

transfers and debt would be required to continue just this fiscal year 2009 level of spending. The general fund, however, is also broke—incurring a \$1.4 trillion deficit in fiscal year 2009, and the fiscal year 2010 deficit is likely to be about the same. Consequently, when Congress transfers money from the broke general fund to the broke highway trust fund, the debt of the U.S. Government goes up by exactly that amount and immediately counts against the debt limit.

Despite the unaffordability of the baseline, Congress adopted a 2010 budget resolution in May 2009 that allocated amounts to authorizing committees to write a highway bill that would spend more than current law revenues collected by the trust fund. The Senate highway expansion bill, which would restore the \$8.7 billion rescission twice, would not only enact the levels magically assumed by the 2010 budget resolution but would also increase outlays by another \$62 billion over 10 years, bringing the total draw on the general fund, the debt, and future generations to nearly \$150 billion, just from a so-called 6-month extension bill.

The authorizers brush off any deficit concerns by saying that, under the Byzantine system of split jurisdiction with the appropriators, they don't control outlays and so there is no "pay-go" problem with their expansion bill. But it's too late to raise any objection if you wait to measure highway program outlays for budget enforcement until they are triggered by an appropriations bill, since the outlays are already baked into the baseline and into the allocations of the appropriators. The only point where taxpayers or their watchdogs can measure whether proposed future spending is higher than current law is at the authorization stage. Extra special vigilance is required whenever authorizers claim they just want to enact a "simple clean extension."

When Republicans controlled Congress in 1998, they enacted a bipartisan highway bill dedicated to spending all gas tax revenues only on highways. When they enacted the next highway bill in 2005, it was also a bipartisan goal to spend every penny of gas tax revenue. They succeeded beyond their imaginations. And now that Democrats are responsible for writing the next highway bill, their proposal is to spend all the gas taxes plus an additional \$150 billion. This can only be done by increasing the Nation's debt, in other words—handing the bill to our children so today's politicians can take credit for highway projects.

I ask unanimous consent that the components to which I referred be printed in the RECORD.

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

COMPONENTS OF THE \$20.8 BILLION IN HIGHWAY SPENDING ABOVE THE CBO BASELINE

The \$20.8 billion consists of 4 pieces:

\$11.9 billion from the highway title of the bill, made up of \$8.7 billion from restoring

the funds lost due to the rescission enacted in SAFETEA-LU and \$3.2 billion from restoring the funds lost due to the rescission enacted in the FY09 Transportation/HUD appropriation bill;

Another \$8.7 billion in additional appropriations to again restore the amount that was rescinded on September 30, 2009, just to make sure;

\$0.1 billion for the safety title of the bill; and

\$0.1 billion for the transit title of the bill.

The \$8.7 billion appears twice in the bill:

In Section 101, which provides highway funding for FY10 and beyond at the FY09 level but defines the FY09 level as if no rescissions occurred in FY09, and

In Section 103, which adds another \$8.7 billion.

NOMINATION OF JUDGE ANDRE M. DAVIS

Mr. CARDIN. Madam President, I would like to address the concerns stated by the Senator from Oklahoma, Mr. COBURN, and the Senator from Alabama, Mr. SESSIONS, about Judge Davis's record when it comes to criminal cases. His concerns seem primarily rooted in six criminal case reversals that appear in Judge Davis's record. As a Federal judge over the past 14 years, Judge Davis has presided over approximately 5,300 cases. Of that number, Judge Davis has presided over approximately 4,300 cases that went to verdict or judgment based on a trial or decision he made. My colleagues are focusing on just a handful of cases to argue that Judge Davis should not be elevated to the Fourth Circuit.

While the number of reversals on criminal evidentiary matters appearing in Judge Davis's record that my colleague has mentioned is small, Judge Davis has directly addressed Senators' questions related to each of these reversals, expressing his commitment to applying the law to the facts impartially and fairly, while respecting the role of the appellate courts in our judicial system and their decisions in all cases. Following his confirmation hearing in the Judiciary Committee in April, which I chaired, our committee reported him out favorably with a strong bipartisan vote of 16 to 3. This overwhelming, bipartisan approval indicates that Judge Davis is well-qualified to be a U.S. Circuit Judge for the Fourth Circuit. Out of the 5,300 cases over which Judge Davis has presided, these six cases are hardly cause for the concern my colleagues have expressed. Later I want to also mention some criminal cases in which Judge Davis's stiff criminal sentences were upheld by the Fourth Circuit, along with convictions obtained after jury trials. However, to make the record clear, I will review in detail Judge Davis's responses to some of the half a dozen cases noted by my colleagues.

In *US v. Bradley*, Judge Davis accepted several plea agreements with the defendants, who ultimately pleaded guilty but later, on appeal, argued that their pleas were not voluntary because the court impermissibly participated

in plea negotiations. The Fourth Circuit did "not suggest that [Judge Davis] improperly intended to coerce involuntary guilty pleas," but found plain error and remanded the case for assignment to a different district judge. Upon questioning by the committee, Judge Davis said that he became involved with—but did not interfere with the plea process—at the invitation and encouragement of defense counsel. He ultimately concluded that he shouldn't have gotten involved with the process at all. He said he believed, with the benefit of hindsight, that his involvement in facilitating the guilty pleas in this case was inappropriate and that the Fourth Circuit was correct to say so.

In *US v. Custis*, Judge Davis granted the defendant's motion to suppress evidence discovered in a residential search on the grounds that the warrant was defective and insufficient. The Fourth Circuit reversed, holding that probable cause supported the warrant. While Judge Davis told the committee he does believe he read the affidavit in a common sense manner, he fully accepts the appellate court's ruling in this case.

In *US v. Kimbrough*, Judge Davis said he accepts the appellate court's ruling rejecting his legal conclusion that the police permitted the defendant's mother to question him under circumstances which the police couldn't have done so without first administering customary warnings. He agrees that warnings are required only when official interrogation takes place, but not when private interrogation takes place.

In *US v. McNeill*, Judge Davis granted a motion to suppress the defendant's confession on the grounds of an unlawful arrest. Judge Davis explained to the committee that the principal issue before him was whether, for a warrantless misdemeanor arrest, the fourth amendment required that the misdemeanor be committed in the officer's presence. He concluded that the answer was "yes" in this case, and that no misdemeanor had been committed in the officer's presence as of the moment of arrest. While Judge Davis explained that the Fourth Circuit's holding presented an argument and precedent that had not been presented to him, he fully accepted the appellate court's ultimate ruling in this case.

In *US v. Dickey-Bey*, Judge Davis also suppressed evidence arising out of the interception of cocaine by police for lack of probable cause to arrest the defendant. He has told us that he fully accepts the appellate court's rejection of his legal conclusion that the evidence presented at the hearing on the motion to suppress was insufficient, and remains committed to adhering to the fourth amendment requirement to make commonsense assessments of objective facts, taking into account the totality of the circumstances.

I found Judge Davis's responses to the Judiciary Committee's questions

about these six criminal cases to be candid, honest, and forthright. Judging by the overwhelming bipartisan support for his approval in the Judiciary Committee, so did many of my colleagues, on both sides of the aisle. Judge Davis has told us that in every case that has ever come before him, and there have been over 5,300 of them, he has done his best to determine the facts and to apply the law to the facts impartially and fairly.

Indeed, among the 5,300 cases that Judge Davis has presided over, he has a clear record of using a moderate and fair approach to criminal cases. He has presided over numerous important criminal trials that have resulted in convictions affirmed by the Fourth Circuit, and he has also granted motions to suppress evidence obtained in violation of the rights of the accused. So let's look at his record more broadly to get a clearer picture of his many years on the bench.

For example, in *US v. Ulrich*, Judge Davis handed down convictions for four defendants for mail fraud in connection with a real estate flipping scheme, a ruling that was affirmed by the Fourth Circuit in June 2007. In 2001, in *US v. Montgomery*, the Fourth Circuit affirmed his convictions related to a 10-week, multidefendant trial in a narcotics conspiracy prosecution. In 1998, the Fourth Circuit affirmed his conviction handed down in a murder prosecution in *US v. Gray*.

As a Fourth Circuit Judge, Judge Davis has expressed that he will follow the precedents of the Supreme Court and the circuit, and will continue to apply the law to the facts of each case impartially and fairly. His record as a district judge clearly bears out this commitment.

I thank my colleagues for supporting this nomination.

RECOGNIZING NEBRASKA'S ARMY NATIONAL GUARD

Mr. JOHANNIS. Madam President, I rise today to salute the 313th Medical Company of Nebraska Army National Guard on its upcoming and second deployment to Iraq. The 313th Medical Company is about to embark on an important mission, and I want its members to know how thankful I am for their service and how proud I am of their professionalism and dedication.

Thanks to the sacrifices made by the 313th during previous deployments and those of so many other servicemen and women, 29 million Iraqis are free, Iraq is the most democratic country in the Arab world, and Iraq has become an ally in the war on terror. As conditions continue to improve in Iraq, with Iraqi armed forces and police taking the lead on security, the need for our presence in Iraq is diminishing. However, we must be vigilant in successfully completing the transition. Medical support from the 313th will be vital to ensuring our achievements in Iraq are lasting.

Members of the 313th are some of the best-trained and prepared soldiers in

our Nation's history. Some of them have already been deployed one or more times and their experience will undoubtedly be invaluable to mission success. The equipment they use is the best in world. But, ultimately, their individual patriotism and dedication has made and continues to make the difference in Iraq.

I also thank the families of the 313th. They will also endure hardships in the name of freedom and security. Their support will undoubtedly enable the unit to focus on the mission. The Department of Defense and many private organizations have established programs to assist families while their loved ones are fighting overseas. My staff and I stand ready to assist them if they need help accessing these resources.

The thoughts and prayers of all Nebraskans and of grateful citizens across this great Nation go with the 313th. I could not be more proud of them, and look forward to seeing them all back in a year. May God bless the 313th, and protect them and their families as they answer the country's call to duty.

TRIBUTE TO LAURENCE CAROLIN

Mr. LEVIN. Madam President, today I would like to tell the story of a young Michigan man who gives us all great reason to be proud.

Laurence Carolin from Dexter, MI, was only 13 years old when doctors discovered an inoperable tumor in his brain. After intensive radiation and chemotherapy regimens, the tumor still grew. Today Laurence is 15. He has fought the cancer valiantly, but it is the larger fight he has waged for the impoverished around the world that moves me to speak today.

Laurence was born in South Korea, just south of the demilitarized zone. When he was 5 months old he was adopted by Lisa and Patrick Carolin, who brought him to their home a world away in Michigan. There, with access to education and health care, he experienced what he described as "the kind of start that I wish everyone could have."

Warning signs emerged in 2007 when Laurence started to get headaches and began to fatigue easily. Two days after Christmas he and his family received the diagnosis of the glioblastoma multiforme.

Many of us would react to this diagnosis with despair and self-pity. But not Laurence. When he was offered the opportunity to fulfill a dream by the Make-A-Wish Foundation, Laurence did what many 13-year-old boys might do: asked to meet his favorite rock star, U2's lead singer Bono. When told that might not be possible, Laurence asked instead that a donation be made to the United Nations Foundation to combat AIDS, tuberculosis and malaria in Africa. Characteristically, he said, "I should have thought of my next wish as my first wish. It's a much better wish. I have everything I need."

That selfless act was only the start of the great work Laurence has performed in his efforts to help fight poverty in his community and around the world. When a class at Mill Creek Middle School in his hometown wanted to raise donations for him, Laurence instead asked the class to run a food drive for the needy in Michigan. Today Laurence is organizing efforts in his community to support Nothing But Nets, a U.N. Foundation campaign designed to stop the spread of malaria across Africa.

Laurence says that though the cancer has weakened him, it has given him perspective on suffering that is felt around the world. His efforts to fight his cancer make him admirable. His actions to help the world's poor make him nothing less than heroic. His example calls us all to action, reminding us in his words that "it's our ethical and moral obligation to help others who are in need."

An avid guitar player, I am happy to report that Laurence did get that meeting with Bono and the rest of U2 after all, at a concert earlier this fall. Laurence's inspirational work gives new meaning to the band's music, which helped open his eyes to the problems in this world.

Laurence does not want to leave his work left unfinished. In his words, "Death isn't a big deal to me. It's just another part of life. Some people die earlier than others. . . . I can accept dying, but I don't want to die before there's an end to extreme poverty in Africa."

I thank Laurence for the example he sets, I commend him for his courage in confronting his disease, and I share his hope that someday soon the twin plagues of disease and poverty will be lifted.

NOMINATION OF DAVID GOMPURT

Mr. FEINGOLD. Madam President, I voted to confirm David Gompert to be Deputy DNI during the Senate Select Committee on Intelligence's, SSCI, consideration of his nomination. He is highly qualified, and the responses he provided to questions from members of this committee have generally demonstrated a strong grasp of many of the issues he will face. However, one issue—the statutory obligations to notify the full committee of intelligence activities—requires further comment. I voted against the confirmation of Robert Litt to be the ODNI's general counsel and that of Stephen Preston to be CIA's general counsel because of their misinterpretation of the National Security Act. Specifically, they misread the "Gang of Eight" provision, which is included only in section 503 of the act covering covert action, to apply to section 502, which covers all other intelligence activities. When I asked Mr. Gompert about this, he acknowledged that the provision is not in section 502 but nonetheless cited the views of the general counsel.