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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

PRAYER

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

Let us pray.

Eternal Spirit, whose inward fellowship means peace and power, dissolve the barriers that keep our souls from You. Deliver us from the self-sufficiency that will not recognize our need of You. Save us from spiritual blindness that sees the visible but is unaware of the invisible and eternal.

Lord, teach our lawmakers how to be victors over life and not victims of it and that to live worthily, they must put their faith in You. Whether on the mountaintop or in the valley, may they ever be aware that You are walking beside them. Give them, therefore, the wisdom to comprehend Your perspective, plan, and purpose.

We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER 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, January 29, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WARNER 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 for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each. There will be no rollcall votes today. The next vote will occur at 5:30 p.m. on Monday, February 1. The vote will be on the motion to invoke cloture on the nomination of Patricia Smith to be Solicitor at the Department of Labor. I advise Senators that they should be here to vote. We are not going to extend the vote on Monday. We must finish the vote about 10 to 6. There will be a strict enforcement of that time. We have to finish for obvious reasons because the 30 hours starts running when we complete the vote. If we go past 6 o'clock, it is past midnight. We want to make sure the vote is over at 10 to 6. Everyone is forewarned that if they are late, they will not be counted as voting.

SUCCESSFUL LEGISLATIVE WEEK

Mr. REID. Mr. President, we had a very successful week legislatively. I extend my appreciation to Senators on both sides of the aisle, especially my friends on the Republican side. There were no 30 hours used. It worked out extremely well. There was ample time for debate, and there were issues that were of concern to both parties. Of course, the issues are important to the country.

Without belaboring the issues on which we voted, I wish to spend just a minute on two issues—first, the pay-go rules we passed.

The Presiding Officer has been a great asset to the Senate. He has worked with the chairman of the Budget Committee, Senator CONRAD, and others to focus on finances of our country. The Presiding Officer was a very successful Governor of the Commonwealth of Virginia and noted for what he did with budgetary matters in Virginia.

Pay-go rules are so important. We have rules now, like people have in their individual homes. We are working to do what people who work for a living do, and that is spend money we have. It is not as if we are inventing something new. During the Clinton years, we had pay-go rules. As a result of that, we were able to spend less money than we were taking in. For the first time in decades, in the last 3 years of the Clinton administration, we paid down the national debt by hundreds of billions of dollars. So I hope, looking into the future, we can continue doing that; that is, do it again. It is so important.

I extend my appreciation to Members of the House of Representatives, especially the Speaker and the majority leader, STENY HOYER. They have been focused on this pay-go for more than a year.

We were finally able to get it done over here. It is going to be good for the country. I think the things we did will continue to focus on the money that we do not have and the way we have to get our budget in order. I am especially happy we were able to give the doctors 5 years' reprieve from the Draconian rules that were facing doctors who take Medicare patients.

The other issue I wish to spend a minute on is last evening, again with the cooperation of all Senators, we

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

were able to pass the Iran sanctions law. It is so important. We all know what that country is doing to its citizens. It is time this country of ours stepped forward and did some things to focus on what they are doing; that is, what Iran is doing. The legislation we passed will certainly allow this to take place.

We have a conference with the House. I will have a conversation later today with the chairman of the committee over there, HOWARD BERMAN, who has been such a good friend of mine personally. He and I came to Washington together in the House of Representatives, but he has also been a great representative of our country in his chairmanship of the Foreign Affairs Committee in the House.

Senator MCCAIN had an amendment about which he is concerned. I appreciate his not offering it last night because it would have caused other amendments from this side being offered.

As a result of the cooperation between both sides of the aisle, we got this legislation passed. We hope to get it out of conference quickly and have the President sign it. It is certainly what we need to do. Iran is a country on which all the world is focusing. We must do everything we can to stop them from acquiring nuclear weapons.

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 be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak in morning business for up to 25 minutes.

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

CITIZENS UNITED DECISION

Mr. WHITEHOUSE. Mr. President, I rise this morning to join Chairman LEAHY's eloquent and inspiring remarks of yesterday and express my strong disagreement with the Supreme Court's decision released last week in Citizens United v. the Federal Election Commission.

In this astonishing decision, the slimmest of 5-to-4 majorities overturned legal principles that have been in place since Theodore Roosevelt's administration. The five Justices who make up the Court's conservative bloc opened floodgates that had for over a century kept unlimited spending by corporations from drowning out the voices of the American people. It would be hard to call this decision anything other than judicial activism.

Let me start by reminding my colleagues of the long history of successful and appropriate regulation of corporate influence on elections. Federal laws restricting corporate spending on campaigns have a long pedigree. The 1907 Tillman Act restricted corporate spending on campaigns. Various loopholes have come and gone since, but the principle embodied in that law more than 100 years ago—that inanimate business corporations are not free to spend unlimited dollars to influence our campaigns for office—was an established cornerstone of our political system. Monied interests have long desired to wield special influence, but the integrity of our political system always has had champions—from Teddy Roosevelt a century ago to Senators MCCAIN and FEINGOLD in our time, who won a bruising legislative battle with their 2002 bipartisan Campaign Finance Reform Act.

Last week, that activist element of the Supreme Court struck down key protections of our elections integrity, overturned the will of Congress and the American people, and allowed all corporations to spend without limit in order to elect and defeat candidates and influence policy to meet their political ends. The consequences may well be nightmarish. As our colleague, Senator SCHUMER said, one thing is clear: The conservative bloc of the Supreme Court has predetermined the outcome of the next election; the winners will be the corporations.

As my home State paper, the Providence Journal, explained:

> The ruling will mean that, more than ever, big-spending economic interests will determine who gets elected. More money will especially pour into relentless attack campaigns. Free speech for most individuals will suffer because their voices will count for even less than they do now. They will simply be drowned out by the big money. The bulk of the cash will come from corporations, which have much more money available to spend than unions. Candidates will be even more unlikely to take on big interests than they are now.

What could make a big interest more happy than that? The details of this case were quite simple. Citizens United is an advocacy organization that accepts corporate funding. It sought to broadcast on on-demand cable a lengthy negative documentary attacking our former colleague, now-Secretary of State Clinton, who was then a candidate for President. The law prohibited the broadcast of this kind of corporate-funded electioneering on the eve of an election. Citizens United filed suit, arguing that this prohibition violated the first amendment. The conservative Justices agreed, holding that all corporations have a constitutional right to use their general treasury funds, their shareholder funds, to pay for advertisements for or against candidates in elections.

Although the decision was cast as being about the rights of individuals to hear more corporate speech, its effect will be with corporations—big oil, pharmaceutical companies, debt collection agencies, health insurance companies, credit card companies and banks, tobacco companies—now all moving without restriction into the American election process.

To highlight the radical nature of this decision, let me put this in the context of true principles of judicial conservatism. Justice Stevens explained in his dissent that the principle of stare decisis—''it stands decided''—assures that our Nation's ''bedrock principles are founded in the law rather than in the proclivities of individuals.''

It is jarring that the unrestrained activism of the conservative bloc on the Supreme Court led them to pay so little heed to longstanding judicial precedents, brushing them aside with almost no hesitation. Justice Stevens noted that ''the only relevant thing that has changed [since those prior precedents] . . . is the composition of this Court.''

Is it truly just a coincidence that this same bloc of Judges just last year invented a new individual constitutional right to bear arms that no previous Supreme Court had noticed for more than 200 years or is something else going on here where core Republican political goals are involved? Is stare decisis now out the window, at least with the Republican activist judges?

Another supposed conservative principle thrown aside by these activists was the approach to constitutional interpretation that focuses on the original intent of the Founders. Read the opinions. By far, the most convincing discussion of that original intent appears in Justice Stevens' dissent, not in the majority opinion or in Justice Scalia's concurrence. Justice Stevens, in dissent, correctly explains that the Founding Fathers had a dim view of corporations. They were suspicious of them. They considered them prone to abuse and scandal, and that those corporations that did exist at the time of the founding were largely creatures of the State that did not resemble contemporary corporations. Justice Stevens rightly describes it as:

> . . . implausible that the Framers believed ''the freedom of speech'' would extend equally to all corporate speakers, much less that it would preclude legislatures from taking limited measures to guard against corporate capture of elections.

This lack of historical awareness is, as I will explain, not the only flaw of the majority opinion. Only the dissent points out the most basic point:

> . . . that corporations are different from human beings . . . corporations have no consciences, no beliefs, no feelings, no thoughts, no desires.

I would add they have no souls. The dissent explains:

> Corporations help structure and facilitate the activities of human beings, to be sure, and their ''personhood'' often serves as a useful legal fiction. But they are not themselves members of ''We the People'' by whom and for whom our Constitution was established.

The majority just bypasses this elemental point.

One bedrock principle in our democracy is that the will of the people should be supreme except in very limited circumstances. In the judicial context this means that courts should hesitate before striking down statutes enacted by Congress. But it seems that is not so when core tenets of the Republican platform are involved.

It is not just this one case. There is a pattern that is discernible when these five men get together to strike down laws of Congress they do not like and make new law more to their liking. The pattern is not just discernible, it is unmistakable. It is undeniable. It appears, indeed, to be without exception.

Look at the evidence: There is virtually perfect concordance between the major departures by the activist bloc from conservative judicial tenets—such as judicial restraint, original intent, States rights—and the result in those cases of achieving current Republican political goals. One could probably call this practice ''situational judicial restraint.'' A rational person could conclude, based on the evidence of the Court's behavior, the observable results that this and other decisions by the five-man conservative bloc would more properly be characterized as political prize-taking than judicial lawmaking.

The only unchecked power in the American political system is that of a majority of a court of final appeal. When a small group can seize majority power in a court of final appeal, they answer to no one and can rule as they please. That danger is why courts are ordinarily so careful to answer to rules of judicial practice, respect for precedent, answering the narrowest question, and engaging in honorable, neutral, and logical analysis to arrive at decisions. That is why this conservative majority's departure from these rules of judicial practice and the association between these departures and outcomes favorable to their political party is so unpleasant.

The steady march of the activist rightwing bloc to establish its conservative political priorities as the law of the land should come to observers as no surprise. It represents the fruit of a longstanding and often very public effort to turn the law and the Constitution over to special interest groups and conservative activists. Conservative institutions, such as the Federalist Society, were created to groom and vet the ideological purity of foot soldiers in the conservative movement. Consider legal historian Steven Teles on the role of the Federalist Society in the Reagan administration:

> Society membership was a valuable signal for an administration eager to hire true-believers for bureaucratic hand-to-hand combat. In addition, by hiring this Society's entire founding cadre, the Reagan administration and its judicial appointees sent a very powerful message that the terms of advancement associated with political ambition were being set on their head: clear ideological positioning, not cautiousness, was now an affirmative qualification for appointed office.

The results of this meld of political ambition, ideological positioning, and judicial appointees have been terrible. Fringe conservative ideas, such as hostility to our Nation's civil rights, environmental protection, and consumer protection laws, have been steadily dripped into the legal mainstream by endless repetition in a rightwing echo chamber. The mainstream of American law has been shifted steadily to the right by force of this effort, backed by seemingly endless corporate funds. This ''rights movement'' for corporations, for the rich, the powerful, and the fortunate, has been pursued in a manner—deliberate infiltration of the judicial branch of government—that should concern anybody who respects the law and, in particular, respects our Supreme Court.

The Republican effort to capture that institution for those interests has been a remarkably aggressive and surprisingly explicit effort. Usually, political efforts to capture great public institutions come, as it were, in sheep's clothing. But this wolf came as a wolf. Consider for example the official Republican Party platform of 2000, which ''applauded Governor Bush's pledge to name only judges who have demonstrated that they share his conservative beliefs and respect the Constitution.'' All that was left out was that they should be willing to bend the law and overturn precedents to impose those beliefs.

The pattern is not complicated. America's big corporate interests fund Republican candidates for office, and those corporate interests want those Republicans to help them. That is as old as politics. Republicans, once elected, make it a priority to appoint judges who want to help them—judges who may give obligatory lip service opposing judicial activism but will actually deliver on core Republican political interests; the conservative bloc of judges overrules precedent and 100 years of practice to open the doors to unlimited corporate political spending; and corporations can now give ever more money into the process of electing more Republicans. Connect the dots: The Republicans are the party of the corporations; the judges are the appointees of the Republicans; and the judges just delivered for the corporations. It is being done in plain view.

The Washington Post recently explained:

> ''The U.S. Chamber of Commerce is now free to spend unlimited amounts of money on advertisements explicitly attacking candidates.''

The Chamber of Commerce already had announced in November ''a massive effort to support pro-business candidates.'' So the response from the Republicans, as reported by the Washington Post, should come as no surprise:

> Republican leaders cheered the ruling as a victory for free speech and predicted a surge in corporate support for GOP candidates in November's midterm election.

Now that the Court has taken the fateful step of forbidding any limits on corporation spending to limit campaigns, we can expect to see corporate polluters under investigation by the Department of Justice running unlimited ads for a more sympathetic Presidential candidate; financial services companies spending their vast wealth to defeat Members of Congress who are tired of the way business is done on Wall Street; and defense contractors overwhelming candidates who might dare question a weapons program that they build.

The Court was so eager to give artificial corporations the same rights as natural living human beings that it virtually overlooked foreign corporations. The activist Republican majority leaves wide open the possibility of constitutionally protected rights to influence American elections being held by a Saudi oil company interested in American energy policy, a Third World clothing manufacturer opposed to American labor standards, or a foreign farm conglomerate concerned about America's food safety rules. Is the five-man conservative bloc's fealty to corporate power so absolute that they could not bring themselves to say that the first amendment doesn't protect foreign companies wishing to drown out the voices of American citizens?

Our government is of the people, by the people, and for the people. By refusing to distinguish between people and corporations, the Citizens United opinion undermines the integrity of our democracy, allowing unlimited corporate money to drown out ordinary citizens' voices. So look out for government of the CEOs, by the CEOs, and for the CEOs, who now have special privileged status: Not only may CEOs use their personal wealth to influence elections, they now get the added megaphone—not available to regular citizens—of being able to direct unlimited corporate funds to influence elections. CEOs now have twice the voice or more of everyday Americans.

I won't belabor the record here, because it is something of a technical matter, but before I conclude I have to say from the point of view of judicial practice, the majority opinion is disturbing in several ways: First, it uses rhetorical devices that are more consistent with polemic than judicial determination—vastly overstating the opponents' arguments, using false analysis, knocking over a straw man, indulging in selective quotation and unsupported fact finding.

One example: This is what the conservative bloc found as a fact. And remember, fact finding is not the proper province of an appellate court in the first place, but here is what they found regarding elections:

> We now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.

They just decreed that. So a company comes in, drops a couple of a million dollars in a smear campaign

against an opponent at the bitter end of a race, when it can't be answered, and the next thing you know the person they defended against the opponent is in their pocket. No appearance of corruption? Well, the Supreme Court has decided it: No appearance of corruption. That is clear to them.

Here is another finding of fact by this bloc of judges:

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy.

They made that up out of whole cloth. There are hundreds of thousands of pages of findings to the contrary in the record of previous Supreme Court decisions they overruled. But, no, they made these unsupported findings.

It is novel, it is naive, and it contrasts with the actual findings of this Senate 100 years ago, which said the following:

The evils of the use of [corporate] money in connection with political elections are so generally recognized that the committee deems it unnecessary to make any argument in favor of the general purpose of this measure. It is in the interest of good government and calculated to promote purity in the selection of public officials.

The evils of the use of corporate money in connection with political elections was so generally recognized 100 years ago that the Senate committee working on that legislation deemed it unnecessary to make any argument in favor of the measure—it was too obvious. Yet now this appellate tribunal has made fact findings that that is all wrong.

Moreover, a small band of conservative Justices departs from regular judicial practice by relying for precedent on its own members' previous concurring and dissenting opinions, as if they were their own little court, building a scaffold of arguments alongside the law, in wait for the right case with a sufficient majority to abandon the law and jump to their scaffold of argument. As Justice Stevens accurately pointed out, the majority opinion of the right wing bloc is essentially an ''amalgamation of resuscitated dissents.''

Finally, and most disturbingly, the Chief Justice evaluates precedent in terms of whether his five-member bloc objects to it. He is surprisingly outright about this. He said this: ''Stare decisis,'' the principle that a settled question is settled, that it stands decided—''stare decisis effect is . . . diminished when the precedent's validity is so hotly contested that it cannot reliably function as a basis for decision in future cases.''

He later continues: ''The simple fact that one of our decisions remains controversial . . . does undermine the precedent's ability to contribute to the stable and orderly development of the law.''

As anybody looking at this can see, it is a completely self-fulfilling theory, and it allows the five-man right wing bloc on the Court to gradually undermine settled precedent, to tunnel under it with quarreling objections, hotly contesting it, perhaps even to accelerate the process of undermining it; then, at some point, decree that the settled precedent is no longer valid because they have quarreled with it. Now it must fall.

There can be little doubt that the conservative bloc is laying the foundation for future right wing activism in a seemingly deliberate and concerted effort to expand its political philosophy into our law. Of course, always the dramatic changes observably fall in the direction of the Republican Party's current political doctrine and interests.

I will close by quoting Justice Stevens, who I think puts the fundamental issue of the Citizens United majority opinion in clear relief. ''At bottom,'' he says:

. . . the court's opinion . . . is a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect—

Justice Stevens concludes—

few outside the majority of the Court would have thought that its flaws included a dearth of corporate money in politics.

I yield the floor.

ANNUAL REPORT OF THE SELECT COMMITTEE ON ETHICS

Mrs. BOXER. Mr. President, the Honest Leadership and Open Government Act of 2007 calls for the Select Committee on Ethics of the U.S. Senate to issue an annual report not later than January 31 of each year providing information in certain categories describing its activities for the preceding year. Reported below is the information describing the committee's activities in 2009 in the categories set forth in the act:

(1) The number of alleged violations of Senate rules received from any source, including the number raised by a Senator or staff of the Committee: 99. (In addition, 26 alleged violations from the previous year were carried into 2009.)

(2) The number of alleged violations that were dismissed—

(A) For lack of subject matter jurisdiction or in which, even if the allegations in the complaint are true, no violation of Senate rules would exist: 58. (This figure includes 12 matters that were carried into 2009.)

(B) Because they failed to provide sufficient facts as to any material violation of the Senate rules beyond mere allegation or assertion: 45. (This figure includes 5 matters that were carried into 2009.)

(3) The number of alleged violations for which the Committee staff conducted a preliminary inquiry: 13. (This figure includes 8 matters from the previous year carried into 2009.)

(4) The number of alleged violations for which the Committee staff conducted a preliminary inquiry that resulted in an adjudicatory review: 0.

(5) The number of alleged violations for which the Committee staff conducted a preliminary inquiry and the Committee dismissed the matter for lack of substantial merit: 8. (This figure includes matters in which the Committee subsequently lost jurisdiction. It also includes two letters of public dismissal.)

(6) The number of alleged violations for which the Committee staff conducted a preliminary inquiry and the Committee issued private or public letters of admonition: 1.

(7) The number of matters resulting in a disciplinary sanction: 0.

(8) Any other information deemed by the Committee to be appropriate to describe its activities in the previous year:

In 2009, the Committee staff conducted 10 Member code of conduct training sessions and 5 new Member sessions; 19 employee code of conduct training sessions; 12 Member and committee office campaign briefings; 27 ethics seminars for Member DC offices, state offices, and Senate committees; 3 private sector ethics briefings; and 7 international ethics briefings.

In 2009, the Committee staff handled 12,667 telephone inquiries for ethics advice and guidance.

In 2009, the Committee wrote 996 ethics advisory letters and responses including, but not limited to, 752 travel and gifts matters (Senate Rule 35) and 111 conflict of interest matters (Senate Rule 37).

In 2009, the Committee issued 3,309 letters concerning financial disclosure filings by Senators, Senate staff and Senate candidates and reviewed 1,663 reports.

DENYING AL-QAIDA SAFE HAVENS

Mr. FEINGOLD. Mr. President, the attempt to blow up a U.S. airliner on Christmas Day has shined a spotlight squarely, if belatedly, on Yemen. I cannot overstate the importance of denying al-Qaida safe havens in Yemen and countries like it, an issue on which I have been working for years. The threat from al-Qaida in Yemen, as well as the broader region, is increasing, and our attention to this part of the world is long overdue.

That is why I welcome the President's increased focus on Yemen. But we need to remember, as we focus needed resources and attention on Yemen, that it shouldn't be seen as the new Afghanistan, or the new Iraq. Instead, Yemen highlights the importance of a comprehensive, global counterterrorism strategy that takes into account security sector reform, human rights, economic development, transparency, good governance, accountability, and the rule of law.

We must seize the opportunity to focus attention on the strategy and policies we need to deny al-Qaida safe havens around the world, including in Yemen. Concurrently, we need to examine our policy in Yemen and better understand how we can develop a partnership that is both in our national security interest and helps Yemen to move towards becoming a more stable, secure nation for its people. The recognition at the recent high-level international meeting on Yemen in London of the importance of addressing broader economic, social and political factors in Yemen is thus very welcome.

Any serious effort against al-Qaida in Yemen will require strengthening the

weak capacity of the government as well as its legitimacy in the eyes of its citizens. We need to be careful about providing assistance to a government that isn't always aligned with the needs of the Yemeni people, as last year's State Department report on human rights notes. I am pleased to be an original cosponsor with Senators KERRY and FEINSTEIN of a resolution that urges the implementation of a comprehensive strategy to address instability in Yemen that also calls on the Yemeni government to strengthen efforts to address corruption, to respect human rights and to work with its citizens and the international community to address the factors driving instability in the country.

Yemen is a fragile state whose government has limited control in many parts of the country. It faces a multitude of challenges including poverty, a young and growing population, resource scarcities, and corruption. It is also distracted from the counterterrorism effort by two other sources of domestic instability—the al-Houthi rebellion in the North and tensions with a southern region with which Sana'a was united less than 20 years ago. In other words, counterterrorism is hampered by weak governance and by internal conflicts that would not appear on the surface to threaten our interests. With this in mind, we must also work to ensure that, in the provision and use of our counterterrorism assistance to Yemen, care is taken to protect civilians and prevent the alienation of the local population and attention is given to the local conditions that enable militants to recruit followers.

Instability in Yemen is, of course, also closely linked to conflict in the Horn of Africa. Last year, Somali pirates attacked a U.S. vessel, which briefly raised awareness of maritime insecurity fostered by a lack of effective governance and insufficient naval capacity on both sides of the Gulf of Aden. This problem continues, even when it is not on the front pages, and is both a symptom and a driver of overall instability in the region. Meanwhile, refugees from the conflict in Somalia, as well as from the broader region, are fleeing to Yemen. According to the Office of the United Nations High Commissioner for Human Rights, more than 70,000 Somalis and Ethiopians arrived on Yemen's shores in 2009—a dramatic increase from previous years. The human cost to this exodus, as well as the potentially destabilizing effects, demand our attention.

Congress and the executive branch need to work together to ensure that the weak states, chronic instability, vast ungoverned areas, and unresolved local tensions that have created safe havens in which terrorists can recruit and operate do not get short shrift in our counterterrorism efforts. We cannot continue to jump from one perceived ''central front in the war on terror'' to the next. Local conditions in places like Yemen—as well as Somalia, north Africa and elsewhere—will continue to enable al-Qaida affiliates and sympathizers to recruit new followers. As a result, although we should aggressively pursue al-Qaida leaders, and our efforts to track individual operatives are critical, we will not ultimately be successful if we treat counterterrorism merely as a manhunt with a finite number of al-Qaida members. I am pleased to see that Ambassador Daniel Benjamin has underscored the importance of our counterterrorism efforts addressing conditions that facilitate recruitment to terrorism and extremism. I hope this understanding is shared throughout our government agencies and in the implementation process.

To effectively fight the threat from al-Qaida and its affiliates in Yemen and elsewhere, we also need to change the way our government is structured and how it operates.

In this regard, we need better intelligence. For example, we need to improve the intelligence that relates directly to al-Qaida affiliates—where they find safe haven and why and the local conflicts and other conditions that create a fertile ground for terrorist recruitment. And we need to pay attention to all relevant information—including the information that the State Department and others in the Federal Government openly collect. Conditions around the world that allow al-Qaida to operate are often apparent to our diplomats, and do not necessarily require clandestine collection. The information diplomats and others collect therefore should be fully integrated with the intelligence community.

That is why I have proposed and the Senate has approved a bipartisan commission to provide recommendations to the President and to the Congress on how to integrate and otherwise reform our existing national security institutions. Unless we reform how our government collects, reports and analyzes information from around the world, we will remain a step behind al-Qaida's global network.

We also need better access to important countries and regions. When our diplomats aren't present, not only will we never truly understand what is going on, but we also won't be able to build relationships with the local population. In some cases, we can and should establish new embassy posts, such as in northern Nigeria. In other cases, such as Yemen, where security concerns present obstacles, we should develop policies that focus on helping to reestablish security, for the sake of the local populations as well as for our own interests.

In addition, as Yemen makes clear, we need strong, sustained policies aimed directly at resolving conflicts that allow al-Qaida affiliates to operate and recruit. These policies must be sophisticated and informed. We have suffered from a tendency to view the world in terms of extremists versus moderates, good guys versus bad guys. These are blinders that prevent us from understanding, on their own terms, complex conflicts such as the ones in Yemen that undermine broader counterterrorism goals. This approach has led us to prioritize tactical counterterrorism over long-term strategies. And it has contributed to the misperception that regional conflicts, which are often the breeding grounds for al-Qaida affiliates, are obscure and unimportant and can be relegated to small State Department teams with few resources and limited influence outside the Department. We must change this dangerous pattern, which is why my resolution with Senators KERRY and FEINSTEIN urges a comprehensive policy toward Yemen, approved at the highest levels and agreed upon by the entirety of the U.S. Government.

We have an opportunity to take a smarter approach. By recognizing al-Qaida as a global network that takes advantage of local conditions, instead of a monolithic threat, we can get ahead of the curve and identify threats before the next attack.

65TH ANNIVERSARY OF THE LIBERATION OF AUSCHWITZ

Mr. CARDIN. Mr. President, on January 27, 1945, the Nazi concentration camp at Auschwitz, including Birkenau and other related camps near the Polish city of Oswiecim, was liberated by the Soviet Army. This week, people have gathered at Auschwitz and in many other places to mark the 65th anniversary of that event. I am pleased that President Obama presented a video address in which he underscored—using Elie Wiesel's words—the sacred duty of memory.

Auschwitz-Birkenau was the principal and most notorious of the six death camps built by Nazi Germany to achieve its goal of the mass extermination of the Jewish people of Europe. Built in Nazi-occupied Poland initially as a concentration camp for Poles and later for Soviet prisoners of war, it soon became a prison for a number of other nationalities.

Ultimately, a minimum 1,300,000 people were deported to Auschwitz between 1940 and 1945, and of these, at least 1,100,000 were murdered at that camp. An estimated 6 million Jews—more than 60 percent of the pre-World War II Jewish population of Europe—were murdered by the Nazis and their collaborators at Auschwitz and elsewhere in Europe. In addition, hundreds of thousands of civilians of Polish, Roma, and other nationalities, including in particular disabled individuals, homosexuals, political, intellectual, labor, and religious leaders, all of whom the Nazis considered 'undesirable,' as well as Soviet and other prisoners of war, perished at Auschwitz.

On that day of liberation, 65 years ago, only 7,000 camp prisoners who had passed through the infamous Auschwitz gates, the ones who promised

''Arbeit Macht Frei''—''Work Will Make You Free''—managed to survive the selections, torture, starvation, disease, inhuman medical experiments, and executions that occurred at Auschwitz.

According to a new survey published this week by the Organization for Security and Cooperation in Europe, OSCE, at least 41 of the OSCE's 56 participating states commemorate the Holocaust with official events. Thirty-three participating states have established official memorial days for Holocaust victims, and January 27 is the official Holocaust Memorial Day in many European countries, including Denmark, Estonia, Germany, Greece, Italy, Sweden, and the United Kingdom. I am deeply gratified that since 2005, the United Nations has also observed January 27 as a day of remembrance for the victims of the Holocaust. In fact, Auschwitz-Birkenau was inscribed on the UNESCO World Heritage List in 1979.

I personally visited Auschwitz in 2004 and cannot overstate the importance of the Memorial Museum there today in the effort to teach future generations about the Holocaust. The recent theft of the ''Arbeit-Macht-Frei'' sign—which, fortunately, was recovered—has certainly heightened awareness of the need for additional security measures there, and I support the efforts to secure increased funding for the preservation of the Memorial Museum.

Teaching about the Holocaust is an obligation that must be met not only at Auschwitz, but at places where people learn around the globe. As chairman of the Commission on Security and Cooperation in Europe, I am deeply concerned by the rise of anti-Semitism and violent extremism in some OSCE participating states. In particular, I am deeply troubled by the continued prevalence of Nazi-era discourse to describe Roma. As Thommas Hammarberg, the Council of Europe Commissioner for Human Rights, has said:

> Even after . . . the Nazi killing of at least half a million Roma, probably 700,000 or more, there was no genuine change of attitude among the majority population towards the Roma.

With this concern in mind, I was pleased to learn that the United Nations invited the OSCE senior advisor for Romani issues, Andrzej Mirga, to participate in the commemoration they organized this year. Sadly, as Mr. Mirga observed, although approximately 23,000 Romani people were sent to Auschwitz, none were among the survivors liberated there 65 years ago.

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. WEBB (for himself and Mr. WARNER):

S. 2970. A bill to amend the Internal Revenue Code of 1986 to allow rehabilitation expenditures for public school buildings to qualify for rehabilitation credit; to the Committee on Finance.

By Mr. KERRY:

S. 2971. A bill to authorize certain authorities by the Department of State, and for other purposes; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DORGAN (for himself, Mr. SPECTER, Mr. LEAHY, Mr. KERRY, Mrs. FEINSTEIN, Mr. SCHUMER, Mrs. BOXER, Ms. SNOWE, Mr. WICKER, and Mr. PRYOR):

S. Res. 402. A resolution expressing support for the designation of January 28, 2010 as National Data Privacy Day; considered and agreed to.

ADDITIONAL COSPONSORS

S. 752

At the request of Mr. DURBIN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 752, a bill to reform the financing of Senate elections, and for other purposes.

S. 812

At the request of Mr. BAUCUS, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 812, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions.

S. 1067

At the request of Mr. FEINGOLD, the names of the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 2755

At the request of Mr. MENENDEZ, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 2755, a bill to amend the Internal Revenue Code of 1986 to provide an investment credit for equipment used to fabricate solar energy property, and for other purposes.

S. 2924

At the request of Mr. LEAHY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2924, a bill to reauthorize the Boys & Girls Clubs of America, in the wake of its Centennial, and its programs and activities.

S. 2961

At the request of Mr. DODD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2961, a bill to provide debt relief to Haiti, and for other purposes.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 402—EXPRESSING SUPPORT FOR THE DESIGNATION OF JANUARY 28, 2010 AS NATIONAL DATA PRIVACY DAY

Mr. DORGAN (for himself, Mr. SPECTER, Mr. LEAHY, Mr. KERRY, Mrs. FEINSTEIN, Mr. SCHUMER, Mrs. BOXER, Ms. SNOWE, Mr. WICKER, and Mr. PRYOR) submitted the following resolution; which was considered and agreed to:

S. RES. 402

Whereas the protection of the privacy of personal information has become a global imperative for governments, commerce, civil society, and individuals;

Whereas advances in modern technology enhance our lives by increasing our abilities to communicate, learn, share, and produce, and every effort should be made to continue both the creation and the innovative use of such technologies;

Whereas the pervasive use of technologies in our everyday lives and in our work gives rise to the potential compromise of personal data privacy if appropriate care is not taken to protect personal information;

Whereas many individuals are unaware of data protection and privacy laws generally and of specific steps that they can take to help protect the privacy of personal information;

Whereas a continuing examination and understanding of the ways in which personal information is collected, used, stored, shared and managed in an increasingly networked world will contribute to the protection of personal privacy;

Whereas National Data Privacy Day constitutes an international collaboration and a nationwide and statewide effort to raise awareness about data privacy and the protection of personal information;

Whereas government officials from the United States, Canada, and Europe, privacy professionals, academic communities, legal scholars, representatives of international businesses and nonprofit organizations, and others with an interest in data privacy issues are working together on this date to further the discussion about data privacy and protection;

Whereas privacy professionals and educators are being encouraged to take the time to discuss data privacy and protection issues with teens and young adults in schools and Universities across the country;

Whereas the second annual recognition of National Data Privacy Day will encourage more people nationwide to be aware of data privacy concerns and to take steps to protect their personal information; and

Whereas January 28, 2010, would be an appropriate day to designate as National Data Privacy Day: Now, therefore, be it

Resolved, That the Senate—

(1) supports the designation of a National Data Privacy Day;

(2) encourages State and local governments to observe the day with appropriate activities that promote awareness of data privacy;

(3) encourages educators and privacy professionals to discuss data privacy and protection issues with teens in high schools across the United States;

(4) encourages corporations to take steps to protect the privacy and security of the personal information of their clients and consumers, to design privacy into products they create where possible, and to promote trust in technologies; and

(5) encourages individuals across the Nation to be aware of data privacy concerns and to take steps to protect their personal information.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, February 9, 2010, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to examine financial transmission rights and other electricity market mechanisms.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510–6150, or by e-mail to Gina_Weinstock@energy.senate.gov.

For further information, please contact Leon Lowery or Kevin Huyler or Gina Weinstock.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before Committee on the Energy and Natural Resources, previously announced for February 9th, has been rescheduled and will now be held on Thursday, February 11, 2010, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the U.S. Department of Energy's Loan Guarantee Program.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510–6150, or by e-mail to Abigail_Campbell@energy.senate.gov.

For further information, please contact Mike Carr or Abigail Campbell.

NATIONAL DATA PRIVACY DAY

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 402.

The ACTING PRESIDENT pro tempore. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 402) expressing support for the designation of January 28, 2010, as ''National Data Privacy Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. 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 that any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 402) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 402

Whereas the protection of the privacy of personal information has become a global imperative for governments, commerce, civil society, and individuals;

Whereas advances in modern technology enhance our lives by increasing our abilities to communicate, learn, share, and produce, and every effort should be made to continue both the creation and the innovative use of such technologies;

Whereas the pervasive use of technologies in our everyday lives and in our work gives rise to the potential compromise of personal data privacy if appropriate care is not taken to protect personal information;

Whereas many individuals are unaware of data protection and privacy laws generally and of specific steps that they can take to help protect the privacy of personal information;

Whereas a continuing examination and understanding of the ways in which personal information is collected, used, stored, shared and managed in an increasingly networked world will contribute to the protection of personal privacy;

Whereas National Data Privacy Day constitutes an international collaboration and a nationwide and statewide effort to raise awareness about data privacy and the protection of personal information;

Whereas government officials from the United States, Canada, and Europe, privacy professionals, academic communities, legal scholars, representatives of international businesses and nonprofit organizations, and others with an interest in data privacy issues are working together on this date to further the discussion about data privacy and protection;

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(4) encourages corporations to take steps to protect the privacy and security of the personal information of their clients and consumers, to design privacy into products they create where possible, and to promote trust in technologies; and

(5) encourages individuals across the Nation to be aware of data privacy concerns and to take steps to protect their personal information.

ORDERS FOR MONDAY, FEBRUARY 1, 2010

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 2 p.m. Monday, February 1; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day; that the Senate then proceed to a period of morning business until 3 p.m., with Senators permitted to speak for up to 10 minutes each; that following morning business, the Senate proceed to executive session to debate the nomination of Patricia Smith; finally, I ask that the RECORD remain open until 12 noon today for the introduction of legislation, submission of statements, and cosponsors requests.

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

PROGRAM

Mr. REID. Mr. President, the next vote will be at 5:30 p.m. Monday. That will be on the motion to invoke cloture on the nomination of Patricia Smith to be Solicitor for the Department of Labor.

I announced earlier that the vote on Monday will end at 5:50 p.m. If somebody's plane is late, or whatever the situation, that is what it is going to have to be. We have to close that vote for procedural purposes, as everybody knows.

ORDER TO ADJOURN

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order following the remarks of Senator SESSIONS.

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

DEFICIT REDUCTION

Mr. SESSIONS. Mr. President, a number of things of importance have

happened with regard to our financial condition over a period of years. Actually, this week the President, in his State of the Union Address, made some reference to the seriousness of our financial condition. I think his comments were far too weak, and he insufficiently advised the American people of how serious our condition is.

Yesterday, in the Budget Committee, Mr. Elmendorf, who is the CBO Director selected by our Democratic majority in the Congress and whom I think tries his best to do the right thing day after day and give us the right numbers to make our plans upon, told us a lot of things that were very troubling. He was just repeating that the dire predictions and dire assessments they have made previously, which are, if anything, on track and getting worse. They haven't misjudged the numbers and how bad our debt is increasing, but, in fact, if anything, they may have underestimated them.

I will just quote one thing in his statement to us yesterday. He talked about analyzing the American debt or how much money we owe as a percentage of the size of our economy—as a percentage of GDP, gross domestic product. That is one way economists like to look at it. He pointed out that the numbers might look a little better, but there are a number of things that are on the table that are likely to occur. I think he is exactly correct about that; if those things occur then the situation realistically is even worse. He analyzed if the tax cuts were made permanent and if the alternative minimum tax is indexed for inflation. The President proposed to make some of the tax cuts permanent, and Members of Congress are reluctant to see taxes increase substantially, which will occur if the tax cuts aren't extended but are allowed to expire. Each year we address the alternative minimum tax because it is falling ferociously on middle-income Americans, and disproportionately on families with children. Every year, we indexed it and fixed it so it doesn't impact so many people, but for 1 year only. But when the CBO tries to predict the budget deficit, they have been assuming that the AMT would go back to its high rate, and we would have more income coming in because we are taking these increased taxes from American families.

However, instead of fixing it permanently, which would score a loss of revenue over 10 years, we only fix it 1 year, and the CBO has to assume based on what the law is that it would not be fixed again and that these taxes will be imposed on Middle America and we will have more revenue and make the budget numbers look better. But I don't think we are going to not fix AMT. Frankly, we may not be able to 100 percent fix it, in my view, but that is what the votes have been each year, to fix it 100 percent.

He notes that if annual appropriations keep up with the increasing gross domestic product, as they have over the last 20 years, which is about where increases in spending has fallen, the deficit in 2020 would be historically large as a percentage of GDP, and the annual deficit would be large as a percentage of GDP. Then he said:

> The debt held by the public would equal nearly 100 percent of GDP. This is a level of debt that most economists say has the ability to create instability and a lack of confidence in the United States Government and it would have adverse economic ramifications throughout our economy. In other words, once the Nation reaches this high of a level of debt, we have a very serious problem, and it is very difficult to extract yourself from the cliff with those kinds of huge deficits.

I think the President should have talked about that in real detail. He did say on the discretionary accounts, which amount to about 18 percent of our budget, he would like to have a freeze, and he made some exceptions and said that freeze wouldn't be this year, though. Instead, it would be next year because that is the way things work, and I wish to talk about that for a minute. I think our Congress needs to be more serious about it, and the President needs to be more serious about it.

Senator MCCASKILL, my Democratic colleague, and I offered an amendment yesterday that was voted on, and I think 17 Democrats joined with all but one Republican to vote for it, and it would have helped. It would have said the budget we passed—which I will explain to my colleagues how we violate it—the budget we passed that allows the 1 percent to 2 percent increase in discretionary spending accounts would be enforced. In other words, there would be a cap on our spending. So we put in this amendment that we offered the actual dollar amounts in the budget we passed last year—or basically the Democrats passed last year—and we wouldn't go above that. It would take a two-thirds vote to go above those top line numbers. That would work. This was done in 1990 and in 1997. They had statutory caps, not just budget caps, and those statutory caps led to a consistent reduction in annual deficits to the point that by the late 1990s we were in surplus for 4 years from 1998 through 2001. We had surpluses for the first time in decades. Then we allowed the statutory caps to expire and we got back on this spending track that has put us in this deficit situation that exceeds anything we have ever done before in the history of the American Republic; nothing close to it, except World War II.

But when the war ended, we promptly got back on the right track and brought the economy back into sound shape. I don't see us heading in that direction. It is going to take bold leadership.

We received 56 votes to put these statutory caps in, but it took 60, so it is not the law. I am disappointed about that. If you want to know the truth, I think the leadership in the Senate didn't mind how many voted for it, as long as it wasn't 60, because it crimps their style.

The President, during his State of the Union Address, made some confusing statements about his commitment and the depth of it to dealing with the problem. He gave some lipservice to the freeze, which I think I am going to support, and I will back him on that all I can. I hope he can do that. However, there were other things that were contrary to a freeze. For example, he said we were going to take money from the Wall Street bailout, the TARP money as we call it, and he said:

> I am proposing that we take $30 billion of the money Wall Street banks have repaid and use it to help community banks give small businesses the credit they need.

Well, that sounds OK, except that is $30 billion more. Well, we took it from the TARP money that they paid back, so that doesn't count. That doesn't count? It does count.

At the budget hearing yesterday, Senator GREGG, the ranking Republican and former chairman of the Budget Committee, who is an expert on this and very respected, asked this question of Mr. Elmendorf.

The budget Chairman:

> There has been a lot of talk about the fact that the TARP money is available to spend somewhere else. First, the law doesn't allow that.

Parenthetically, I would note that Senator GREGG put in the language. He foresaw that when the banks paid back the money they were given as part of this financial bailout, it shouldn't be used as a slush fund to spend. He wrote it in there. So he said:

> First, the law doesn't allow that. It is supposed to reduce the debt. But I want to clarify the fact that there is no TARP money. All of this money has to be borrowed, right? Every cent of the TARP money is borrowed from China or somebody else, right?

Mr. Elmendorf answered:

> There is just one pool of government money and everything else is sort of accounting treatments to keep track of various purposes. But, yes, if more is spent through the TARP, that is just more that's spent and more that's borrowed, and more that goes to the Federal debt.

So there is no free money in the TARP repayments. We borrowed the money, every penny of it, to give to those banks. When they pay it back, we have a debt to pay down.

That is what we were supposed to do. That is what Senator GREGG put in the bill. Now they claim they have some free money paid back by the banks, and we can just spend it. That is what the President said, and it is not accurate. That is wrong, and it doesn't prove to me that he understands he has to fight every day over every billion dollars to contain the natural tendency of this body to spend.

Mr. President, I point out that even though the President talked about a freeze, he talked about $30 billion for banks, not big banks, but this free money he apparently suggests has now appeared as a result of the repayment of the loans they got in the financial bailout. Some of the banks didn't even

want the loans. They forced them to take it, basically. Some have been told they should not pay it back. They don't want them to pay it back, when the banks are ready to pay it back. At any rate, some of that is paid back. We borrowed the money to give it to them. When it is paid back, it is not extra, free money. We always assumed that most of this money would eventually be paid back.

I point out as to how big a need it is to spend $30 billion out of this money for community banks instead of big banks, to give small businesses credit. Well, what did the community banks say? They don't want the TARP.

According to the Christian Science Monitor yesterday, the headline is: ''Community Bankers to Obama on TARP: Thanks, But No Thanks.'' Community bankers say they have plenty of money now. That isn't the problem with loaning money. It says:

''The whole TARP program is perceived as a misadventure by the public,'' says Dennis Jacobe, chief economist for Gallup, Inc. in Washington. ''I think it is greatly disliked.''

Now we are getting the money back from the big banks, and now the other bankers said they don't need it. Also, as we talk about money, the President is proposing a second stimulus package. The first one passed was scored at $787 billion, the largest expenditure in the history of the American Republic—a breathtaking amount of money, so large that most people have not been able, in any realistic way, to apprehend how large it is. I just point out that the State of Alabama, one-fiftieth of the Nation, an average-size State with over 4 million people—our budget, the general fund, is about $2 billion.

Senator WARNER was Governor of Virginia and did a fabulous job and was well respected for his work. I am sure they didn't have a $100 billion budget. I don't know what it was, but it is a lot less than that.

We spent over $700 billion on one vote on one day, out the door, and every penny of it was borrowed because we were already in debt. So if you spend more money, you have to borrow it. However, now it is not $787 billion. Based on some of the entitlement language we put into the bill, it is now at $862 billion. Some people said they would not vote for a bill over $800 billion, so they got it under. In truth, surreptitiously, they put in guaranteed benefits for certain programs, and those have now claimed the money, and it is over $800 billion. I think it is $862 billion. That is a pretty big overrun—$75 billion. Just like that. We didn't vote on it really.

Now we have stimulus II. This is what the President said:

Now the House has passed a jobs bill that includes some of these steps [referring to clean energy and high-speed rail]. As the first order of business this year, I urge the Senate to do the same. . . .

I thought we had a freeze on spending. Let me tell you what the House's so-called jobs bill does. It costs $150 billion. Spending. Another $150 billion in spending, with $28 billion for highways, and about $2.5 billion for railroads, and $2 billion for clean energy.

Well, if I recall, we were told that the $787 billion stimulus bill was designed for what primary purpose? Jobs and to rebuild our crumbling infrastructure. They talked about roads and bridges that have fallen in and interstates getting old and needing all this work. Do you remember that? That is how the bill was sold by this administration. I don't want to be just partisan carping, but that is what they told us.

Amazingly, less than 4 percent of the stimulus bill that we passed—the $787 billion package—went to highways and infrastructure, less than 4 percent. I complained about that. I remember making speeches on it because jobs are created when you build a highway. At least you have something permanent that benefits the Nation—perhaps replacing a bridge that you are going to have to replace anyway, and you get a benefit for everybody from improving our infrastructure, although that is not a philosophy that will always stand us in good stead. We were trying to create jobs, and at least we should have focused on infrastructure.

Now they are coming back with $150 billion more—$28 billion for highways and $2.5 billion for railroads. That is not good management of money. That is not good spending.

The President went on to say this:

According to the Congressional Budget Office, the independent organization that both parties have cited as the official scorekeeper for Congress, our approach would bring down the deficit by as much as $1 trillion over the next two decades.

He is talking about the health care bill that did not pass. He said it would bring down the deficit by as much as $1 trillion. That is not accurate. The CBO on December 19 of last year, trying to get out these scores as fast as they could, said it would cut the deficit by roughly $1 trillion. Then they revised it 1 day later. The official score was that it would reduce the deficit about half that amount.

As I explained on the floor, that is a product of miscalculation—deliberate miscalculation. Let me explain.

The way they get this score in the first 10 years, for example, is they said it would create a surplus of $132 billion if we would pass this health care bill. Isn't that great? You add 20 million people to the rolls, give many of them subsidized health care, and you are going to reduce the costs and you are going to save money. That is a pretty good deal if you can get it. But, of course, you cannot get something for nothing. Nothing comes from nothing.

What happened was, Medicare scored that if you cut Medicare benefits, as the administration proposed, and you increase Medicare taxes, as they proposed, you create extra money in Medicare and you extend the life of Medicare. Medicare is going into bankruptcy, but this would extend the life of it. That is an honest and correct score.

The Congressional Budget Office utilizes what it calls the unified budget. They score the whole budget as to how it comes out. The amount of money is increased to the government through Medicare, and they score that as a gain. Since the health care bill would not take effect or pay benefits until 4 or 5 years later—although the taxes increase now—then over 10 years, it would create a surplus of $132 billion. Sound good? But I read the small print of the CBO letter and the small print of the Medicare letter.

The Medicare Chief Actuary told us that if you raise taxes and you cut spending in Medicare, it will extend the life of Medicare. But he had a parenthetical line in there. He said: Of course, you cannot simultaneously use the Medicare savings to fund a new program and claim it does both. You would be spending the money twice. How logical is that? But that is what they did. He used this phrase: ''Although the conventions of accounting might suggest.'' What he is saying is, Medicare scores the money. They scored it accurately. Mr. Elmendorf and CBO score it as a unified budget. They said you have more money for Medicare and spending in the first 10 years of the health care plan—it is less than that—so you have a net surplus, right? Looks good. Sounds good. But that is not so because there is a bond, a debt instrument from the U.S. Treasury back to the Medicare Trust Fund. As soon as Medicare starts going into deficit again, they are going to cash in those bonds and the government is going to have to then borrow the money on the open market.

According to the CBO, it would not increase the deficit but it would increase the debt of America. When we raised the debt limit yesterday—and my colleagues voted to do so—the internal debt between the Treasury and Medicare, counts as part of the Nation's debt. It is an internal debt. It is not scored the same way. But sooner or later, when Social Security and Medicare start cashing in and claiming their money, the U.S. Treasury has to do something. What they are going to do and what they have been doing is convert those debt instruments and go out and sell bonds in the marketplace. Whatever the interest rate, they have to pay to China, individuals in the United States, and others who buy those Treasury bills. We are selling so many of them it is no doubt going to drive up the interest rate.

These numbers are not real. My concern and my criticism of the President's address is not that he said we ought to have a freeze. I salute that, and I will support that. But he did not indicate the severity of the crisis we are in.

Two years ago, President Bush's last year, he had a $460 billion deficit which I think at that time was the highest deficit since World War II. It spiked up

as a result of increased spending and the recession we are in. Last year, the debt was $1.4 trillion, 1,400 billion dollars, three times what it was. And this year the projected deficit is going to be almost the same, according to Mr. Elmendorf's report.

It continues this way, unfortunately, throughout the decade and will average, based on the planned expenditures and revenues as set forth by the Obama administration's budget, almost $1 trillion a year in deficits. This is why experts are repeatedly telling us it is unsustainable. We will be maintaining deficits twice as large as anything we have ever seen for the next decade.

Let me show what it means in one area that I think all of us can understand. When you borrow money, you pay interest on it. Each year, the interest we pay on the debt is one of the biggest line items in the whole budget. If the debt goes up from $5.7 trillion in 2008 to $17 trillion in 2019, which is what they project will happen, the interest rate is going to go up. It will go up even more than that. It will go up more. Interest rates are extraordinarily low as a result of the economic slowdown. They are going to go up, and they are going to hit us in the book.

Here is what CBO says will happen. In 2009, we paid $200 billion in interest on the debt. In 2019, they project we will pay $799 billion. They project an increase in rates and an increase in debt—a tripling of debt and an increase in interest rates—which leads to four times as much interest being paid over that period of time. Frankly, it does not include some other factors in there also.

I have to say to my colleagues, I am sorry we did not pass the statutory cap we offered this week. But I was encouraged by so many of our Democratic colleagues who saw fit to support it. I think it is indicating there is a recognition in this body that we are going to have to do some tough things. We cannot keep spending like this. There is always some excuse for it. We cannot continue it.

Think about this. The Federal Highway Program a few years ago, before we had the stimulus package, was about $40 billion a year. Federal aid to education is about $40 billion a year. Other programs are in that range. It gives you a picture of what kind of dollars we are talking about. But if you add $600 billion in increased interest payments over this next decade, in 1 year $600 billion more, this is going to crowd out spending for all kinds of programs that we wish to fund.

We are going to be in a dilemma. How much more can we borrow—100 percent of GDP? More?—without destabilizing our currency or cutting spending? And it is going to crowd out spending on items we need to be spending money on. It is going to be crowded out by the interest payment which will exceed all expenditures in the budget, well above the defense budget even, the largest expenditure.

This is a stunning path we are on. Mr. Elmendorf reconfirmed it yesterday in his testimony before the Budget Committee. I am worried about it. The American people are worried about it. I don't think they know it is as bad as it is, but they know it is not good. They know there is no free lunch. They know nothing comes from nothing, and that we have to pay for what we do around here. We cannot continue to borrow, borrow, borrow, stimulate today and maybe 1 day in the future we will get around to paying it.

I offer to you, in 2019, there is no plan to pay down a dime of the debt. It is just to pay the interest on the debt. In 2019, we will add $1 trillion more to the debt of America. It is going up almost $1 trillion a year, and these are outyears, according to CBO analysis. Nothing is perfect that far out. It could be better; it could be worse. They are not projecting a recession in the outyears; they are projecting steady economic growth. It could be worse.

We have to do better. This is not a matter that is going away. The American people instinctively have it right. They are telling us in rallies and tea parties: You guys have to do better. You are being irresponsible. I think they are fundamentally correct. They have every right to be upset with us. We can do better. We must do better. And I hope we will.

Mr. President, I thank you for the opportunity to make these remarks. It is something we are going to have to continue to work on. We cannot continue this path. If we put our mind to it, we can fix this situation. It is not a challenge beyond our capacity. But make no mistake, financially I doubt we have ever been in a situation that requires as much clarity and as much determination as is going to be required over the next decade, and some painful decisions are going to have to be made. They are going to have to be made.

That means containing spending and resisting the temptation to create more and more new programs that inevitably cost more than they were projected to when they started.

I thank the Chair, and I yield the floor.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 1, 2010, AT 2 P.M.

The ACTING PRESIDENT pro tempore. The Senate stands adjourned until Monday, February 1, 2010, at 2 p.m.

Thereupon, the Senate, at 11:39 a.m., adjourned until Monday, February 1, 2010, at 2 p.m.