

sovereignty of those who preceded us in the country.

#### TRIBUTE TO BRIAN PERKINS

Mr. MORAN. Mr. President, on a different topic, just for a moment I would like to indicate that it is time, unfortunately, for me to say good-bye to one of my long-time employees, Brian Perkins of Wichita, KS. A Kansan through and through is departing our staff at the end of the year.

Brian came to our office when I was a House Member in 2009 and followed me here to the U.S. Senate. Among the issues that I consider most important as we try to care and work on behalf of Kansans and Americans are issues related to health care and issues related to education. Brian has been front and center in our office, day in and day out, on these issues.

I have many wonderful and qualified staff members, but I think Brian is the role model for all of them, including for me. We have seen Brian time and again step up and act above and beyond the norm. In every setting he is genuine, he is sincere, and he demonstrates his care for Kansans in each and every circumstance. He is intelligent and knows the details of health care and education law, but the compelling factor about Brian is that he cares so much about getting it right and doing things for the right reasons.

I understand there is sometimes a lack of appreciation by Americans across the country for the people who work here. I would exclude me and other Members of Congress from this statement, but I would think that almost without exception all of our staffs are worthy; those who work in the Senate, who work in our offices, and who work in committees are worthy of esteem and respect. These are people who work hard every day for a good and worthy cause. Most of them have an interest in policy or an interest in politics and decided that Washington, DC, the Nation's Capital was a place where they could do something for the good of their country. Brian exemplifies that.

It is not easy to say good-bye to Brian. As Senators, we spend a lot of time with our staff. I want to express my gratitude to him on behalf of my family and me. I wish him and his family, Beth and their children, all the best as they move closer to family. It is another attribute of Brian; I think he has the sense that he hates to leave, but he knows he has a responsibility to his family. That is something Kansans also admire and respect.

Brian, thank you very much for all the hours, days, weeks, months, and years in which you have advanced the good cause of government for the people of our State and the people of our country.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. SASSE. Thank you, Mr. President.

Mr. INHOFE. Will the Senator yield?  
Mr. SASSE. Yes.

Mr. INHOFE. Mr. President, I ask unanimous consent that at the conclusion of the remarks by the Senator of Nebraska and the Senator of Georgia that I be recognized along with the Senator from New Mexico.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### EXECUTIVE OVERREACH AND THE SEPARATION OF POWERS

Mr. SASSE. Mr. President, today I would like to propose a thought experiment. Imagine if President Trump has been propelled into the White House with 300 electoral votes, having won mainly by the force of his personality, by calling BS on this town, and by his promise to "get things done" by acting unilaterally.

The first 100 days are huge. He signs an order to turn the Peace Corps into stone masons to build a southern wall. He shuts the Department of Education, and by Executive order, he turns the Department of Interior into the classiest oil company the world has ever known.

What happens next? Would those who have stayed silent about Executive overreach over the last 7 years suddenly find religion? After years of legislative atrophy, would Congress spring into action and remember its supposed power of the purse?

And what about the Republicans? After having raged against a supposedly lawless President, would they suddenly find that they are OK with a strongman President, so long as he is wearing the same color jersey they are? He may be a lawless son of a gun, some would say, but he is our lawless son of a gun. Would the end justify the means?

The way Congress thinks and talks about Executive power over the last few years has almost been this sophomoric. It has been based overwhelmingly on the party tag of whoever happens to sit in the Oval Office at any given moment. Republicans, Democrats, us versus them—these are the political trenches, and the no man's land lies somewhere between this Chamber and 1600 Pennsylvania Avenue, NW. When your highest objective is advancing partisan lines on a map, it is easy to forgive a President who oversteps his authority, so long as he is your guy and the one with authority is in your party.

This Senator suggests that this is the entirely wrong way to think about this issue. The problem of a weak Congress—which we are—and the growth of the unchecked Executive should be bad

news to all of us. But more importantly than us, this should be bad news for every constituent who casts their votes for us under the impression that the Congress actually makes decisions and doesn't just offer whiny suggestions.

The shrinking of the legislature in the age of Obama should be bad news for all of us for three reasons. First, we have taken an oath to defend the Constitution, and the Constitution invests the legislature with the legislative powers.

Second, the Founders' design of checks and balances actually was and is a good idea. They were struggling to preserve the freedom of the individual and especially of the vulnerable against the powerful—against those who could afford to hire the well-connected lobbyists. The Founders were equally afraid of the unchecked consolidation of power in a king or in the passions of a mob. They understood that human nature means that those in power will almost always try to grab more power, and that base reality hasn't changed over the last 230 years.

Third, under the system that is now emerging, the public is growing more and more frustrated. They think that most of us will be reelected no matter what, and they think that the executive agencies that daily substitute rulemaking for legislating will promulgate whatever rules they want, no matter what, and that the people have no control. People grow more cynical in a world where the legislators who can be fired—that is what elections are for—have little actual power and a world where bureaucrats, who have most of the actual power, cannot be fired. It is basically impossible for the people who are supposed to be in charge of our system to figure out how they would throw the bums out. They ask: Where is the accountability in the present arrangement?

Allow me to be clear about two issues up front. First, this Senator believes that the weakness of the Congress is not just undesirable; it is actually dangerous for America and her future. Second, this Senator thinks so not because I am a Republican and we have a Democrat in the White House; rather, I think this because of my oath of office to a constitutional system, and I will continue to hold this view, having taken this oath, the next time a Republican President tries to reach beyond his or her constitutional powers. Despite these two strongly held views, though, in this series of addresses on the growth of the administrative State and more broadly on the unbalanced nature of executive and legislative branch relations in our time, my goal will not be primarily to advocate. My first goal is just to do some history together.

My goal is primarily to describe how the executive branch has grown and

how Presidents of both parties are guilty of it. But it isn't just that Republicans and Democrats are guilty of trying to consolidate more power when they have the Presidency, although that is true; it is a one-way ratchet. It is also true that Republicans and Democrats are to blame in this Congress for not wanting to lead on hard issues and take hard votes, but rather to sit back and let successive Presidents gobble up more authorities.

My goal is to give all of us who are called to serve in this body a shared sense of some historical moments, how we got to this place where so much of the legislative function now happens inside the executive branch, and to convince my colleagues of both parties that we have to take this power back, regardless of who serves in the White House and what party they are from.

So how did we get to the place where so many giant legislative decisions are now made inside 1600 Pennsylvania Avenue and in the dozens of alphabet soup agencies? To understand that, we have to look briefly at the Founders and what they were trying to accomplish. These were educated men who had studied all forms of government throughout human history. They had a worked-out theory of human nature. They knew that we are created with inherent dignity worthy of respect, that our rights come to us from God via nature, and that government doesn't give us rights; government is just our shared tool to secure those natural rights. At the same time they knew that we also have a disposition to self-interest and a capacity for evil. They observed it throughout all of human history, rulers trying to consolidate more power for their own ends, and this is obviously dangerous.

One of the lessons they drew from their rich historical understanding was the importance of keeping three main functions of government separate. As Montesquieu wrote: "All would be lost if the same man or the same body of principal men, either of the nobles or of the masses, exercised these three powers: that of making the laws, that of executing public resolutions, and that of judging the crimes and disputes among individuals."

The separation of powers could not, of course, be absolute, for the branches had to work together, each power had to counterpose one another. The key was to divide the power among different institutions while ensuring that those institutions could act together as a coherent whole on the basis of what they call "mixed government."

The Constitution that emerged from the Founders' debates and deliberations intentionally enshrines the separation of the powers, and this was a direct result of the Founders' study of human nature and their conclusion that that nature was relatively constant. Men everywhere tend to aggran-

dize power and to use it for selfish ends. When power checks power in the government, the people are better protected. As Tocqueville said when he studied America: Their more constrained government leaves them more room for civil society.

We have a limited government because we mean to enable nearly limitless—that is, more free families, more free inventors, more free churches and synagogues, more free not-for-profits, more free local governments, and so on.

If you have to describe the essence of the American government in one sentence, Lincoln, to paraphrase, would say, it is "of the people, by the people, and for the people." Americans believe that we are free, endowed by our Creator with unalienable—that is unchangeable and untouchable—rights. That is opposite of everything the world had ever held in government until 1776.

This is what American exceptionalism means—not that there is something unique about Americans distinct from people in any other place, but that the American idea is premised on rejecting the idea that the King is the one who is free. The King, after all, had an army, and you didn't, and he could use his power however he wished. His subjects—remember they were not called citizens; they were subjects—were dependent. If they wanted to open a business, to start a church, to publish a book, then they needed to ask the King for permission. All that was not mandatory was forbidden unless the King gave you an exception, unless the King gave you a carve-out, unless the King gave you a waiver.

In America, the opposite was to be true. You are born free, regardless of where you are from or who your parents are, regardless of your bank balance or the color of your skin. In America, if you want to preach a sermon or write a piece of investigative journalism, if you want to say that your elected leaders are losers, if you want to invest in a new app or launch a nonprofit, you don't need the King's permission, for you are free.

About 100 years ago, this idea and our system of separation of powers came under attack. There are three or four large reasons why the era of urbanization, industrialization, and then progressivism and the rise of specialized experts called our constitutional system of limited government into question. We will tackle some of those topics after the holidays. But for now, it is sufficient to say that the Presidency began to grow larger in the first two decades of the 20th century, and the Congress began to lose some of its powers.

It happened because Presidents of both parties were willing to overreach and because the Congress was willing to underreach, to retreat from that

field of competitive ideas, to retreat from our constitutional commitments.

For every TR—Teddy Roosevelt, a Republican—there is an FDR, a Democrat. This should not be a partisan issue, for both sides have been guilty of extensive executive branch overreach. Meanwhile, the professional legislators realized that permanent incumbency is easier if you cede control rather than lead, if you decide not to take the hard votes but just quietly ask the executive branch to make the decisions unilaterally.

Today many in my party argue that no President has ever even contemplated what President Obama regularly does. That is actually not true. Whatever one might think of President Obama's gobbling up of powers, his theories are not at all new. His theories date back to the Progressive Era's disdain for limits of the Constitution, and this is especially evident in the self-conscious Executive expansionism of Teddy Roosevelt, the Republican, and Woodrow Wilson the Democrat.

After the holidays, we are going to spend a little time exploring both of these men and their attempts to marginalize and to intentionally ignore the Congress to—as TR put it—"greatly broaden the use of executive power."

I hope that this look at the rise of the executive branch and its legislating over the next number of months will contribute to the efforts of all of us here together who want to recover and safeguard that constitutional vision.

But in historical terms, the Congress, in the age of Obama, is very weak. This isn't about the current majority leader, and it isn't about the most recent previous majority leader. It is much bigger than that. This institution is arguably the weakest it has been relative to the executive branch at any point in our Nation's 2½ centuries. Others interested in the history of this special place might argue that there is some other moment with greater relative weakness than this current moment. We should have that debate, for we should be discussing how and why this institution became so weak.

We should stop pretending—the constant exaggeration around here as people fake it, pretending that some tiny procedural vote that didn't pass somehow still changed the world. We should stop pretending omniscience across huge expanses of often unknowable executive branch governmental action.

Voters—better, citizens—don't believe us. The lobbyists don't believe it either. They are willing to fake it with you, but they don't really believe you, which is why so many lobbying firms today are expanding most of their efforts in the regulatory—not the legislative—lobbying space, for that is where the action is.

It would be far more useful in this body—not to mention far more believable to the people who we work for—for us to learn to talk openly about how and why this once powerful and still special body became so weak. Congress is mocked, and we should tackle the hows and whys, for the people are not wrong. We should stop this trend, and the first step toward that would be to better understand and to more openly admit the nature of the problem.

I planned this series on the growth of the executive branch for early in 2016 because it would be healthy for the Senate and for our broader public to be wrestling with the duties and constitutional authorities in advance of November's Presidential elections before we will know which party will win. We need to have this conversation now precisely because we don't know which party will win.

Let me be realistic for a minute. I hope it is not pessimistic, but I will be realistic. I actually don't think there is much will in this body to do things like recovering the power of the purse. And even if there were, the will to get beyond R's and D's, shirts and skins Kabuki theatre, as we drift toward a parliamentary system with "winners take all" in the executive branch—the actual act of trying to recover power, the power of the purse and the legislative powers that the Constitution vests in this body—would be very difficult at a time when the public is so cynical and so disengaged because of how dysfunctional this institution is.

I think that the Democrats are likely only to recover a sense of their article I powers if they are looking at a President Trump or a President X or a President Y or whoever the scariest candidate might be to the Democrats.

Similarly, I think the Republicans are most likely prone to forget most of their concerns about Executive overreach if a Republican does defeat Secretary Clinton in November.

I will just end with two brief stories. In the first, FDR was frustrated with the Supreme Court, so he had a solution. He would just pack the Court. Who could stop him? He had control of the Congress, after all.

Well, someone did stop him—Senate Democrats who cared about the Constitution and their oath stepped up.

In one of the other great instances of this place just saying no, regardless of party, LBJ—arguably the most powerful leader until the last 10 years in the history of the Senate, the most powerful leader this place had ever known in his age—became VP and said he would essentially remain majority leader of the Senate at the same time. Again, it was Democrats in this body who said no based on their constitutional responsibilities, not their partisanship. These were men and women who cared more about their country and more about their Constitution and more about their oaths than their party.

I think that all of us in both parties should look to those examples and again be talking in the future about how we emulate them and recover the responsibilities of this body.

The PRESIDING OFFICER. The Senator from Georgia.

#### SUPPORTING OUR VETERANS

Mr. ISAKSON. Mr. President, I think it is important that we pause for a moment at the end of 2015, look back upon the past 12 months and, in particular, look at the Veterans Administration and the veterans who have served our country, looking at the problems that we have solved and the things we have done to better improve those services.

When the year dawned, we had a scandal in Arizona at a Phoenix hospital. We had bonuses being paid to employees who had not performed. We had medical services that weren't available to veterans who had earned them and deserved them. As a Senate, we came together in the Senate Veterans' Affairs Committee, which I chair. We had a bipartisan effort to see to it we addressed those problems.

So for just a second I want everyone to pause and realize what we have done bipartisanly and collectively for those who have served our country and the veterans today.

No. 1, by the end of January, we had passed the Clay Hunt Suicide Prevention for American Veterans Act to deal with the growing problem of suicide with our veterans. It is already working with more psychiatric help available to our veterans, quicker responses for those who seek mental help, better diagnosis of PTSD and TBI, and a reduction in the rate of the suicides that take place in the veterans community. That was affirmative action. It passed 99 to 0—Republicans and Democrats—in the Senate of the United States.

We took the veterans choice bill, which had passed in August of last year, and made it work better for the veterans of our country. In the first 9 months of this year, the Veterans Administration fulfilled 7.5 million more individual appointments for veterans and benefits than they had in the preceding year, all because we made the private sector a part of the VA and allowed veterans to go to the doctor of their choice under certain qualified situations. We made access easier, we made access better, and because of that, we made health care better.

Then we addressed the Denver crisis, and this is the most important thing of all. In January we got this little note from the VA that they had a \$1.3 billion cost overrun on a \$1.7 billion hospital, a 328-percent increase in cost with no promise that it would go down.

Ranking Member BLUMENTHAL, myself, and the Colorado delegation flew to Denver and brought in the contractors and the VA. We made significant

changes. First we took the VA out of the construction business. They had proven they didn't deserve the ability to manage that much money or to build things. Their job was to deliver health care.

We took the construction and put it in the hands of the Corps of Engineers, where construction and engineering was responsible. We told the VA: You may have a \$1.385 billion cost overrun, but if you are going to pay for it, we are not going to borrow from China. You are going to find it internally in the \$71 billion budget of the Veterans Administration. And they did.

By unanimous consent this Senate and the House of Representatives approved the completion of that hospital, the funding of the shortfall, and the management takeover by the Corps of Engineers. Today it is on progress to be there for the veterans of the Midwest and the West in Denver, CO.

Then we dealt with many other programs, such as homelessness and caregiver benefits to our veterans' caregivers, to see to it we have the very best care possible available.

Then we changed the paradigm. The VA had so many acting appointees and so many unfilled positions that they couldn't function as well as they should. So we went in, and we approved Dr. David Shulkin to be the under secretary for medicine. We took LaVerne Council and approved her to be the head of information technology. We took former Congressman Michael Michaud and made him the Assistant Secretary of Labor for Veterans' Employment and Training. We put highly qualified people who knew what they were doing in positions where we had vacancies. We are already seeing a benefit in health delivery services, planning for IT coordination, and, hopefully, interoperability between the Department of Veterans Affairs and the Department of Defense in terms of medical records, which is so important.

But we also did something else. We said we are no longer going to tolerate scandals in the VA or look the other way, and we are not going to pay rewards and bonuses to people who aren't doing the job. As you heard earlier today with Senator CASSIDY from Louisiana and Senator AYOTTE from New Hampshire, with the help of Senator SHERROD BROWN of Ohio, we are going to pass legislation that is going to hold VA employees accountable, have a record if they are not performing, and in the future prevent any Veterans Administration employee who is not doing a job from getting a bonus for a job that is not well done. That is the way it works in the private sector. It ought to be the way it works in the government.

Then we took another problem. We took the problem of the scandal in the VA relocation benefits, which cost hundreds of thousands of lost revenue to