The clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 178, S. 1776, the Medicare Physician Fairness Act of 2009.

Harry Reid, Debbie Stabenow, Roland W. Burris, Patty Murray, Mark Udall, Mark Begich, Frank R. Lautenberg, Amy Klobuchar, Jack Reed, Carl Levin, Jeff Bingaman, Sherrod Brown, Sheldon Whitehouse, Barbara Boxer, Kirsten E. Gillibrand, Charles E. Schumer, Jeanne Shaheen, Richard Durbin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 1776, the Medicare Physician Fairness Act of 2009, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 47, nays 53, as follows:

[Rollcall Vote No. 325 Leg.]

YEAS—47

Akaka	Gillibrand	Mikulski
Baucus	Hagan	Murray
Begich	Harkin	Nelson (NE)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Cantwell	Klobuchar	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Dodd	Levin	Udall (CO)
Durbin	Lincoln	Udall (NM)
Feinstein	Menendez	Whitehouse
Franken	Merkley	

NAYS—53

Alexander	Dorgan	McCaskill
Barrasso	Ensign	McConnell
Bayh	Enzi	Murkowski
Bennett	Feingold	Nelson (FL)
Bond	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Byrd	Hutchison	Snowe
Chambliss	Inhofe	Tester
Coburn	Isakson	Thune
Cochran	Johanns	Vitter
Collins	Kohl	Voinovich
Conrad	Kyl	Warner
Corker	LeMieux	Webb
Cornyn	Lieberman	Wicker
Crapo	Lugar	Wyden
DeMint	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 47, the nays are 53. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Senator from Alabama is recognized.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010—CONFERENCE REPORT—Resumed

Mr. SHELBY. What is the pending business?

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

Conference report to accompany H.R. 2647, a bill to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2010, and for other purposes.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for about 10 minutes.

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

NASA AND THE FUTURE OF HUMAN SPACE FLIGHT

Mr. SHELBY. Mr. President, I would like to take the opportunity to expand upon some of my earlier comments, and those of other Members of the Senate, in relation to NASA and the future of human space flight.

I am concerned with aspects of the Augustine Commission's report that add credibility to far-reaching options for furthering our manned space flight program. If Congress and the public are to be asked to spend more for change, then it should be change that will give us the best chance to succeed and to continue to lead the world in human space exploration.

The Chairman of the Review of U.S. Human Space Flight Plans Committee, Norm Augustine, announced that safety would be paramount. Yet, from reviewing the preliminary information, there is only one area where mission safety was examined in the report. The Augustine report contained no safety comparison for the various vehicles considered by the panel and no risk assessment based on each option. The only safety issue identified was an assessment of how ''hard'' the panel thought each overall mission would be to achieve—not the safest means to complete the mission successfully. Since safety is the most important issue, these omissions are starling to some of us.

When making comparisons on the safety and performance of the various options, fundamental design differences cannot be lumped together and considered to be equal. Without an honest and thorough examination of the safety and reliability aspects of the various designs and options, the findings of this report are worthless. I would like to know why this blue ribbon panel did not examine these safety aspects.

Constellation's vehicles have been planned and scrutinized by multiple stakeholders, all with a single goal in mind: to provide a safe and reliable human space flight system for our Nation.

Flashy PowerPoint presentations and boisterous claims by potential commercial providers about their easy and simple science solutions to human travel into space sound like the answer to all of our problems. What sounds too good to be true usually is. Are these proposals subject to the same safety standards and testing that have resulted from the Columbia Accident Investigation Board, I would ask? Is there any evidence that the cargo rockets, promised to execute their first servicing mission sometime in 2010, are better than the manned rockets that have been under development for over 4 years? What do the experts say?

NASA's own Aerospace Safety Advisory Panel issued a report in April of this year that stated that ''Commercial Orbital Transportation Services vehicles are not proven to be appropriate to transport NASA personnel.'' Will the current Administrator, Mr. Bolden, who helped write these words, now contradict his statement 6 months after putting his name to them?

Further, I would ask, what happened to the April report findings in the Augustine Commission recommendations? Have there been findings since April that were available to the Augustine Commission that the Aerospace Safety Advisory Panel was not privy to? If so, I would certainly look forward to reviewing this new data.

The Augustine Commission states in its own report that while human safety can never be absolutely assured, it is ''not discussed in extensive detail because any concepts falling short in human safety have simply been eliminated from consideration.'' Yet we see the vehicles currently deemed unsafe for our astronauts being used in the Augustine Commission's report as a viable option to go to low Earth orbit.

When asked on September 15, 2009, about the readiness of emerging space contractors to provide manned space flights, former NASA Administrator Mike Griffin said:

To confuse the expectation that one day a commercial transport of crew will be there, to confuse that expectation with the assumption of its existence today or in the near term I think is—is risky in the extreme.

Current and former NASA Administrators are on record registering their doubts regarding the safety of these new commercial contractors.

Companies that are new contractors within the aerospace community have been provided a pathway that could potentially lead to billions in government funding to pursue opportunities to support International Space Station operations, starting with cargo. I believe the contractors wishing to pursue human launches to low Earth orbit should prove they can establish a reliable record of meeting the cargo and trash hauling responsibilities to support the station before we turn over the Nation's human space flight future to them.

Pretty slides and unproven promises will not show us you have the right stuff to be entrusted with the lives of our astronauts. If these companies can be successful—and there is no reason to doubt that eventually, someday, somehow they will be—then NASA, the Congress, and the public might be willing to hand over launches to low Earth orbit. That day is not today and it will not be for years to come.

But until that day arrives, I believe we should follow the path that has the safest manned vehicle, the vehicle furthest along in development, and, as mentioned several times by the Augustine Commission itself, the program that, given appropriate funding, will successfully provide a system that can not only go to the space station but to the Moon and beyond.

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, yesterday, the Senate majority leader was required to file cloture to end a Republican filibuster against the Department of Defense authorization bill. We are in two wars. We are in two wars, and we are about to send, from my State of Vermont, 1,500 members of our National Guard to Afghanistan. We have all kinds of things the Defense authorization bill is designed for, including to protect Americans serving abroad in harm's way. Yet the Republicans have filibustered against the Department of Defense authorization bill. The Senate is going to vote on that tomorrow, pursuant to our rules. I hope we will have a bipartisan vote proceeding to conclude the debate on the conference report which has been adopted by the House. I expect the Senate, on both sides of the aisle, will vote to provide the authorities necessary for our men and women in uniform.

I wonder what it would be like if you were a soldier, a marine out on the front lines in Afghanistan, and you get some news back home that one political party is holding up the Department of Defense authorization bill—the authorization for your equipment, the authorization for your body armor, the authorization for your ammunition, the authorization for your going forward. What would you think as the bullets are whizzing toward you? I know what I would think. I know what I would have thought when my young son was in the Marine Corps and got called for service in the Middle East. I know what I would have thought of people holding up the authorization for the equipment he needed.

Also, as part of that conference report, we are going to be adopting the Hate Crimes Prevention Act, including the provision added by the ranking Republican on the Senate Judiciary Committee, Senator SESSIONS, to create a new criminal offense for attacks against servicemembers because of their service. I would hope we will be moving forward on that.

After more than a decade, Congress is finally set to pass the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 as an amendment to the Defense Authorization Act. I know the President will sign this, and I am proud the Congress has come together to show that violence against members of any group because of who they are is not going to be tolerated in our country. I thank Senator COLLINS for cosponsoring the amendment with me. I commend Senator LEVIN for working so hard to ensure that this provision would go forward as part of the conference report, and I congratulate Senate Majority Leader REID for his essential role in this matter.

If I might, as I look over where my dear friend and colleague, Senator Kennedy, sat for decades on this floor, I wish to take the opportunity to remember Senator Ted Kennedy, who provided steadfast leadership on this issue for more than a decade. I wish he could have been here to see this bill, about which he was so passionate, finally get enacted. I wish he was here in any event, but I am honored to be able to see it through to the finish line for him. I know it meant a lot to him. I miss him, but I think this is a way we can say to Senator Kennedy his good work goes on.

Earlier this month was the 11th anniversary of the brutal murder of Matthew Shepard. He was a college student who was beaten to death solely because of his sexual orientation. Matthew's parents worked courageously and tirelessly for this legislation, which aims to ensure this kind of despicable act will never be tolerated in this country.

The bill was named for Matthew as well as for James Byrd, Jr. Mr. BYRD was a Black man who was killed in 1998 because of his race—another awful crime which I will not even describe because it was so gruesome—but it galvanized the Nation against hateful violence. We appreciate and honor the important contribution of James Byrd's family, as they have worked so hard for this legislation.

Unfortunately, the years since these two horrific crimes have made clear that hate crimes remain a serious and growing problem. Only a few weeks ago, we saw—just a few blocks from this Capitol—a shooting at the Holocaust Memorial Museum, a place that should be sacred ground because of what it remembers. We saw a vicious hate crime, with a man dying trying to defend the Holocaust Memorial Museum. I think this bipartisan legislation will help law enforcement respond more effectively to this problem. It is a testament to the importance of this legislation that the Attorney General of the United States, Eric Holder, came to the Judiciary Committee in June to testify in favor of it. We have been urged to pass this bill by State and local law enforcement organizations and dozens of leaders in the faith and civil rights communities. I wish, when I had been a prosecutor in the State of Vermont, that we had had such legislation so we could have called on it when we needed help.

This historic hate crimes legislation will improve existing law by making it easier for Federal authorities to investigate and prosecute crimes of racial or ethnic or religious violence. Victims will no longer have to engage in a narrow range of activities, such as serving as a juror, to be protected under Federal law.

It also focuses the attention and resources of the Federal Government on the crimes committed against people because of sexual orientation, their gender, their gender identity or their disability, which are much needed protections. In addition, the legislation will provide resources to State, local, and tribal law enforcement to address hate crimes.

President Obama has worked closely with us to facilitate the quick passage of this vital hate crimes legislation. In his first few months in office, he has acted to ensure that Federal benefits are awarded more equitably, regardless of sexual orientation, and now to ensure that this hate crimes legislation becomes law. Unlike previous years, this bipartisan hate crimes bill does not face a veto threat. We have a President who understands that crimes motivated by bias are particularly pernicious crimes and affect more than just the victims and the victims' families. They affect all of us. They affect us as a society. They weaken us and demean us as a society, and we should all be opposed to such crimes. I expect the President to sign this legislation without delay.

Hate crimes instill fear in those who have no connection to the victim other than a shared characteristic, such as race or sexual orientation. For nearly 150 years, we have responded as a nation to deter and to punish violent denials of civil rights by enacting Federal laws to protect the civil rights of all our citizens. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 continues that great and honorable tradition—Matthew Shepard, who was murdered because of his sexual orientation; James Byrd, who was murdered because of his race. In passing this legislation, we can say to them and everybody else that at last we in the Senate, the body that should be the conscience of the Nation, will show, once again, that America values tolerance and protects all its people.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I ask unanimous consent that Senator BARRASSO and I be permitted to speak as in morning business to offer some comments about Senator Cliff Hansen, who passed away last night, and to agree to a resolution.

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

(The remarks of Mr. ENZI and Mr. BARRASSO are printed in today's RECORD under ''Morning Business.'')

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

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

UNEMPLOYMENT

Mr. MERKLEY. Mr. President, I rise to address the devastating jobs crisis hitting my home State of Oregon. Last Monday, we got new job numbers. On the face, it was good news. The rate of unemployment dropped from 12.2 percent to 11.5 percent. Of course, we would all expect this is because there were more jobs.

As it turns out, that is not the case. Oregon lost 10,300 jobs in September. The unemployment rate dropped simply because, in the face of so much unemployment, many Oregonians are giving up in their search for a job. A year ago, 121,000 Oregonians were unemployed. This September, 211,000 Oregonians were out of work. Jobs are hard to find in my home State right now.

The reasons for this are many. We are an export State that has seen our trading partners hit hard with their own economic problems, countries such as South Korea whose GDP, year over year, dropped up to 20 percent.

Mexican penalty tariffs have hit Oregon's agricultural sector, our fruits and our Christmas trees, particularly hard. One of our main industries, the timber industry, which produces dimensional lumber for construction all across this great United States, has been wiped out by the collapse of construction and housing sectors of our economy.

Allow me to zero in on the county where I was born, Douglas County. In September, Douglas County had a seasonally adjusted unemployment rate of 16.1 percent. One out of every six adults was out of a job. Douglas County is a big timber county. There is no market for dimensional lumber right now. The recovery package has helped some by creating jobs preventing wildfires in choked and overgrown second-growth forests, but that is not enough.

We need the housing markets to turn around. We need to diversify Douglas County's economic base by investing in clean energy technology that will turn biomass from the forests into renewable fuels.

We are hard at work on both fronts, attempting to stabilize housing and crafting new clean energy legislation. But in the meantime, workers in Douglas County are hurting. There are not enough jobs. It is a crisis for the Douglas County families.

In a crisis, we help our neighbors. One of the best ways we can help our neighbors and friends in Douglas County and other counties throughout Oregon and other counties throughout the United States of America is to pass an extension of unemployment benefits.

Let me be clear: Oregonians want jobs. That is our first and best answer. If there are jobs out there, citizens will line up to get them. But when there are no jobs, we need to have help. The extension of unemployment benefits is such help. It would extend benefits for 14 weeks for all States and 20 weeks for high unemployment States such as the State of Oregon.

It is paid for through extending a fee employers are already paying. So it puts no additional pressure on business but provides a critical safety net to our out-of-work Americans.

Before I close, I wish to add one point: This bill will help these families and workers get by, but it will also help our economy as a whole by putting money into the hands of those who need it most. Unemployment benefits rapidly turn into bags of groceries, new and secondhand school clothes, needed home repairs. All of that has a big impact on small businesses in Douglas County and small towns such as Roseburg, Sutherlin, and Myrtle Creek.

That is why economists say extending unemployment insurance is about the best job-creating step the Federal Government could take. I understand some of my colleagues on the other side of the aisle are objecting to consideration of this bill. They do not want that bill to come to this floor.

I think we need to look more closely at this issue. A bill extending unemployment benefits to assist in shoring up the financial foundations of our working families while they are still searching for those jobs is essential. We need to have not partisan potshots but real help for working families.

I appreciate that some Members of this Chamber may come from States that are doing quite well right now. There may be some States in America that are not in the middle of a jobs crisis, but far too many of our States are similar to Oregon, where families need assistance. The delay of providing an extension of unemployment benefits will cause real pain to families in those States and slow down the effort for our economy as a whole to recover.

I urge my colleagues to join in supporting the working families of Douglas County, the working families of Oregon, the working families of the United States of America, and support job creation by supporting this extension of unemployment benefits.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

(The remarks of Ms. KLOBUCHAR pertaining to the submission of S. Res. 317 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

Ms. KLOBUCHAR. 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. VOINOVICH. 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. VOINOVICH. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business for up to 10 minutes.

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

MEDICARE PHYSICIAN PAYMENT FIX

Mr. VOINOVICH. Mr. President, several weeks ago I came to the floor to remind my colleagues and all Americans about the fiscal realities in which we find ourselves. I promised I would continue these efforts until we did something to address this crisis, so my colleagues are going to see a lot of me between now and the end of the year. Hopefully something will get done on this issue before the end of the year.

Unfortunately, I return today to tell my colleagues that the bill to repeal the Medicare physician payment formula the Senate considered earlier today is a step in the opposite direction, and I was very pleased with the vote on that. There were 47 votes for cloture and 53 votes in opposition, so we had more opposed than we had for cloture.

When I spoke here earlier this fall, I discussed one of my children's favorite stories, ''The Emperor's New Clothes'' by Hans Christian Anderson. This little piece of artwork I have in the Chamber is in that fairytale.

In the tale, an emperor goes about the land wearing a nonexistent suit sold to him by a new tailor who convinced the monarch the suit was made of the finest silks. The tailors—two swindlers—tell the emperor that the threads of his robes will be so fine that they will look invisible to those dimwitted or unfit for their position. The emperor and his ministers, themselves unable to see the clothing, lavish the tailor with praise for the suit because they do not want to appear to be dimwitted or incompetent.

Word spread across the kingdom of the emperor's beautiful new clothes. To show off the extraordinary suit, a parade was formed. People lined the streets to see the emperor show off his new clothes. Again, afraid to appear stupid or unfit, everyone pretends to see the suit. It is only when a child cries out ''the emperor wears no clothes'' does the crowd acknowledge that the emperor is, in fact, naked.

Mr. President, much like the emperor in this story, America's elected leaders know we face a fiscal train wreck, but we are choosing to ignore our current economic reality. The American people know ''we are naked,'' and so does the rest of the world, and our credibility and our credit are at risk, but we refuse to acknowledge what is obvious: When it comes to fiscal responsibility, ''the emperor wears no clothes.'' Yet earlier today we had a vote on whether to proceed to a bill that would have added $247 billion to our Nation's debt. The interest alone adds another $50 billion in debt over the next 10 years. We are just going to put it on the national credit card and let our children and grandchildren take care of it. We are the biggest credit card abusers in the world, and the credit cards we are using are the credit cards of my children and grandchildren and other Americans. I am pleased, as I said, that a majority of my colleagues joined me in opposing moving forward with this legislation.

The President has said the health care reform bill would not add one

dime to the deficit. Yet the bill we voted on earlier today should be a larger part of reform legislation, and it is going to spend over $¼ trillion without paying for it—that is what would have happened.

I suppose it is easy to make claims about health care reform legislation not adding to the deficit when Congress takes the parts that cost money off the table, but to do so is fiscally irresponsible and morally corrupt.

The physician fix was left out of the Finance Committee, I suspect, not because my colleagues do not agree it is a fundamental part of health care reform but because it would have cost money my colleagues did not want to account for in the bill. If the Finance Committee would have included the fix in their bill, the $81 billion surplus they say the bill will create would have quickly turned into a deficit. That is unacceptable, and I am not the only one who feels that way. The Washington Post discussed the effort to take the fix for the sustainable growth formula—the formula that calculates reimbursement for physicians under Medicare—out of the larger health care bill as a ''shell game'' and ''budgetary smoke and mirrors.'' This is just another illustration of our out-of-control spending that has caused our national debt to skyrocket.

One of the reasons I ran for the Senate and came to Washington a long time ago was to reduce the Federal debt and balance our budgets. That is what I did when I was mayor of Cleveland. That is what I did when I was Governor of Ohio. When I arrived in the Senate in 1999, the gross national debt stood at $5.6 trillion, or 61 percent of the GDP. Today, the gross national debt is nearly $11.8 trillion, and the President will be coming before us to raise the national debt to, I think, over $12 trillion. The 2009 deficit stands at about $1.4 trillion.

I just got back 2 weeks ago from Athens, Greece, and an Organization for Security and Co-operation meeting in Athens. When I shared with my colleagues that we borrowed $1.4 trillion to run the government—and they were all asking for help—they were astounded. They just could not believe it. I also reminded them that debt was like the debt we racked up during the Second World War. In other words, that is the period to which you can compare it. So the 2009 deficit stands at $1.4 trillion and at $9.1 trillion over the next decade, which does not include the borrowing from the trust funds and which is three times the largest deficit in our history.

It does not take an economist to realize our current course is unsustainable. The Medicare Program is scheduled to be bankrupt by 2017. I cannot understand why we are not talking about that. That means the supply of money coming in is not going to be enough to take care of the demand—just what is happening now in Social Security. In the next couple years, the money coming in is not going to be adequate to take care of people who are on Social Security, so we are going to have to borrow that money in order to take care of their needs. We need to take a comprehensive look at the program.

I will be the first to admit we must honor our commitment to our Nation's seniors and ensure they have access to quality health care services. I have heard it firsthand from family and friends that in some places in Ohio, Medicare beneficiaries face delays for physician services right now. In fact, 6.8 percent of Ohioans live in a designated primary care shortage area. We need more doctors and nurses. The situation is only going to get worse. Thirty-nine percent of physicians are over the age of 50 and considering limiting the amount of time they see patients.

For these reasons, I have been advocating for the past several years that we need a permanent and commonsense fix for the flawed sustainable growth rate formula, which we refer to as the doc fix. I do not think there is anyone on either side of the aisle who disagrees. We need to do that. Yet this bill we just considered is not the way to do it. Any fix must be part of a larger conversation, and it must be done in a way that does not simply add to the burden we are already placing on our children and grandchildren.

I am pleased that in a letter last week to Senator REID, 10 Senate Democrats joined me in this conclusion, asking the majority leader that he get serious about the Federal debt and tax and entitlement reform. They believe, as I do, that we cannot continue to keep spending without consequence. As I have been advocating, we must give larger reform serious thought before it is too late. We must act on the tough issues today.

As Gerald Seib noted in the Wall Street Journal yesterday:

> Administration officials also know they have little choice but to start showing early next year that they take the deficit seriously, for both political and economic reasons.

That is why Senator LIEBERMAN and I have introduced legislation called Securing America's Future Economy, which basically creates a bipartisan commission that would deal with the deficit and deal with tax reform; that if a supermajority of those agree to the solution, that would get expedited procedure on the floor of the Senate and move to an up-or-down vote, very much like we do with the BRAC process. We have been trying to do this now for 4 years. We have talked to the OMB Director, Peter Orszag. It is interesting. Two years ago he was with a lot of former CBO Directors and said, We have to have a commission. It is the only way we are going to deal with entitlements; it is the only way we are going to deal with tax reform, yet we are not able to convince the administration to move forward with us to tackle this very heavy responsibility.

Time is running out. The dollar is going down. People are talking about not using the dollar as an exchange anymore. Most of the economic experts say if we keep going on this unsustainable course, we are going to see interest rates start to skyrocket in this country. Over half our debt is in the hands of the Chinese and the Indians and the OPEC nations and Japan. We are in bad shape. The public understands it. They understand. They understand that the emperor has no clothes. We are not doing anything about the problem, and they get it today.

I happen to believe that the undertow that is out there in the country today in terms of health care reform and in terms of climate change is the fact that the American people understand that things aren't right. The American people in the Presiding Officer's State, in my State, do you know what they are doing? They are buying less. They are not putting it on their cards. They are trying to save some money. They know they have been on a binge. They look to us and they say, What are you doing? What are you doing? We care about ourselves, but we also care about our children and grandchildren. It is not fair to those individuals to do what we are doing.

We have a moral obligation to do what we can to try to make sure this generation's standard of living will not be less than those who came before them. Many people believe that is going to be the case. The passage of the legislation to fix the physician payment formula by borrowing more money will only help guarantee that they are right.

We have a serious problem. I will be coming to the floor over and over to see if we can't do it. I am going to do what I can to convince the President that he ought to participate in setting up this commission, working with Senator GREGG and Senator KENT CONRAD, to see if we can't get them together to agree on what this commission would look like. We are hoping the President is alert enough to know that if he doesn't deal with this problem, it is not only a substantive problem that needs to be dealt with but a major political problem that he is going to have. The American public demands that we start talking about doing something about this problem and they know we are running out of time.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

INTERNET NEUTRALITY

Mr. DORGAN. Mr. President, tomorrow at the Federal Communications Commission there will be a vote on a proposed rulemaking. It is a rulemaking on something called net neutrality. Let me put that in English, if I might. It is about Internet freedom. I wish to talk for a moment about the importance of this.

One would think, given the reaction by some and dozens and dozens of letters that are now going to the FCC,

that what is going to happen tomorrow is some unbelievable vote on some controversial proposal that has had no discussion. It is not that at all. It is a notice of proposed rulemaking. It is the beginning of a process to describe a rulemaking on what is called net neutrality or the principle of nondiscrimination with respect to the Internet.

I wish to describe how important that is. The Internet is an unbelievable new invention in our lifetime. It was created by the Federal Government. A bunch of scientists and engineers in the Federal Government described this method of communicating one to another with computer technology and it became the Internet. The Internet developed over a number of years in a completely free and open architecture. That meant that anyone could go to anyplace and see anybody on the Internet. So the stories are legend.

It was, I believe, 11 years ago when Larry and Sergey, two young men in college in a dormitory room started a company. They moved it to a garage that had a garage door opener, and it had eight employees, and they had this idea, a new company, a new search engine. It had eight employees and it was in a garage with a garage door opener 11 years ago. Well, now it is called Google.

But it is not just Larry and Sergey having a dream and a vision. It is so many others as well. It is Jeff Bezos who drove to California with an idea and that idea became Amazon.com, selling books, and then selling almost everything. Or it became someone with an idea about having an auction on the Internet, and it became eBay, and most of us know about eBay. Or it became Mark Zuckerberg who had an idea of something called Facebook. Well, I am talking about huge successes. But for every one of those—Facebook, eBay, Amazon, Google—for every one of those large companies that have now grown on the Internet, there are millions of people out there who are conducting a business in their kitchen, in their dorm room, in their garage, because they are the next enterprising person to succeed on the Internet.

The question is this: If there is someone in my hometown—and let me describe that someone, because it happened to be someone who is now occupying the home that I grew up in; a very small, two-bedroom home in a small town of 300 people. I had not been back for some long while to see the home. So I knocked on the front door. When the woman answered, I asked if I could see the home that I grew up in, where I spent my first 17 years, and she said: Of course. Come on in. So I came in and she was doing something that I found kind of interesting. She had in the small kitchen on the table a camera, and the camera was pointed at an aperture with an arm and on the arm was hanging a bracelet, a little gold bracelet, and she was taking a picture of the gold bracelet.

I said: What are you doing?

Well, I have a business, she said.

I said: Well, what kind of business do you have?

Well, I sell on the Internet. I purchase jewelry and then I sell it on the Internet.

Sure enough, in the little porch coming into the home she had cardboard boxes and tape and the kinds of things you would do to box something up and send it. Here in this little town in southwestern North Dakota, a town of 300 people, a woman, in the home I grew up in, was running a business.

I said: How do you do?

She said: Pretty well. This income supplements my husband's income. She said: I sell on eBay.

Well, you know what? In that little kitchen, anybody in the world can find her business—anybody in the world can find that business. Why? Because the Internet is open. The architecture has never been closed. The whole notion of the Internet is this notion of freedom, of liberty to go anywhere you want to go. In the last 3½ years I have written two books and I have discovered in the writing of books how unbelievable the Internet is to be able to go to anywhere in the world and do research. If you want to know something, go there, and nobody is going to stop you from going wherever you wish to go. Put it in a search engine, go find it, and you will find it in some crevice on the Internet. Somebody out there has put it on the Internet for you to see. It is the most unbelievable research tool I have ever found.

So, yes, it is Google, it is Amazon, it is eBay, it is the big companies, but much more than that, it is the backbone that allows people all over this country and the world to do business. Yes, from their kitchen, from their garage. Some of those businesses will grow to become names we don't now know but will, because they will be successful. They will be the next invention, the next opportunity on this thing called the Internet.

Here is the question: The Internet was created under circumstances that required rules of nondiscrimination. For the first portion of its birth and then origin, it was an Internet that was described as a telephone service and it was subject to rules that had nondiscrimination, so no one could discriminate. It was completely open, completely free. Its architecture was available to anyone at any time. Anybody can go anywhere at any time. Nobody has a toll booth, nobody is a gatekeeper. It is completely open and free. The biggest company over here and the smallest enterprise over here—big corporate executives wearing gray suits making lots of money, and two people in a dorm room or someone in a small kitchen in a small town—they are equal. Anybody has access to both sites, or all sites. That is called nondiscrimination and the nondiscrimination rules say no one can set up a barrier. No one can set up a gate. No one can set up a toll booth. Anyone has freedom and access anywhere on the Internet.

That is the way the Internet was developed. That is its origin and that is the way most of its life has existed. Then the Federal Communications Commission came along and said, We are going to redefine the Internet as an information service rather than a telephone service and the result is the nondiscrimination rules fell off the chart because they attached to the telephone service. So some of us have said, Well, we certainly want to maintain and continue nondiscrimination rules. I mean, who would be for discrimination, right? So we want to maintain the nondiscrimination rules. We want to, with what is called network neutrality or net neutrality, restore the nondiscrimination rules and the basic freedom under which the Internet developed in the first instance. That has been our effort. That is what the Chairman of the Federal Communications Commission is attempting to do. It is to begin tomorrow with a notice of proposed rulemaking. It doesn't mean he is saying, Here is exactly what we are going to do; it is saying, Let's propose a rulemaking and that rulemaking process will allow everybody to weigh in, to make comments, to be involved with the question of exactly what kind of a rule they may or may not write.

I think what the Federal Communications Commission is doing tomorrow is exactly the right thing. I know there are some who are pushing back. In fact, there are some who have said, We want to set up a toll booth. There are some CEOs of some large companies who have suggested, You know what. Those wires belong to us. We want to be able to have some toll booths and so on.

I don't believe they should be able to set up any impediments. By that I am not suggesting they don't have a right to have security for their networks; they certainly do. I am not suggesting they don't have a right to do certain kinds of inspections to make sure that the kinds of things that are prohibited—child pornography and others—are stopped on the Internet. But what I am saying is the architecture under which the Internet itself was created is an architecture all of us should aspire to continue, and that is nondiscrimination rules and transparency. This is very simple. So tomorrow there will be a vote at the FCC. I would say to the chairman of the FCC and to all of the Commissioners that you are doing the right thing by proceeding to make certain that the future of the Internet is open and has free access with nondiscrimination rules and transparency.

Here are a couple of letters I wish to have printed in the RECORD, if I might ask unanimous consent. One is a letter to Chairman Genachowski and this letter is dated October 19th:

We write to express our support for your announcement that the FCC will begin a process to adopt rules to preserve an open

Internet. We believe a process that results in common sense baseline rules is critical to ensuring that the Internet remains a key engine of economic growth, innovation, and global competitiveness.

Let me not read it all, but let me read the final paragraph of this letter:

America's leadership in the technology space has been due, in large part, to an open Internet. We applaud your leadership in initiating a process to develop rules that ensure the qualities that have made the Internet so successful are protected.

That is a letter from a large group of people who run Internet companies and applications, from Craigslist, EchoStar, Google, Mozilla, Skype, Amazon, Expedia, Netflix, Sony Electronics, XO Communications, Facebook, eBay, and so many others; Twitter, and Meetup, so many different folks who know of what they are speaking. I support this letter and commend it to the Chairman of the FCC. Again, I ask unanimous consent that it be printed in the RECORD.

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

OCTOBER 19, 2009.

Hon. JULIUS GENACHOWSKI,
Chairman, Federal Communications Commission, Washington, DC.

DEAR CHAIRMAN GENACHOWSKI: We write to express our support for your announcement that the Federal Communications Commission will begin a process to adopt rules that preserve an open Internet. We believe a process that results in common sense baseline rules is critical to ensuring that the Internet remains a key engine of economic growth, innovation, and global competitiveness.

For most of the Internet's history, FCC rules have ensured that consumers have been able to choose the content and services they want over their Internet connections. Entrepreneurs, technologists, and venture capitalists have previously been able to develop new online products and services with the guarantee of neutral, nondiscriminatory access by users, which has fueled an unprecedented era of economic growth and creativity. Existing businesses have been able to leverage the power of the Internet to develop innovative product lines, reach new consumers, and create new ways of doing business.

An open Internet fuels a competitive and efficient marketplace, where consumers make the ultimate choices about which products succeed and which fail. This allows businesses of all sizes, from the smallest startup to larger corporations, to compete, yielding maximum economic growth and opportunity.

America's leadership in the technology space has been due, in large part, to the open Internet. We applaud your leadership in initiating a process to develop rules to ensure that the qualities that have made the Internet so successful are protected.

Sincerely,

Jared Kopf, Chairman & President, AdRoll.com; Craig Newmark, Founder, Craigslist; Charles E. Ergen, Chairman & CEO, EchoStar Corporation; Eric Schmidt, CEO, Google Inc.; John Lilly, CEO, Mozilla Corporation; Josh Silverman, CEO, Skype; Gilles BianRosa, CEO, Vuze, Inc.; Jeff Bezos, Founder & CEO, Amazon.com; Jay Adelson, CEO, Digg; Erik Blachford, Former CEO, Expedia.

Barry Diller, Chairman & CEO, IAC; Reed Hastings, Co-Founder & CEO, Netflix, Inc.; Stan Glasgow, President & COO, Sony Electronics; Carl J. Grivner, CEO, XO Communications; Ashwin Navin, Co-Founder, BitTorrent, Founding Partner, i/o Ventures; Kevin Rose, Founder, Digg; Mark Zuckerberg, Founder & CEO, Facebook; Reid Hoffman, Executive Chairman, Linkedin; Howard Janzen, CEO, One Communications; Thomas S. Rogers, President & CEO, TiVo Inc.

Steven Chen, Founder, YouTube; James F. Geiger, Chairman & CEO, Cbeyond; John Donahoe, CEO, eBay, Inc.; Caterina Fake, Founder, Flickr; Scott Heiferman, CEO & Co-Founder, Meetup; David Ulevitch, Founder, OpenDNS; Evan Williams, Co-Founder & CEO, Twitter; Mark Pincus, CEO, Zynga.

Mr. DORGAN. Mr. President, this is a letter from the largest venture capital funds in the country that have made substantial investments in these companies that have helped the Internet grow;

Dear Chairman Genachowski: We write to express our support for the Commission's ongoing efforts to adopt rules to safeguard the open Internet. As business investors in technology companies, we have first-hand experience with the importance of guaranteeing an open market for new applications for services on the Internet. Clear rules to protect and promote innovation at the edges of the Internet will reinforce the core principles that led to its extraordinary social and economic benefits. Open markets for Internet content will drive investment, entrepreneurship and innovation. For these reasons, Net Neutrality policy is pro-investment, pro-competition, and pro-consumer.

I ask unanimous consent to have printed in the RECORD this letter from the venture capital firms that know a lot about the Internet.

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

OCTOBER 21, 2009.

Hon. JULIUS GENACHOWSKI,
Chairman, Federal Communications Commission, Washington, DC.

DEAR CHAIRMAN GENACHOWSKI: We write to express our support for the Commission's ongoing efforts to adopt rules to safeguard the open Internet. As business investors in technology companies, we have first-hand experience with the importance of guaranteeing an open market for new applications and services on the Internet. Clear rules to protect and promote innovation at the edges of the Internet will reinforce the core principles that led to its extraordinary social and economic benefits. Open markets for Internet content will drive investment, entrepreneurship and innovation. For these reasons, Net Neutrality policy is pro-investment, pro-competition, and pro-consumer.

Permitting network operators to close network platforms or control the applications market by favoring certain kinds of content would endanger innovation and investment in an investment sector which represents many billions of dollars in economic activity. The Commission is absolutely correct to propose clear rules that require competition. The promise of permanently securing an open Internet will deliver consumers and innovators a perfect free market that drives investment, job creation, and consumer welfare. These principles should apply across all Internet access networks, wired or wireless.

Investment and innovation at the edge of the network will create not just jobs but also new tools and opportunities for communication, education, health care, business, and every other human endeavor.

We look forward to working with you in developing clear rules to protect the open Internet, and in building together a framework to secure its future and promote its continued growth.

Sincerely,

Immad Akhund, Co Founder, Heyzap; Brian Ascher, Venrock; Aneel Bhusri, Partner, Greylock Partners (and Co-Founder and Co-CEO, Workday); Matt Blumberg, Chairman & CEO, Return Path, Inc.; Brad Burnham, Union Square Ventures; Stewart Butterfield, Co-Founder, Flickr; Ron Conway, Founder, SV Angel LLC; John Doerr, Partner, Kleiner Perkins Caufield & Byers; Timothy Draper, Founder and Managing Director, Draper Fisher Jurvetson; Caterina Fake, Co-Founder, Flickr & Hunch.

Brad Feld, Co-Founder, Foundry Group; Peter Fenton, Benchmark Partners; Eyal Goldwerger, CEO, TargetSpot; Jude Gomila, Co founder, Heyzap; Mark Gorenberg, Managing Director, Hummer Winblad; Jordan Greenhall, Founder of Divx; Bill Gurley, Benchmark Partners; Jed Katz, Managing Director, Javelin Venture Partners; Dany Levy, Founder, DailyCandy; Mario Marino, Member, Executive Advisory Board, General Atlantic LLC.

Jason Mendelson, Managing Director, Mobius Venture Capital; Michael Moritz, Sequoia Capital; Kim Polese, CEO of Spike Source, Inc.; Avner Ronen, CEO of Boxee; Pete Sheinbaum, Former CEO of Daily Candy; Ram Shriram, Founder, Sherpalo; David Sze, Partner, Greylock Partners; Albert Wenger, Union Square Ventures; Steve Westly, Managing Director, The Westly Group; Fred Wilson, Union Square Ventures.

Mr. DORGAN. Mr. President, finally, I ask unanimous consent to have printed in the RECORD a letter from the folks who created the Internet. The list is headed by Vinton Cerf, who is often called the ''father of the Internet.'' I know Vint Cerf. He is an extraordinary man. Others signing this letter include Stephen Crocker, David Reed, Lauren Weinstein, and Daniel Lynch: these are all Internet pioneers. They were there at the beginning. They created this unbelievable engine of opportunity for the American people. They write a similar letter saying:

As individuals who have worked on the Internet and it predecessors continuously beginning in the late 1960s, we are very concerned that access to the Internet be both open and robust. We are very pleased by your recent proposal to initiate a proceeding for the consideration of safeguards to that end.

This is a letter to Chairman Genachowski from the folks I mentioned. I ask unanimous consent to have printed in the RECORD this letter.

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

OCTOBER 15, 2009.

Hon. JULIUS GENACHOWSKI,
Chairman, Federal Communications Commission, Washington, DC.

DEAR MR. CHAIRMAN: We appreciate the opportunity to send you this letter. As individuals who have worked on the Internet and its predecessors continuously beginning in the

late 1960s, we are very concerned that access to the Internet be both open and robust. We are very pleased by your recent proposal to initiate a proceeding for the consideration of safeguards to that end.

In particular, we believe that your network neutrality proposal's key principles of ''nondiscrimination'' and ''transparency'' are necessary components of a pro-innovation public policy agenda for this nation. This initiative is both timely and necessary, and we look forward to a data-driven, on-the-record proceeding to consider all of the various options.

We understand that your proposal, while not even yet part of a public proceeding, already is meeting with strong and vocal resistance from some of the organizations that the American public depends upon for broadband access to the Internet. As you know, the debate on this topic has been lengthy, and many parties opposing the concept have systematically mischaracterized the views of those who endorse and support your position.

We believe that the existing Internet access landscape in the U.S. provides inadequate choices to discipline the market through facilities-based competition alone. Your network neutrality proposals will help protect U.S. Internet users' choices for and freedom to access all available Internet services, worldwide, while still providing for responsible network operation and management practices, including appropriate privacy-preserving protections against denial of service and other attacks.

One persistent myth is that ''network neutrality'' somehow requires that all packets be treated identically, that no prioritization or quality of service is permitted under such a framework, and that network neutrality would forbid charging users higher fees for faster speed circuits. To the contrary, we believe such features are permitted within a ''network neutral'' framework, so long they are not applied in an anti-competitive fashion.

We believe that the vast numbers of innovative Internet applications over the last decade are a direct consequence of an open and freely accessible Internet. Many now-successful companies have deployed their services on the Internet without the need to negotiate special arrangements with Internet Service Providers, and it's crucial that future innovators have the same opportunity. We are advocates for ''permissionless innovation'' that does not impede entrepreneurial enterprise.

We commend your initiative to protect and maintain the Internet's unique openness, and support the FCC process for considering the adoption of your proposed nondiscrimination and transparency principles.

Respectfully,

VINTON G. CERF,
Internet Pioneer.
STEPHEN D. CROCKER,
Internet Pioneer.
DAVID P. REED,
Internet Pioneer.
LAUREN WEINSTEIN,
Internet Pioneer.
DANIEL LYNCH,
Internet Pioneer.

Mr. DORGAN. Mr. President, let me finally say this: I understand this issue has been controversial. I and Senator SNOWE have worked on this issue for a long while. The only time it has been voted on in the Congress was an attempt by us to add an amendment in a Commerce Committee markup. This was about 2½ years ago. We had an 11-to-11 tie. Why was there a tie vote? It is a controversial issue, although it should not be.

The basic principle of freedom on the Internet, open architecture on the Internet, the openness with which this Internet was created ought to persuade everyone to say: Yes, let's restore the conditions under which the Internet has always operated, up until recently; that is, nondiscrimination and transparency.

There are some interests in this country, I understand, some economic interests that say: No, we don't want that. We want some opportunity to perhaps go a different direction. We had one CEO in this country say: You know what. I want some of these companies on the Internet to pay me for the right to move on my lines. Once that starts, once we go down that road with those who have the muscle or the strength to decide who is going to cross and who is not, who can get by their toll booth and who cannot, then I am telling you there are Larrys and Sergeys in a dorm room out there someplace or a woman in a kitchen with a small business that is not going to succeed. And that innovation, that new company, that new business for this country, the expansion of the Internet and opportunity that comes with it will not exist. Why? Because we failed to continue the open architecture and the basic freedoms on which the Internet was created and on which we still ought to govern the future of the Internet.

What Julius Genachowski, the new chairman, is doing tomorrow at the FCC is exactly the right thing. He is not mandating some specific menu. He is beginning a rulemaking process which, at the end, in my judgment, will result in the restoration of two basic principles: nondiscrimination on the Internet and transparency. Is there anyone who believes those principles are not fair, are not reasonable? I don't think so.

There has been a flurry of protests, an unbelievable dust created by a lot of noise, a lot of crowd noise around this issue. I hope perhaps the chairman and those on the Commission who believe we ought to move in this direction understand there is very substantial support for what they are trying to do. That support exists in a letter I am sending today with some of my colleagues to say that support is here. Work that Senator SNOWE and I have done on this issue will be reflected as well in a message tomorrow.

I just want the Chairman to know: Keep going. You are doing the right thing. Don't worry about some of the dust that is out there. Do the public business, do the right thing, and this country will be best served.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Republican leader.

SUPREME COURT APPEAL

Mr. MCCONNELL. Mr. President, yesterday the Supreme Court announced it would hear a case that has critical ramifications for our ability to detain foreign nationals safely outside our borders during wartime at the U.S. naval station at Guantanamo Bay, Cuba. The case also provides insight into the question of the best place to detain and try foreign terrorists.

The case involves a group of ethnic Chinese Uighurs who are detained at Guantanamo Bay. The Uighurs won their habeas corpus petition to be released from custody. Many of these Uighurs, however, had received terrorist training in the Tora Bora Mountains of Afghanistan, including weapons training on AK–47 assault rifles at a camp run by the head of a group that our State Department has designated a terrorist organization and that the United Nations has listed as a group associated with Osama bin Laden, al-Qaida, or the Taliban.

Not surprisingly, it has not been easy to find countries eager to accept the Uighurs into their civilian populations. So the Uighurs sued to be released into the United States. Federal District Court Judge Ricardo Urbina granted the Uighurs' request and ordered them released in our country. It did not matter to Judge Urbina that the Uighurs did not have an immigration status or that they had received military-style weapons training or that they had associated with a terrorist group. He was persuaded by their argument that justice required that they be released right here in the United States.

Fortunately, the DC Circuit Court reversed Judge Urbina. It ruled that even though the Uighurs had won their habeas corpus petition, they did not have a right to be released into the United States. In other words, it ruled that even if the government had to release them, it did not have to release them into Alexandria or Annandale or Falls Church or anywhere else in Northern Virginia that the Uighurs might like to go.

The DC Circuit's ruling is important to national security in general and to the debate over where we should try foreign terrorists in particular. The DC Circuit noted that the Supreme Court has held that foreign nationals, without property or presence in the United States, have fewer legal rights than foreign nationals who are present on American soil.

The DC Circuit also noted that the Supreme Court has repeatedly ruled that a sovereign has a right to control its borders, and that means it has a right to bar from being released into its territory foreign nationals whom it has not admitted onto its soil.

In short, because these detainees remain at Guantanamo outside our borders, they have fewer legal rights than they would have if they were brought within our borders, including the right to be released into our civilian population.

We don't know how the DC Circuit would have ruled if the Uighurs had been present on U.S. soil. But we do know a couple of things. First, the DC

Circuit's reason for not releasing them into the United States was that they had not been brought into the United States. Let me say that again. The DC Circuit's reason for not releasing them in the United States was that they had not been brought here. Second, other foreign nationals who have committed murder and other serious crimes who were in the United States have been released here when our government could not transfer them to another country, either because they did not want to go to another country or because other countries did not want to take them.

The administration and its defenders in the Senate say that because we have tried terrorists in civilian courts before, we should do so again. They say there is no problem with us doing so because the administration would never release detainees into the United States, by which they really mean to say the administration would not intentionally release detainees into the United States. Both assertions miss the mark.

First, whether we can try terrorists here is not the issue. The issue is whether we should try terrorists here. We can try them here, but should we? Before he became Attorney General, Michael Mukasey was a noted Federal trial judge who presided over civilian trials of terrorists such as the trial of the so-called Blind Sheik, Omar Abdel Rahman, for the 1993 World Trade Center bombing. He has written that there are very good reasons we should not try terrorists in a civilian court. This is a judge who presided over a terrorist trial in a U.S. civilian court, and this is what he says: We should not try terrorists in civilian court, including the additional legal rights terrorists will receive if they are brought here.

I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks General Mukasey's recent op-ed on the topic.

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

(See Exhibit 1.)

Mr. MCCONNELL. Mr. President, second, once the administration brings detainees into the United States—right here in our country—it is no longer simply a matter for the administration. In other words, once they get here, the administration cannot entirely control the issue of whether they are going to be released. It is no longer about what it will or will not do. It is also about what a Federal judge will or will not do.

As we saw with Judge Urbina and the Uighurs, a judge may very well agree with the legal arguments of Guantanamo detainees and order them released right here in the United States. In other words, no matter what the administration's intention may be, once we bring them here, they do not control the situation; the courts do.

Those risks do not exist if the Obama administration does not bring the Guantanamo detainees into the United States. That risk does not exist if it leaves them at Guantanamo and tries them at the modern, multimillion-dollar courtroom at Guantanamo Bay under the very military commission rules it has now rewritten to its liking and which we will soon vote on when we consider the Defense authorization conference report.

The Supreme Court should affirm the DC Circuit Court's decision and let the political branches maintain control over our borders, including deciding whether and how foreign nationals outside our borders may be admitted within them.

If it does, it will bring clarity to the debate over whether terrorist detainees at Guantanamo Bay ought to be transferred to the United States. That clarity is this: If we want certitude that foreign terrorists detained at Guantanamo Bay are not released into the United States, then do not bring them here in the first place.

Mr. President, I repeat. We could try terrorists in the United States—we could do that—but the issue is should we do that. The answer is no.

I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Oct. 19, 2009]

CIVILIAN COURTS ARE NO PLACE TO TRY TERRORISTS

(By Michael B. Mukasey)

The Obama administration has said it intends to try several of the prisoners now detained at Guantanamo Bay in civilian courts in this country. This would include Khalid Sheikh Mohammed, the mastermind of the Sept. 11, 2001 terrorist attacks, and other detainees allegedly involved. The Justice Department claims that our courts are well suited to the task.

Based on my experience trying such cases, and what I saw as attorney general, they aren't. That is not to say that civilian courts cannot ever handle terrorist prosecutions, but rather that their role in a war on terror—to use an unfashionable harsh phrase—should be, as the term ''war'' would suggest, a supporting and not a principal role.

The challenges of a terrorism trial are overwhelming. To maintain the security of the courthouse and the jail facilities where defendants are housed, deputy U.S. marshals must be recruited from other jurisdictions; jurors must be selected anonymously and escorted to and from the courthouse under armed guard; and judges who preside over such cases often need protection as well. All such measures burden an already overloaded justice system and interfere with the handling of other cases, both criminal and civil.

Moreover, there is every reason to believe that the places of both trial and confinement for such defendants would become attractive targets for others intent on creating mayhem, whether it be terrorists intent on inflicting casualties on the local population, or lawyers intent on filing waves of lawsuits over issues as diverse as whether those captured in combat must be charged with crimes or released, or the conditions of confinement for all prisoners, whether convicted or not.

Even after conviction, the issue is not whether a maximum-security prison can hold these defendants; of course it can. But their presence even inside the walls, as proselytizers if nothing else, is itself a danger. The recent arrest of U.S. citizen Michael Finton, a convert to Islam proselytized in prison and charged with planning to blow up a building in Springfield, Ill., is only the latest example of that problem.

Moreover, the rules for conducting criminal trials in federal courts have been fashioned to prosecute conventional crimes by conventional criminals. Defendants are granted access to information relating to their case that might be useful in meeting the charges and shaping a defense, without regard to the wider impact such information might have. That can provide a cornucopia of valuable information to terrorists, both those in custody and those at large.

Thus, in the multidefendant terrorism prosecution of Sheik Omar Abdel Rahman and others that I presided over in 1995 in federal district court in Manhattan, the government was required to disclose, as it is routinely in conspiracy cases, the identity of all known co-conspirators, regardless of whether they are charged as defendants. One of those co-conspirators, relatively obscure in 1995, was Osama bin Laden. It was later learned that soon after the government's disclosure the list of unindicted co-conspirators had made its way to bin Laden in Khartoum, Sudan, where he then resided. He was able to learn not only that the government was aware of him, but also who else the government was aware of.

It is not simply the disclosure of information under discovery rules that can be useful to terrorists. The testimony in a public trial, particularly under the probing of appropriately diligent defense counsel, can elicit evidence about means and methods of evidence collection that have nothing to do with the underlying issues in the case, but which can be used to press government witnesses to either disclose information they would prefer to keep confidential or make it appear that they are concealing facts. The alternative is to lengthen criminal trials beyond what is tolerable by vetting topics in closed sessions before they can be presented in open ones.

In June, Attorney General Eric Holder announced the transfer of Ahmed Ghailani to this country from Guantanamo. Mr. Ghailani was indicted in connection with the 1998 bombing of U.S. Embassies in Kenya and Tanzania. He was captured in 2004, after others had already been tried here for that bombing.

Mr. Ghailani was to be tried before a military commission for that and other war crimes committed afterward, but when the Obama administration elected to close Guantanamo, the existing indictment against Mr. Ghailani in New York apparently seemed to offer an attractive alternative. It may be as well that prosecuting Mr. Ghailani in an already pending case in New York was seen as an opportunity to illustrate how readily those at Guantanamo might be prosecuted in civilian courts. After all, as Mr. Holder said in his June announcement, four defendants were ''successfully prosecuted'' in that case.

It is certainly true that four defendants already were tried and sentenced in that case. But the proceedings were far from exemplary. The jury declined to impose the death penalty, which requires unanimity, when one juror disclosed at the end of the trial that he could not impose the death penalty—even though he had sworn previously that he could. Despite his disclosure, the juror was permitted to serve and render a verdict.

Mr. Holder failed to mention it, but there was also a fifth defendant in the case, Mamdouh Mahmud Salim. He never participated in the trial. Why? Because, before it began, in a foiled attempt to escape a maximum security prison, he sharpened a plastic comb into a weapon and drove it through the eye and into the brain of Louis Pepe, a 42–year-old Bureau of Prisons guard. Mr. Pepe was blinded in one eye and rendered nearly unable to speak.

Salim was prosecuted separately for that crime and found guilty of attempted murder. There are many words one might use to describe how these events unfolded; ''successfully'' is not among them.

The very length of Mr. Ghailani's detention prior to being brought here for prosecution presents difficult issues. The Speedy Trial Act requires that those charged be tried within a relatively short time after they are charged or captured, whichever comes last. Even if the pending charge against Mr. Ghailani is not dismissed for violation of that statute, he may well seek access to what the government knows of his activities after the embassy bombings, even if those activities are not charged in the pending indictment. Such disclosures could seriously compromise sources and methods of intelligence gathering.

Finally, the government (for undisclosed reasons) has chosen not to seek the death penalty against Mr. Ghailani, even though that penalty was sought, albeit unsuccessfully, against those who stood trial earlier. The embassy bombings killed more than 200 people.

Although the jury in the earlier case declined to sentence the defendants to death, that determination does not bind a future jury. However, when the government determines not to seek the death penalty against a defendant charged with complicity in the murder of hundreds, that potentially distorts every future capital case the government prosecutes. Put simply, once the government decides not to seek the death penalty against a defendant charged with mass murder, how can it justify seeking the death penalty against anyone charged with murder—however atrocious—on a smaller scale?

Even a successful prosecution of Mr. Ghailani, with none of the possible obstacles described earlier, would offer no example of how the cases against other Guantanamo detainees can be handled. The embassy bombing case was investigated for prosecution in a court, with all of the safeguards in handling evidence and securing witnesses that attend such a prosecution. By contrast, the charges against other detainees have not been so investigated.

It was anticipated that if those detainees were to be tried at all, it would be before a military commission where the touchstone for admissibility of evidence was simply relevance and apparent reliability. Thus, the circumstances of their capture on the battlefield could be described by affidavit if necessary, without bringing to court the particular soldier or unit that effected the capture, so long as the affidavit and surrounding circumstances appeared reliable. No such procedure would be permitted in an ordinary civilian court.

Moreover, it appears likely that certain charges could not be presented in a civilian court because the proof that would have to be offered could, if publicly disclosed, compromise sources and methods of intelligence gathering. The military commissions regimen established for use at Guantanamo was designed with such considerations in mind. It provided a way of handling classified information so as to make it available to a defendant's counsel while preserving confidentiality. The courtroom facility at Guantanamo was constructed, at a cost of millions of dollars, specifically to accommodate the handling of classified information and the heightened security needs of a trial of such defendants.

Nevertheless, critics of Guantanamo seem to believe that if we put our vaunted civilian justice system on display in these cases, then we will reap benefits in the coin of world opinion, and perhaps even in that part of the world that wishes us ill. Of course, we did just that after the first World Trade Center bombing, after the plot to blow up airliners over the Pacific, and after the embassy bombings in Kenya and Tanzania.

In return, we got the 9/11 attacks and the murder of nearly 3,000 innocents. True, this won us a great deal of goodwill abroad—people around the globe lined up for blocks outside our embassies to sign the condolence books. That is the kind of goodwill we can do without.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

CAMPAIGN FINANCE REFORM

Mr. MCCAIN. Mr. President, I am joined by my friend and colleague and fellow warrior, Senator FEINGOLD. He and I both have some remarks to make. I was chosen to go first, and then Senator FEINGOLD, I know, will also want to address what we think is a very important issue. This is the issue of the U.S. Supreme Court case Citizens United v. Federal Election Commission.

On September 9, the U.S. Supreme Court heard oral arguments from both sides in the Citizens United v. Federal Election Commission. The implications of this case are very serious, and the Supreme Court's decision could result in the unraveling of over 100 years of congressional action and judicial precedent with respect to corporate spending in political campaigns. Senator FEINGOLD and I were present in the Supreme Court chamber for the arguments in this case. I commend both sides for presenting their case in a thoughtful, intelligent manner. However, there was one part of the argument I found particularly disturbing.

While responding to a question from Justice Alito, the Solicitor General was interrupted by Justice Scalia, who said:

Congress has a self-interest. I mean, we—we are suspicious of Congressional action in the First Amendment area precisely because we—at least I am—

Here is the interesting part, when Justice Scalia said:

I doubt that one can expect a body of incumbents to draw election restrictions that do not favor incumbents. Now is that excessively cynical of me? I don't think so.

Yes, I think it is excessively cynical. I take great exception to Justice Scalia's statement, as should every Member of both Houses of Congress. It is an affront to the thousands of good, decent, honorable men and women who have served this Nation in these Halls for well over 200 years. Not only was Justice Scalia's statement excessively cynical, it showed his unfortunate lack of understanding of the facts and history of campaign reform. Throughout our history, America has faced periods of political corruption, and in every instance, Congress has risen above its own self-interest and enacted the necessary reforms to address the scandals and corruption that have plagued our democratic institutions over time and throughout our history. The Tillman Act in 1907, the Publicity Act of 1910, the Federal Corrupt Practices Act in 1925, the Public Utilities Holding Act in 1935, the Hatch Act in 1939, the Smith-Connelly Act in 1943, the Taft-Hartley Act of 1947, the Long Act in 1968, the Federal Election Campaign Act in 1974, and the bipartisan Campaign Reform Act in 2002 are just some of the reforms enacted by Congress over the years to address corruption in our government and in our campaigns.

Simply put, history has proven Justice Scalia wrong in his assessment that Congress will not act in anything but a self-serving manner.

Justice Scalia's statement was also remarkable in that it exposed his belief that when it comes to issues relating to campaign reform, he somehow is a better arbiter of what is needed to reform the electoral process than the Congress or the American people. With all due respect, that is not the job of the judicial branch. Judges who stray beyond their constitutional role to try and take Congress's place as policymakers falsely believe that judges somehow have a greater insight into what legislation is necessary and proper than representatives who are duly elected by the people and accountable to them every several years.

Activist judges—regardless of whether it is liberal or conservative activism—assume the judiciary is a superlegislature of moral philosophers, entitled to support Congress's policy choices whenever they choose. I believe this judicial activism is wrong and is contrary to the Constitution.

Our Constitution is very clear in its delineation and dispersement of power. It solely tasks the Congress with creating law, not the courts. I have a long history of opposing activist judges. Judicial activism demonstrates a lack of respect for the popular will, and that is at fundamental odds with our republican system of government. I believe a judge should seek to uphold all acts of Congress and State legislatures, unless they clearly violate a specific section of the Constitution, and refrain from interpreting the law in a manner which creates new law. That is a fundamentally conservative position I have held throughout my career. I wish Justice Scalia shared that position.

Let us be very clear. At stake in the Citizens United case are the voices of millions and millions of Americans that could be drowned out by large corporations if the decades-old restrictions on corporate electioneering are rescinded. Overturning Supreme Court precedent would open the floodgates to unlimited corporate and union spending during elections and undermine election laws across the country. Those able to spend tens of millions of dollars, such as a Fortune 500 company or a big labor union, are much more likely to be heard during an election than the average American voter is. For this reason, I have always advocated laws that would prevent big-moneyed special interests from drowning out the voices of individual American citizens in elections and dominating the decisionmaking process of our government.

Contrary to some of my critics, I am a firm believer in the first amendment.

For more than 100 years, laws have stood to limit corporate donations to political candidates and campaigns—for more than 100 years. The concern about corporate involvement in campaigns is not new in America. On September 3, 1897, in a speech on government and citizenship, Elihu Root, who would go on to become Theodore Roosevelt's Secretary of State and a Nobel Peace Prize winner, said:

The idea . . . is to prevent the great moneyed corporations of the country from furnishing the money with which to elect members of the legislature . . . in order that those members of the legislature may vote to protect the corporations. It is to prevent the great railroad companies, the great insurance companies, the great telephone companies, the great aggregations of wealth, from using their corporate funds, directly or indirectly, to send members of the legislature to these halls, in order to vote for their protection and the advancement of their interests as against those of the public.

It strikes, Mr. Chairman, at a constantly growing evil in our political affairs, which has, in my judgment, done more to shake the confidence of the plain people of small means in our political institutions, than any other practice which has ever obtained since the foundation of our government.

Remember, this was in 1897. He went on to say:

And I believe that the time has come when something ought to be done to put a check upon the giving of $50,000 or $100,000 by a great corporation toward political purposes, upon the understanding that a debt is created from a political party to it; a debt to be recognized and repaid with the votes of representatives in the legislature and in Congress, or by the action of administrative or executive officers who have been elected in a measure through the use of the money so contributed.

Additionally, one can make the case that the concern about corporate influence extends as far back as our Founding Fathers. In 1816, Thomas Jefferson wrote:

I hope we shall crush in its birth the aristocracy of our moneyed corporations which dare already to challenge our government in a trial of strength, and bid defiance to the laws of our country.

Kentucky was the first State to ban corporations from spending their funds in State elections in 1891, and by 1897 Florida, Missouri, Nebraska, and Tennessee had all enacted similar corporate spending prohibitions in their State elections. While some States began enacting limits on the influence of money on politics during the Civil War era, Congress did not begin to pass major campaign finance regulations until some decades later. By that time, political contributions by major corporate interests and business leaders dominated campaign fundraising, and this development sparked the first major movement for national reform.

Progressive reformers, such as President Theodore Roosevelt and investigative journalists, charged that these business interests were attempting to gain special access and favors; thereby, corrupting the democratic process. This reform movement, combined with allegations of financial impropriety in the 1904 Presidential election, resulted in the enactment of significant reforms.

On October 1, 1904, Joseph Pulitzer published an editorial in the New York World questioning President Roosevelt's ties to many of the large corporations that had donated to his campaign. Those questions led Roosevelt's opponent, Judge Alton Parker, to describe the donations as blackmail and insinuated there was a quid pro quo involved. President Roosevelt responded angrily, calling the accusations monstrous and said:

The assertion that there has been any blackmail, direct or indirect . . . is a falsehood. The assertion that there has been made any pledge or promise or that there has been any understanding as to future immunities or benefits, in recognition from any source is a wicked falsehood.

President Roosevelt, not wanting to give the appearance of improper influence, directed his staff to return a $100,000 contribution from the Standard Oil Corporation. In his memo he wrote:

We cannot under any circumstances afford to take a contribution which can be even improperly construed as putting us under an improper obligation.

The allegations of impropriety also led Roosevelt to call for an end to corporate donations to campaigns. In his fifth annual message to the Congress on December 5, 1905, Roosevelt said:

The power of the Government to protect the integrity of the elections of its own officials is inherent and has been recognized and affirmed by repeated declarations of the Supreme Court. There is no enemy of free government more dangerous and none so insidious as the corruption of the electorate.

He warned:

If [legislators] are extorted by any kind of pressure or promise, express or implied, direct or indirect, in the way of favor or immunity, then the giving or receiving becomes not only improper but criminal. All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders money for such purposes; and, moreover, a prohibition of this kind would be, as far as it went, an effective method of stopping the evils aimed at in the corrupt practices acts. Not only should both the national and the several State legislatures forbid any officer of a corporation from using the money of the corporation in or about any election, but they should also forbid such use of money in connection with any legislation.

Again, the following year, in his sixth annual message to Congress in December 1906, President Roosevelt tried to limit corporate influence, stating:

I again recommend a law prohibiting all corporations from contributing to the campaign expenses of any party. Such a bill has already passed one House of Congress. Let individuals contribute as they desire . . .

I repeat what he said:

Let individuals contribute as they desire; but let us prohibit in effective fashion all corporations from making contributions for any political purpose, directly or indirectly.

In January 1907, Theodore Roosevelt signed into law the Tillman Act. This law prohibited nationally chartered banks and corporations from contributing to campaigns. In the report to accompany the Senate version of the legislation, dated April 27, 1906, the Senate Committee on Privileges and Elections wrote:

The evils of the use of 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.''

Following passage of the Tillman Act, Roosevelt again addressed the issue in his Seventh Annual Message to Congress in December, 1907. He said:

Under our form of government voting is not merely a right but a duty, and, moreover, a fundamental and necessary duty if a man is to be a good citizen. It is well to provide that corporations shall not contribute to Presidential or National campaigns, and furthermore to provide for the publication of both contributions and expenditures.

Although the Tillman Act constituted a landmark in Federal law, according to campaign finance expert Anthony Corrado, ''its adoption did not quell the cries for reform. Eliminating corporate influence was only one of the ideas being advanced at this time to clean up political finance.'' In the years following the passage of the Tillman Act, reducing the influence of wealthy individuals and labor unions became a concern and reformers pushed for further limits on donations.

Consequently, in 1947, Congress enacted the Taft-Hartley Act, which explicitly banned corporate and labor union expenditures in Federal campaigns. In doing so, Senator Robert Taft made clear that the purpose of the new language was simply to affirm what had been understood to always be the case—that the 1907 corporate ban had prohibited corporate expenditures, or indirect contributions, as well as direct corporate contributions.

A ban on corporate expenditures in campaigns has been consistently upheld by the Supreme Court as constitutional and as ''firmly embedded in our law.''

The constitutionality of the ban on corporate campaign expenditures was upheld by the Supreme Court in the Austin v. Michigan Chamber of Commerce decision in 1990 and reaffirmed by the Court in the McConnell v. Federal Election Commission decision in 2003. And the corporate expenditure ban had been commented on favorably by the Court in earlier cases.

In 1990, in the Austin case, the Supreme Court acknowledged the importance of maintaining the integrity of the political process. From the Court's opinion:

Michigan identified as a serious danger the significant possibility that corporate political expenditures will undermine the integrity of the political process, and it has implemented a narrowly tailored solution to that problem. By requiring corporations to make all independent political expenditures

through a separate fund made up of money solicited expressly for political purposes, the Michigan Campaign Finance Act reduces the threat that huge corporate treasuries amassed with the aid of favorable state laws will be used to influence unfairly the outcome of elections.

In the McConnell case, the Supreme Court recognized its long-standing support for the constitutionality of bans on corporate campaign expenditures going back to its Buckley decision in 1976. From the Court's decision:

Since our decision in Buckley, Congress' power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law.

Additionally, in 1982, in the National Right to Work Committee case, the Supreme Court, in an opinion authored by Chief Justice William Rhenquist, stated regarding the Federal ban on corporate and labor union expenditures:

The careful legislative adjustment of the federal electoral laws, in a cautious advance, step by step, to account for the particular legal and economic attributes of corporations and labor organizations warrants considerable deference. [I]t also reflects a permissible assessment of the dangers posed by those entities to the electoral process.

In order to prevent both actual and apparent corruption, Congress aimed a part of its regulatory scheme at corporations. The statute reflects a legislative judgment that the special characteristics of the corporate structure require particularly careful regulation. Nor will we second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared. As we said in California Medical Association v. FEC, the ''differing structures and purposes; of different entities 'may require different forms of regulation in order to protect the integrity of the electoral process . . .'''

The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized, First National Bank of Boston v. Bellotti, supra, and there is no reason why it may not in this case be accomplished by treating unions, corporations and similar organizations different from individuals.

In 1986, in the Massachusetts Citizens for Life case, the Supreme Court stated regarding the Federal ban on corporate expenditures in campaigns:

This concern over the corrosive influence of concentrated corporate wealth reflects the conviction that it is important to protect the integrity of the marketplace of political ideas . . . Direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace . . . The resources in the treasury of a business corporation . . . are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.

By requiring that corporate independent expenditures be financed through a political committee expressly established to engage in campaign spending, section 441b seeks to prevent this threat to the political marketplace. The resources available to this fund, as opposed to the corporate treasury, in fact reflect popular support for the political positions of the committee.

If anyone has doubts about the influence of big-moneyed special interests on policy makers in this town, let me relay a personal observation. During the Senate Commerce Committee's consideration of the 1996 Telecommunications Act, every company affected by the legislation had purchased a seat at the table with soft money. Consequently, the bill attempted to protect them all, a goal that is obviously incompatible with competition. Consumers, who only give us their votes, had no seat at the table, and the lower prices that competition produces never materialized. Cable rates went up. Phone rates went up. And huge broadcasting giants received billions of dollars in digital spectrum, property that belonged to the American people, for free. They got it for free, billions of dollars worth of spectrum.

Information gathered from various sources in the press at the time indicated that the special interest groups involved spent nearly $150 million to lobby Congress on telecommunications reform—and they all came out on top—at the expense of the American consumer.

Similarly, the pharmaceutical industry has spent millions of dollars to sway lawmakers against the idea of drug importation. In the 2008 election cycle, pharmaceutical companies gave almost $30 million in campaign contributions to Members of Congress. Just this year, according to an article published in the June 3 edition of The Hill, the prescription drug industry has given more than one million dollars to both Republicans and Democrats. And these contributions were from the limited funds of corporate PACs—a fraction of the flood of money that could be spent out of corporate treasuries if the Supreme Court changes the law by judicial fiat.

As my colleagues know, for many years my colleague from Wisconsin, Senator FEINGOLD and I fought to ban soft money—the large, unregulated donations from corporations, labor unions, and wealthy individuals—from Federal elections. As the sponsors of the Bipartisan Campaign Finance Reform Act, we submitted, together with our colleagues from the House, Representatives Shays and Meehan, a brief for the court. In this brief we stated:

More fundamentally, Austin and McConnell were correctly decided. Unlimited expenditures supporting or opposing candidates may create at least the appearance of corruption, as Caperton v. A.T. Massey Coal Co. illustrates. The tremendous resources business corporations and unions can bring to bear on elections, and the greater magnitude of the resulting apparent corruption, amply justify treating corporate and union expenditures differently from those by individuals and ideological nonprofit groups.

So, too, does the countervailing free-speech interest of the many shareholders who may not wish to support corporate electioneering but have no effective means of controlling what corporations do with what is ultimately the shareholders' money. Austin was rightly concerned with the corruption of the system that will result if campaign discourse becomes dominated not by individual citizens—whose right it is to select their political representatives—but by corporate and union war-chests amassed as a result of the special benefits the government confers on these artificial ''persons.'' That concern remains a compelling justification for restrictions on using corporate treasury funds for electoral advocacy—constraints that ban no speech but only require that it be funded by individuals who have chosen to do so.

The holdings of Austin and McConnell—that it is constitutional to require business corporations to use segregated funds contributed by shareholders, officers and employees for express candidate advocacy or its functional equivalent—remain sound today. The interests in preventing actual or apparent corruption of the electoral process and protecting shareholders provide compelling justification for such requirements, which neither unduly burden nor overbroadly inhibit protected speech.

The corporate PAC option, moreover, is ideally suited to balancing the First Amendment interests of corporate entities and their shareholders. It allows the corporation to direct political spending only to the extent shareholders have personally decided to contribute for that specific purpose. It thus ensures that the corporation may have a voice, but one that is not subsidized unwillingly by those who may disagree with its electoral message. And there is no basis in the record for concluding that PACs are inadequate or unduly burdensome for business corporations, whatever may be true of certain ideological nonprofit corporations. Indeed, PAC requirements pale in comparison with the detailed recordkeeping and accounting otherwise required of corporations and unions.

The ability of corporate campaign expenditures to buy influence with Federal officeholders, and to create the appearance of such influence-buying is sadly evident in nearly every aspect of the legislative process. This fact was recognized in the McConnell case.

The brief filed in the McConnell case by me and my colleagues stated:

Not surprisingly, the McConnell record provided strong corroboration that corporate and union expenditures on ads that were the functional equivalent of express advocacy created the appearance of corruption. Based on that record, Judge Kollar-Kotelly found that such expenditures ''permit corporations and labor unions to inject immense aggregations of wealth into the process'' and ''radically distort the electoral landscape.'' She further found that candidates are ''acutely aware of'' and ''appreciate'' such expenditures, and ''feel indebted to those who spend money to help get them elected.'' She concluded that ''the record demonstrates that candidates and parties appreciate and encourage corporations and labor unions to deploy their large aggregations of wealth into the political process,'' and that ''the record presents an appearance of corruption stemming from the dependence of officeholders and parties on advertisements run by these outside groups.''

According to the Solicitor General's brief, the record in the McConnell case showed that:

Federal officeholders and candidates were aware of and felt indebted to corporations

and unions that financed electioneering advertisements on their behalf or against their opponents.

The brief further stated:

[T]he record compiled in the McConnell case indicated that corporate spending on candidate-related speech, even if conducted independent of candidates, had come to be used as a means of currying favor with and attempting to influence Federal office-holders.

It is important for us to remember that this case does not affect solely the integrity of Federal elections. The States also have a great deal at stake in this case. In a brief filed in the Citizens United case, 26 State attorneys general wrote that ''Courts have repeatedly upheld these State and Federal corporate electioneering restrictions from their inception.''

In their brief, the attorneys general wrote:

This case does not concern the traditional regulation of corporate spending by State Laws. Instead it presents the application of a recent Federal statute to a novel form of political campaigning through the medium of video-on-demand and the message of a ninety-minute film. These and other political campaign innovations present an occasion to draw on State law experiments, not end them. The court cannot reach the validity of these laws under Austin without departing from its conventional approach to constitutional avoidance and as-applied review of campaign finance statutes, and ignoring its cautions against facial challenges in election law generally.

Austin follows a century of campaign finance law at the State and Federal level honed by six decades of this Court's holdings. Those decisions, and the State and Federal laws that gave rise to and rely on them, delineate a workable segregated-fund requirement for corporate electioneering that is embedded in campaign laws and practice at the Federal and State level. While imposing minimal burdens on corporations, the segregated fund protects the integrity of the political process from the corrupting influence of corporate executives funding political campaigns that have no proven support from the shareholders or customers whose money pays for the advocacy. The flourishing of corporate speech through PACs, and continued harms of direct corporate electioneering, has vindicated rather than undermined Austin's approval of segregated funds.

It is clear that the Austin and McConnell cases were correctly decided on the merits and those decisions remain sound today. According to the brief filed by the U.S. Solicitor General:

The Court in Austin held that corporations may constitutionally be prohibited from financing electoral advocacy with funds derived from business activities. That holding was correct when issued and should not be overturned now. Use of corporate treasury funds for electoral advocacy is inherently likely to corrode the political system both by actually corrupting political officeholders and by creating the appearance of corruption. Moreover, such use of corporate funds diverts shareholders' money to the support of candidates who the shareholders may oppose.

Congress's interest in preventing these pernicious consequences is compelling, and Congress has chosen a valid message of achieving it, requiring a corporation to fund its electoral advocacy through the voluntary contributions of officers and shareholders who agree with its political statements.

The Solicitor General's brief further stated:

Corporate participation in candidate elections creates a substantial risk of corruption or the appearance thereof. Corporations can use electoral spending to curry favor with particular candidates and thus to acquire undue influence over the candidates' behavior once in office.

The record in McConnell, which is by far the most extensive body of evidence ever compiled on these issues, indicates that during the period leading up to BCRA's enactment, Federal office-holders and candidates were aware of and felt indebted to corporations and unions that financed electioneering advertisements on their behalf or against their opponents.

The nature of business corporations makes corporate political activity inherently more likely than individual advocacy to cause quid pro quo corruption or the appearance of such corruption. Even minor modifications in complex legislation have great potential to benefit or burden particular companies, industries, or sectors. The economic stake of corporations in the nuances of such matters as industry-specific tax credits, subsidies, or tariffs generally dwarfs that of any set of individuals.

And when those benefits can be obtained through a game of ''pay to play,'' corporations are better suited than individuals to afford the ante. Corporate managers need not assemble a coalition of the like-minded; they can draw on the firm's entire capitalization without seeking the approval of shareholders. If only businesses can afford the investment necessary to pursue rents in this way, only businesses can reap the (even larger) reward. And the public perception that businesses reap such rewards from legislators whom they support in campaigns creates an appearance of corruption that corrodes popular confidence in our democracy.

At the heart of the Citizens United case is a critical question: Do the cherished individual rights protected by the Constitution extend in the same manner to corporations? Corporations, after all, are artificial creations of law, provided for by acts of Congress and the State legislaturs, and endowed under these laws with perpetual existence, special tax status, and other privileges, all for the sole purpose of economic gain. The resolution of this question in the affirmative will have wide-ranging and unpredictable results for our legal system.

For example, if the Court determines corporations have first amendment rights, it will be logical that corporations also have fifth amendment rights against self-incrimination. Is a corporation ''endowed by its creator with inalienable rights''? Just last year the Court found that the second amendment right to bear arms is a personal right. If the Court were to determine that corporations had the same rights as persons, would corporations have the right to arm themselves? Would lobbies of Fortune 500 companies contain grand weapon caches? The absurdity of the argument should be apparent to the members of the Court.

John Marshall, former Chief Justice of the Supreme Court, wrote in 1819 that corporations were ''an artificial being, invisible, intangible.'' Therefore, he stated, ''Being the more creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence.''

Essential to a corporation's existence is a first amendment right to speak about their products and services. Essential to a corporation's existence is the right to sue for the theft of its intellectual property. Essential to a corporation's existence is the right to enter into contracts. Not essential to a corporation's existence is the ability to contribute unlimited funds to political candidates.

It is for this reason and others that the Supreme Court has repeatedly and consistently upheld a ban on direct contributions to political candidates by corporations and unions. Chief Justice Roberts stated at one point during the argument in the Citizens United case that: ''We do not put our First Amendment rights in the hands of FEC bureaucrats.'' I agree. And that is why the Court has repeatedly upheld bans passed by the Congress of the United States and by the State legislators on unlimited corporate or union spending in elections.

Under current law, corporations are free to give to political candidates through political action committees. In an editorial in the Boston Globe entitled ''Corporations Aren't People Yet,'' the editorial board rightly states: ''Even under current financial restrictions, health care industry groups are pouring millions of dollars into Congressional campaigns in the hope of thwarting reforms that might constrain their members.''

A September 10, 2009 editorial in the Philadelphia Inquirer stated:

Allowing corporations to flood elections with their aggregate corporate wealth would place a heavy thumb on the scales of democracy. If a certain industry did not like the way a Senator voted on environmental regulations, for example, there would be nothing to stop that industry from dumping $200 million into the campaign of that Senator's opponent.

The editorial goes on to say:

If the high court rules now that corporations have the same political speech rights as individuals, average citizens will have that much more trouble being heard . . . the distinction between corporate speech and individual speech is clear enough, and the importance of limiting the undue influence of money and politics is significant enough that the court, in all its wisdom, should leave well enough alone.

I agree.

In conclusion, the Court should not overturn precedent and Congress's clear intent to limit corporate contributions to political candidates. In summary, there are three simple points raised by the Court's consideration of the Citizens United case. First, whatever one thinks of a first amendment right for corporations, it is not appropriate for a nondemocratic branch of government to raise a question of the broadest scope at the last minute when

such a question was not raised in the trial court and there is no ability to build a record.

Congress is the most democratically elected branch of government and should be able to make laws that do not stand in the face of the Constitution whether or not the members of the Court would themselves support such legislation if they served in the elected branches of government.

Secondly, the principle enshrined in law for many years was that corporations, because of their artificial legal nature and special privileges, including perpetual existence, pose a unique threat to our democracy. However, the current court seems poised to find that Thomas Jefferson, Theodore Roosevelt, and others were wrong despite there being no record built on this point in this case. In McConnell, there was a record built to support the decision. Here, the trial court never examined the idea of corporations having broad first amendment rights. The Court is reaching to find such a conclusion as part of the Citizens United case.

Lastly, I stress again to my colleagues the implications of the decision the Court may reach in this case. The Court is considering a question that may lead to corporations being treated as ''persons'' under the Constitution, would allow corporations to assert a fifth amendment right to refuse to testify under oath and to keep documents from lawful investigations, and would allow corporations to be subject to individual tax brackets.

Are my colleagues prepared to provide such rights to corporations? Are my colleagues prepared to pass legislation that taxes corporations and persons at the same rate? If the Court provides full first amendment rights to corporations, there is no reason that corporations could not receive the benefits as well as the responsibilities of being a person.

Justice Sandra Day O'Connor wrote in the McConnell decision, and I think with such accuracy, that ''money, like water, will always find an outlet,'' and that the government was therefore justified in taking steps to prevent schemes developed to get around the contribution limits. Again, Justice O'Connor knew better than most jurists, as a former Arizona State Senator, and majority leader of the Arizona State Senate. I hope and wish that the current Court heeds the words of this brilliant jurist who had real-life experiences in politics.

Needless to say, I am very concerned about the integrity of our elections should the Supreme Court rule to overturn the Austin decision. I sincerely hope that the Justices will practice restraint and rule in a manner consistent with judicial precedent and the Constitution of the United States of America.

I again want to, as I have on many occasions, thank my friend from Wisconsin, a man of courage and a man of integrity, and a man I have always been proud to be associated with on issues such as these that are important to the integrity of the institution that we both try to serve with honor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senator from Arizona for all the work he has done over these many years to improve our campaign finance system. We have been partners in this effort for over a decade. In fact, it will soon be 15 years. Of course, there is no one in this body whom I admire more than JOHN MCCAIN.

In early September, Senator MCCAIN and I had the opportunity to walk across the street to the Supreme Court and hear the oral argument in the Citizens United case. It was a morning of firsts: The first case that Justice Sonia Sotomayor has heard since the Senate confirmed her nomination to become only the third woman to sit on our Nation's highest court. And the first oral argument that Solicitor General Elena Kagan has done since becoming the first woman to hold that important position in our government.

And it was the first time since the Tillman Act was passed in 1907 prohibiting spending by corporations on elections, and the Taft-Hartley Act in 1947 clarified and strengthened that prohibition, that a majority of the Court has suggested it is prepared to hold that Congress and the many State legislatures that have passed similar laws have violated the Constitution. Such a decision could have a truly calamitous impact on our democracy.

Until a few months ago, as the Senator from Arizona pointed out, no one had any idea that the Citizens United case would potentially become the vehicle for such a wholesale uprooting of the principles that have governed the financing of our elections for so long. The case started out as a simple challenge to the application of title II of the law that Senator MCCAIN and I sponsored, the Bipartisan Campaign Reform Act of 2002. The issue was whether the provisions of BCRA relating to so-called issue ads could constitutionally be applied to a full-length feature film about then-Presidential candidate Hillary Clinton. The movie was to be distributed solely as video on demand.

Yet somehow at the end of its last term, instead of deciding the case on the basis of the briefs and arguments submitted by the parties early this year, the Court reached out and asked for supplemental briefing on whether it should overturn its decisions in McConnell v. FEC, the case that upheld BCRA in 2003, and Austin v. Michigan Chamber of Commerce, a 1991 decision that upheld a State statute prohibiting corporate funding of campaign ads expressly advocating the election or defeat of a candidate. That set the stage for the recent special session to hear reargument in the case. And now we await the Court's verdict on whether these longstanding laws will be in jeopardy.

I certainly hope the Court steps back from the brink. A decision to overturn the Austin decision would open the door to corporate spending on elections the likes of which this Nation truly has never seen. Our elections would become like NASCAR races—underwritten by companies. Only in this case, the corporate underwriters wouldn't just be seeking publicity, they would be seeking laws and policies that the candidates have the power to provide.

We were headed well down that road in the soft money system that BCRA stopped. It may seem like a long time ago, but the Senator from Arizona and I remember that hundreds of millions of dollars were contributed by corporations and unions to the political parties between 1988 and 2002. The system led to scandals like the White House coffees and the sale of overnight stays in the Lincoln bedroom. The appearance of corruption was well documented in congressional hearings and fully justified the step that Congress took in 2002—prohibiting the political parties from accepting soft money contributions.

Before BCRA was passed, corporations were making huge soft money donations. They were also spending money on phony issue ads. That is what title II was aimed at. But what they were not doing was running election ads that expressly advocated the election or defeat of a candidate. That has been prohibited in this country for at least 60 years, though it is arguable that the Tillman Act in 1907 prohibited it 40 years before that. So it is possible that the Court's decision will not just take us back to a pre-McCain-Feingold era, but back to the era of the robber baron in the 19th century. That result should frighten every citizen of this country. The Court seems poised to ignite a revolution in campaign financing with a stroke of its collective pen that no one contemplated even 6 months ago.

While I have disagreed with many Supreme Court decisions, I have great respect for that institution and for the men and women who serve on the Court. But this step would be so damaging to our democracy and is so unwarranted and unnecessary that I must speak out. That is why Senator MCCAIN and I have taken the unusual step of coming to the floor today.

To overrule the Austin decision in this case, the Court would have to ignore several time-honored principles that have served for the past two centuries to preserve the public's respect for and acceptance of its decisions. First, it is a basic tenet of constitutional law that the Court will not decide a case on constitutional grounds unless absolutely necessary, and that if there is no choice but to reach a constitutional issue, the Court will decide the case as narrowly as possible.

This is the essence of what some have called ''judicial restraint.'' What seems

to be happening here though is the antithesis of judicial restraint. The Court seems ready to decide the broadest possible constitutional question—the constitutionality of all restrictions on corporate spending in connection with elections in an obscure case in which many far more narrow rulings are possible.

The second principle is known as stare decisis, meaning that the Court respects its precedents and overrules them only in the most unusual of cases. Chief Justice John Roberts, whom many believe to be the swing justice in this case, made grand promises of what he called ''judicial modesty,'' when he came before the Senate Judiciary Committee in 2005. Respect for precedent was a key component of the approach that he asked us to believe he possessed. Here is what he said:

I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness. It is not enough—and the court has emphasized this on several occasions—it is not enough that you may think the prior decision was wrongly decided. That really doesn't answer the question, it just poses the question. And you do look at these other factors, like settled expectations, like the legitimacy of the court, like whether a particular precedent is workable or not, whether a precedent has been eroded by subsequent developments. All of those factors go into the determination of whether to revisit a precedent under the principles of stare decisis.

So said then Judge Roberts. Talk about a jolt to the legal system. It is hard to imagine a bigger jolt than to strike down laws in over 20 States and a Federal law that has been the cornerstone of the Nation's campaign finance system for 100 years. The settled expectations that would be upset by this decision are enormous. And subsequent developments surely have not shown that the Austin decision is unworkable. Indeed, the Court relied on it as recently as 2003 in the McConnell case and even cited it in the Wisconsin Right to Life decision just 2 years ago, written by none other than Chief Justice Roberts. To be sure, there are Justices on the Court who dissented from the Austin decision when it came down and continue to do so today. But if stare decisis means anything, a precedent on which so many State legislatures and the American people have relied should not be cast aside simply because a few new Justices have arrived on the Court.

Third, the courts decide cases only on a full evidentiary record so that all sides have a chance to put forward their best arguments and the court can be confident that it is making a decision based on the best information available. In this case, precisely because the Supreme Court reached out to pose a broad constitutional question that had not been raised below, there is no record whatsoever to which the Court can turn. None. The question here demands a complete record because the legal standard under prevailing first amendment law is whether the statute is designed to address a compelling State interest and is narrowly tailored to achieve that result. My colleagues may recall that when we passed the McCain-Feingold bill, a massive legislative record was developed to demonstrate the corrupting influence of soft money. And the facial constitutional challenge to that bill led to months of depositions and the building of an enormous factual record for the court. None of that occurred here. And furthermore, the over 20 States whose laws would be upended if Austin is overruled were given no opportunity to defend their legislation and show whatever legislative record had been developed when their statutes were enacted.

Instead, the Court seems to be ready to rely on its intuition, its general sense of the political process. From what I observed at oral argument, that intuition is sorely lacking. One Justice blithely asserted that the 100-year-old congressional decision to bar corporate expenditures must have been motivated by the self-interest of Members of Congress as incumbent candidates, ignoring the fact that the modern Congress prohibited soft money contributions even though the vast majority of those contributions were used to support incumbents. Another Justice opined that it was paternalistic for Congress to be concerned about corporations using their shareholders' money for political purposes, even though most Americans invest through mutual funds and have little or no idea what corporations their money has actually gone to.

For the Court to overrule Austin and McConnell in this case would require it to reject these three important principles of judicial modesty. It would amount to the unelected branch of government reaching out to strike down carefully considered and longstanding judgments of the most democratic branch. It would be, in my view, a completely improper exercise of judicial power.

Let me discuss for a moment the consequences of this decision. A fundamental principle of our democracy is that the people elect their representatives. Each citizen gets just one vote. Our system of financing campaigns with private money obviously gives people of means more influence than average voters, but Congress over the years has sought to provide some reasonable limits and preserve the importance of individual citizens' votes. One of the most important and longstanding limits is that only individuals can contribute to candidates or spend money in support of or against candidates. Corporations and unions are prohibited from doing so, except through their PACs, which themselves raise money only from individuals. The Supreme Court may very well be about to change that forever.

According to a 2005 IRS estimate, the total net worth of U.S. corporations was $23.5 trillion, and after-tax profits were nearly $1 trillion. During the 2008 election cycle, Fortune 100 companies alone had profits of $605 billion. That is quite a war chest that may be soon unleashed on our political system. Just for comparison, spending by candidates, outside groups, and political parties on the last Presidential election totaled just over $2 billion. Federal and State parties spent about $1.5 billion on all Federal elections in 2008. PACs spent about $1.2 billion. That usually sounds like a lot of money, but it is nothing compared to what corporations and unions have in their treasuries. So we are talking here about a system that could very easily be completely transformed by corporate spending in 2010.

Does the Supreme Court really believe that the first amendment requires the American people to accept a system where banks and investment firms, having just taken our country into its worst economic collapse since the Great Depression, can spend millions upon millions of dollars of ads directly advocating the defeat of those candidates who didn't vote to bail them out or want to prevent future economic disaster by imposing strict new financial services regulations? I say that because that is where we are headed. Is the Court really going to say that oil companies that oppose action on global warming are constitutionally entitled to spend their profits to elect candidates who will oppose legislation to address that problem?

The average winning Senate candidate in 2008 spent $8.5 million. The average House winner spent a little under $1.4 million. A single major corporation could spend three or four times those amounts without causing even a smudge on its balance sheet. This is not about the self-interest of legislators who will undoubtedly fear the economic might that might be brought against them if they vote the wrong way. This is about the people they represent, who live in a democracy and who deserve a political system where their views and their interests are not completely drowned out by corporate spending.

At the oral arguments last month, one Justice seemed to suggest it is perfectly acceptable for a tobacco company to try to defeat a candidate who wants to regulate tobacco and to use its shareholders' money to do so. This is the system the Supreme Court may bequeath to this country if it does not turn back.

Some will say that corporate interests already have too much power and that Members of Congress listen to the wishes of corporations instead of their constituents. I will not defend the current system, but I will say: Imagine how much worse things would be in a system where every decision by a Member of Congress that contradicts the wishes of a corporation could unleash a tsunami of negative advertising in the next election.

In light of the immense wealth a corporation can bring to bear on such a project, I frankly wonder how our democracy would function under such a system. We are talking about a political system where corporate wealth rules in a way that we have simply never seen in our history.

So, once again, I certainly want to thank my friend from Arizona for his friendship and his courage. We will continue to fight for a campaign finance system that allows the American people's voices to be heard.

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

The PRESIDING OFFICER (Mr. BENNET). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

HEALTH INSURANCE INDUSTRY ANTITRUST ENFORCEMENT ACT

Mr. WHITEHOUSE. Mr. President, I come to the floor to speak in strong support of the Health Insurance Industry Antitrust Enforcement Act, introduced by the senior Senator from Vermont, the chairman of our Judiciary Committee, Mr. PATRICK LEAHY. I believe this bill is an important part of health care reform, and I am hopeful it can be included in the final reform bill as it makes its way through this body.

Our antitrust laws embody the proud American idea that democracy shapes capitalism and not vice versa; that vigorous economic competition is not an amoral, Hobbesian contest but disciplined by a strong rule of law tradition; and that ours is not a society in which might makes right and only the powerful write the rule book.

The great Supreme Court jurist and antitrust crusader William O. Douglas, wrote:

> Industrial power should be decentralized. It should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men. . . . That is the philosophy and the command of the Sherman [Antitrust] Act.

The passage of the Sherman Antitrust Act and the Clayton Antitrust Act and the creation of the Federal Trade Commission and the Antitrust Division at the Department of Justice demonstrated a Federal commitment to a level economic playing field. Small businessmen and entrepreneurs, shouldering the enormous task of starting and sustaining a new enterprise, would know that powerful competitors could not collude to keep them out of the market. Consumers could rest assured that prices were not being fixed artificially high by scheming monopolists. Every industry, ever vector of American business, was made subject to these rules of the road—except for one: the insurance industry.

In 1944, insurance companies challenged the Federal Government's very ability to enforce antitrust laws against them, and the Supreme Court ruled that the insurance business was subject to antitrust laws just like everybody else. In response, insurance companies came to Congress, where they launched a massive lobbying campaign, pressuring Congress to invalidate the Supreme Court's decision—not unlike the current lobbying barrage they are aiming at killing health care reform. That campaign back in 1944 was successful. In March 1945, the McCarran-Ferguson Act exempted insurance companies entirely from the reach of America's antitrust laws. If that exemption ever made sense, it no longer does, especially when it comes to health insurance coverage.

Today, Americans pay ever-higher premiums for less care because a small group of wealthy, powerful companies control the health insurance market. Just consider these numbers: A study by the American Medical Association shows that 94 percent of metropolitan areas—virtually every one—has a health insurance market that is ''highly concentrated,'' as measured by Department of Justice standards. This means that if the Department of Justice's Antitrust Division had enforcement authority over the health insurance industry, it would be carefully scrutinizing this market for signs of anticompetitive conduct that hurts consumers. But due to the antitrust exemption, the Department of Justice cannot do that job. That same study shows that, in 39 States 2 health insurers control at least half of the health insurance market and in 9 States a single insurer controls at least 70 percent of the market.

Back in 1945, the insurance industry argued that it should be exempted from the antitrust laws because the market was heavily localized and not concentrated. Well, if that were true then, it is not true now.

Overhead for private insurers is an astounding 20 to 27 percent—charges that consumers pay for in higher premiums. A Commonwealth Fund report indicates that private insurer administrative costs increased 109 percent from 2000 to 2006—109 percent in those 6 years—and the McKinsey Global Institute estimates that Americans spend roughly $150 billion annually on what the report calls ''excess administrative overhead'' in the private health insurance market. Mr. President, $150 billion a year in ''excess administrative overhead.'' Clearly, this is not a competitive market. If it were, companies would be driven to cut these costs in order to compete effectively in the marketplace.

Without competition and without economic incentive to avoid massive administrative costs, health insurance premiums have increased 120 percent—more than doubled—in one decade, while insurance industry profits increased 428 percent in the same period—428 percent.

Doctors and other health care providers have been hurt as well. For many years, United Health Care, a massive health insurance company, owned and operated a computerized pricing system that was used by almost every other health insurer. The New York attorney general recently found that the system was designed to systematically underpay doctors for their services and that this had been going on for years. United Health paid $400 million to settle lawsuits by the State, but if the Federal Trade Commission or the U.S. Department of Justice had tried to bring suit under the Federal antitrust laws, they would have been blocked by McCarran-Ferguson.

Finally, ironically, health insurers threaten and sue doctors all the time under these same antitrust laws while protecting their own exemption from the laws they seek to impose on the providers and the doctors whom they torment.

One might ask how this exemption has survived so long. A certain school of political thought holds that the only proper relationship of government to the market is hands off, that any government involvement in the marketplace is unnatural and unwelcome. But with respect to antitrust enforcement, we crossed that Rubicon long ago, and every industry in the country is required to play by rules that support the market by increasing competition, again, except insurance. Experience in those other areas has shown that the government referee on the field of play creates a better environment for competition, and the public wins.

Think of the benefits of a competitive health insurance market. Insurers would have to compete on price, lowering premiums for individuals and small businesses purchasing insurance, and work hard to lower those unnecessary administrative costs. New competitors would be able to enter more easily and offer better consumer service, quicker claims processing, streamlined enrollment—competition that is desperately needed in a market where 36 percent of physician overhead is consumed by fighting with the insurance industry over inappropriate denial and delay of health insurance claims.

Senator LEAHY's Health Insurance Industry Antitrust Enforcement Act would repeal the unique and peculiar exemption for health insurance and medical malpractice insurance companies. The bill ensures that these companies are no longer permitted to engage in the most egregious forms of antitrust violations—price fixing, bid rigging, and market allocations—while preserving insurers' ability to share statistical information with each other in a procompetitive manner, with appropriate approvals.

Let me conclude with the words of a distinguished Senator, one of the greatest advocates for the elderly, ill, and disabled this Chamber has seen, Senator Claude Pepper. Senator Pepper, at the time, strongly opposed the McCarran-Ferguson antitrust exemption for the insurance industry, and he

warned of the ''carte blanche authority . . . which had been contained in no previous legislation . . . [and] which for the first time gives the States carte blanche to legitimize the very vices against which the Clayton Act and the Sherman Act were directed.''

It appears to me the exemption for the insurance industry was a mistake then, and it is assuredly unwise now. Let's repeal this unfair law and give health insurance consumers the same benefits of free, open, and fair competition that all Americans enjoy.

Let me finally add that the state of the health insurance market reinforces the need to which I have spoken, and so many of my colleagues have spoken before, for an efficient, nonprofit public health insurance option. The health insurance industry has been artificially sheltered by government for decades, building huge profit margins, massive market share, and colossal overhead and administrative costs. Now these same companies argue vehemently against the public option on the grounds that it would amount to government interference—government interference with their government protection from competition. That irony just doesn't pass the laugh test.

According to the AMA study I quoted in the beginning of my remarks, Rhode Island is the second most concentrated health insurance market in the country. Just two insurers control 95 percent of the market. My constituents desperately would like the chance to choose a public option and would benefit from a more competitive health insurance market, one in which vigorous competition brings down costs and improves the quality of care and encourages health insurers to treat people decently.

Mr. President, I have concluded the remarks on the McCarran-Ferguson exemption. I wish to turn to another topic, but I see the majority whip on the Senate floor, and I would be delighted to yield to him if he wishes to take a moment.

I will continue, then. I thank the distinguished majority whip.

BIPARTISAN CAMPAIGN REFORM ACT

Mr. President, I wish now to say a few words about the colloquy that took place between Senator MCCAIN and Senator FEINGOLD on the Senate floor a few moments ago over the need to protect our Nation's political system from the influence of corporate money.

For more than a decade, Senators MCCAIN and FEINGOLD have been stalwart defenders of the integrity of our political system, and they achieved a hard-fought victory in 2002 with the passage of the Bipartisan Campaign Reform Act, which everybody around here knows as the McCain-Feingold law. As they said in their remarks, we face a real danger that an activist Supreme Court will strike down portions of that law, overturn the will of Congress and the American people, and allow corporations to spend freely in order to elect and defeat candidates and influence public policy to meet their ends. The consequences of such a decision by our Supreme Court could be nightmarish.

Federal laws restricting corporate spending on campaigns have a long pedigree. Back in 1907, the Tillman Act restricted corporate spending on political campaigns. While various loopholes have come and gone over the years, the principle embodied in that law that corporations aren't free to spend unlimited dollars to influence political campaigns is a cornerstone of our American system of government. That principle now appears to be at risk as the Supreme Court may be poised to open the floodgates now holding back corporate cash.

In September, the Supreme Court heard oral argument in Citizens United v. The Federal Election Commission. Citizens United is an organization that accepts, channels, and funnels corporate funding. It sought to broadcast a documentary attacking our former colleague, Senator Clinton, now Secretary of State Clinton, at the time a candidate for President, on On Demand cable broadcasts. Current law prohibits the broadcast of this kind of corporate advocacy on the eve of an election. Citizens United filed a lawsuit arguing that the law infringed on its first amendment rights.

Many observers expected the Court to rule narrowly on the case, perhaps focusing on whether McCain-Feingold applies to On Demand broadcasts. Instead, after hearing oral argument, the Court asked for an additional briefing and a new round of oral argument, something the Supreme Court does very rarely, to consider whether the first amendment bans such restrictions on corporate campaign spending. There is some indication that the activist conservative wing of the Court believes it does. We may be on the verge of another effort by a Roberts court to advance its ideologically charged view of the Constitution. In so doing, the Court would overturn its own long-standing precedents, opinions such as Austin v. Michigan State Chamber of Commerce where Justice Thurgood Marshall warned of ''the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public support for the corporation's political ideas.''

Should the Court upturn so much long-settled law, it would upend our entire political system and we could see a new era of corporate influence over politics not seen in the history of our Republic.

Imagine for a moment what our political system would look like if the Court takes the fateful step of allowing corporations to unrestrictedly spend money to influence campaigns. Corporate polluters under investigation by the Department of Justice, running unlimited advertisements for a more sympathetic Presidential candidate; financial services companies spending unlimited money to defeat Members of Congress who have the nerve to want to reform the way things are done on Wall Street; defense contractors overwhelming candidates who dare question a weapons program they build. It would become government of the CEOs, by the CEOs, and for the CEOs.

Nothing in the history of the first amendment requires the protection of such activities. To the contrary, Congress long has been understood to hold the power to protect the electoral process from the corrupting flood of corporate money. This is because, as the Supreme Court long has recognized, a corporation holds no inalienable right to participate in an election. Unlike the people from whom the sovereign power of the State is drawn, a corporation is created by and subject to the sovereign power of the State. Indeed, as Chief Justice John Marshall explained in 1809, only 18 years after ratification of the first amendment, a corporation is ''a mere creature of the law, invisible, intangible, and incorporeal and certainly not a citizen.''

In 1906, a century later, the Supreme Court explained that:

> The corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its powers are limited by law.

Corporations are created by government charter. They are legal fictions, tools for organizing human behavior. Neither logic nor history justifies unleashing them from the bonds of government to master and control the very government that created them—new monsters on the political landscape, bending public wealth to their peculiar private purposes.

How might they do that? Well, let's look at one recent case involving Bank of America.

All of us remember in September of 2008, Bank of America announced that it would buy Merrill Lynch for $50 billion. In August of this year, the Securities and Exchange Commission filed a civil suit against the Bank of America alleging that it had made a misrepresentation to its shareholders that Merrill Lynch would not pay bonuses to its executives in 2008 when, in fact, Bank of America had agreed that Merrill Lynch could pay up to $5.8 billion in bonuses to its executives. That is the background.

Bank of America and the Securities and Exchange Commission submitted a proposed final consent judgment proposing to resolve that case by giving $33 million of shareholder money to the Securities and Exchange Commission. The U.S. District Court in New York took a look at this proposal and threw it out. The judge rightfully rejected it as neither fair nor reasonable nor adequate. The Court said it well; I can't improve on the Court's decision:

> The parties were proposing that the management of Bank of America—having allegedly hidden from the bank's shareholders

that as much as $5.8 billion of their money, shareholder money, would be given as bonuses to the executives of Merrill who had run that company nearly into bankruptcy—would settle the legal consequences of their lying by paying the SEC $33 million more of their shareholders' money.

As the Court noted, this was all done ''at the expense not only of the shareholders, but also of the truth.''

That is a pretty stark example of corporate management trying to use shareholder money to serve its own ends, even against shareholder interests. Well, guess whose interests corporate managers would pursue politically if they could open the spigots of shareholder money in elections.

Longstanding statutes and judicial precedents that limit corporate involvement in campaigns rests on the well-established and long-accepted recognition that corporations and their corrupting self-interests must be controlled. There is no reason now for a fundamental rethinking of such a plain and well-settled principle. The right-wing of the Supreme Court will be hard pressed to justify departing from such settled understandings of the first amendment, from the century-long tradition of controlling corporate spending, to invent new constitutional rights for corporations against real human beings.

In closing, I stand with my colleagues, Senator MCCAIN and Senator FEINGOLD, in readiness to do what it takes to protect our system of campaign finance laws from the danger of corporate corruption. I look forward to working with them and my other colleagues to ensure that our elections remain enlivened by a robust debate among human participants in which CEOs don't have favored princely status because they can direct corporate funds to drown out people's voices.

I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER. The majority whip is recognized.

Mr. DURBIN. Mr. President, let me say at the outset the Senator from Rhode Island has addressed two issues that are timely and important. I certainly concur with him and cosponsor the legislation offered by the chairman of the Senate Judiciary Committee, Senator PATRICK LEAHY, which would repeal the McCarran-Ferguson Act as it relates to health insurance companies and medical malpractice insurers. The McCarran-Ferguson Act, since the 1940s, if I am not mistaken, has exempted the insurance industry from antitrust regulation, which literally means those insurance companies, exempt from the supervision of the Justice Department, can engage in conduct absolutely illegal and unacceptable by any other corporation in America, save one. Organized baseball is given the same basic exemption for reasons that are lost in the pages of history. But I will say that under the current McCarran-Ferguson law, the health insurance companies have the power to fix prices, to allocate markets. In other words, they can make good on their threat 2 weeks ago that they are going to raise health insurance premiums if we pass health care reform in America. There is nothing we can do to stop them, short of creating a competitive model where they might have an actual competitor in markets such as Rhode Island and Illinois. It is known as the public option. Some people brand it as socialism or some wild French idea, but what it comes down to is basic competition—something the health insurance companies loathe. Because of the antitrust exemption, McCarran-Ferguson, they have not been held to the same standards as any other business in America.

I believe Senator LEAHY is on the right track. It is part of the health care reform. I know he is supported by Senator HARRY REID, the majority leader, that we should repeal the McCarran-Ferguson antitrust legislation as it exists today.

I concur with Senator WHITEHOUSE as well on the notion that the case which is now pending before the U.S. Supreme Court could, in my mind, completely destroy our political climate and campaigning in America. If we allow corporations to be exempt from limitations in their involvement in this political process, it is virtually the end of campaigns as we have known them.

It is time for us to not only endorse the position that has been expressed by Senator MCCAIN, Senator FEINGOLD, and Senator WHITEHOUSE, but also step back and take an honest look at this system, which I think is unsustainable and intolerable.

I have introduced legislation with Senator SPECTER calling for public financing of campaigns. When will we ever reach the conclusion that this system, if it is not corrupt, is corrupting? In order to take the big money out of politics, whether from corporations or from individuals, we need to move to a model that has been embraced by States that are more progressive in their outlooks. The States of Maine and Arizona have moved in this direction. We should as well.

I support public financing, and I hope our Rules Committee can consider a hearing on this important measure soon.

UNEMPLOYMENT INSURANCE BENEFITS

Yesterday, I came to the Senate floor to talk about a Republican hold on our efforts to extend unemployment insurance benefits to millions of Americans. These are people who have worked hard their entire adult lives and are struggling now to make ends meet. Some of them earned six-figure salaries and others more modest incomes, and now they are struggling to put food on the table. Some had high-ranking bank jobs, others more mundane and routine jobs. But they are all in trouble, and they are counting on us to let them have the money they put into a fund for their unemployment.

These people worked for years on factory floors, building expertise in machines and equipment, and now have depleted their savings and do not know where to turn, and they are frightened.

Listen to the words a husband and father from Joliet, IL, has written to me:

I am one of the millions who has become dependent on my unemployment benefits to help carry our family from week to week. I've been employed full time since I was legally old enough to work and have always had a job.

I worked at the same company for 8 years before losing my job due to lack of work. Confident that I'd find a job right away, I didn't sweat it. But I haven't. Eighteen months later and I'm still unemployed and terrified because I'm about to receive my last unemployment check.

I have two young children, a modest house, one vehicle and a lot of bills. I'm horrified at the thought that I won't be able to pay my bills or put food on our table. We just got hit with unforeseen medical bills that the insurance company has decided not to cover (apparently vaccinating children falls under the ''unimportant'' category), my truck needs tires and brakes, but we can't afford to pay for either, and my refrigerator is threatening to die on me.

My entire world feels like it's crumbing around me but I was confident that the government, my government, would be there to back us up and I'm appalled that this extension is being held up.

Without this extension, things are going to get much worse. I'm scared. Please don't let us fall through the cracks.

I say to the Senator from Rhode Island, I am sure he has received similar messages from his State, and I am sure our Republican colleagues have received similar messages. They have held us up in our attempt to extend unemployment benefits to millions of people just like the man who wrote to me from Joliet, IL.

Here is something I just learned. The Republicans say: We cannot go onto unemployment benefits because we want to offer some amendments. This is a common plank we hear from them, that they don't have enough of a chance to offer amendments. I have not seen the amendments, but they were described to me. I think the Senator from Rhode Island may be surprised to learn that two of the amendments they want to offer—the reason they are holding up unemployment benefits is because they want to take another whack at ACORN. Think about that. The Republican Senate leadership has reached the point where they would consider amendments on the organization of ACORN as an alternative or at least holding up even the most basic unemployment benefits for unemployed workers across America.

ACORN is a controversial organization. I know that as well as anyone. I said the people who were disclosed on a video several weeks ago should be held accountable. I know they have been fired. And if they have broken laws, they should be prosecuted, period. I called for an investigation of ACORN's involvement with the Federal Government to find out if there has been wrongdoing and misuse of Federal funds. We have gone even further on the floor of the Senate to actually barring ACORN from doing business with

the Federal Government. But that is not enough on the Republican side of the aisle. In order to feed the mouths of the rightwing cable shows, they keep pushing ACORN down our throats at the expense of unemployment benefits for millions of Americans.

When you look at this, this is such a vacuous, frivolous, embarrassing outcome that we would say to people like the man who has just written to me: Sorry, we cannot give you the peace of mind you get with an unemployment check; we have to take another whack at ACORN and we have to hold up the bill for weeks until we satisfy a few Senators who cannot get enough of this exercise. I don't think it is responsible. I sure don't think it is fair. And I can tell you that the people who are suffering because they lost their jobs and are feeling the pain and frustration are not going to be satisfied to know a few Republican Senators want to offer another amendment on ACORN.

Listen to the frustration and pain of a veteran from Cicero, IL. He writes:

> My age is 61. I have been unemployed since March 2008. I am actively looking for work. It has been more than 6 months since I've even had an interview.
>
> When I've had interviews, I feel that once the interviewer sees my gray hair, I am eliminated from competition, saying I'm over qualified.
>
> I'm realistic, and willing to take a cut in pay to [get a job].
>
> What I'm writing about is the extension of unemployment benefits. I've received notices from the State of Illinois my extended benefits and emergency benefits from the State of Illinois have expired.
>
> I understand that the House [of Representatives in Washington] has voted to extend benefits by an overwhelming majority. But the extension is being held up in the Senate.
>
> Sir, I am facing losing my home and all my possessions that I can't pack in my car.
>
> I must urge you once again to look positively and in a timely manner to a vote in the Senate. Now, I must also ask you to consider extending relief to those who no longer have benefits.
>
> I have now applied for State welfare benefits. I am now waiting for my scheduled interview to have my application reviewed.

All of these people have been helped by unemployment insurance. All of them are at risk of losing that lifeline.

Since I spoke on the floor yesterday about the Republican obstructionism stopping us from bringing up unemployment benefits, 7,000 people have lost their unemployment insurance, 7,000 more will lose it today and 7,000 more tomorrow. Why? So that several Senators can have another amendment attacking ACORN. Does that make any sense? Is that fair or just? These Senators ought to go home to their States and tell the people who are out of work and not receiving unemployment: Sorry, we can't help you yet because we have a few more political items to work on, an agenda.

Republicans in this body, unfortunately—some of them—are too concerned about the political agenda and not concerned enough about the human agenda of hard-working Americans out of work. Mr. President, 1.3 million Americans will lose benefits by the end of the year if we do not pass the Democratic extension of unemployment benefits; 1.3 million Americans will suffer needless poverty and deprivation for their families because of this obstructionism. These are working-class families. These are families we value in this country. These are families who deserve a fighting chance.

I say to my Republican colleagues who have stopped the Democrats from extending unemployment insurance benefits: What are you waiting for? Don't you receive the same e-mails, mail, and phone calls we receive? You have unemployed people in your State. Clearly, they need help.

Mr. President, 50,000 families in Illinois will lose their unemployment insurance, while they look for work, by the end of the year if the Senate does not act. Some seem to be worried about how to pay for this extension, but we have paid into this for years. Workers put in a little bit of money out of their paychecks, and employers as well. It goes right into a fund to cover unemployment. So it is not as if the money is not there; it is just the political will is lacking. Unfortunately, there are other things that are more important to some people on the other side of the aisle.

I say to my colleagues in the Senate, it is time for us—in fact, it is over time for us—to pass extension of unemployment benefits.

HATE CRIMES LEGISLATION

Mr. President, the Defense authorization bill includes hate crimes language which for several years has been passed by both the House and the Senate only to see it blocked by filibuster threats or by the threat of a veto. What a difference a year has made. When Congress took up the hate crimes bill last Congress, President George W. Bush called it ''unnecessary and constitutionally questionable.'' He said he would veto it.

The American people said last November that they wanted a new President and a change. They wanted our country to move in a different direction. President Obama is doing that. In this case, he is supporting the hate crimes legislation.

This bill has another important champion who sadly is no longer with us. Senator Ted Kennedy of Massachusetts was our leader on this issue for over a decade. I only wish he were here to vote and join us on the passage of this important legislation. Nobody spoke to this issue with more authority and clarity than Senator Ted Kennedy. He was the heart and soul of the Senate, and passing this bill will honor the great work he gave in his public career to the cause of civil rights.

I generally believe Congress should be careful in federalizing crime, but in the case of hate crimes, there is a demonstrated problem and a carefully crafted solution.

There are two parts to this problem. First, the existing Federal hate crimes law, which was passed over 40 years ago in 1968 after the assassination of Dr. Martin Luther King Jr., only carries six narrow categories of conduct. The hate crime has to take place, for example, while using a public accommodation. The hate crimes bill now being considered would expand coverage so that hate crimes could be prosecuted wherever they take place. Federal prosecutors would no longer be limited to these six narrow categories.

Second, the bill would expand the categories of people covered under the Federal hate crimes law. The current law provides no coverage for hate crimes based on the victim's sexual orientation, gender, gender identity, or disability. Unfortunately, statistics tell us that hate crimes based on sexual orientation are the third most common after those based on race and religion. About 15 percent—one out of six or seven—of all hate crimes is based on sexual orientation. We cannot ignore this reality.

Let me address one or two arguments made against this bill.

Many have written to me and said they believe this bill would be an infringement on religious speech. Their concern is that a minister in a religious setting could be prosecuted if he sermonizes against homosexuality and then a member of his congregation assaults someone on the basis of their sexual orientation. I certainly understand this, but their concern is misplaced.

The chair of the Senate Judiciary Committee, Senator LEAHY, held a hearing a few months ago with Attorney General Eric Holder. I attended the hearing, and I asked the Attorney General of the United States pointblank whether a religious leader could be prosecuted under the facts I just described. This is what the Attorney General said in response to the hypothetical question I raised:

> This bill seeks to protect people from conduct that is motivated by bias. It has nothing to do with regard to speech. The minister who says negative things about homosexuality, about gay people, this is a person I would not agree with, but is not somebody who would be under the ambit of this statute.

This clear representation from the Nation's top law enforcement officer puts to rest, in my mind and the mind of any reasonable person listening to it, any misunderstanding people might have about how this law would work.

It is also important to note that the hate crimes bill requires bodily injury before prosecution. Words are not enough. It does not apply to speech or harassment. It does not apply to those who would carry signs with messages which exhibit their religious belief. Attorney General Holder assured the Senate that unless there is bodily injury involved, no hate crimes prosecution could be brought. I don't know how he could have been clearer and more definitive. People who listen to his statement in good faith will understand it.

I also note that 24 States, nearly half the States in our Nation, have hate crime laws on the books that include sexual orientation, and religious leaders are not being prosecuted in those States.

That is not the purpose of the hate crimes law. Prosecutors aren't looking to put ministers in jail for their religious beliefs. To the contrary, the hate crimes bill will actually help religious communities. Understand, 20 percent of all hate crimes that are committed in the United States are committed on the basis of religion. This bill would eliminate the narrow requirements that currently prevent Federal prosecutors from bringing certain hate crimes cases motivated by religious bias.

Another criticism of the legislation is there is no need to pass a Federal hate crimes law because some States are already doing it on their own. This argument is similar to one we faced before. Almost a century ago, when Congress debated an antilynching law between 1881 and 1964, almost 5,000 people were lynched in the United States. The victims were mostly—but not exclusively—African American. Yet Congress resisted addressing this problem for generations. Criminal law is primarily a State and local function. I understand that. An estimated 95 percent of prosecutions for crimes occur at that level. But in some areas of criminal law, the Federal Government can and should step in to help.

We have 4,000 Federal criminal laws, 600 of which have been passed in the last 10 years. Hate crimes are a sad and tragic reality in America. The killing this past summer of an African-American security guard at the Holocaust Museum here in Washington, DC, was a reminder that hate-motivated violence still plagues our Nation.

Earlier this year, in my home State of Illinois, two White men in the town of Joliet used a garbage can to beat a 43-year-old Black man outside a gas station, while yelling racial epithets and stating: ''This is for Obama.'' The victim sustained serious injuries, lacerations, and bruises to his head.

Just 2 weeks ago, in Springfield, in my hometown, three University of Illinois students were arrested for viciously beating and punching two men while yelling antigay slurs at them.

These are incidents in my home State, a State I am proud to represent, but I am not proud of this criminal conduct, and I don't think America should be proud of it.

According to FBI data, based on voluntary reporting, there are 8,000 hate crimes annually in America. Some experts think the number is closer to 50,000. The hate crimes bill would not eliminate hate crimes, but it will help ensure these crimes do not go unpunished.

In closing, I wish to quote the words of Senator Kennedy when he introduced the hate crimes bill in April. This is what he said:

It has been over 10 years since Matthew Shepard was left to die on a fence in Wyoming because of who he was. It has also been 10 years since this bill was initially considered by Congress. In those 10 years, we have gained the political and public support that is needed to make this bill into law. Today, we have a President who is prepared to sign hate crimes legislation into law, and a Justice Department that is willing to enforce it. We must not delay the passage of this bill. Now is the time to stand up against hate-motivated violence and recognize the shameful damage it has done to our Nation.

We will honor the memory and legacy of Senator Edward Kennedy by passing this Defense authorization conference report, which includes the hate crimes law language. We need to send this to President Obama, who has promised he will sign it into law. I urge my colleagues to join me in support of this important legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

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

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

TRIBUTE TO REV. AND MRS. MELVIN SANDERS

Mr. REID. Mr. President, I rise today to honor Rev. Melvin Sanders and his wife Emma Sanders for 40 years of service to the Las Vegas community. Mr. SANDERS and his wife moved to Las Vegas, NV, from Arizona in 1954. Mr. and Mrs. Sanders entered the business field successfully and have remained involved for over 40 years.

Reverend Sanders and Emma Sanders are known all over Las Vegas for their generosity and warmth toward their neighbors. He and his wife assisted multiple families in financial need and have also provided ministerial and spiritual outreach to the people of the Las Vegas Valley. The Sanders are known as Mom and Dad to literally hundreds of Nevadans. Reverend Sanders and his beloved wife have been married for 57 years and are the proud parents of six children, one of whom tragically preceded them in death. The Sanders' church has been in existence for 40 years.

The House of Holiness Church has been open to its congregation for 40 years, and may best be described as a vibrant and joyful place of worship. The church has Sunday school, afternoon service, evening service, prayer and Bible band as well as Bible study. The House of Holiness may best be described by a verse of Scripture which attests ''Holiness becometh thine house o Lord for ever.'' It is clear that Reverend Sanders and his wife are holy people who try to live as lights for God in our world.

President Obama once said ''Focusing your life solely on making a buck shows a certain poverty of ambition. It asks too little of yourself. Because it's only when you hitch your wagon to something larger than yourself that you realize your true potential.'' This ideal is exemplified by Reverend Sanders and Emma, as together they serve others and help make Nevada a better place. Whether it be through their volunteer efforts with the Salvation Army or by way of their many other selfless endeavors, the Sanders help to better their community.

The Sanders and the House of Holiness Church have a bright future on their horizon. I congratulate the Sanders on 57 years of loving marriage and 40 years of saintly service to the Las Vegas community.

HONORING OUR ARMED FORCES

CAPTAIN BENJAMIN A. SKLAVER

Mr. LIEBERMAN. Mr. President, I wish pay tribute to CPT Benjamin A. Sklaver, U.S. Army, of Hamden, CT, who died of injuries sustained when an improvised explosive device detonated near his dismounted patrol in Murcheh, Afghanistan, on October 2, 2009.

Captain Sklaver was assigned to Headquarters Company, 422nd Civil Affairs Battalion, U.S. Army Reserve, of Greensboro, NC.

Ben Sklaver was a remarkable young man. He lived not only as a true patriot and defender of our Nation's principles of freedom and justice but as a compassionate ambassador of good will and humanitarian assistance to thousands in need.

Though he was called ''Captain'' by those soldiers around him, he was known as ''Moses Ben'' to thousands of Ugandans who now have clean water thanks to Ben's efforts. After serving in Africa and being struck by the number of deaths and illnesses resulting from dirty drinking water, he returned home and founded ClearWater Initiative. In the short time since its inception, with the aid of his parents Laura and Gary, ClearWater Initiative constructed wells for more than 6,500 people, primarily in northern Uganda.

Captain Sklaver served as a messenger of high justice and idealism in the best tradition of American principles and patriotism. Our Nation extends its heartfelt condolences to his mother and father, Laura and Gary Sklaver, his brother Samuel, sister Anna, and fiance Beth, whom I have known since she was a baby because she is the daughter of my dear friends Jim and Barbara Segaloff.

To Ben's family and the people he touched during his life, we extend our