirmed unanimously. Like now Attorney General Holder, Mr. Ogden is an immensely qualified nominee whose priorities will be the safety and security of the American people and reinvigorating the traditional work of the Justice Department in protecting the rights of Americans.

Mr. CARDIN. Mr. President, I ask unanimous consent that on Thursday, March 12, the Senate resume consideration of the Ogden nomination at 12 noon and that it be considered under the parameters of the order of March 10; that the vote on the confirmation of the nomination occur at 2 p.m.; further, that upon confirmation of the Ogden nomination, the Senate remain in executive session and consider Calendar No. 23, the nomination of Thomas John Perrelli to be Associate Attorney General; that debate on the nomination be limited to 90 minutes equally divided and controlled between the leaders or their designees; that upon the use or yielding back of time, the Senate proceed to a vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be laid upon the table, no further motions be in order; that the President be immediately notified of the Senate's action; and that the Senate then resume legislative session.

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

MORNING BUSINESS

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

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

OMNIBUS APPROPRIATIONS ACT

Mrs. BOXER. Mr. President, during consideration of the Omnibus Appropriations Act, members of the minority party attempted to attach amendments in an effort to delay passage of this important bill. Because further delay in passing this bill could have resulted in the shutdown of the Federal Government, I voted against all amendments to the bill.

I believe that this omnibus bill is important for job growth and will help revitalize our economy. That must be our concern at this critical time.

I would like to clarify my position of some of these amendments:

Amendment 630 would have required the Secretary of State to report on whether additional military aid to Egypt could be used to counter the illegal smuggling of weapons into Gaza. The omnibus bill already explicitly authorizes the use of military aid provided to Egypt for border security programs so the amendment was completely unnecessary.

Amendment 631 would have prohibited funds for reconstruction efforts in Gaza unless the administration certifies that the funds will not be diverted to Hamas or entities controlled by Hamas. The Omnibus bill and permanent law already prohibit any funds from being provided to Hamas or entities controlled by Hamas so this amendment was also completely unnecessary.

Amendment 634 would have prevented funds in this bill from going to companies that assist Iran's energy sector. While I have long supported tough action against Iran for its illicit nuclear program, sending this provision back to the House of Representatives could have endangered final passage of the bill.

Amendment 613 would have cut off all U.S. funding for the United Nations if it imposes any tax on any United States person. The U.N. has never imposed a tax, is not a taxing organization, and if the U.N. ever decided it wanted to impose a tax the U.S. would veto it. This amendment is unnecessary.

Amendment 604 would have extended the E-Verify worker identification program for an additional five years. The omnibus bill already contains a 6-month extension of this program.

Amendment 662 would prohibit the use of funds by the Federal Communications Commission to promulgate the fairness doctrine. On February 26, 2009, I voted in favor of an amendment offered by the junior Senator from South Carolina to prevent the FCC from promulgating the fairness doctrine. This amendment passed the Senate as part of S. 160, the Washington, DC voting rights bill. Also, there are no provisions in the omnibus bill related to the fairness doctrine, making this amendment unnecessary.

Amendment 604 repeals the provision of the Legislative Reorganization Act which grants Members an automatic pay adjustment each year. The amendment would take effect beginning December 11, 2010, and would require the enactment of new legislation to grant Members a pay raise. I believe the junior Senator from Louisiana was doing nothing more than playing politics with his amendment, as he objected to passing a stand-alone bill offered by the Senate majority leader that would have accomplished the same goal as the Vitter amendment. I would have supported passing the majority leader's bill.

Mr. DODD. Mr. President, earlier this week the Senate voted down amendment No. 668 offered by my colleague Senator ENZI by a vote of 42 to 53. I strongly opposed this amendment and am pleased that my colleagues defeated this harmful amendment.

The amendment, if passed, would have cut more than $983,000 in Ryan White Part A funding to the city of Hartford, CT, and more than $770,000 in funding to the city of New Haven, CT, in fiscal year 2009. The Enzi amendment would have forced these cities to absorb a combined cut of more than 35 percent to their Ryan White Part A grant in 1 year.

During floor debate on the Enzi amendment, the amendment was represented as a proposal that would simply cut funding from San Francisco. That is not the case and if the Enzi amendment had become law, thousands of individuals living with HIV/AIDS in the State of Connecticut would have been denied direct medical services for the treatment of their disease.

Cuts in funding as envisioned under the Enzi amendment would have deprived individuals living with HIV/AIDS in Connecticut access to medications, clinics would have to turn away patients, and programs would have to make drastic cuts to counseling, transportation, and nutrition assistance.

In fact, 13 cities in Florida, California, New York, New Jersey, Puerto Rico, and Connecticut would have seen huge funding cuts under the Enzi amendment.

For the information of my colleagues, the State of Connecticut was severely disadvantaged because of the way the last reauthorization was handled. Despite receiving assurances and seeing numbers that told a different picture, the 2006 reauthorization bill has led to more than $3 million in annual losses to Connecticut. The funding provided in the omnibus is essential to restoring these cuts.

It is my sincere hope that we can address the problems underlying the cuts to Connecticut when we reauthorize this program which expires this year. I find it regretful that the senate had to take up this funding fight yesterday because reauthorizations of the Ryan White CARE Act program have traditionally enjoyed bipartisan support.

I want to thank Senators HARKIN and INOUYE for including the largest increase in Part A of Ryan White in 8 years in the fiscal year 2009 omnibus bill. With the defeat of the Enzi amendment, cities under Part A will receive a total increase of more than $25 million.

I thank my colleagues for defeating this harmful amendment.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heartbreaking and touching. While energy prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

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

Thanks for asking our input. As Republican delegates to the convention in Sandpoint, my wife and I were pleased to help pass resolutions encouraging energy development.

I am really not sure what blend of ineptitude/conspiracy (not you, sir) to blame for not drilling in Alaska and off our coasts for the last 15 years, but I am glad to see that clearing up.

I do encourage domestic and offshore drilling; China is already drilling past the 16 mile limit off the coasts of California and Florida. (I gave a letter from delegate Jack Streeter to Bill Sali regarding this at the convention; he may recall it).

Also, I would like to plug Idaho developing not only nuclear power (I could go either way on that) but I really think, as our forefathers had the wisdom to use government resources to develop hydroelectric power, which we still benefit from, so we should develop wind power, in a state so blessed with wind, water and mountains!

Rather than our children inheriting simply an enormous U.S. debt burden, I would like to see us drill on a national level (Idaho might benefit from deep drilling, like the Russians are doing, 30–40,000 foot deep wells, unlike anything we have—that is how you get oil in high altitude regions like Idaho) and produce cheap, renewable energy from wind in Idaho to bless our selves, and children and generations beyond.

Please let me hear your thoughts; wind power for Idaho by state funding or even a U.S. bill would be an earmark few in the state would hold against you.

BOB, *Mountain Home.*

I heard on the radio that you want input from Idahoans on the subject of gas prices and ideas for solutions. That is why I am writing. In my opinion, this is a manipulated situation, designed to pull more money from the pockets of working Americans and put it in the coffers of corporate America and a few of the mega wealthy citizens. We have seen this happen before with the Enron debacle and the spike of electricity prices a few years ago. We have seen it with the .com stock market crash. We have seen it with the housing market crisis. This is but another symptom of the larger problem—corporate irresponsibility and subsequent government bailout.

The larger problem is the corruption in Washington. Corporate business cannot run government and have the citizens of the country be the winner in anything. The only solution to the problem of gas prices (and drug prices, and food prices) is to kick corporate lobbies out of Washington, step up to

the plate and legislate for the people, not corporate. If this does not happen, next year's problem will be extreme food shortages in the U.S., as is happening in much of the rest of the world. Corporate farming giants are not producing as the old–fashioned family farmer did.

The other part of this problem is the [partisan blaming of] each other for the problems. Continuing along this line simply compounds the problems, and bipartisan solutions are not found. Again, the citizens of our nation suffer. I am one of a growing majority of Americans who are sick to death of hearing the yammering and in-fighting coming from Washington. At the rate our leaders in Washington are going, the terrorists will not have anything left to terrorize. Government and corporate corruption will have torn the country apart for them. You all need to put your party difference aside and come up with solutions with the other party for the good of the country, or there is not going to be a country anymore.

It is not just a fuel price crisis; it is a country in crisis, from sea to shining sea.

ANNA, *Weiser*.

I am writing in response to your recent request for input about gas prices and how it has affected our lives in Idaho. As you mentioned: ''The driving distances between places in our state as well as limited public transportation options mean that many of us do not have any choice but to keep driving and paying those ever-increasing prices for fuel.'' I could not agree more. The opportunity for good solid employment in Idaho is not something that can be found too often in the little towns spread across the state. This of course means that if you want a good job you will have to commute. Being a single mother, I have had no choice but to find good steady employment. I have been commuting from west of Blackfoot to Idaho Falls to work every day. Due to the price of gas, I have recently been forced to sell my home and try to relocate in Idaho Falls. I have had to uproot my 3–year–old little boy from his daily routine and child care. I have had to move away from family and friends who helped with him therefore causing yet more costs to me in the form of more expensive daycare. It is so sad that my son will now have to be with strangers each day while I work to support the two of us all because I could not afford to commute a mere 45 miles to work. It is sad that I am forced to be secluded from lifelong friends and family because now that I am moving to Idaho Falls I cannot afford to drive to Blackfoot to see them. Sick—it is just sickening.

SHERI, *Blackfoot*.

Sir, you asked for input on energy issues. Here is mine:

First, I fully support nuclear energy. When viewed in terms of energy independence, being environmentally friendly (e.g., green house gas emission, waste), sustainability, cost and efficiency, it stands out above every other option. Wind, solar, ocean tides and the like may be reasonable supplemental energy sources in certain cases but they are not primary energy sources. The public needs to be educated on this.

Second, the gas tax holiday concept is foolish. It is robbing Peter–to–pay–Paul. We need that tax money for highway maintenance and construction. Also, a gas tax holiday would do nothing to increase supply but would increase demand (in the short term due to a drop in pump prices), therefore worsening the supply/demand situation.

Third, we need to aggressively pursue gasoline's ultimate replacement (e.g., ethanol) like Brazil has. E85 fuel is a prudent start. Also, we are at the door step to the hydrogen economy; we need to be seriously working toward it.

Regarding a response to this inquiry, just an acknowledgement that you received it is adequate. Thanks.

CHRIS, *Falls*.

The people of Idaho are affected by the energy crisis. This is why we in Idaho and across our country need to learn to conserve and to develop clean and safe energy alternatives which do not pose a risk for our children's future. I oppose the use of nuclear energy as it does pose a health risk however small. Remember Chernobyl and Three Mile Island. In addition, I oppose more domestic drilling. Harming our earth more just to feed our excessive oil habit is a short term kneejerk reaction. I strongly hope that Idaho can be a role model for other states, by really looking at the problem and creating long term solutions such as conservation, more public transportation, and investment in extensive wind and solar power energy.

SHEILA, *Hailey*.

You ask for people to tell you their story about what the high cost of gas and energy is doing to them. Well, here it is. We live in rural Idaho. For those that do not know what that means, it is ninety miles to a doctor or a reasonably priced grocery store. Some people are going to say, ''take mass transit''; we do have a subsidized transit system (it costs over $90 for the round trip). They also charge extra for more than one stop. It is cheaper to pay $4 per gallon for gas. Some will say ''buy a hybrid'' that would be nice if I could afford one, $40,000, and it will not do me any good. They get great mileage in town but at highway speeds, they do not get any better mileage than what I have. My family, daily, makes the choice ''do we put gas in the car or do we buy food''. I do not think anyone in government has ever had to make that choice.

I am so disgusted with our government and Congress in general that, I think, for the first time in fifty years, I will sit the next election out. In long-term results, I do not see an ounce of difference in the two candidates running for President. You need look no farther than congressional approval ratings. The government (all of you) have lied to the American people for so long that I believe you have started believing your own lies. You take my Social Security money and spend it to buy votes. You take the items out that we all have to buy to calculate inflation. Everything you do is calculated on a political power basis. You borrow money from my grandchildren to send me a check and tell me it is good for the economy. You have us so deep in debt that what money we have is not worth anything. I do not expect my Social Security check to feed me the rest of my life.

I guess I have ranted enough. You ask for it; there it is. I do not expect it to do any good. You will not do what the people want, you are going to do whatever generates you the most power wither it is good for the country or not. Drill here—drill now!

JESS, *Aberdeen*.

Like everyone, I have been very concerned about the rising cost in fuel, and everything else. I am trying to raise a family with my husband, and we definitely feel the pinch. Even as the price of filling our cars has increased dramatically, so has the cost of feeding our family. It is costing my husband almost $10 per day, in a fuel-efficient sedan, just to go to work. We also have my husband's brother's family living here to get back on their feet, so, of course, the cost of running our household and everything in it is a concern.

I wanted to tell you that I strongly support domestic drilling. It is something we should have done years ago, and should be implemented as soon as possible. We need to decrease our reliance on foreign oil! I also think that if we are to continue fighting for the freedoms of the people in the Middle East, we should expect that they compensate us, maybe with oil. I know the answers are more complicated than that, but there has to be something done. I would also, of course, support alternative energy sources. I have heard interesting things about algae, some of which you can see in a video here: http://www.valcent.net/i/misc/Vertigro/index.html.

I am not eloquent or succinct, but I wanted my voice heard. Please encourage Washington to lift bans on off-shore drilling, and also to explore domestic drilling. Also please express support for programs to research alternative energy; and anything else that will decrease our dependence on other countries for our energy.

Thank you for your time, and your continued service to our great state. Your representation is much appreciated.

JENNIFER, *Nampa*.

You are trying to find out the public mind on what should be done about the energy crisis and I really appreciate that. Thank you.

I am in college, married and working to pay for school. The gas prices have not helped me at all.

It is great that we are trying to get more fuel-efficient cars but, I would like to see cars that do not need fuel at all. (hydrogen fuel cell) The batteries for electric cars have harmful chemicals in them and are going to be expensive to replace and hard to dispose of. If we can push hydrogen we will eliminate a lot of our dependency on oil altogether, demand will go down; then the people who still need fossil fuels can afford it.

As far as powering the nation goes, I am a great fan of nuclear power. I started working at the INL outside of Idaho Falls; here I was educated on nuclear energy and radiation. Education was the key to convince me of the benefits of nuclear power. People are just scared of it because they do not understand it or radiation. If the public can be educated, I believe nuclear power can become much more feasible. Even new coal-fired power plants have a near zero emission operation and I would be OK with using our coal resource to ease the burden until a new energy strategy can be implemented. In recent years, windmills were placed east of Idaho Falls, and I like the idea of making the best use of the resources in our area. Some things may work well here, and other things may work well in other places. Researching what works best in our area and implementing that is a wise strategy.

Lastly, I favor drilling for our own oil. Self-sufficiency is a principle that applies not only to individuals but to a country as well. It is good to deal and trade with other nations, but when a crisis is present making us pay unfair prices we need to be able to step away from the problem and be deal with it effectively. However, that oil is no good without refineries. We need to make sure we can do something with the oil we produce.

Thank you once again for listening and hopefully this can help you in making a decision.

KRIS, *Rexburg*.

Rising fuel costs are a big concern for us here in Idaho where a large percent of the working public have to drive 30 miles or more to work each day. And even with fuel efficient cars it still takes a large chunk of change to keep the gas tank full I carpool with three other coworkers to help the situation. Even with the carpool, it still costs me

$200 to $250 per month for fuel. We have family that live 600 miles + away and we can hardly afford to go see them. A trip to Reno costs over $300 so we have to limit our trips to visit because it is too expensive. Our recreation has been limited, too. W have a cabin that is in the mountains east of where we live about 40 miles away but, because of fuel costs, we do not go there as often. Fuel costs are also driving the cost of everything we buy. Where is it all going to stop?

I think that we need to become less dependent on oil from overseas and do more work on developing our own resources. We need to work on alternative methods for powering the automobile. Charge higher fuel prices in the areas they have mass transportation available. Do not hammer the work force with all the high costs.

ORIN.

High energy prices are affecting my ability to provide resources for living for my family. I am a disabled veteran and on a fixed income, which prevents me from offsetting the costs of oil. We have had to make significant changes in the way we buy food, travel to the store and how much gas we use for cooking and heating, often times being stuck with a $500 gas bill for a few gallons. The American people are smart. They know that Congress is scrambling to hide the real issue. That issue being, that they are no longer looking out for the best interests of the American people.

Though I am grateful that you and others in Idaho are finally trying to change things, this should have never been a problem in the first place. We have one of the world's largest resources of coal. We have very significant amount of oil on the coasts and within the continental United States. Still, you all bend to the wishes of eco-terrorists like Al Gore and that fraud agency EPA.

Drill now! Here! Kick China and other countries off of our coast lines. What were you thinking!! Letting other countries drill on our soil and coasts while forbidding and banning our own companies from doing it. That is obviously an attack on our sovereignty,

Please sir, get Congress back on track, and let them know we are on to them. For Idaho, For the United States of America! Please allow refineries. Allow drilling. Allow coal. Allow more nuke plants! Now please, stop wasting your time with email and written answers. Action is worth a thousand words!

ADAM.

[We] converted [our] pick-up truck to all electric. Why does not Congress give tax breaks to people who drive alternative vehicles?

In our home, we are conserving energy by making our house more energy-efficient. Why is not Congress enacting legislation to reward homeowners for replacing windows, furnaces, appliances with more energy efficient ones?

Rather than expand domestic oil supplies (off shore and in Alaska), why does not Congress raise the CAFE and heavily tax people who drive gas guzzlers for pleasure (not business)? Congress should be enacting meaningful legislation to curb consumption before jumping to open up off shore resources and ANWR.

I think Congress should be embarrassed for talking about opening up domestic oil resources when they just defeated a windfall profit tax on oil companies. Higher prices at the pumps, record profits, a Congress who cannot do the right things to curb consumption and encourage conservation/alternative resources, a Congress who caterers to the oil companies at the expense of the environment and the non-rich.

Come on, Senator Crapo—please vote, sponsor, support a government ''of, by, and for the people''.

MICHAEL.

We still pay less than European countries. What I think is a total same is the fact that the Treasure Valley still does not have a decent bus system. When I was in Olympia, Washington (pop of 20,000) during the 1960s that had a better bus system that included other cities than we have now. Think of the energy savings possible if the bus system was easy and accessible for all of the residents.

MICHAEL.

ADDITIONAL STATEMENTS

TRIBUTE TO EMMA JEAN GUYN MILLER

● Mr. BUNNING. Mr. President, it is with great admiration and respect that I take this time to memorialize one of Kentucky's most cherished citizens, Mrs. Emma Jean Guyn Miller. Unfortunately, Mrs. Miller passed away at the age of 107. However, her life story should serve as an inspiration for people in central Kentucky and around the entire United States.

Mrs. Miller was born in Woodford County on September 29, 1901, and moved with her family to Nicholasville in 1902. Since she was young Mrs. Miller knew that she wanted to gain an education and better her community. However, since Kentucky schools were still segregated during this time period, Mrs. Miller could only attend the Nicholasville Colored School, that only served students through the eighth grade. This situation did not stop Mrs. Miller. Her mother, making only $4.50 a week, and her local church saved enough money to send Mrs. Miller to Russell High School in Lexington where she graduated in 1920.

After graduating from high school she attended Turner Normal School in Shelbyville, TN, and earned her teaching certificate. She then returned to Nicholasville and began a teaching career that lasted over 40 years. Mrs. Miller began her career teaching in a one room schoolhouse and did not retire until segregated schools were ended in Nicholasville. Her students remembered Mrs. Miller as a kind but strict teacher who always had their best interest at heart.

In 1940 she married William Miller, and although they did not have any children, the Millers opened their home to numerous young people in the community who needed a place to stay. She also continued to be active in Bethel AME Church, now Bethel Methodist Church, and was a member for over 80 years. This church was the same congregation that helped pay for her education at Russell High School.

Mrs. Miller's life story should serve an inspiration to every American. Her uniquely American story should give us hope that we can make a difference in our local communities and change the world one person at a time.●

HONORING DANCEBLUE

● Mr. BUNNING. Mr. President, today I invite my colleagues to join me in congratulating the University of Kentucky's DanceBlue student organization and 24-hour dance marathon. This organization operates through the support and leadership of UK students, faculty, and staff as well as the Lexington community. The organization improves the lives of children and families suffering from childhood cancer through the Golden Matrix Fund, and helps serve the Bluegrass by assisting those treated at the University of Kentucky Pediatric Oncology Clinic. In just 4 years of operation, the DanceBlue organization has raised over $1 million towards research in childhood cancer. I would like to take this time to recognize the student leadership behind DanceBlue: Erin Priddy, Caitlin Mullen, Betsy Cooper, Joshua Rupp, Carson Massler, Townsend Miller, Colin Wheeler, and Tyler Bolin.

Erin Priddy is a senior from Louisville, KY, and is the DanceBlue overall chair for this year. She is the fourth individual to preside over DanceBlue operations. Erin has spent many of her days and nights planning this yearlong fundraising process which builds up the actual dance marathon, as well as being a full time student. The success of this organization would not be possible without the dedication and hard work of Erin.

Caitlin Mullen is the vice chair for the DanceBlue organization and is also in her senior year at the University of Kentucky. Caitlin's hard work this entire year on the budget for the organization, as well as maintaining the organization's committees and keeping them together are a value to the entire university.

Betsy Cooper is a senior from Paducah, KY, and is the dance marathon programming chair. Betsy's role with DanceBlue involves planning, organizing, and orchestrating the entire 24-hour period of which the Dance Marathon consists including overseeing 650 student dancers that will dance for 24-hours.

Joshua Rupp is a senior from Louisville, KY, and is involved with many organizations on campus. His role with DanceBlue is the rules, regulations and operations chair. He is in charge of the logistics for the dance marathon which took place this past weekend. Josh's influence and presence on the University of Kentucky is a benefit to the school and the community.

Carson Massler is a senior from Louisville, KY, and graduate of Sacred Heart Academy. Her role with DanceBlue is the family relations chair. Her position is vital to the organization since she serves as a liaison between the UK Pediatric Oncology Clinic and Golden Matrix Fund families and DanceBlue. The partnerships she has created serve as a sign of hope that this organization will continue to flourish for many more years.

Townsend Miller is a senior from Lexington, KY, and is the corporate relations chair. Townsend's role with DanceBlue this year involves maintaining relationships with corporate sponsors of DanceBlue, and he is the representative of DanceBlue to local and national businesses.

Colin Wheeler is from Bowling Green, KY, and serves as the marketing chair for DanceBlue. Colin's work on public relations, press releases, press kits and promotional materials is one of the main reasons why the organization and 24-hour dance marathon is such a big success.

Tyler Bolin is a senior from Owensboro, KY, and serves as the special events chair. Tyler has worked hard throughout the entire year planning events that help build up to the dance marathon. His hard work and motivation are truly an inspiration to all who meet him.

I am grateful that these students serve the people of the Commonwealth. I am confident that the children, families, and students whose lives they touch are all thankful for the opportunity to know them. The money that is raised through DanceBlue helps patients receive better care while improving the lives of children and their families suffering from childhood cancer. The funds are also going directly to pediatric cancer research initiatives that are helping to find a cure.

Mr. President, I would like to thank these individuals for their contributions to the Commonwealth of Kentucky, the University of Kentucky, and the Lexington community. I wish them well in all their future endeavors.●

HONORING NEW ENGLAND CASTINGS, LLC

● Ms. SNOWE. Mr. President, the manufacturing sector of our Nation's economy is facing incredible hardships that are only amplified by the global economic downturn. In fact, Maine's manufacturing industry has shed an alarming 23,600 jobs in the past 10 years, which represents nearly 30 percent of the State's manufacturing employment. Despite these challenges, some manufacturers, like New England Castings, the company I rise today to recognize, have been able to adapt, expand, and succeed.

Founded in 1985, New England Castings is an investment casting foundry located in the western Maine town of Hiram. Considered the most ancient form of metal casting, investment casting allows the firm to specialize in producing specific castings that many conventional shops often find too difficult or intricate to fill. New England Castings prides itself on the timely creation of prototypes for customers to review, allowing it to produce customers' orders in a shorter timeframe. The firm was certified as a historically underutilized business zone, or HUBZone, business in 2002, allowing it access to a wide variety of Federal contracting opportunities. The HUBZone program, managed by the Small Business Administration, assists small firms in rural and disadvantaged areas in attracting contracts to benefit their businesses and grow their companies.

Castings, which are the solidified materials made after pouring a liquid into a mold, have a number of practical uses, and New England Castings' work is easily suited to supply a number of diverse industries. From medical and dental instruments to gas turbine components, New England Castings' products run the gamut from small to large, slim to heavy. For instance, New England Castings can provide sturdy turbine powered tank combustor cover assemblies for Abrams M1 tanks, or more delicate window latches or sconces for architects seeking to beautify their buildings. The company's more innovative pieces can be seen at Carnegie Hall in New York City and the Smithsonian's Museum of Natural History in Washington, DC.

Although times are difficult for most small businesses, manufacturers have been hit particularly hard by a confluence of challenges, including foreign competition, finding skilled workers, and rising energy costs. But to remain competitive, New England Castings had to transform the way it operated, and followed through by improving its practices and becoming a leaner company with increased productivity.

Seeking to secure a major contract to supply components to a railroad hardware manufacturer, New England Castings' president and owner, Walter Butler, decided that his company needed to become more efficient to earn the contract. After working with the Maine manufacturing extension partnership, MEP, a public-private partnership that assists small and medium manufacturers, New England Castings was able to double its sales, maximize the productivity of its workspace, and add 13 new employees.

As cochair of the Senate Task Force on Manufacturing, it is heartening to see small manufacturers like New England Castings utilize the tremendous resources that the MEP has to offer, and I am certain that the company will continue to benefit for years to come from the training and advice it has received. I congratulate Walter Butler and everyone at New England Castings for their dedication to creating quality products, and extend my best wishes for a productive and successful year.●

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

REPORT ON THE CONTINUATION OF THE NATIONAL EMERGENCY THAT WAS DECLARED ON MARCH 15, 1995, WITH RESPECT TO IRAN—PM 12

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

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication, stating that the Iran emergency declared on March 15, 1995, is to continue in effect beyond March 15, 2009.

The crisis between the United States and Iran resulting from the actions and policies of the Government of Iran that led to the declaration of a national emergency on March 15, 1995, has not been resolved. The actions and policies of the Government of Iran are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to continue the national emergency declared with respect to Iran and maintain in force comprehensive sanctions against Iran to respond to this threat.

BARACK OBAMA.

THE WHITE HOUSE, *March 11, 2009*.

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 11:03 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 1105. An act making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. BYRD).

At 2:48 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the

following bills, in which it requests the concurrence of the Senate:

H.R. 813. An act to designate the Federal building and United States courthouse located at 306 East Main Street in Elizabeth City, North Carolina, as the ''J. Herbert W. Small Federal Building and United States Courthouse''.

H.R. 837. An act to designate the Federal building located at 799 United Nations Plaza in New York, New York, as the ''Ronald H. Brown United States Mission to the United Nations Building''.

H.R. 842. An act to designate the United States Courthouse to be constructed in Jackson, Mississippi, as the ''R. Jess Brown United States Courthouse''.

H.R. 869. An act to designate the Federal building and United States courthouse located at 101 Barr Street in Lexington, Kentucky, as the ''Scott Reed Federal Building and United States Courthouse''.

H.R. 887. An act to designate the United States courthouse located at 131 East 4th Street in Davenport, Iowa, as the ''James A. Leach United States Courthouse''.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 37. Concurrent resolution authorizing the use of the Capitol Grounds for the Greater Washington Soap Box Derby.

H. Con. Res. 39. Concurrent resolution authorizing the use of the Capitol Grounds for the District of Columbia Special Olympics Law Enforcement Torch Run.

The message further announced that pursuant to 44 U.S.C. 2702, the Clerk of the House reappoints the following member on the part of the House of Representatives to the Advisory Committee on the Records of Congress: Mr. Bernard Forrester of Houston, Texas.

MEASURES REFERRED

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

H.R. 813. An act to designate the Federal building and United States courthouse located at 306 East Main Street in Elizabeth City, North Carolina, as the ''J. Herbert W. Small Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

H.R. 837. An act to designate the Federal building located at 799 United Nations Plaza in New York, New York, as the ''Ronald H. Brown United States Mission to the United Nations Building''; to the Committee on Environment and Public Works.

H.R. 842. An act to designate the United States Courthouse to be constructed in Jackson, Mississippi, as the ''R. Jess Brown United States Courthouse''; to the Committee on Environment and Public Works.

H.R. 869. An act to designate the Federal building and United States courthouse located at 101 Barr Street in Lexington, Kentucky, as the ''Scott Reed Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

H.R. 887. An act to designate the United States courthouse located at 131 East 4th Street in Davenport, Iowa, as the ''James A. Leach United States Courthouse''; to the Committee on Environment and Public Works.

H.R. 1106. An act to prevent mortgage foreclosures and enhance mortgage credit availability; to the Committee on Banking, Housing, and Urban Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 39. Concurrent resolution authorizing the use of the Capitol Grounds for the District of Columbia Special Olympics Law Enforcement Torch Run; to the Committee on Rules and Administration.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 570. A bill to stimulate the economy and create jobs at no cost to the taxpayers, and without borrowing money from foreign governments for which our children and grandchildren will be responsible, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–942. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''2-Propenoic acid, monoester with 1,2-propanediol, polymer with a-[4-(ethenyloxy) butyl]-w-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione; Tolerance Exemption'' (FRL–8396–9) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–943. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''2-Propenoic acid, 2-hydroxyethyl ester, polymer with a-[4-(ethenyloxy) butyl]-w-hydroxypoly (oxy-1,2-ethanediyl); Tolerance Exemption'' (FRL–8396–7) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–944. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''2-Propenoic acid, polymer with a-[4-(ethenyloxy) butyl]-w-hydroxypoly (oxy-1,2-ethanediyl), sodium salt; Tolerance Exemption'' (FRL–8397–1) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–945. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''2-Propenoic acid, polymer with a-[4-(ethenyloxy) butyl]-w-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt; Tolerance Exemption'' (FRL–8396–9) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–946. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''2-Propenoic acid, polymer with a-[4-(ethenyloxy) butyl]-w-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandion, sodium salt; Tolerance Exemption'' (FRL–8396–8) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–947. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bacillus Mycoides Isolate J; Temporary Exemption From the Requirement of a Tolerance'' (FRL–8400–2) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–948. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Benfluralin, Carbaryl, Diazinon, Dicrotophos, Fluometruon, Formetanate Hydrochloride, Glyphosate, Metolachlor, Napropamide, Norflurazon, Pyrazon, and Tau-Fluvalinate; Technical Amendment'' (FRL–8402–1) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–949. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Chlorimuron-ethyl; Pesticide Tolerances'' (FRL–8402–6) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–950. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Recordkeeping and Reporting Requirements for the Import of Halon-1301 Aircraft Fire Extinguishing Vessels'' (FRL–8779–6) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Environment and Public Works.

EC–951. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates'' (Notice 2009–20) received in the Office of the President of the Senate on March 10, 2009; to the Committee on Finance.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–10. A resolution adopted by the Senate of the Commonwealth of Kentucky urging the 111th United States Congress to enact a federal Menu Education and Labeling (Meal) Act; to the Committee on Health, Education, Labor, and Pensions.

SENATE RESOLUTION NO. 76

Whereas, research continues to reveal the strong link between diet and health, and that diet-related diseases start early in life; and

Whereas, increased caloric intake is a key factor contributing to the alarming increase in obesity in the United States. According to the Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity have tripled in children and teens since 1980. Obesity increases the risk of diabetes, heart disease, stroke, and other health problems. Each year obesity costs families, businesses, and governments $117 billion; and

Whereas, over the past two decades, there has been a significant increase in the numbers of meals prepared and consumed outside of the home, with an estimated one-third of calories and almost 46 percent of total food dollars being spent on food purchased from and consumed at restaurants and other food-service establishments; and

Whereas, studies like eating out with obesity and higher caloric intakes. Foods that people eat from restaurants and other food-service establishments are generally higher in calories and saturated fat and lower in nutrients, such as calcium and fiber, than home-prepared foods; and

Whereas, while nutrition labeling is currently required on most packaged foods, this information is required only for restaurant foods for which nutrient content or health claims are made; and

Whereas, three-quarters of American adults report using food labels on packaged foods, which are required by the Nutrition Labeling and Education Act and went into effect in 1994. Using food labels is associated with eating healthier diets, and approximately 48 percent of people report that the nutrition information on food labels has caused them to change their minds about buying a food product. Research shows that people make healthier choices when restaurants provide point-of-purchase nutrition information; and

Whereas, it is difficult for consumers to limit their intake of calories at restaurants, given the limited availability of nutrition information, as well as the popular practice by many restaurants of providing foods in larger-than-standard servings and 'supersized' portions; and

Whereas, the enacting of a federal Meal Act would provide all Americans valuable additional nutritional information that will best equip individuals and allow them to make healthy choices when they are consuming prepared foods outside of the home: Now, therefore, be it

Resolved by the Senate of the General Assembly of the Commonwealth of Kentucky:

Section 1. The Senate of the Commonwealth of Kentucky hereby urges the 111th United States Congress to enact a federal Menu Education and Labeling (Meal) Act.

Section 2. The Clerk of the Senate shall forward a copy of this Resolution to the Clerk of the United States Senate and the Clerk of the United States House of Representatives.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 303. A bill to reauthorize and improve the Federal Financial Assistance Management Improvement Act of 1999 (Rept. No. 111–7).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. CRAPO (for himself, Mr. KYL, Mr. CORKER, Mr. SHELBY, Mr. GREGG, Mr. ENZI, Mr. ISAKSON, Mr. ALEXANDER, Mr. BROWNBACK, Mr. SPECTER, Mr. VITTER, Mr. INHOFE, Mr. CORNYN, Mr. CHAMBLISS, Mr. RISCH, Mr. BUNNING, Mr. JOHANNS, Mr. MARTINEZ, and Mr. ROBERTS):

S. 567. A bill to repeal the sunset on the reduction of capital gains rates for individuals and on the taxation of dividends of individuals at capital gains rates; to the Committee on Finance.

By Mr. CRAPO:

S. 568. A bill for the relief of Sali Bregaj and Mjaftime Bregaj; to the Committee on the Judiciary.

By Mr. LEVIN (for himself, Mr. GRASSLEY, and Mrs. MCCASKILL):

S. 569. A bill to ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent wrongdoers from exploiting United States corporations for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. VITTER (for himself, Mr. BUNNING, Mr. SHELBY, Mr. DEMINT, Mr. CORNYN, Mr. ENSIGN, Mr. COBURN, Mr. RISCH, Mr. INHOFE, Mr. ENZI, Mr. SESSIONS, and Mr. BOND):

S. 570. A bill to stimulate the economy and create jobs at no cost to the taxpayers, and without borrowing money from foreign governments for which our children and grandchildren will be responsible, and for other purposes; read the first time.

By Mr. MENENDEZ (for himself, Mr. WYDEN, Mr. KERRY, Mr. CASEY, and Mr. DODD):

S. 571. A bill to strengthen the Nation's research efforts to identify the causes and cure of psoriasis and psoriatic arthritis, expand psoriasis and psoriatic arthritis data collection, and study access to and quality of care for people with psoriasis and psoriatic arthritis, and for other purposes; to the Committee on Health, Education, Labor, and Pensions .

By Mr. WEBB (for himself, Mr. BROWN, Mr. VITTER, Mr. WICKER, Mrs. BOXER, Mr. NELSON of Nebraska, and Mrs. LINCOLN):

S. 572. A bill to provide for the issuance of a ''forever stamp'' to honor the sacrifices of the brave men and women of the armed forces who have been awarded the Purple Heart; to the Committee on Homeland Security and Governmental Affairs.

By Mr. TESTER:

S. 573. A bill to improve the efficiency of customs and other services at the Wild Horse, Montana port of entry; to the Committee on Finance.

By Mr. AKAKA (for himself, Mr. VOINOVICH, Mr. CARPER, Mr. LEVIN, Mrs. MCCASKILL, and Mr. TESTER):

S. 574. A bill to enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. CARPER (for himself and Mr. SPECTER):

S. 575. A bill to amend title 49, United States Code, to develop plans and targets for States and metropolitan planning organizations to develop plans to reduce greenhouse gas emissions from the transportation sector, and for other purposes; to the Committee on Environment and Public Works.

ADDITIONAL COSPONSORS

S. 69

At the request of Mr. INOUYE, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 69, a bill to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes.

S. 211

At the request of Mrs. MURRAY, the names of the Senator from Maryland (Mr. CARDIN), the Senator from Vermont (Mr. SANDERS) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 211, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral on human services and volunteer services, and for other purposes.

S. 388

At the request of Mr. CORNYN, his name was added as a cosponsor of S. 388, a bill to extend the termination date for the exemption of returning workers from the numerical limitations for temporary workers.

S. 416

At the request of Mrs. FEINSTEIN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 416, a bill to limit the use of cluster munitions.

S. 423

At the request of Mr. AKAKA, the names of the Senator from Oklahoma (Mr. COBURN) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 423, a bill to amend title 38, United States Code, to authorize advance appropriations for certain medical care accounts of the Department of Veterans Affairs by providing two-fiscal year budget authority, and for other purposes.

S. 428

At the request of Mr. DORGAN, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 428, a bill to allow travel between the United States and Cuba.

S. 488

At the request of Mr. BROWN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 488, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require group and individual health insurance coverage and group health plans to provide coverage for individuals participating in approved cancer clinical trials.

S. 503

At the request of Ms. MURKOWSKI, the names of the Senator from Wyoming (Mr. BARRASSO), the Senator from Idaho (Mr. RISCH) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 503, a bill to authorize the exploration, leasing, development, and production of oil and gas in and from the western portion of the Coastal Plain of the State of Alaska without surface occupancy, and for other purposes.

S. 527

At the request of Mr. THUNE, the name of the Senator from Missouri

(Mrs. MCCASKILL) was added as a cosponsor of S. 527, a bill to amend the Clean Air act to prohibit the issuance of permits under title V of that Act for certain emissions from agricultural production.

S. 535

At the request of Mr. NELSON of Florida, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 535, a bill to amend title 10, United States Code, to repeal requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation, and for other purposes.

S. 541

At the request of Mr. DODD, the names of the Senator from New Hampshire (Mr. GREGG) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 541, a bill to increase the borrowing authority of the Federal Deposit Insurance Corporation, and for other purposes.

S. 546

At the request of Mr. REID, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 546, a bill to amend title 10, United States Code, to permit certain retired members of the uniformed services who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service of Combat-Related Special Compensation.

S. RES. 60

At the request of Mrs. SHAHEEN, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. Res. 60, a resolution commemorating the 10-year anniversary of the accession of the Czech Republic, the Republic of Hungary, and the Republic of Poland as members of the North Atlantic Treaty Organization.

S. RES. 70

At the request of Mr. DURBIN, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. Res. 70, a resolution congratulating the people of the Republic of Lithuania on the 1000th anniversary of Lithuania and celebrating the rich history of Lithuania.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN (for himself, Mr. GRASSLEY, and Mrs. MCCASKILL)

S. 569. A bill to ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent wrongdoers from exploiting United States corporations for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. LEVIN. Mr. President, I am introducing today, with my colleagues Senator GRASSLEY and Senator MCCASKILL, the Incorporation Transparency and Law Enforcement Assistance Act. This bill tackles a longstanding homeland security problem involving inadequate State incorporation practices that leave this country unnecessarily vulnerable to wrongdoers, hinders law enforcement, and damages the international stature of the United States.

The problem is straightforward. Each year, our States allow persons to form nearly 2 million corporations and limited liability companies in this country without knowing, or even asking, who the beneficial owners are behind those corporations. Right now, a person forming a U.S. corporation or limited liability company, LLC, provides less information to the State than is required to open a bank account or obtain a driver's license. Instead, States routinely permit persons to form corporations and LLCs under State laws without disclosing the names of any of the people who will control or benefit from them.

It is a fact that criminals are exploiting this weakness in our State incorporation practices. They are forming new U.S. corporations and LLCs, and using these entities to commit crimes ranging from drug trafficking, money laundering, tax evasion, financial fraud, and corruption.

Law enforcement authorities investigating these crimes have complained loudly for years about the lack of beneficial ownership information. Last year, for example, the U.S. Department of the Treasury sent a letter to the States stating: ''the lack of transparency with respect to the individuals who control privately held for-profit legal entities created in the United States continues to represent a substantial vulnerability in the U.S. antimoney laundering/counter terrorist financing (AML/CFT) regime. . . . [T]he use of U.S. companies to mask the identity of criminals presents an ongoing and substantial problem . . . for U.S. and global law enforcement authorities.''

Michael Chertoff, former Secretary of the U.S. Department of Homeland Security, wrote the following:

> In countless investigations, where the criminal targets utilize shell corporations, the lack of law enforcement's ability to gain access to true beneficial ownership information slows, confuses or impedes the efforts by investigators to follow criminal proceeds. This is the case in financial fraud, terrorist financing and money laundering investigations. . . . It is imperative that States maintain beneficial ownership information while the company is active and to have a set time frame for preserving those records. . . . Shell companies can be sold and resold to several beneficial owners in the course of a year or less. . . . By maintaining records not only of the initial beneficial ownership but of the subsequent beneficial owners, States will provide law enforcement the tools necessary to clearly identify the individuals who utilized the company at any given period of time.

These types of complaints by U.S. law enforcement, their pleas for assistance, and their warnings about the dangers of anonymous U.S. corporations operating here and abroad are catalogued in a stack of reports and hearing testimony from the Department of Justice, the Department of Homeland Security, the Financial Crimes Enforcement Network of the Department of the Treasury, the Internal Revenue Service, and others.

To add insult to injury, our law enforcement officials have too often had to stand silent when asked by their counterparts in other countries for information about who owns a U.S. corporation committing crimes in their jurisdictions. The reality is that the United States can't answer those requests, because we don't have the information.

Our bill would cure the problem by requiring State incorporation forms to include a request for the names of a corporation's beneficial owners. States would not be required to verify the information, but civil or criminal penalties would apply to persons who submitted false information. If law enforcement issued a subpoena or summons to obtain the ownership information, States would then supply the data contained on its forms.

This bill has received the support of numerous law enforcement associations, including the Federal Law Enforcement Officers Association, the Fraternal Order of Police, the National Association of Assistant United States Attorneys, the National Narcotic Officers' Associations Coalition, the United States Marshals Service Association, and the Association of Former ATF Agents.

The Federal Law Enforcement Officers Association, FLEOA, for example, which represents more than 26,000 Federal law enforcement officers, states that ''the unfortunate lax attitude demonstrated by certain states has enabled large criminal enterprises to exploit those state's flawed filing systems.'' FLEOA goes on:

> We regard corporate ownership in the same manner as we do vehicle ownership. Requiring the driver of a vehicle to have a registration and insurance card is not a violation of their privacy. This information does not need to be published in a Yellow Pages, but it should be available to law enforcement officers who make legally authorized requests pursuant to official investigations.

The National Association of Assistant United States Attorneys, NAAUSA, which represents more than 1,500 Federal prosecutors, urges Congress to take legislative action to remedy inadequate State incorporation practices. NAAUSA states:

> [M]indful of the ease with which criminals establish 'front organizations' to assist in money laundering, terrorist financing, tax

evasion and other misconduct, it is shocking and unacceptable that many State laws permit the creation of corporations without asking for the identity of the corporation's beneficial owners. Your legislation will guard against that from happening, and no longer permit criminals to exploit the lack of transparency in the registration of corporations.

Our bill was also endorsed by President Obama during the last Congress when he was a member of the U.S. Senate and served as an original cosponsor of the predecessor bill, S. 2956.

In 2006, the leading international anti-money laundering body in the world, the Financial Action Task Force on Money Laundering—known as FATF—issued a report criticizing the United States for its failure to comply with a FATF standard requiring countries to obtain beneficial ownership information for the corporations formed under their laws. This standard is one of 40 FATF standards that this country has publicly committed itself to implementing as part of its efforts to promote strong anti-money laundering laws around the world.

FATF gave the United States 2 years, until July 2008, to make progress toward coming into compliance with the FATF standard on beneficial ownership information. That deadline passed long ago, and we have yet to make any real progress. Enacting the bill we are introducing today would bring the United States into compliance with the FATF standard by requiring the States to obtain beneficial ownership information for the corporations formed under their laws. It would ensure that the United States met its international commitment to comply with FATF anti-money laundering standards.

The bill being introduced today is also the product of years of work by the U.S. Senate Permanent Subcommittee on Investigations, which I chair. As long ago as 2000, the Government Accountability Office, GAO, at my request, conducted an investigation and released a report entitled, ''Suspicious Banking Activities: Possible Money Laundering by U.S. Corporations Formed for Russian Entities.'' This report revealed that one person was able to set up more than 2,000 Delaware shell corporations and, without disclosing the identity of the beneficial owners, open U.S. bank accounts for those corporations, which then collectively moved about $1.4 billion through the accounts. It is one of the earliest government reports to give some sense of the law enforcement problems caused by U.S. corporations with unknown owners. It sounded the alarm years ago but to little avail.

In April 2006, in response to a Subcommittee request, GAO released a second report entitled, ''Company Formations: Minimal Ownership Information Is Collected and Available,'' which reviewed the corporate formation laws in all 50 States. GAO disclosed that the vast majority of the States do not collect any information at all on the beneficial owners of the corporations and LLCs formed under their laws. The report also found that many States have established automated procedures that allow a person to form a new corporation or LLC within the State within 24 hours of filing an online application without any prior review of that application by a State official. In exchange for a substantial fee, at least two States will form a corporation or LLC within one hour of a request. After examining these State incorporation practices, the GAO report described the problems that the lack of beneficial ownership information has caused for a range of law enforcement investigations.

In November 2006, our subcommittee held a hearing further exploring this issue. At that hearing, representatives of the U.S. Department of Justice, DOJ, the Internal Revenue Service, IRS, and the Department of Treasury's Financial Crimes Enforcement Network, FinCEN, testified that the failure of States to collect adequate information on the beneficial owners of the legal entities they form has impeded Federal efforts to investigate and prosecute criminal acts such as terrorism, money laundering, securities fraud, and tax evasion. At the hearing, DOJ testified:

> We had allegations of corrupt foreign officials using these [U.S.] shell accounts to launder money, but were unable—due to lack of identifying information in the corporate records—to fully investigate this area.

The IRS testified:

> Within our own borders, the laws of some states regarding the formation of legal entities have significant transparency gaps which may even rival the secrecy afforded in the most attractive tax havens.

FinCEN identified 768 incidents of suspicious international wire transfer activity involving U.S. shell companies.

In addition, in a list of the ''Dirty Dozen'' tax scams in 2007, the IRS highlighted shell companies with unknown owners as number four on the list, as follows:

> 4. Disguised Corporate Ownership: Domestic shell corporations and other entities are being formed and operated in certain states for the purpose of disguising the ownership of the business or financial activity. Once formed, these anonymous entities can be, and are being, used to facilitate underreporting of income, non-filing of tax returns, listed transactions, money laundering, financial crimes and possibly terrorist financing. The IRS is working with state authorities to identify these entities and to bring their owners into compliance.

That is not all. Dozens of Internet websites advertising corporate formation services highlight the fact that some of our States allow corporations to be formed under their laws without asking for the identity of the beneficial owners. These Web sites explicitly point to anonymous ownership as a reason to incorporate within the United States, and often list certain States alongside notorious offshore jurisdictions as preferred locations for the formation of new corporations, essentially providing an open invitation for wrongdoers to form entities within the United States.

One Web site, for example, set up by an international incorporation firm, advocates setting up companies in Delaware by saying: ''DELAWARE—An Offshore Tax Haven for Non U.S. Residents.'' It cites as one of Delaware's advantages that: ''Owners' names are not disclosed to the state.'' Another Web site, from a U.K. firm called ''formacompanyoffshore.com,'' lists the advantages to incorporating in Nevada. Those advantages include: ''No I.R.S. Information Sharing Agreement'' and ''Stockholders are not on Public Record allowing complete anonymity.''

Despite this type of advertising, years of law enforcement complaints, and mounting evidence of abuse, many of our States are reluctant to admit there is a problem with establishing U.S. corporations and LLCs with unknown owners. Too many of our States are eager to explain how quick and easy it is to set up corporations within their borders, without acknowledging that those same quick and easy procedures enable wrongdoers to utilize U.S. corporations in a variety of crimes and tax dodges both here and abroad.

Since 2006, the subcommittee has worked with the States to encourage them to recognize the homeland security problem they have created and to come up with their own solution. After the subcommittee's hearing on this issue, for example, the National Association of Secretaries of State, NASS, convened a 2007 task force to examine state incorporation practices. At the request of NASS and several States, I delayed introducing legislation while they worked on a proposal to require the collection of beneficial ownership information. My subcommittee staff participated in multiple conferences, telephone calls, and meetings; suggested key principles; and provided comments to the task force.

In July 2007, the NASS task force issued a proposal. Rather than cure the problem, however, the proposal was full of deficiencies, leading the Treasury Department to state in a letter that the NASS proposal ''falls short'' and ''does not fully address the problem of legal entities masking the identity of criminals.''

Among other shortcomings, the NASS proposal does not require States to obtain the names of the natural individuals who would be the beneficial owners of a U.S. corporation or LLC. Instead, it would allow States to obtain a list of a company's ''owners of record'' who can be, and often are, offshore corporations or trusts. The NASS proposal also doesn't require the States themselves to maintain the beneficial ownership information, or to supply it to law enforcement upon receipt of a subpoena or summons. The proposal also fails to require the beneficial ownership information to be updated over time. These and other flaws in the proposal have been identified by the

Treasury Department, the Department of Justice, me, and others, but NASS has given no indication that the flaws will be corrected.

It is deeply disappointing that the States, despite the passage of more than 1 year, were unable to devise an effective proposal. Part of the difficulty is that the States have a wide range of practices, differ on the extent to which they rely on incorporation fees as a major source of revenue, and differ on the extent to which they attract non-U.S. persons as incorporators. In addition, the States are competing against each other to attract persons who want to set up U.S. corporations, and that competition creates pressure for each individual State to favor procedures that allow quick and easy incorporations. It is a classic case of competition causing a race to the bottom, making it difficult for any one State to do the right thing and request the names of beneficial owners.

That is why we are introducing Federal legislation today. Federal legislation is needed to level the playing field among the States, set minimum standards for obtaining beneficial ownership information, put an end to the practice of States forming millions of legal entities each year without knowing who is behind them, and bring the United States into compliance with its international commitments.

The bill's provisions would require the States to obtain a list of the beneficial owners of each corporation or LLC formed under their laws, to maintain this information for 5 years after the corporation is terminated, and to provide the information to law enforcement upon receipt of a subpoena or summons. If enacted, this bill would ensure, for the first time, that law enforcement seeking beneficial ownership information from a State about one of its corporations or LLCs would not be turned away empty-handed.

The bill would also require corporations and LLCs to update their beneficial ownership information in an annual filing with the State of incorporation. If a State did not require an annual filing, the information would have to be updated each time the beneficial ownership changed.

In the special case of U.S. corporations formed by non-U.S. persons, the bill would go farther. Following the lead of the Patriot Act which imposed additional due diligence requirements on certain financial accounts opened by non-U.S. persons, our bill would require additional due diligence for corporations beneficially owned by non-U.S. persons. This added due diligence would have to be performed—not by the States—but by the persons seeking to establish the corporations. These incorporators would have to file with the State a written certification from a corporate formation agent residing within the State attesting to the fact that the agent had verified the identity of the non-U.S. beneficial owners of the corporation by obtaining their names, addresses, and passport photographs. The formation agent would be required to retain this information for a specified period of time and produce it upon request.

The bill would not require the States to verify the ownership information provided to them by a formation agent, corporation, LLC, or other person filing an incorporation application. Instead, the bill would establish Federal civil and criminal penalties for anyone who knowingly provided a State with false beneficial ownership information or intentionally failed to provide the State with the information requested.

The bill would also exempt certain corporations from the disclosure obligation. For example, it would exempt all publicly traded corporations and the entities they form, since these corporations are already overseen by the Security and Exchange Commission. It would also allow the States, with the written concurrence of the Homeland Security Secretary and the U.S. Attorney General, to identify certain corporations, either individually or as a class, which would not have to list their beneficial owners, if requiring such ownership information would not serve the public interest or assist law enforcement in their investigations. These exemptions are expected to be narrowly drawn and used sparingly, but are intended to provide the States and Federal law enforcement added flexibility to fine-tune the disclosure obligation and focus it where it is most needed to stop crime, tax evasion, and other wrongdoing.

Another area of flexibility in the bill involves privacy issues. The bill deliberately does not take a position on the issue of whether the States should make the beneficial ownership information they receive available to the public. Instead, the bill leaves it entirely up to the States to decide whether and under what circumstances to make beneficial ownership information available to the public. The bill explicitly permits the States to place restrictions on providing beneficial ownership information to persons other than government officials. The bill focuses instead on ensuring that law enforcement and Congress, provided they are equipped with a subpoena or summons, are given ready access to the beneficial ownership information collected by the States.

To ensure that the States have the funds needed to meet the new beneficial ownership information requirements, the bill makes it clear that States can use their DHS state grant funds for this purpose. Every State is guaranteed a minimum amount of DHS grant funds every year and may receive funds substantially above that minimum. Every State will be able to use all or a portion of these funds to modify their incorporation practices to meet the requirements in the act. The bill also authorizes DHS to use appropriated funds to carry out its responsibilities under the act. These provisions will ensure that the States have the funds needed for the modest compliance costs involved with amending their incorporation forms to request the names of beneficial owners.

It is common for bills establishing Federal standards to seek to ensure State action by making some Federal funding dependent upon a State's meeting the specified standards. This bill, however, states explicitly that nothing in the bill authorizes DHS to withhold funds from a State for failing to modify its incorporation practices to meet the beneficial ownership information requirements in the act. Instead, the bill simply calls for a GAO report in 2013 to identify which States, if any, have failed to strengthen their incorporation practices as required by the act. After getting this status report, a future Congress can decide what steps to take, including whether to reduce any DHS funding going to the noncompliant States.

Finally, the bill would require the U.S. Department of the Treasury to issue a rule requiring formation agents to establish anti-money laundering programs to ensure they are not forming U.S. corporations or LLCs for criminals or other wrongdoers. GAO would also be asked to conduct a study of existing State formation procedures for partnerships and trusts.

We have worked hard to craft a bill that would address, in a fair and reasonable way, the homeland security problem created by States allowing the formation of millions of U.S. corporations and LLCs with unknown owners. What the bill comes down to is a simple requirement that States change their incorporation applications to add a question requesting the names and addresses of the prospective beneficial owners. That is not too much to ask to protect this country and the international community from wrongdoers seeking to misuse U.S. corporations and to help law enforcement stop those wrongdoers.

For those who say that, if the United States tightens its incorporation rules, new companies will be formed elsewhere, it is appropriate to ask exactly where they will go. Every country in the European Union is already required to get beneficial information for the corporations formed under their laws. Most offshore jurisdictions already request this information as well, including the Bahamas, Cayman Islands, Jersey, and the Island of Man. Our States should be asking for the same ownership information, but they don't, and there is no indication that they will any time in the near future, unless required to do so.

I wish Federal legislation weren't necessary. I wish the States could solve this homeland security problem on their own, but ongoing competitive pressures make it unlikely that the States will reach agreement. It has been more than 2 years since our 2006 hearing with no real progress to show for it, despite repeated pleas from law enforcement.

Federal legislation is necessary to reduce the vulnerability of the United States to wrongdoing by U.S. corporations with unknown owners, to protect interstate and international commerce from criminals misusing U.S. corporations, to strengthen the ability of law enforcement to investigate suspect U.S. corporations, to level the playing field among the States, and to bring the United States into compliance with its international anti-money laundering obligations.

There is also an issue of consistency. For years, I have been fighting offshore corporate secrecy laws and practices that enable wrongdoers to secretly control offshore corporations involved in money laundering, tax evasion, and other misconduct. I have pointed out on more than one occasion that corporations were not created to hide ownership, but to shield owners from personal liability for corporate acts. Unfortunately, today, the corporate form has too often been corrupted into serving those wishing to conceal their identities and commit crimes or dodge taxes without alerting authorities. It is past time to stop this misuse of the corporate form. But if we want to stop inappropriate corporate secrecy offshore, we need to stop it here at home as well.

For these reasons, I urge my colleagues to support this legislation and put an end to incorporation practices that promote corporate secrecy and render the United States and other countries vulnerable to abuse by U.S. corporations with unknown owners.

As I mentioned earlier, in the 110th Congress, then-Senator Obama was an original cosponsor of this legislation. I look forward to working with President Obama to ensure this homeland security bill is enacted into law.

I thank my cosponsor, Senator GRASSLEY, who has been such a leader in this effort for so long, as he has in so many other good government initiatives. I also thank Senator MCCASKILL for her cosponsorship.

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

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

S. 569

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Incorporation Transparency and Law Enforcement Assistance Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Nearly 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year.

(2) Very few States obtain meaningful information about the beneficial owners of the corporations and limited liability companies formed under their laws.

(3) A person forming a corporation or limited liability company within the United States typically provides less information to the State of incorporation than is needed to obtain a bank account or driver's license and typically does not name a single beneficial owner.

(4) Criminals have exploited the weaknesses in State formation procedures to conceal their identities when forming corporations or limited liability companies in the United States, and have then used the newly created entities to commit crimes affecting interstate and international commerce such as terrorism, drug trafficking, money laundering, tax evasion, securities fraud, financial fraud, and acts of foreign corruption.

(5) Law enforcement efforts to investigate corporations and limited liability companies suspected of committing crimes have been impeded by the lack of available beneficial ownership information, as documented in reports and testimony by officials from the Department of Justice, the Department of Homeland Security, the Financial Crimes Enforcement Network of the Department of the Treasury, the Internal Revenue Service, and the Government Accountability Office, and others.

(6) In July 2006, a leading international anti-money laundering organization, the Financial Action Task Force on Money Laundering (in this section referred to as the ''FATF''), of which the United States is a member, issued a report that criticizes the United States for failing to comply with a FATF standard on the need to collect beneficial ownership information and urged the United States to correct this deficiency by July 2008.

(7) In response to the FATF report, the United States has repeatedly urged the States to strengthen their incorporation practices by obtaining beneficial ownership information for the corporations and limited liability companies formed under the laws of such States.

(8) Many States have established automated procedures that allow a person to form a new corporation or limited liability company within the State within 24 hours of filing an online application, without any prior review of the application by a State official. In exchange for a substantial fee, 2 States will form a corporation within 1 hour of a request.

(9) Dozens of Internet websites highlight the anonymity of beneficial owners allowed under the incorporation practices of some States, point to those practices as a reason to incorporate in those States, and list those States together with offshore jurisdictions as preferred locations for the formation of new corporations, essentially providing an open invitation to criminals and other wrongdoers to form entities within the United States.

(10) In contrast to practices in the United States, all countries in the European Union are required to identify the beneficial owners of the corporations they form.

(11) To reduce the vulnerability of the United States to wrongdoing by United States corporations and limited liability companies with unknown owners, to protect interstate and international commerce from criminals misusing United States corporations and limited liability companies, to strengthen law enforcement investigations of suspect corporations and limited liability companies, to set minimum standards for and level the playing field among State incorporation practices, and to bring the United States into compliance with its international anti-money laundering obligations, Federal legislation is needed to require the States to obtain beneficial ownership information for the corporations and limited liability companies formed under the laws of such States.

SEC. 3. TRANSPARENT INCORPORATION PRACTICES.

(a) TRANSPARENT INCORPORATION PRACTICES.—

(1) IN GENERAL.—Subtitle A of title XX of the Homeland Security Act of 2002 (6 U.S.C. 601 et seq.) is amended by adding at the end the following:

''SEC. 2009. TRANSPARENT INCORPORATION PRACTICES.

''(a) INCORPORATION SYSTEMS.—

''(1) IN GENERAL.—To protect the security of the United States, each State that receives funding from the Department under section 2004 shall, not later than the beginning of fiscal year 2012, use an incorporation system that meets the following requirements:

''(A) Each applicant to form a corporation or limited liability company under the laws of the State is required to provide to the State during the formation process a list of the beneficial owners of the corporation or limited liability company that—

''(i) identifies each beneficial owner by name and current address; and

''(ii) if any beneficial owner exercises control over the corporation or limited liability company through another legal entity, such as a corporation, partnership, or trust, identifies each such legal entity and each such beneficial owner who will use that entity to exercise control over the corporation or limited liability company.

''(B) Each corporation or limited liability company formed under the laws of the State is required by the State to update the list of the beneficial owners of the corporation or limited liability company by providing the information described in subparagraph (A)—

''(i) in an annual filing with the State; or

''(ii) if no annual filing is required under the law of that State, each time a change is made in the beneficial ownership of the corporation or limited liability company.

''(C) Beneficial ownership information relating to each corporation or limited liability company formed under the laws of the State is required to be maintained by the State until the end of the 5-year period beginning on the date that the corporation or limited liability company terminates under the laws of the State.

''(D) Beneficial ownership information relating to each corporation or limited liability company formed under the laws of the State shall be provided by the State upon receipt of—

''(i) a civil or criminal subpoena or summons from a State agency, Federal agency, or congressional committee or subcommittee requesting such information; or

''(ii) a written request made by a Federal agency on behalf of another country under an international treaty, agreement, or convention, or section 1782 of title 28, United States Code.

''(2) NON-UNITED STATES BENEFICIAL OWNERS.—To further protect the security of the United States, each State that accepts funding from the Department under section 2004 shall, not later than the beginning of fiscal year 2012, require that, if any beneficial owner of a corporation or limited liability company formed under the laws of the State is not a United States citizen or a lawful permanent resident of the United States, each application described in paragraph (1)(A) and each update described in paragraph (1)(B) shall include a written certification by a formation agent residing in the State that the formation agent—

''(A) has verified the name, address, and identity of each beneficial owner that is not a United States citizen or a lawful permanent resident of the United States;

''(B) has obtained for each beneficial owner that is not a United States citizen or a lawful permanent resident of the United States a copy of the page of the government-issued passport on which a photograph of the beneficial owner appears;

''(C) will provide proof of the verification described in subparagraph (A) and the photograph described in subparagraph (B) upon request; and

''(D) will retain information and documents relating to the verification described in subparagraph (A) and the photograph described in subparagraph (B) until the end of the 5-year period beginning on the date that the corporation or limited liability company terminates, under the laws of the State.

''(b) PENALTIES FOR FALSE BENEFICIAL OWNERSHIP INFORMATION.—In addition to any civil or criminal penalty that may be imposed by a State, any person who affects interstate or foreign commerce by knowingly providing, or attempting to provide, false beneficial ownership information to a State, by intentionally failing to provide beneficial ownership information to a State upon request, or by intentionally failing to provide updated beneficial ownership information to a State—

''(1) shall be liable to the United States for a civil penalty of not more than $10,000; and

''(2) may be fined under title 18, United States Code, imprisoned for not more than 3 years, or both.

''(c) FUNDING AUTHORIZATION.—To carry out this section—

''(1) a State may use all or a portion of the funds made available to the State under section 2004; and

''(2) the Administrator may use funds appropriated to carry out this title, including unobligated or reprogrammed funds, to enable a State to obtain and manage beneficial ownership information for the corporations and limited liability companies formed under the laws of the State, including by funding measures to assess, plan, develop, test, or implement relevant policies, procedures, or system modifications.

''(d) STATE COMPLIANCE REPORT.—Nothing in this section authorizes the Administrator to withhold from a State any funding otherwise available to the State under section 2004 because of a failure by that State to comply with this section. Not later than June 1, 2013, the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report identifying which States are in compliance with this section and, for any State not in compliance, what measures must be taken by that State to achieve compliance with this section.

''(e) DEFINITIONS.—In this section:

''(1) BENEFICIAL OWNER.—The term 'beneficial owner' means an individual who has a level of control over, or entitlement to, the funds or assets of a corporation or limited liability company that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the corporation or limited liability company.

''(2) CORPORATION; LIMITED LIABILITY COMPANY.—The terms 'corporation' and 'limited liability company'—

''(A) have the meanings given such terms under the laws of the applicable State;

''(B) do not include any business concern that is an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d)), or any corporation or limited liability company formed by such a business concern;

''(C) do not include any business concern formed by a State, a political subdivision of a State, under an interstate compact between 2 or more States, by a department or agency of the United States, or under the laws of the United States; and

''(D) do not include any individual business concern or class of business concerns which a State, after obtaining the written concurrence of the Administrator and the Attorney General of the United States, has determined in writing should be exempt from the requirements of subsection (a), because requiring beneficial ownership information from the business concern would not serve the public interest and would not assist law enforcement efforts to detect, prevent, or punish terrorism, money laundering, tax evasion, or other misconduct.

''(3) FORMATION AGENT.—The term 'formation agent' means a person who, for compensation, acts on behalf of another person to assist in the formation of a corporation or limited liability company under the laws of a State.''.

(2) TABLE OF CONTENTS.—The table of contents in section 1 of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 2008 the following:

''Sec. 2009. Transparent incorporation practices.''.

(b) EFFECT ON STATE LAW.—

(1) IN GENERAL.—This Act and the amendments made by this Act do not supersede, alter, or affect any statute, regulation, order, or interpretation in effect in any State, except where a State has elected to receive funding from the Department of Homeland Security under section 2004 of the Homeland Security Act of 2002 (6 U.S.C. 605), and then only to the extent that such State statute, regulation, order, or interpretation is inconsistent with this Act or an amendment made by this Act.

(2) NOT INCONSISTENT.—A State statute, regulation, order, or interpretation is not inconsistent with this Act or an amendment made by this Act if such statute, regulation, order, or interpretation—

(A) requires additional information, more frequently updated information, or additional measures to verify information related to a corporation, limited liability company, or beneficial owner, than is specified under this Act or an amendment made by this Act; or

(B) imposes additional limits on public access to the beneficial ownership information obtained by the State than is specified under this Act or an amendment made by this Act.

SEC. 4. ANTI-MONEY LAUNDERING OBLIGATIONS OF FORMATION AGENTS.

(a) ANTI-MONEY LAUNDERING OBLIGATIONS OF FORMATION AGENTS.—Section 5312(a)(2) of title 31, United States Code, is amended—

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

(2) by redesignating subparagraph (Z) as subparagraph (AA); and

(3) by inserting after subparagraph (Y) the following:

''(Z) any person involved in forming a corporation, limited liability company, partnership, trust, or other legal entity; or''.

(b) DEADLINE FOR ANTI-MONEY LAUNDERING RULE FOR FORMATION AGENTS.—

(1) PROPOSED RULE.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Treasury, in consultation with the Attorney General of the United States, the Secretary of Homeland Security, and the Commissioner of the Internal Revenue Service, shall publish a proposed rule in the Federal Register requiring persons described in section 5312(a)(2)(Z) of title 31, United States Code, as amended by this section, to establish anti-money laundering programs under subsection (h) of section 5318 of that title.

(2) FINAL RULE.—Not later than 270 days after the date of enactment of this Act, the Secretary of the Treasury shall publish the rule described in this subsection in final form in the Federal Register.

SEC. 5. STUDY AND REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report—

(1) identifying each State that has procedures that enable persons to form or register under the laws of the State partnerships, trusts, or other legal entities, and the nature of those procedures;

(2) identifying each State that requires persons seeking to form or register partnerships, trusts, or other legal entities under the laws of the State to provide information about the beneficial owners (as that term is defined in section 2009 of the Homeland Security Act of 2002, as added by this Act) or beneficiaries of such entities, and the nature of the required information;

(3) evaluating whether the lack of available beneficial ownership information for partnerships, trusts, or other legal entities—

(A) raises concerns about the involvement of such entities in terrorism, money laundering, tax evasion, securities fraud, or other misconduct; and

(B) has impeded investigations into entities suspected of such misconduct; and

(4) evaluating whether the failure of the United States to require beneficial ownership information for partnerships and trusts formed or registered in the United States has elicited international criticism and what steps, if any, the United States has taken or is planning to take in response.

SUMMARY OF LEVIN-GRASSLEY-MCCASKILL INCORPORATION TRANSPARENCY AND LAW ENFORCEMENT ASSISTANCE ACT

To protect the United States from U.S. corporations being misused to commit terrorism, money laundering, tax evasion, or other misconduct, the Incorporation Transparency and Law Enforcement Assistance Act would:

Beneficial Ownership Information. Require the States to obtain a list of the beneficial owners of each corporation or limited liability company (LLC) formed under their laws, ensure this information is updated annually, and provide the information to civil or criminal law enforcement upon receipt of a subpoena or summons.

Non-U.S. Beneficial Owners. Require corporations and LLCs with non-U.S. beneficial owners to provide a certification from an in-state formation agent that the agent has verified the identity of those owners.

Penalties for False Information. Establish civil and criminal penalties under federal law for persons who knowingly provide false beneficial ownership information or intentionally fail to provide required beneficial ownership information to a State.

Exemptions. Provide exemptions for certain corporations, including publicly traded corporations and the corporations and LLCs they form, since the Securities and Exchange Commission already oversees them; and corporations which a State has determined, with concurrence from the Homeland Security and Justice Departments, should be exempt because requiring beneficial ownership information from them would not serve the public interest or assist law enforcement.

Funding. Authorize States to use an existing DHS grant program, and authorize DHS

to use already appropriated funds, to meet the requirements of this Act.

State Compliance Report. Clarify that nothing in the Act authorizes DHS to withhold funds from a State for failing to comply with the beneficial ownership requirements. Require a GAO report by 2013 identifying which States are not in compliance so that a future Congress can determine at that time what steps to take.

Transition Period. Give the States until October 2012 to require beneficial ownership information for the corporations and LLCs formed under their laws.

Anti-Money Laundering Rule. Require the Treasury Secretary to issue a rule requiring formation agents to establish anti-money laundering programs to ensure they are not forming U.S. corporations or other entities for criminals or other suspect persons.

GAO Study. Require GAO to complete a study of State beneficial ownership information requirements for in-state partnerships and trusts.

Mr. GRASSLEY. Mr. President, I rise to speak on the same bill the Senator from Michigan spoke on, but I ought to compliment him. He is most known for being a leader in the area of military affairs because of being chairman of that committee. But for sure, for years he has been also a chairman of the Permanent Subcommittee on Investigations and so much of the work that comes out of this legislation comes out of his work on that committee. I think he ought to be commended for the work he does through investigations there as well.

I am happy to join Senator LEVIN and Senator MCCASKILL in cosponsoring the Incorporation Transparency and Law Enforcement Assistance Act. This bill requires States to obtain corporate ownership information at the time of formation and help law enforcement investigate shell companies which are set up for the sole purpose of conducting illegal activities.

Earlier this year, Senator LEVIN joined me when I introduced a bill that we entitled the Hedge Fund Transparency Act. I said then that the major cause of the current financial crisis is a lack of transparency among hedge funds. That same thing can be said about corporate ownership. In too many States, very little ownership information is needed to register a corporation, and the actual owners of that corporation are often hidden behind the agents and lawyers who register the corporation on behalf of owners.

One example of how these criminals take advantage of this lack of transparency is the practice of setting up and using shell corporations to hide corporate ownership information. These individuals set up shell corporations that have the benefits of corporate registration and function legitimately. But these same corporations are being used to hide illegal activities. These activities include a variety of elaborate schemes to disguise money laundering, tax evasion, and securities fraud. Law enforcement officials from the Department of Justice and the Internal Revenue Service have testified before Congress about how the lack of corporate information has been a very significant impediment to their ability to conduct criminal investigations.

For example, when a corporation is involved in illegal activities, the legitimate corporate owners are often hidden, making it difficult for law enforcement agencies to determine who is actually responsible. That, in turn, makes it difficult to bring the real culprits to justice. States differ as to what corporate information is required to register a corporation and how long it takes to process that paperwork. Most States require only the name of the company, the name and address of the agent, a signature, and, of course, a fee.

In fact, the Government Accountability Office found that most States will take the time to verify that the fee has been paid but do not take the time to verify the identities of the incorporators, officers, and directors. Perhaps even more important, no State checks the names of incorporators, officers, or directors against criminal records and the watch lists that sometimes Federal agencies have. As a result, we have no way of knowing if the beneficial owners are criminals, or they could even be terrorists, for that matter. Many States now have introduced electronic registration procedures that enable a new corporation to be registered on line within 24 hours. States offer this expedited service in exchange for yet an additional fee. In fact, there are two States where an individual can form a corporation within 1 hour of making the request. The promise of quick registration and little oversight has proven to be a very popular revenue generator for some States. But this process is not necessarily in the best interest of protecting our financial system or our national security.

Some States have raised concerns that if their incorporation laws are tightened, corporations will simply register in other States where there are less stringent registration requirements. This bill is to take care of that problem. It is designed to bring some sanity to this whole process. It makes the registration requirement uniform over all 50 States, as well as the District of Columbia. This way corporations will simply not be able to ''shop around'' for the State with the most relaxed standards and simply play one State against the other. Further, much of the information set forth in this bill is already required by the European Union and many offshore jurisdictions. This bill simply updates our laws to match those of other nations combating the same problems with money laundering, tax evasion, and terrorist financing.

The legislation I am introducing today with Senators LEVIN and MCCASKILL requires that States obtain a list of the beneficial owners of each corporation or limited liability company formed under their laws before the corporation is registered in that particular State. The bill also requires that States ensure required information is updated annually and that States provide the information to civil or criminal law enforcement agencies upon receipt of a subpoena or summons. This also establishes a civil penalty of up to $10,000 and a criminal penalty of up to 3 years in prison for providing false information.

Additionally, the bill would exempt publicly traded companies that are already regulated by the Securities and Exchange Commission. Further, the bill requires non-U.S. beneficial owners to provide certification from an in-State agent that verifies the identity of the beneficial owner.

Finally, this bill requires the Government Accountability Office to complete a study of State beneficial ownership information requirements for in-State partnerships and trusts and gives the States until October 2011 to require beneficial ownership information for the corporations and limited liability companies formed under their laws.

I urge colleagues to cosponsor and support this legislation as we try to bring greater transparency to our financial system.

By Mr. WEBB (for himself, Mr. BROWN, Mr. VITTER, Mr. WICKER, Mrs. BOXER, Mr. NELSON of Nebraska, and Mrs. LINCOLN):

S. 572. A bill to provide for the issuance of a ''forever stamp'' to honor the sacrifices of the brave men and women of the armed forces who have been awarded the Purple Heart; to the Committee on Homeland Security and Governmental Affairs.

Mr. WEBB. Madam President, I have introduced a bill that will create a perpetual Purple Heart stamp. I cannot think of any other stamp or any other area for a perpetual stamp that is more deserving than this award which recognizes sacrifice on the battlefield.

The original cosponsors of this legislation are Senators BROWN, VITTER, WICKER, BOXER, LINCOLN, and BEN NELSON of Nebraska. The Purple Heart is the oldest continually authorized U.S. military decoration. It was created as a badge of military merit by George Washington in 1782.

The original Purple Hearts were awarded to three soldiers in the Continental Army who had shown outstanding courage during the Revolutionary War. In 1931, Army Chief of Staff Douglas MacArthur commissioned work on a new design for the Purple Heart to coincide with the then upcoming 200th anniversary of President Washington's birth.

President Hoover's War Department authorized the award for wounds received by Army personnel in action or for meritorious service dating back to World War I. On February 22, 1932, General MacArthur became its first recipient. In December of 1942, the Purple Heart was extended to all branches of service, but the criteria were then strictly limited to those we know

today; that is, to be awarded to those who are wounded or killed during direct combat with the enemies of the United States. More than 1.7 million Americans of every race, color, creed and from all 50 States have received the Purple Heart in honor of their sacrifice on our Nation's battlefields.

This is the only U.S. military decoration for which there is no recommendation. It is simply earned through bloodshed for our country.

In 2003, the Postal Service honored recipients of this award by commissioning a first-class Purple Heart stamp in a ceremony at the home of George Washington in Mount Vernon, VA. The image used for this stamp is a photograph of one of the two Purple Hearts received by Marine LTC James Loftus Fowler of Alexandria, VA, which he received in 1968 as a battalion commander near the Ben Hai River in South Vietnam. Since that first issuance in 2003, approximately 1.2 billion first-class Purple Heart stamps have been sold, an average of 200 million a year. At the new first-class rate of 44 cents, which is taking place in May, that is approximately $88 million a year in revenue for the U.S. Government.

This yearly sales rate is equal to or greater than the sales of even the most popular commemorative stamps issued during that period, stamps bearing such American icons as Supreme Court Justice Thurgood Marshall, singer Frank Sinatra, and the classic Disney characters.

In 2007, the Postal Service created the first ''forever'' stamp, a stamp which, no matter when it was purchased, would be good for first-class postage on the day it was used. The image they chose was an image as old and venerable and quintessentially American as the Purple Heart—the Liberty Bell. According to a Postal Service press release, since its first issuance in April of 2007, more than 6 billion forever Liberty Bell stamps have been sold. This is an order of magnitude greater than any other single stamp sold in the United States, generating revenue of $2 billion.

Clearly, the volume of sales of forever stamps is a win for the Postal Service, which is facing a shortfall in future revenues, and a win in terms of the value delivered to the people who want to use them.

In creating the first Purple Heart, General Washington said:

> Let it be known that he who wears the military order of the Purple Heart has given of his blood in defense of his homeland and shall forever be revered by his fellow countrymen.

George Washington intended that the Nation he helped found would forever revere those who wear the Purple Heart as a symbol of the sacrifice they have given in our Nation's defense.

As a recipient of the Purple Heart in Vietnam as a Marine, I believe that making the Purple Heart stamp a forever stamp is the most appropriate way to honor the past and future recipients of our Nation's oldest military decoration.

I hope my colleagues will join me in this legislation.

By Mr. AKAKA (for himself, Mr. VOINOVICH, Mr. CARPER, Mr. LEVIN, Mrs. MCCASKILL, and Mr. TESTER):

S. 574. A bill to enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce the Plain Writing Act of 2009. I am pleased that Senators GEORGE VOINOVICH, TOM CARPER CARL LEVIN, CLAIRE MCCASKILL, and JON TESTER have joined as original co-sponsors of this legislation.

Our bill is very similar to H.R. 946, introduced by Representative BRUCE BRALEY last month.

The Plain Writing Act has a simple purpose: it would require the Federal Government to write more clearly. Agencies would be required to write documents that are released to the public in a way that is clear, concise, well-organized, readily understandable.

This bill would extend an initiative that President Bill Clinton and Vice President Al Gore started a decade ago as part of the Reinventing Government initiative. In 1998, President Clinton directed agencies to write in plain language. Although many agencies have made progress in writing more clearly, the requirement never was fully implemented. In recent years, the focus on plain writing has dropped. This legislation will renew that focus.

There are many benefits to plain writing. First, it promotes transparency and accountability. It is very difficult to hold the Federal Government accountable for its actions if only lawyers can understand Government writing. As we face an economic crisis and unprecedented budget deficits, the American people need clear explanations of Government actions.

Plain writing also improves customer service. Individuals and businesses waste time and money, and make unnecessary errors, because Government instructions, forms, and other documents are too complicated. Anyone who has filled out their own tax forms, applications for Federal financial aid or veterans' benefits, Medicare forms, or any number of other overly complicated Federal forms understands the need for plain writing.

Government officials, in turn, spend time and money answering questions and addressing complaints from people frustrated with Government documents they cannot understand. Correcting the errors people make because they do not understand Government documents demands Government officials' time as well. Because of this, plain writing makes Government more efficient and effective.

Numerous organizations have called on Congress to require the Federal Government to write more clearly, including the AARP, Disabled American Veterans, National Small Business Association, Small Business Legislative Council, Women Impacting Public Policy, American Nurses Association, American Library Association, American Association of Law Libraries, and several associations dedicated to promoting better communication. These groups support plain writing because their members complain about their frustration with trying to understand Government documents—or hiring attorneys to decipher them—and the time and money they waste because the Government does not write plainly.

As a former teacher and principal, I understand that even very smart people must be trained to write plainly, so this bill recognizes that Federal Employees will need plain writing training. Each agency will report their plans to train employees in plain writing. Writing in plain, clear, concise, and easily understandable language is a skill that Congress and Federal agencies must foster. As Thomas Jefferson once said, ''The most valuable of all talents is that of never using two words when one will do.''

Additionally, congressional oversight will ensure that agencies implement the plain language requirements. Agencies will be required to designate a senior official responsible for implementing plain language requirements and to report to Congress how it will ensure compliance with the plain language requirement and on its progress.

To avoid imposing too great a burden on agencies, agencies will not be required to rewrite existing documents. Only new or substantially revised documents will be covered. Similarly, this bill does not cover regulations, so that agencies can focus first on improving their every day communications with the American people. We recognize that it will be more challenging to write plainly when crafting regulations, which often must be technical and complex.

Requiring plain writing is an important step in improving the way the Federal Government communicates with the American people.

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

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

S. 574

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Plain Writing Act of 2009''.

SEC. 2. PURPOSE.

The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear

Government communication that the public can understand and use.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGENCY.—The term ''agency'' means an Executive agency, as defined under section 105 of title 5, United States Code.

(2) COVERED DOCUMENT.—The term ''covered document'' means any document (other than a regulation) issued by an agency to the public, including documents and other text released in electronic form.

(3) PLAIN WRITING.—The term ''plain writing'' means writing that the intended audience can readily understand and use because that writing is clear, concise, well-organized, and follows other best practices of plain writing.

SEC. 4. RESPONSIBILITIES OF FEDERAL AGENCIES.

(a) REQUIREMENT TO USE PLAIN WRITING IN NEW DOCUMENTS.—Not later than 1 year after the date of enactment of this Act, each agency shall use plain writing in every covered document of the agency issued or substantially revised.

(b) GUIDANCE.—

(1) IN GENERAL.—

(A) DEVELOPMENT.—Not later than 6 months after the date of enactment of this Act, the Office of Management and Budget shall develop guidance on implementing the requirements of subsection (a).

(B) ISSUANCE.—The Office of Management and Budget shall issue the guidance developed under subpargraph (A) to agencies as a circular.

(2) INTERIM GUIDANCE.—Before the issuance of guidance under paragraph (1), agencies may follow the guidance of—

(A) the writing guidelines developed by the Plain Language Action and Information Network; or

(B) guidance provided by the head of the agency that is consistent with the guidelines referred to under subparagraph (A).

SEC. 5. REPORTS TO CONGRESS.

(a) INITIAL REPORT.—Not later than 6 months after the date of enactment of this Act, the head of each agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report that describes how the agency intends to meet the following objectives:

(1) Communicating the requirements of this Act to agency employees.

(2) Training agency employees in plain writing.

(3) Meeting the requirement under section 4(a).

(4) Ensuring ongoing compliance with the requirements of this Act.

(5) Designating a senior official to be responsible for implementing the requirements of this Act.

(b) ANNUAL AND OTHER REPORTS.—

(1) AGENCY REPORTS.—

(A) IN GENERAL.—The head of each agency shall submit reports on compliance with this Act to the Office of Management and Budget.

(B) SUBMISSION DATES.—The Office of Management and Budget shall notify each agency of the date each report under subparagraph (A) is required for submission to enable the Office of Management and Budget to meet the requirements of paragraph (2).

(2) REPORTS TO CONGRESS.—The Office of Management and Budget shall review agency reports submitted under paragraph (1) using the guidance issued under section 4(b)(1)(B) and submit a report on the progress of agencies to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives—

(A) annually for the first 2 years after the date of enactment of this Act; and

(B) once every 3 years thereafter.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, March 11, 2009, at 9:30 a.m. to conduct a hearing entitled ''Violent Islamist Extremism: al-Shabaab Recruitment in America.''

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, March 11, 2009, at 10 a.m.

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

SUBCOMMITTEE ON THE CONSTITUTION

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on the Constitution be authorized to meet during the session of the Senate, to conduct a hearing entitled ''S.J. Res. 7 and H.J. Res. 21: A Constitutional Amendment Concerning Senate Vacancies'' on Wednesday, March 11, 2009, at 10 a.m., in room SH–216 of the Hart Senate Office Building.

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

EXTENSION OF CERTAIN IMMIGRATION PROGRAMS

Mr. CARDIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1127, which was received from the House.

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

The assistant legislative clerk read as follows:

A bill (H.R. 1127) to extend certain immigration programs.

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

Mr. CARDIN. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 1127) was ordered to a third reading, was read the third time, and passed.

CONGRATULATING LITHUANIA ON ITS 1000TH ANNIVERSARY

Mr. CARDIN. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. Res. 70, and that the Senate then proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 70) congratulating the people of the Republic of Lithuania on the 1000th anniversary of Lithuania and celebrating the rich history of Lithuania.

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

Mr. DURBIN. Mr. President, today I wish to recognize an important moment for the people of Lithuania. Last month, Lithuania celebrated its 1000 year anniversary.

Along with my distinguished colleagues, Senator VOINOVICH from Ohio and Senator FEINSTEIN from California, I have submitted a commemorative resolution for this occasion.

As the birthplace of my mother, who came to the United States from Lithuania with her parents when she was just 2 years old, Lithuania holds a special place in my heart.

One thousand years sounds like a long time, especially in our relatively young United States. But historians have noted that the name of the area now known as Lithuania first appeared in European records, in the German Annals of Quedlinburg.

Traditions of Lithuanian statehood date back to the early Middle Ages, when Duke Mindaugas united an assortment of Baltic Tribes to defend themselves from attacks by the Teutonic Knights. From these early roots, Lithuania grew to encompass territory stretching from the Baltic Sea to the Black Sea by the end of the 14th century.

This nation, which once was the largest in Europe, has seen extraordinary struggles during the last century. It suffered 50 years of occupation, by both Nazi and Soviet forces.

Throughout that time, the U.S. Congress stood in support of Lithuania and its Baltic neighbors, Estonia and Latvia, and refused to recognize the Soviet occupation. In 2007, the United States and Lithuania celebrated 85 years of continuous diplomatic relations.

Today, Lithuania is a thriving free-market democracy and a strong ally of the United States. As a member of the European Union and NATO, Lithuania contributes to peace and security in Europe. Lithuania also contributes to global stability and peace building through its contributions to missions in Afghanistan, Iraq, Bosnia, Kosovo and Georgia.

When I traveled to Lithuania a few years ago and visited the village of my mother and grandparents, I was welcomed warmly by President Adamkus, who I have known for many years, and the people of Lithuania. I was so proud, not only to see my family's roots, but to see how far Lithuania has come, despite the many difficulties it endured in the last century.

I congratulate President Adamkus, Foreign Minister Usackas, and the people of Lithuania on this historic occasion.

Mr. CARDIN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 70) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 70

Whereas the name ''Lithuania'' first appeared in European records in the year 1009, when it was mentioned in the German manuscript ''Annals of Quedlinburg'';

Whereas Duke Mindaugas united various Baltic tribes and established the state of Lithuania during the period between 1236 and 1263;

Whereas, by the end of the 14th century, Lithuania was the largest country in Europe, encompassing territory from the Baltic Sea to the Black Sea;

Whereas Vilnius University was founded in 1579 and remained the easternmost university in Europe for 200 years;

Whereas the February 16, 1918 Act of Independence of Lithuania led to the establishment of Lithuania as a sovereign and democratic state;

Whereas, under the cover of the Molotov-Ribbentrop Pact, on June 17, 1940, Latvia, Estonia and Lithuania were forcibly incorporated into the Soviet Union in violation of pre-existing peace treaties;

Whereas, during 50 years of Soviet occupation of the Baltic states, Congress strongly, consistently, and on a bipartisan basis refused to legally recognize the incorporation of Latvia, Estonia, and Lithuania by the Soviet Union;

Whereas, on March 11, 1990, the Republic of Lithuania was restored and Lithuania became the first Soviet republic to declare independence;

Whereas on September 2, 1991, the United States Government formally recognized Lithuania as an independent and sovereign nation;

Whereas Lithuania has successfully developed into a free and democratic country, with a free market economy and respect for the rule of law;

Whereas Lithuania is a full and responsible member of the United Nations, the Organization for Security and Cooperation in Europe, the European Union, and the North Atlantic Treaty Organization;

Whereas in 2007, the United States Government and the Government of Lithuania celebrated 85 years of continuous diplomatic relations;

Whereas the United States Government welcomes and appreciates efforts by the Government of Lithuania to maintain international peace and stability in Europe and around the world by contributing to international civilian and military operations in Afghanistan, Iraq, Bosnia, Kosovo, and Georgia; and

Whereas Lithuania is a strong and loyal ally of the United States, and the people of Lithuania share common values with the people of the United States: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the people of the Republic of Lithuania on the occasion of the 1000th anniversary of Lithuania;

(2) commends the Government of Lithuania for its success in implementing political and economic reforms, for establishing political, religious, and economic freedom, and for its commitment to human rights; and

(3) recognizes the close and enduring relationship between the United States Government and the Government of Lithuania.

MEASURE READ THE FIRST TIME—S. 570

Mr. CARDIN. Mr. President, I understand that there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The assistant legislative clerk read as follows:

A bill (S. 570) to stimulate the economy, create jobs at no cost to the taxpayers, and without borrowing money from foreign governments for which our children and grandchildren will be responsible, and for other purposes.

Mr. CARDIN. Mr. President, I now ask for a second reading, and in order to place the bill on the calendar, under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read for the second time on the next legislative day.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 100–696, appoints the Senator from Alaska, Ms. MURKOWSKI, as a member of the United States Capitol Preservation Commission.

The Chair announces, on behalf of the Republican leader, pursuant to Public Law 101–509, the appointment of Terry Birdwhistell, of Kentucky, to the Advisory Committee on the Records of Congress.

ORDERS FOR THURSDAY, MARCH 12, 2009

Mr. CARDIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 11 a.m., Thursday, March 12; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and that the Senate proceed to a period of morning business until 12 noon, with Senators permitted to speak for up to 10 minutes each; further, that following morning business, the Senate proceed to executive session under the previous order.

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

PROGRAM

Mr. CARDIN. Mr. President, under the previous order, the Senate will vote at 2 p.m. on the confirmation of the nomination of David Ogden to be the Deputy Attorney General. Tomorrow the Senate will also consider the nomination of Thomas Perrelli to be Associate Attorney General. That vote is expected to occur tomorrow afternoon.

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. CARDIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate adjourn under the previous order.

There being no objection, the Senate, at 5:56 p.m., adjourned until Thursday, March 12, 2009, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate:

ENVIRONMENTAL PROTECTION AGENCY

JONATHAN Z. CANNON, OF VIRGINIA, TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE MARCUS C. PEACOCK, RESIGNED.

DEPARTMENT OF STATE

RICHARD RAHUL VERMA, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF STATE (LEGISLATIVE AFFAIRS), VICE MATTHEW A. REYNOLDS, RESIGNED.

ESTHER BRIMMER, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF STATE (INTERNATIONAL ORGANIZATION AFFAIRS), VICE BRIAN H. HOOK, RESIGNED.

PHILIP H. GORDON, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF STATE (EUROPEAN AND EURASIAN AFFAIRS), VICE DANIEL FRIED, RESIGNED.

IVO H. DAALDER, OF VIRGINIA, TO BE UNITED STATES PERMANENT REPRESENTATIVE ON THE COUNCIL OF THE NORTH ATLANTIC TREATY ORGANIZATION, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY.

KARL WINFRID EIKENBERRY, OF FLORIDA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF AFGHANISTAN.

CHRISTOPHER R. HILL, OF RHODE ISLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF IRAQ.

MELANNE VERVEER, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR AT LARGE FOR WOMEN'S GLOBAL ISSUES.

DEPARTMENT OF HOMELAND SECURITY

IVAN K. FONG, OF OHIO, TO BE GENERAL COUNSEL, DEPARTMENT OF HOMELAND SECURITY, VICE PHILIP J. PERRY, RESIGNED.

DEPARTMENT OF VETERANS AFFAIRS

W. SCOTT GOULD, OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY SECRETARY OF VETERANS AFFAIRS, VICE GORDON H. MANSFIELD, RESIGNED.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) MICHAEL W. BROADWAY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) SEAN F. CREAN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) PATRICK E. MCGRATH
REAR ADM. (LH) JOHN G. MESSERSCHMIDT
REAR ADM. (LH) MICHAEL M. SHATYNSKI