

us in this research effort is what we discover will help them. China is building a new coal-fired plant almost every week and is going to be adding more pollution to the environment than we can ever hope to take care of in the United States alone.

But if we can find a way, a technology, a scientific way, using the best engineering and capture that pollution before it goes into the air, it is a positive result not just for the United States but for the world.

From a parochial point of view, we happen to be sitting on a fantastic energy reserve right here in America. There are coal reserves all across the Midwestern United States, and almost 75 percent of my State of Illinois has coal underneath the soil. It is there to be had and used. But we want to use it responsibly.

We want to make sure that at the end of the day that we can use coal and say to our kids and grandkids: We provided the electricity you needed but not at the expense of the environment you need to survive.

So this finding by the GAO has given us a new chance. We are looking forward to working with the Department of Energy. For those back in Illinois who did not give up hope, we are still very much alive, and this latest disclosure gives us a chance to bring the cost within affordable ranges. I hope the Department of Energy will decide to move forward on this critical research project.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

(The remarks of Mr. WEBB pertaining to the introduction of S. 572 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

EARMARKS

Mr. WEBB. Madam President, I rise to address the recent debate we have had on the Omnibus appropriations bill with respect to earmarks. The premise seems to be, for those who have criticized the earmarks process, that this is pork. Sometimes it is; sometimes it is not. But I would start first with the Constitution.

There is nothing in the Constitution that says the executive branch of Government should appropriate funds or decide which funds should be spent. That is a procedure that has evolved over the centuries because of the complexities of Government, where the executive branch looks at its needs and comes to the Congress and asks for appropriations. Earmarks take place when individual Members of Congress, exercising their authority to appropriate under the Constitution, decide

and recommend that worthwhile programs in an ideal case should be included in a budget process, programs that have not been considered or included by the executive branch or through other processes.

For instance, I was able, last year, along with Senator John Warner, now retired, to bring \$5 million into a rural area of Tidewater, VA, so they could put broadband in. Broadband is something we know all Americans who want to compete for their future and contribute equally need to have. It didn't make it into anybody's bill. Who is thinking about sparsely populated areas such as rural Virginia? Yet we were able to bring a lot of benefit to those who otherwise would not have received it.

What I would ask my colleagues, particularly those who have become so adamant in their concern over the earmarks process, to consider is, let's take a look at the budget that comes to the Congress. Is there pork in the budgets that come over, pork that comes through, in some cases, unnecessary influence or individual discretion? You bet there is.

I say that as someone who spent 5 years in the Pentagon, 4 years of which I was on the Defense Resources Board where on any given day we were implementing a budget, arguing a budget in the Congress, and developing the next year's budget. I offer an example of a situation that my staff has been following for the last 10 months and use it as an invitation to colleagues to join me in looking at where there can be abuses of discretion and where there can be a lot of money that can be saved.

Ten months ago, on May 21, there was an article in the Wall Street Journal that talked about Blackwater Worldwide attempting to obtain local approval for a new training center in San Diego, CA. We all remember Blackwater. They are an independent contractor that has done more than a billion dollars of business since the Bush administration, the most recent Bush administration took office. I became curious about this project, first, because I had seen reports of what a very high percentage of the Blackwater contracts had been awarded were either noncompete or minimal compete and the high volume number, more than a billion of them. And also the fact that having at one time been Secretary of the Navy, they were apparently wanting to build a training center so they could train Active-Duty sailors how to defend themselves onboard a ship.

Having spent time in the Marine Corps, I immediately started thinking about what it would have been like to have a nonmilitary contractor teaching me how to do patrolling when I was going through basic school in Quantico all those years ago. It didn't fit.

I started asking around. The first thing I found out was, this was a contract from the Navy that was worth about \$64 million. I wrote a letter to

Secretary Gates. I said: Is this Blackwater program in any way authorized or funded by U.S. tax dollars? The answer came back, yes, obviously. I asked: Is there specific legislative authorization for it? Because I couldn't find any, as a member of the Armed Services Committee. The answer was no. According to Secretary Gates, this activity falls under the broad authorization provided to the Secretary of Defense and the Secretaries of the military departments to procure goods and services using appropriated funds and prescribed procedures for those procurements.

Then I asked him in this letter: Is there a specific appropriation, either in an appropriations bill or through an earmark? The answer is: No, there was no specific appropriation or earmark directing this effort.

As we started to peel this back, here is what we found. An individual, an SCS, midlevel individual in the Department of the Navy had the authority to approve this type of a program up to the value of \$78 million, without even having a review by the Secretary of the Navy. This was not an authorized program. It was not an appropriated program. It was money that came out of a block of appropriated funds for operation and maintenance that then somebody in the Navy said was essential to the needs of the service, the needs of the fleet, which is a generic term.

I ask my colleagues who are so concerned about some of the pork projects or earmarks process here, which has gained a great deal of visibility since I have been here over the past 2 years and transparency, to join me in taking a look at these sorts of contracts. When a midlevel person in the Pentagon has the authority to approve a program that hasn't been authorized and hasn't been appropriated up to the value of \$78 million and not even have the oversight of the Secretary of that service, that is where you see the potential for true abuse of the process. That is where we need to start focusing our energies as a Congress.

Mr. REID. Madam President, today we debate the nomination of David Ogden to be the Deputy Attorney General of the United States.

Mr. Ogden is highly qualified for this important job. He is a graduate of Harvard Law School and clerked on the Supreme Court for Justice Harry Blackmun. During the Clinton Administration, he served as the Assistant Attorney General for the Civil Division and as chief of staff to the Attorney General.

He also previously served as Deputy General Counsel at the Department of Defense, so he has a keen appreciation for the national security issues that he will face at DOJ. He has an excellent reputation among his fellow lawyers and is supported by a number of former Republican Justice Department officials.

It is surprising to me that we need to spend more than a full day debating

this obviously qualified nominee. Mr. Ogden was favorably reported by the Judiciary Committee by a vote of 14-5, so it seems clear he will be confirmed. But apparently some far-right advocates have made this nomination more controversial than it should be.

As I understand it, those who oppose this nominee disagree with positions he took on behalf of some of his clients, including media organizations. In my view, that is a very unfair basis for opposing a nominee. As a former practicing lawyer, I feel strongly that a lawyer should not be held personally responsible for the views of his clients.

President Obama deserves to have his advisors, especially members of his national security team, in place as quickly as possible. I urge confirmation of this outstanding nominee.

Mr. LEAHY. Madam President, even after abandoning their the ill-conceived filibuster of President Obama's nomination of David Ogden to be Deputy Attorney General, we still hear Republican Senators making scurrilous attacks against Mr. Ogden, launched by some on the extreme right.

As I said on the Senate Floor earlier, David Ogden is a good lawyer and a good man. He is a husband and a father. Yet, regrettably and unbelievably, we still hear chants that he is a pedophile and a pornographer. Those charges are false and they are wrong. Senators know better than that.

Special interests on the far right have distorted Mr. Ogden's record by focusing only on a narrow sliver of his diverse practice as a litigator spanning over three decades. Dating back to the 1980s, Mr. Ogden's practice has included, for example, major antitrust litigation, counseling, representation and authorship of a book on the law of trade and professional associations, international litigation and dispute resolution, False Claims Act and Export Controls Act investigations, and a significant practice in administrative law. In other words, he has been a lawyer, representing clients. For the last 8 years, since leaving Government service, Mr. Ogden has represented corporate clients in a range of industries, including transportation clients like Amtrak and Lufthansa, insurance and financial institutions like Citibank and Fireman's Fund, petrochemical companies like Shell and BP and pharmaceutical concerns like PhRMA and Merck.

Here are the facts that underlie the overheated rhetoric: As a young lawyer in a small firm with a constitutional practice, along with other lawyers in that respected DC law firm, Mr. Ogden represented a range of media clients. He represented the American Library Association, the American Booksellers Association, and Playboy Enterprises.

In the early 1990s, while at the respected firm of Jenner & Block, Mr. Ogden represented a Los Angeles County firefighter. The firefighter was being prohibited from possessing or reading Playboy magazine at the firehouse,

even when on down time between responding to fires. The Federal Court reviewing the matter held that the first amendment protected the firefighter's right to possess and read the magazine. That representation does not make Mr. Ogden a pornographer, a pedophile or justify any of the other epithets that have been thrown his way.

He also challenged a prosecution strategy that threatened simultaneous indictments in multiple jurisdictions with the goal of negotiating plea agreements that put companies out of business without ever having to prove that the materials they were distributing were obscene. That sounds like the kind of overreaching prosecution strategy that Senator SPECTER and other Republican Senators would condemn, just as they have the excesses of the "Thompson memo" pressuring investigative targets to waive their attorney-client privilege.

Those who have argued that Mr. Ogden has consistently taken positions against laws to protect children ignore Mr. Ogden's record and his testimony. What these critics leave out of their caricature is the fact that Mr. Ogden also aggressively defended the constitutionality of the Child Online Protection Act and the Child Pornography Prevention Act of 1996 while previously serving at the Justice Department. This work has led to support and praise from the National Center for Missing and Exploited Children. He has the support of the Boys and Girls Clubs of America. In private practice he wrote a brief for the American Psychological Association in *Maryland v. Craig* in which he argued for protection of child victims of sexual abuse. In his personal life, he has volunteered time serving the Chesapeake Institute, a clinic for sexually abused children.

Nominees from both Republican and Democratic administrations and Senators from both sides of the aisle have cautioned against opposing nominees based on their legal representations on behalf of clients. When asked about this point in connection with his own nomination, Chief Justice Roberts testified, "it has not been my general view that I sit in judgment on clients when they come" and, "it was my view that lawyers don't stand in the shoes of their clients, and that good lawyers can give advice and argue any side of a case." Part of the double standard being applied is that the rule Republican Senators urge for Republican nominees—that their clients not be held against them—is turned on its head under a Democratic President.

As recently as just over 1 year ago, every Senate Republican voted to confirm Michael Mukasey to be Attorney General of the United States. That showed no concern that one of his clients, and one of his most significant cases in private practice as identified in the bipartisan committee questionnaire he filed, was his representation of Carlin Communications, a company that specialized in what are sometimes

called "dial-a-porn" services. It is more evidence of a double standard.

Senators should reject the partisan tactics and double standards from the extreme right and support David Ogden's nomination. The last Deputy Attorney nominee to be delayed by such a double standard was Eric Holder, whose nomination to be Deputy Attorney General in 1997 was delayed for three weeks by an anonymous Republican hold after being reported favorably by the Judiciary Committee before being confirmed unanimously. Like now Attorney General Holder, Mr. Ogden is an immensely qualified nominee whose priorities will be the safety and security of the American people and reinvigorating the traditional work of the Justice Department in protecting the rights of Americans.

Mr. CARDIN. Mr. President, I ask unanimous consent that on Thursday, March 12, the Senate resume consideration of the Ogden nomination at 12 noon and that it be considered under the parameters of the order of March 10; that the vote on the confirmation of the nomination occur at 2 p.m.; further, that upon confirmation of the Ogden nomination, the Senate remain in executive session and consider Calendar No. 23, the nomination of Thomas John Perrelli to be Associate Attorney General; that debate on the nomination be limited to 90 minutes equally divided and controlled between the leaders or their designees; that upon the use or yielding back of time, the Senate proceed to a vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be laid upon the table, no further motions be in order; that the President be immediately notified of the Senate's action; and that the Senate then resume legislative session.

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

MORNING BUSINESS

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

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

OMNIBUS APPROPRIATIONS ACT

Mrs. BOXER. Mr. President, during consideration of the Omnibus Appropriations Act, members of the minority party attempted to attach amendments in an effort to delay passage of this important bill. Because further delay in passing this bill could have resulted in the shutdown of the Federal Government, I voted against all amendments to the bill.

I believe that this omnibus bill is important for job growth and will help revitalize our economy. That must be our concern at this critical time.