

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

#### CLEARLY QUALIFIED

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

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

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

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

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

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

DAVID W. OGDEN

DEPUTY ATTORNEY GENERAL

Birth: 1953; Washington, DC.

Legal Residence: Virginia.

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

Employment: Law Clerk, Hon. Abraham D. Sofaer, U.S. District Court Judge for the Southern District of New York, 1981–1982; Law Clerk, Hon. Harry A. Blackmun, U.S. Supreme Court, 1982–1983; Associate, Ennis, Friedman, Bersoff & Ewing, 1983–1985, Partner and Attorney, 1986–1988; Partner and Attorney Jenner & Block, 1988–1994; Adjunct Professor, Georgetown University Law Center, 1992–1995; Deputy General Counsel and Legal Counsel, Department of Defense, 1994–1995; Department of Justice, 1995–2001, Asso-

ciate Deputy Attorney General, 1995–1997, Counselor to the Attorney General, 1997–1998, Chief of Staff to the Attorney General, 1998–1999, Acting Assistant Attorney General for the Civil Division, 1999–2000, Assistant Attorney General for the Civil Division, 2000–2001; Partner and Attorney, Wilmer Cutler Pickering Hale and Dorr LLP, 2001–present; Agency Liaison for the Department of Justice, Presidential Transition Team, 2008–2009.

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

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

The PRESIDING OFFICER. The Senator from Montana.

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

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

#### HEALTH CARE REFORM

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

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

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

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

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

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

Director Orszag said if we do not act, then we will further perpetuate a system in which workers' take-home pay is unnecessarily reduced by health care costs. Director Orszag said if we do not act, then 46 million uninsured Americans will continue to be denied ade-

quate health care. According to the Center for American Progress, the ranks of the uninsured grow by 14,000 people every day—14,000 more people uninsured every day. And Director Orszag said if we do not act, then a growing burden will be placed on State governments, with unanticipated consequences. For example, health care costs will continue to crowd out State support of higher education. That would have dire consequences for the education of our Nation's young people.

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

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

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

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

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

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

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

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

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

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

The majority of Americans support protecting children from pornography exploitation, protecting children from Internet pornography in libraries, and allowing for parental notification before a minor's abortion. So do I. I feel very strongly about protecting women

and children from the evils of pornography. I have always been a strong supporter of efforts to restrict the dissemination of pornography in all environments. As a parent and grandparent, I am particularly concerned that children will be exposed to pornographic images while pursuing educational endeavors or simply using the Internet for recreational purposes. Throughout my tenure in Congress I have supported bills to protect children from inappropriate exposure to pornography and other obscenities in the media, and I support the rights of parents to raise children and to be active participants in decisions affecting their medical care. Mr. Ogden has consistently taken positions against these child protection laws and this troubles me.

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

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

#### TRANSPORTATION TROUBLES

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

off because it can depreciate the property. So the city still gets to use its subway system because they are leasing it back.

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

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

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

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

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

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

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

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