

may share the views of some of his clients—of those who have supported pornography—and I cannot trust him to enforce some of our Nation's most important antichild pornography laws—laws that he has a history of arguing are unconstitutional. That is a position he took as a lawyer: that these are unconstitutional, antichild pornography laws.

In an amicus brief David Ogden filed in *United States v. American Library Association*, he argued that the Children's Internet Protection Act, which requires libraries receiving Federal funds to protect children from online pornography on library computers, censored constitutionally protected material and that Congress was violating the first amendment rights of library patrons. Now, that was the position David Ogden took.

In a response to written questions submitted by Senator GRASSLEY after his confirmation hearing, David Ogden indicated he served as pro bono counsel—for people who are not lawyers, that means he did it for free—in this case, further calling into question his personal views. If you are willing to represent a client for free, it seems to me there is some discussion or possibility you may really share your client's views on this issue regarding access to online pornography at libraries.

The Children's Internet Protection Act passed this body, the Senate, by a vote of 95 to 3 back in 2000. Ninety-five Members of this body believed the Children's Internet Protection Act was an appropriate measure to protect children from Internet filth and was constitutional because our duty, as well, is to stand for the Constitution and to abide by the Constitution and uphold it.

How can we trust David Ogden to enforce this law when he argued against it as a pro bono counsel?

In another very disturbing case, *Knox v. the United States*, in which Stephen Knox was charged and convicted for violating antichild pornography laws—these are child pornography laws but child pornography laws which I think are in another thoroughly disgusting category—David Ogden filed a brief on behalf of the ACLU and others challenging the Federal child pornography statutes. At issue in this case was how child pornography is defined under the Federal statutes.

I am sure many of my colleagues will remember the controversy that surrounded this case. As you may recall, Stephen Knox was prosecuted by the Bush Justice Department—during the first Bush Presidency—and ultimately convicted, after U.S. Customs intercepted foreign videotapes he had ordered. By the time his conviction was appealed, however, President Clinton was in office, and the Justice Department changed its position on Knox's conviction. Drew Days, Clinton's Solicitor General at the time, chose not to defend the conviction of Knox.

The Clinton Justice Department said: Yes, he is convicted, but we are not going to prosecute this. But the Senate, by a vote of 100 to 0—which is really rare to get around this place—and the House, by a vote of 425 to 3, rejected the Clinton Justice Department's interpretation of the child porn laws. The Senate unanimously said: Prosecute this. Prosecute this child pornography case.

David Ogden was on the wrong side of this case. I urge my colleagues to consider whether a man who has taken such extreme positions on pornography, and especially child pornography, can be trusted to enforce Federal laws prohibiting this cultural toxic waste. I am not convinced that David Ogden does not share the views he advocated in the Knox case, and I am concerned that at the very least he may be sympathetic to the views of his former clients.

I hope David Ogden proves me wrong and he demonstrates a strong willingness to enforce Federal child pornography and obscenity laws. These laws are on the books. I hope he enforces them. But I cannot in good conscience vote in favor of his nomination given his past record and the positions he has taken. His past positions have been far too extreme and outside of the mainstream for me, or I think for most Americans, and certainly for most parents, to be able to support him to be No. 2 in command of the Justice Department that enforces these laws.

I realize many of my colleagues, and likely the majority, are going to cast their votes in favor of David Ogden. Before they do, I ask them to please consider the negative impact pornography has had—and particularly child pornography has had—on this society and the important role the Justice Department plays in protecting children from obscene and pornographic material, particularly child pornography.

The infiltration of pornography into our popular culture and our homes is an issue that every family now grapples with. Once relatively difficult to procure, it is now so pervasive that it is freely discussed all over. Pornography has become both pervasive and intrusive in print and especially on the Internet. Lamentably, pornography is now also a multibillion-dollar-a-year industry. While sexually explicit material is often talked about in terms of "free speech," too little has been said about its devastating effects on users and their families.

According to many legal scholars, one reason for the industry's growth is a legal regime that has undermined the whole notion that illegal obscenity can be prosecuted. The Federal judiciary continues to challenge our ability to protect our families and our children from gratuitous pornographic images, and we must have a Justice Department that is committed to combating this most extreme form of pornography.

Perhaps the ugliest aspect of the pornographic epidemic is child pornog-

raphy. This is where Mr. Ogden's record is most disturbing because he is outside of even the minimal consensus on pornographic prosecutions that exist. Children as young as 5 years old are being used for profit in this, regrettably, fast-growing industry. While there has been very little consensus on the prosecution of even the most hardcore adult pornography, there has been widespread agreement on the necessity of going after the purveyors of child porn. Despite this agreement, this exploitative industry continues to thrive. Every day, there are approximately 116,000 online searches for child pornography—116,000. I think we can all agree that we have a duty to protect the weakest members of our society from exploitation and from abuse.

I fear David Ogden will be a step backward—and certainly sends that signal across our society and to our parents and our families in this effort to combat this most dangerous form of pornography. For those reasons, I will be casting a "no" vote on his confirmation.

Madam President, I yield the floor.

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.

The PRESIDING OFFICER. The Senator from Utah is recognized.

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

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

#### OBAMA BUDGET

Mr. HATCH. Madam President, a couple weeks ago the Obama administration released an outline of its budget plan for fiscal year 2010. The budget is a plan that reflects the President's agenda and priorities for the fiscal year.

The document with which most of our colleagues are quite familiar with by now is entitled, "A New Era of Responsibility—Renewing America's Promise." While this is a nice title for which I commend the President, it does not sound like the appropriate name for a work of fiction. Because of the impact of the policies outlined in this budget, a more fitting title might be, "How To End America's Global Leadership and Prosperity Without Really Trying." Even better, it sounds more like a 1973 Disney animation entitled "Robinhood."

In this Oscar-nominated movie about a legendary outlaw, I think a colloquy between Little John and Robinhood sums it up best. Little John said:

You know somethin', Robin? I was just wonderin', are we good guys or bad guys? You know, I mean our robbing the rich to give to the poor.

Robinhood responded:

Rob? Tsk, tsk, tsk. That's a naughty word. We never rob. We just sort of borrow a bit from those who can afford it.

Simply stated, this budget declares war on American jobs and on the ability of American businesses to save or

create them. It is bitingly ironic, since on the first page of the budget message the President said that the time has come, “not only to save and create new jobs, but also to lay a new foundation for growth.”

The only thing this budget lays the foundation of growth for is more Government spending and more taxes.

Indeed, this budget is so bad, it is hard to know where to begin to describe what is wrong with it. But let's start with the tax provisions beginning on page 122 of the budget. Right there in black and white are the administration's plans to increase taxes on American businesses—the only entities that can create and save jobs on a permanent basis—by a minimum of \$1.636 trillion over 10 years. I say “minimum” because the total amount may be much higher, as I will explain a little later in my remarks.

This budget is a masterpiece of contradiction. For example, it promises the largest tax increases known to humankind while promising tax cuts to 95 percent of working families. In reality, the President wants to play Robinhood by redistributing trillions of dollars from those who already pay the lion's share of this Nation's income taxes and give a significant portion of it, through refundable tax credits, to those who now pay no income taxes at all.

The budget promises millions of jobs to be saved or created but takes away the very means for the private sector to perform this job creation through increases in capital gains taxes, carried interest, and the top individual rates where most business income is taxed.

The budget is also contradictory to stimulating the economy. On one hand, it claims to provide \$72 billion in tax cuts for businesses, but on the other hand, the budget raises \$353 billion in new taxes on businesses, not counting the hundreds of billions—perhaps trillions—more in so-called “climate revenues.”

The budget decries the role of housing in bringing about our economic crisis. It reduces the value of millions of homes by reducing the value of the home mortgage interest deduction. The budget talks about struggling families but reduces the incentive for taxpayers with the means to donate to charity to do so.

The President claims this budget is free from the trickery and budget gimmicks that have characterized those of previous administrations, but he then assumes the extension of all the 2001 and 2003 tax relief and the AMT patch into the baseline and then eliminates some of the same tax relief and counts it as new revenue. I could go on and on about other contradictions and ironies in this budget outline, and this is likely just a preview. Wait until we get all the details.

The budget outline indicates tax increases of \$990 billion over the next 10 years in so-called “loophole closers” and “upper income tax provisions dedicated to deficit reduction.” This is in

addition to at least \$646 billion more in so-called “climate revenues.”

In short, President Obama is proposing to raise taxes at a time when we are in a recession. The last time we raised taxes during a recession, we went into a depression.

The President claims these tax hikes will not take effect until 2011, when he believes the economy will recover. This is in itself a huge contradiction. Why is it not a good idea to raise taxes this year, but it is OK to do so 2 years hence, when most economists believe we will just begin to recover from the most serious downturn since the 1930s? Huge new taxes in 2011 may be as dangerous to our long-term recovery as putting them in place right now. I find it very interesting that the new administration and many of our colleagues on the other side of the aisle recognize tax increases have a negative effect on economic growth. So please explain again why they would be a good idea 2 years from now. If the President believes the economy will have recovered by 2011, then why does he keep using the fear of a looming, deep recession to push forward his spending projects? Is it because he knows the economy will rebound with or without the “Making Work Pay” tax credit for funding for infrastructure? This budget would make the Making Work Pay tax credit permanent. If this credit, which costs the taxpayers \$116 billion for just 2 years in the stimulus bill and would cost more than half a trillion dollars over 10 years in this budget, is a stimulus measure, as we were told, why is it included in the President's budget beyond 2011, when he predicts the economy to recover?

Let us take a look at the single largest tax increase proposal in the history of the world—a huge tax on middle-income people—the so-called “climate revenues” that are listed at \$646 billion over 10 years. The proponents of this job-killing idea call it a “cap-and-trade” auction, but it is, in reality, nothing more than a gargantuan new tax on American businesses. Moreover, a close look at the footnotes of the tables reveals that this \$646 billion is not even the extent of this new tax on American industry. The footnotes indicate this is just the portion of the new tax hike that will be used to pay for the Making Work Pay credit permanent and for clean energy initiatives. Additional revenues will be used to “further compensate the public.” It sounds like more income distribution to me.

In a briefing of staff last week, top administration officials admitted these revenues could be two to three times higher than the \$646 billion listed in the budget. That means this tax could reach as high as \$1.9 trillion—a \$1.9 trillion tax increase. That is insane. So what we have in this first part is a brandnew tax increase on the industrial output of the United States of America, a tax that has never been levied before and which could raise as

much as \$1.9 trillion over 10 years, and this budget says it is all right because the proceeds of the new tax will go to “compensate the public.”

Now, this \$1 trillion-plus tax increase will mean businesses will have less money to hire new employees or pay salaries of existing employees. How are we going to compensate the hundreds of thousands or perhaps millions of workers who are employed by these industries when they lose their jobs because their companies can no longer compete because of this new tax? Will that be part of “compensating the public”?

The next highest category of tax increases is almost as bad. The budget outline indicates it would raise \$637 billion over 10 years by allowing some of the job-creating tax cuts from 2001 and 2003 to expire at the end of 2010. Now, these massive tax increases are touted as hitting only the so-called wealthy in our society; those who, in another part of the budget—page 14—are referred to as the few “well off and well connected” on whom the Government “recklessly” showered tax cuts and handouts over the past 8 years.

What this gross mischaracterization does not say is, many of these same individuals are the ones who have the ability to save or create the very jobs we need to turn our economy around.

What the Obama administration and many Democrats in Congress refuse to recognize is the fact that a majority of the income earned by small- and medium-sized businesses in America is taxed through the individual tax system. In other words, many of these small businesses pay their taxes as individuals, and they will thus be subject to these huge tax increases.

According to the National Federation of Independent Businesses, over half the Nation's private sector workers are employed by small businesses. Moreover, 50 percent of the owners of these businesses fall into the top two tax brackets which are the ones being targeted for big tax increases by the Obama budget. Let me repeat that. Fifty percent of the owners of these small businesses fall into the top two tax brackets, which are the ones being targeted for the big tax increases by the Obama budget.

The Small Business Administration tells us that 70 percent of all new jobs each year are created by small businesses. Why in the world would we want to harm the ability of America's job creation engines—small businesses—to help us create or save the jobs we so badly need right now? Why would we want to harm their ability? This is sheer folly.

President Obama claims he is providing tax relief to 95 percent of Americans. If you look closely, you will see that the budget raises the cost of living for lower wage earners. How? The budget raises \$31 billion in taxes from domestic oil and gas companies. At a time when we are trying to decrease our dependence on foreign oil, we are

forcing oil companies to raise the price of gas at the pump. This increase in gas prices at the pump will have a greater impact on lower income wage earners than on anyone else.

I think this cartoon illustrated by David Fitzsimmons of the Arizona Daily Star, with a few of my edits, says it best: We will create 4 million jobs out of one side, and we will raise taxes on those who create those jobs on the other. That is a little harsh, but it kind of makes its point. I don't like to see our President depicted this way, but I have to admit it is a pretty good cartoon.

The budget outline also opens the door to universal health care by creating a 10-year, \$634 billion "reserve fund" to partially pay for the vast expansion of the U.S. health care system, an overhaul that could cost as much as \$1 trillion over 10 years. This expansion is financed, in part, by reducing payments to insurers, hospitals, and physicians. Already I am being deluged by hospitals and physicians. How are they going to survive if they get hammered this way? Now, most people don't have much sympathy for hospitals and physicians, but it does take money to run those outfits, and to take as much as \$1 trillion over 10 years by reducing payments in part to insurers and hospitals is pretty serious. Highlights of these reductions include competitive bidding for Medicare Advantage, realigning home health payment rates, and by lowering hospital reimbursement rates for certain admissions.

Almost one-third of the health reserve fund would be financed by forcing private health plans participating in the Medicare Advantage Program to go through a competitive bidding process to determine annual payment rates. I wish to remind my colleagues that in the past, Medicare managed care plans left rural States due to low payments. Utah was one of the States that was severely impacted. I know my State was hurt by it.

Many other States were hurt as well, especially rural States. To correct this situation, Members of Congress on both sides of the aisle worked with both the Clinton and Bush administrations to address this issue in a bipartisan manner by creating statutory language to create payment floors for Medicare Advantage Plans. As a result, Medicare beneficiaries across the country have access to Medicare Advantage Plans, and 90 percent of them seem to be happy with those plans.

By implementing a competitive bidding process for Medicare Advantage, choice for beneficiaries in the Medicare Advantage program will be limited.

It is unclear whether Medicare Advantage programs will continue in rural parts of our country—areas such as Utah, where Medicare payments are notoriously low. You can go on and on with the many small States that are represented by Senators on the Finance Committee—including me.

I served as a key negotiator on the House-Senate conference that created

the Medicare Advantage program. I cannot support any initiative that I believe will limit beneficiaries' choices in coverage under this program.

Another outrage and irresponsible attack on U.S. jobs is contained in the proposal the budget calls "implement international enforcement, reform deferral, and other tax reform policies." This line item is estimated to raise \$210 billion over 10 years. This vague description can really mean only one thing: The Obama administration plans to tax the foreign subsidiaries of all U.S.-owned businesses on their earnings whether they send the money back to the United States or keep it invested in a foreign country. This is similar to requiring individual taxpayers to pay taxes each year if the value of their home or investments goes up even if they do not sell them.

The real danger of this proposal, however, is its impact on U.S. companies and their ability to compete in the global marketplace. Almost all of our major trading partners tax their home-based businesses only on what they earn at home. The rest of the world taxes it that way. They don't tax their businesses for moneys earned overseas that don't come back. Those moneys are taxed there. The U.S. system is practically the only worldwide system in the industrialized world.

What this means is that an American company that is competing for business in some other nation—let's say India—may have competitors from France, the UK, and Germany. Because these other nations don't tax their companies on profits earned in countries other than the home country, they would enjoy a significant competitive advantage over any U.S. company, which, under the Obama proposal, would have to pay U.S. taxes on any profits earned. The result would simply be that multinational businesses would shun the United States and relocate elsewhere, as many have already done. A lot of Fortune 500 companies have left our country, in part because of tax ideas such as this. They don't want to go. U.S. firms will become ripe for international takeovers, and we would lose our global leadership, prestige, market share, jobs, and the bright future our country has enjoyed for decades.

In 1960, 18 of the world's largest companies were headquartered in the United States. Today, just eight are based in the United States. We have the largest corporate tax rates of any major country in the world. Can you imagine, if we reduced those rates, as I and other Republicans have suggested, from 35 to 25 percent, the jobs that would be automatically created? I cannot begin to tell you.

In 1960, we had 18 of the world's largest companies right here in the United States. Today, we only have eight based in the United States, partly because of these stupid, idiotic tax changes. If we pass this proposal, within a short time, there will be none. I

predict that. The United States will be the last place on Earth businesses will want to locate.

I will show you this poster: Effect of Taxing U.S.-owned Subsidiaries. The United States has the second highest corporate tax rate. Again, in 1960, 18 of the world's largest companies were headquartered here. Today, only eight of the world's largest companies are headquartered in the United States. This is part of the reason.

The President believes our Tax Code includes incentives for U.S. businesses to ship jobs overseas, and this proposal is an attempt to end this practice. However, the evidence shows that our tax laws do not lead to U.S. job loss but to increases in U.S. employment when companies invest overseas.

We have all heard the accusations, time after time, right here on the Senate floor. It goes something like this: U.S. companies close their plants here, laying off all of their workers, just to move their production to a lower wage paying country, where those same goods are made with cheap labor and then shipped right back into the United States. Well, these accusations are largely unfounded. In 2006, just 9 percent of sales of U.S.-controlled corporations were made back to the United States. Our companies are not sending production jobs for U.S. products overseas. Instead, they are making products overseas for the overseas market, and they are doing it for solid business reasons, such as transportation savings, not for tax reasons.

Moreover, the evidence shows that the U.S. plants of companies without foreign operations pay lower wages than domestic plants of U.S.-owned multinational companies. This means companies that have overseas operations pay more to their U.S. workers than those that do not invest in other nations.

Studies by respected economists show that increasing foreign investment is associated with greater U.S. investment and higher U.S. wages. Overseas investment by U.S. companies is generally a good thing for the U.S. economy and for U.S. jobs. Attacking the deferral rule, as the Obama budget proposes, would do horrendous damage to our ability to compete in an increasingly global economy and will lead to our loss of world industrial leadership.

Just this week, I talked to one of the leading pharmaceutical CEOs in America. This leader and his family all came to America. They love this country. They don't want to leave. He made it very clear that if this type of tax law goes through, he is going to move to a more fair country. He will have to in order to compete. He probably will move his operations to Switzerland, where they are not treated like this. He doesn't want to do that—leave this beloved country—but to compete he would have to. All those jobs would go from here to there. I don't know who is thinking about this in the Obama administration, but they better start thinking about it.

I could go on about why this is the worst budget proposal I have seen in all of my nearly 33 years in this body. However, I will simply focus on one more reason.

President Obama has said this budget would allow us to reduce the Federal deficit by half over the next 4 years. While this is a noble goal, unfortunately, it is not one he can claim. Using the only common baseline there is, which assumes no change to current law, the deficit would decline—if we had no changes in current law—from \$1.428 trillion in 2009 to \$156 billion in 2013. That is including the expiring tax cuts. To put it in other words, if we do nothing, according to CBO, the deficit would decline by 90 percent over the next 4 years. Let me say that again. If we do nothing, the Federal deficit would decline by 90 percent, according to the estimates. President Obama proposes to reduce that decline to 50 percent by adding more Government spending.

I wish President Obama would follow his own lofty rhetoric. He says he wants to save and create jobs. We all do. But the way to do it is not through the job-killing policies found in this budget. He said it is time for honest and forthright budgeting. But this document is just a means for him to put forth his ultraliberal philosophy while claiming to be fiscally responsible. As you can see from this cartoon, the President talks the talk, but this budget doesn't walk the walk. Again, I know he probably laughs at these things, as I do when they do it to me. I don't want to treat the President like that, but it does make the point. He talks bipartisanship, he talks fiscal responsibility, but everything they are doing can be called irresponsible by good people who understand economics.

Look, I happen to like this President. I happen to want him to succeed. I care for the man. He is bright, articulate, and charismatic. I think that is apparent by the way the general public treats him. They want him to succeed. I do too. He doesn't write this budget himself. I don't blame him for this, except it is under his auspices that it is being touted. He has bright people around him. It is tough to find people brighter than Larry Summers; I think a lot of him. JOE BIDEN is very bright, and he knows a little bit about this. JOE admits that he is a self-confessed liberal. They are allowing this to go forward at a time when they are going to hurt this country rather than help it. I think we have to point some of these things out, and hopefully the President will see some of these things and say: Holy cow, I didn't realize this was in the budget. It is pretty hard because most people don't know what is in the budget. I doubt he has had a chance to read it. I want him to succeed, but he is not going to succeed with this kind of a budget.

This country is resilient, and maybe the country will pull out of this no matter what he does. I think we are in

very trying times. This is the greatest country in the world. I don't want to see it diminished in any way. I am prepared to do things—people know that around here—to bring people together on both sides and help this President be successful. He has made overtures to me, and I very much respect him and I appreciate that. I want to help him.

I have to tell you that one of the reasons I am giving these remarks today is because I am very concerned about this type of a budget. We have put up with this kind of stuff in both Democratic and Republican administrations. It is time to quit doing it and start facing realities in this country. I see as much as a \$5 trillion deficit in the near future. It is hard to even conceive of that. Yet that is where we are headed.

I want Mr. Geithner to succeed. Everybody knows I stood firmly for him in spite of all of the problems. He is a very bright guy, and I hope he succeeds. I will do what I can to help him, as a member on the Finance Committee and other committees as well.

They are not going to succeed with this type of budget. If they do, it will only be temporary. Our kids are going to pay for these costs. They are going to pay for this mess. Elaine and I have 23 grandchildren I am concerned about, and 3 great-grandchildren. I don't want to stick them like this. I hope the President will get into it a little bit more, and I hope Larry Summers will get into it a little bit more. I think they have been taking advantage of a crisis to pass a huge welfare agenda that is going to hurt this country.

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. INHOFE. 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. INHOFE. Madam President, I have been watching the nominations from President Obama with quite a bit of concern. When I go back to my State of Oklahoma, people say: What would happen to us if we didn't pay our taxes? And I thought it couldn't get much worse than that.

I am here today to make sure everyone focuses attention on a couple of nominations that I think are outrageous.

First is my opposition to the nomination of David Ogden to be the U.S. Deputy Attorney General. Last year, Congress passed a significant piece of legislation, the Protect Our Children Act, to address a growing problem of child pornography and exploitation. Both sides of the aisle hailed it as a great success. Democrats and Republicans thought that was great; we are going to protect our kids against child pornography and exploitation. While I proudly supported that legislation, I am shocked President Obama has nominated a candidate to serve in the No. 2

position in the Department of Justice who has repeatedly represented the pornography industry and its interests.

As we are witnessing a significant increase in the exploitation of children on the Internet, we do not need a Deputy Attorney General who will be dedicated to protecting children with that kind of a background. David Ogden has represented the pornography industry for a long period of time.

In *United States v. American Library Association*, Ogden challenged the Children's Internet Protection Act of 2000. I remember that well. We passed it here. He filed a brief with the Supreme Court opposing Internet filters that block pornography at public libraries. He challenged provisions of the Child Protection and Obscenity Enforcement Act of 1988 which seeks to prevent the exploitation of our Nation's most vulnerable population; that is, our children. He instead fought for the interests of the pornography industry.

As a grandfather of 12 grandchildren, I am confident that I stand with virtually all of the parents and grandparents around this country in opposing gross misinterpretations of our Constitution some use to justify the exploitation of women and children in the name of free speech. That is what was happening. That is David Ogden.

Some claim Ogden is simply serving his clients. Yet his extensive record in representing the pornography industry is pretty shocking, especially considering he has been nominated to serve in the Government agency that is responsible for prosecuting violations of Federal adult and children pornography laws.

Let's keep in mind, he is in the position of prosecuting the offenders of these laws, and yet he has spent his career representing the pornography industry.

Additionally, his failure to affirm the right to life gives me a great concern. I don't think that is uncharacteristic of most of the nominees of this President. No one is pro-life that I know of, that I have seen.

In the Hartigan case, Ogden coauthored a brief arguing that parental notification was an unconstitutional burden for a 14-year-old girl seeking to have an abortion. In the case of abortion, parents have the right to know.

Furthermore, as a private attorney, Ogden filed a brief in the case of *Planned Parenthood v. Casey* in opposition to informing women of the emotional and psychological risks of abortion. In the brief, he denied the potential mental health problems of abortion on women. This is what he wrote. The occupier of the chair is a woman. I think it is interesting when men are making their interpretation as to what feelings women have.

He wrote this. Again, this is the same person we are talking about, David Ogden. He said:

Abortion rarely causes or exacerbates psychological or emotional problems . . . she is

more likely to experience feelings of relief and happiness, and when child-birth and child-rearing or adoption may pose concomitant . . . risks or adverse psychological effects . . .

What he is saying is it is a relief. This is something he finds not offensive at all. He is actually promoting abortions.

We have to be honest. We need to talk about the mounting evidence of harmful physical and emotional effects that abortion has on women.

For these reasons, I oppose his nomination.

I also want to address my opposition to the nomination of Elena Kagan to serve as Solicitor General. Because of its great importance, quite often they talk about the Solicitor General as the tenth Supreme Court Justice and, therefore, it requires a most exemplary candidate. She served as the dean of Harvard Law School, which is no doubt an impressive credential. However, in that role, she demonstrated poor judgment on a very important issue to me.

While serving as the dean of Harvard Law School, Kagan banned the military from recruiting on campus. We have to stop and remember what happened in this case. In order to protect the rights of people to recruit—we are talking about the military now—on campuses to present their case—noting mandatory, just having an option for the young students—Jerry Solomon—at that time I was serving in the House of Representatives with him—had an amendment that ensured that schools could not deny military recruiters access to college campuses. Claiming the Solomon amendment was immoral, she filed an amicus brief with the Supreme Court in *Rumsfeld v. FAIR* opposing the amendment. The Court unanimously ruled against her position and affirmed that the Solomon amendment was constitutional.

It is interesting, for a split division it might be different. This is unanimous on a diverse Court.

I also express my opposition to two other Department of Justice nominees—Dawn Johnson and Thomas Pirelli. Dawn Johnson, who has been nominated to serve as Assistant Attorney General in the Office of Legal Counsel, has an extensive record of promoting a radical pro-abortion agenda. She has gone to great lengths to challenge pro-life provisions, including parental consent and notification laws. She has even inserted on behalf of the ACLU that “Our position is that there is no ‘father’ and no ‘child’—just a fetus.”

As a pro-life Senator who believes each child is the creation of a loving God, I believe life is sacred. I cannot in good conscience confirm anyone who has served as the legal director for the National Abortion and Reproductive Rights Action League. The right to life is undeniable, indisputable, and unequivocal. It is a foundational right, a moral fiber fundamental to the strength and vitality of this great Nation.

For a similar reason I can’t support the nomination of Thomas Perrelli to serve as Associate Attorney General. Keep in mind now, we are talking about the four top positions in the Justice Department. And like other nominees I have discussed today, Mr. Perrelli has failed to affirm and protect the dignity of all human life, as an advocate for euthanasia, and I think we know the background of that.

I would only repeat that these are not people with just an opinion, they are extremists. We are talking about someone in the No. 2 position of the Department of Justice who actually has been involved in representing the pornography industry, and this is something that is totally unacceptable.

I think as we look at these nominations, I suggest that those individuals who are supporting these look very carefully, because people are going to ask you the question: How do you justify putting someone who supports pornography, who has worked for it and been paid by that industry, in the No. 2 position in the Justice Department?

With that, Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I ask unanimous consent to speak for up to 7 minutes.

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

Ms. KLOBUCHAR. Madam President, I am here to speak in favor of David Ogden to be the next Deputy Attorney General of the United States.

I have listened to my colleague and friend from Oklahoma, and I am not going to be able to respond to everything he said about every nominee, but I did want to talk today about Mr. Ogden. He is someone who I believe should be our next Deputy Attorney General, at a Department of Justice that is much in need of a Deputy Attorney General, and he is someone who will hit the ground running. He will beef up civil rights and antitrust enforcement. He will address white-collar crime and drug-related violence, as well as help to keep our country safe from terrorist attacks.

We know the to-do list and the demands on the next Deputy Attorney General will be great. Part of why it will be so great is something that I saw in my own State. We had a gem of a U.S. Attorney General Office in Minnesota, and we still do, but there was a period of time where I saw its destruction and rot by putting one political appointee in charge of that office. It was a huge mistake. The office was in an uproar. They got away from their regular mission. Luckily, Attorney General Mukasey put in a career prosecutor, Frank McGill, who has put the office back on track, and I thank him for that. We have suggested—recommended—a new name to the Attorney General and the President for the next U.S. Attorney in Minnesota. But I tell you that story for a reason, and

that is justice is important and order is important and management is important in our criminal justice system. We went so far away from that when Alberto Gonzalez was the Attorney General. That is why it is so important to have David Ogden in there to work with Eric Holder.

David Ogden has demonstrated intelligence and judgment, leadership and strength of character and, most importantly, a commitment to the Department of Justice. He has the experience and the integrity, I say to my colleagues, to serve as the next Deputy Attorney General. One of the most important roles of a Deputy Attorney General is to make sure that the day-to-day operations of the Department run smoothly and to provide effective and competent management guided by justice. I know David Ogden can do that. His experience both as Chief of Staff and counselor to former Attorney General Reno, as well as his experience as Assistant Attorney General for the Department’s civil division under President Clinton proves that David Ogden has experience and the integrity to do the job.

I have heard all these allegations made, including by my colleague. I want to tell you some of the people who are supporting David Ogden. His nomination is supported by a number of law enforcement and community groups, including among others, the Fraternal Order of Police—not exactly a radical organization. He is supported by the National District Attorneys Association, the Partnership for a Drug Free America, and the National Sheriffs’ Association.

The National Center for Missing and Exploited Children is a strong supporter. In fact, they sent a letter saying they gave David Ogden their enthusiastic support. In particular, they wrote:

... during Mr. Ogden’s tenure as Chief of Staff and Counsel to the Attorney General, we worked closely with the Attorney General in attacking the growing phenomenon of child sexual exploitation and child pornography. As counselor to the Attorney General, Mr. Ogden was intricately involved in helping to shape the way our group responded to child victimization challenges and delivered its services.

It is seconded by the Boys and Girls Clubs of America, which also supports David Ogden’s nomination. In addition to these law enforcement and child protective groups, David Ogden has received broad bipartisan support from a number of former Department officials, including Larry Thompson, a former Deputy Attorney General under President George W. Bush, and George Terwilliger, who served in the same role under President George H. W. Bush.

There are so many things on the Justice Department’s plate, and we need someone to be up and running. But I want to respond specifically to some of the things we have heard today. There was a statement by one of Senators that Mr. Ogden opposed a child pornography statute that we passed in 1998.

That is simply not correct, and I hope my colleagues know that. In fact, as head of the Civil Division of the Department of Justice, he led the vigorous defense of the Child Online Protection Act of 1998 and the Child Pornography Prevention Act of 1996.

There were also mischaracterizations, for political reasons, of Mr. Ogden's record. We have already talked about how he is supported by the major police organizations in this country. Well, in addition to that, he has a general business practice, and before that he served in government. His work at the WilmerHale law firm over the past 8 years, for example, hasn't centered on first amendment litigation. He has represented corporate clients, from Amtrak to the Fireman's Fund.

They also said that somehow Mr. Ogden took some position taken by Mr. Ogden's clients, who were America's librarians and booksellers. Rather, the Senate rejected the Clinton administration's interpretation, and Mr. Ogden made clear to the Judiciary Committee that he disagreed with that interpretation. In his testimony, he made clear that he is comfortable with the ruling of the Court and agreed with the Senate resolution.

You can go on and on about some of these misstatements about Mr. Ogden's record, but let us look at what is going on here. As I mentioned before, the child protection community supports Mr. Ogden based on his strong record of protecting children. Now, I tend to believe the people who deal every day with helping families with missing children more than I believe some statement that is made in a political context. I will be honest with you, I tend to believe the Fraternal Order of Police when they give an endorsement more than I believe some statement made in a political context.

Let me tell you this. Why is this so important? Why can we not go back and forth and back and forth and have all these political partisan attacks? Well, we need a Deputy Attorney General now. We need a Deputy Attorney General right now. The Department of Justice has more than 100,000 employees and a budget exceeding \$25 billion. Every single Federal law enforcement officer reports to the Deputy Attorney General, including the FBI, the DEA, the ATF, the Bureau of Prisons, and all 93 U.S. Attorney's Offices. The Attorney General needs the other members of his Justice Department leadership team in place.

Look what we are dealing with: the Madoff case and billions of dollars stolen. We are dealing with childcare cases. We are dealing with administering this \$800 billion in money and making sure people aren't ripped off. We are dealing with murders and street crimes across this country. Yet people are trying to stop the Justice Department from operating? That can't happen.

I want to end by saying I was a prosecutor for 8 years, and always my guid-

ing principle was that you put the law above politics. That is what I am asking my colleagues to do here. We need to get David Ogden in as a Deputy Attorney General. Now is the time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DURBIN. Madam President, pending before the Senate is the nomination of David Ogden to be the Deputy Attorney General. I rise to speak in support of that nomination.

The Justice Department and our Nation are fortunate that President Obama has put forward this nomination. Mr. Ogden has the experience, the talent, and the judgment needed for this critical position.

The Deputy Attorney General is the No. 2 person at the Justice Department. He is the day-to-day manager of the entire agency. This includes supervising key national security and law enforcement offices such as the FBI and our counterterrorism operations. Mr. Ogden is a graduate of Harvard Law School, former law clerk to a Supreme Court Justice, which is one of the most prestigious jobs in the legal profession. He had three senior positions in the Janet Reno Justice Department and served as her Chief of Staff, Associate Deputy Attorney General, and also served as Assistant Attorney General in the Civil Division, a position for which he received unanimous confirmation by this Senate. Mr. Ogden also served as the Deputy General Counsel at the Defense Department.

Given this excellent background, it is not surprising that David Ogden gained the support of many prominent conservatives. At least 15 former officials of the Reagan and both Bush administrations have announced their support for his nomination. They include Larry Thompson, the first Deputy Attorney General of the most recent Bush administration; Peter Keisler, former high-level Justice Department official; and Rachel Brand, another high-level Justice Department official in the Bush administration. Their words are similar. I will not read into the RECORD each of their statements, but they give the highest possible endorsement to David Ogden.

Due to a scheduling conflict, I could not attend his hearing, but I asked him to come by my office so we could have time together and I could ask my questions face to face. We talked about a lot of subjects, including criminal justice reform, human rights, and the professional responsibilities of the Department of Justice lawyers. I was impressed by Mr. Ogden's intellect, his management experience, and his com-

mitment to restoring the Justice Department's independence and integrity.

We talked about the Senate Judiciary Committee's Subcommittee on Crime and Drugs, a subcommittee I will chair in the 111th Congress, and the issues we are going to face—including the Mexican drug cartels, which will be the subject of a hearing in just a few days, racial disparities in the criminal justice system in America, and the urgent need for prison reform. That is an issue, I might add, that is near and dear to the heart of our colleague, Senator JIM WEBB of Virginia. I am going to try to help him move forward in an ambitious effort to create a Presidential commission to look into this.

The Justice Department will play an important role in reclaiming America's mantle as the world's leading champion for human rights. Mr. Ogden and I discussed the Justice Department's role in implementing President Obama's Executive orders in relation to the closure of the Guantanamo Bay detention facilities and review of detention and interrogation policies. We discussed the investigation by the Justice Department's Office of Professional Responsibility, as to the attorneys in that Department who authorized the use of abusive interrogation techniques such as waterboarding. Senator SHELDON WHITEHOUSE of Rhode Island and I requested this investigation. Mr. Ogden committed to us that he would provide Congress with the results of the investigation as soon as possible. This is the kind of transparency and responsiveness to congressional oversight we expect from the Justice Department and something that we have been waiting for.

We also discussed the Justice Department's role in ensuring that war criminals do not find safe haven in the United States. I worked with Senator COBURN who is a Republican from Oklahoma, on the other side of the aisle. We passed legislation allowing the Justice Department to prosecute the perpetrators of genocide and other war crimes in the U.S. courts. I believe Mr. Ogden appreciates the importance of enforcing these human rights laws.

At the end of our meeting, I felt confident David Ogden will be an excellent Deputy Attorney General.

I want to make one final point. There is some controversy associated with his appointment that I would like to address directly. I am aware there has been some criticism that David Ogden represented clients whom some consider controversial. He has been criticized in his representation of libraries and bookstores who sought first amendment free speech protections, and for his representation of a client in an abortion rights case.

I would like to call to the attention of those critics a statement that was made by John Roberts, now Chief Justice of the U.S. Supreme Court, when he appeared before the Senate Judiciary Committee several years ago at his confirmation hearing.

He was asked about the positions he had advocated on behalf of his clients as an attorney. Here is what the Chief Justice told us:

It's a tradition of the American Bar Association that goes back before the founding of the country that lawyers are not identified with the positions of their clients. The most famous example probably was John Adams, who represented the British soldiers charged in the Boston Massacre. He did that for a reason, because he wanted to show that the Revolution in which he was involved was not about overturning the rule of law, it was about vindicating the rule of law.

And he went on to say:

That principle, that you don't identify the lawyer with the particular views of the client, or the views that the lawyer advances on behalf of a client, is critical to the fair administration of justice.

You practiced law, Madam President. I have too. Many times you find yourself in a position representing a client where you do not necessarily agree with their position before the court of law. But you are dutybound to bring that position before the court so the rule of law can be applied and a fair outcome would result. If we only allowed popular causes and popular people representation in this country, I am afraid justice would not be served.

Chief Justice Roberts made that point when he was being asked about his representation of legal clients. I would say to many on the other side of the aisle who are questioning David Ogden's reputation, they owe the same fairness to him that was given to Chief Justice Roberts in that hearing.

I would remind the conservative critics of Mr. Ogden, look carefully at that testimony. What is good for the goose is good for the gander.

After 8 years of a Justice Department that often put politics over principle, we now have a chance to confirm a nominee with strong bipartisan support who can help restore the Justice Department to its rightful role as guardian of our laws and the protector of our liberties.

David Ogden has the independence, integrity, and experience for the job. I urge my colleagues to join me in voting for his nomination to be Deputy Attorney General.

#### CLEAN COAL RESEARCH PROJECT

Mr. DURBIN. Madam President, it was about 7 years ago when the Bush administration announced what they said was the most significant coal research project in the history of the United States. The name of the project was FutureGen. The object was to do research at a facility to determine whether you could burn coal, generate electricity, and not pollute the environment. It is an ambitious undertaking.

The way they wanted to achieve it was to be able to capture the CO<sub>2</sub> and other emissions, virtually all of them coming out of a powerplant burning coal, and to sequester them; that is, to stick them underground, find places underground where they can be absorbed by certain geological founda-

tions, safely held there. Of course, it was an ambitious undertaking. It had never been done on a grand scale anywhere in the country.

Well, the competition got underway and many States stepped forward to compete for this key research project on the future of coal. There were some five to seven different States involved in the competition. My State of Illinois was one of them. The competition went on for 5 years.

Each step of the way, the panel of judges, the scientists and engineers would judge the site. Is this the right place to build it? Is it going to use the right coal? Can they actually pump it underground and trap it so that it will not ever be a hazard or danger at any time in the future? Important and serious questions.

My State of Illinois spent millions of dollars to prove we had a good site. When it finally came down to a decision, there were two States left: Texas and Illinois. Well, I took a look around at our President and where he was from, and I thought, we do not have a chance. Yet the experts made the decision and came down in favor of Illinois. They picked the town of Mattoon, IL, which is in the central eastern part of our State, in Coles County, and said that is the best place to put this new coal research facility.

We were elated. After 5 years of work, we won. After all of the competition, all of the different States, all of the experts, all the visits, everything that we put into it, we won the competition.

Within 2 weeks, the Secretary of the U.S. Department of Energy, Mr. Bodman, came to my office on the third floor of the Capitol and said: I have news for you.

I said: What is that?

He said: We are canceling the project.

I said: You are cancelling it? We have been working on this for 5 years.

He said: Sorry, it cost too much money. The original estimate was that this was going to cost \$1 billion. When the President first announced it, we knew inflation would add to the construction costs over some period of time. But here was Mr. Bodman saying it cost almost twice as much as we thought it would cost; therefore, we are killing the project.

Well, I was not happy about it. In fact, I thought it was totally unfair, having strung us along for 5 years, made my State and many others spend millions of dollars in this competition, go through the final competition and win, and then be told, within 2 weeks: It is over; we are not going to go forward with it.

So I said to Mr. Bodman: Well, you are going to be here about a year more, and I am going to try to be here longer. At the end of that year, when you are gone, I am going to the next President, whoever that may be, and ask them to make this FutureGen research facility a reality.

I told the people back home: Do not give up. Hold on to the land we have

set aside. Continue to do the research work you can do. Bring together the members of the alliance—which are private businesses, utility companies, coal companies—not only from around the United States but around the world interested in this research and tell them: Don't give up.

So we hung on for a year, literally for a year, and a new President was elected. It happened to be a President I know a little bit about, who was my colleague in the Senate, Senator Obama. When we served together, he knew all about this project and had supported it.

So now comes the new administration and a new chance. The Obama administration has said to me and all of us interested in this project: There is one man who will make the decision: it is the Secretary of Energy, Dr. Chu. He is a noted scientist who will decide this on the merits. He is going to decide whether this is worth the money to be spent. So we made our appeal to him, we presented our case to him, and left it in his hands. We are still worried about this whole issue of cost.

BART GORDON, a Congressman from the State of Tennessee and serves on the House Science Committee, he sent the Government Accountability Office to take a look at FutureGen to find out what happened to the cost, why did it go up so dramatically.

Well, the report came out last night. Here is what the report found. The report found the Department of Energy had miscalculated the cost of the plant, overstating its cost by \$500 million because they made a mathematical error—\$500 million.

Taking that off the ultimate cost brings it down into the ordinary construction inflation cost. And so many of us who argued their estimate of cost was exaggerated now understand why. They made a basic and fundamental error calculating the cost of this project.

Here is what we face. Now, 53 percent of all the electricity in America is generated by coal. Burning coal can create pollution. Pollution can add to global warming and climate change, and we have to be serious about dealing with it.

This plant is going to give us a chance to do that. When the GAO took a look at the Department of Energy documentation, they also discovered a memo which said: If we kill the FutureGen coal research plant, we will set coal research back 10 years with all of the time they put into it. All of the effort they put into it would have been wasted and could not be replicated.

So that is what is at stake. The ultimate decision will be made by Dr. Chu at the Department of Energy. I trust that he will find a way to help us move forward, but I want him to do it for the right scientific reasons.

If we are successful, we will not only be able to demonstrate this technology for America but for the world. The reason why foreign countries are joining