

always seems to side with the big corporate interests against the average American?"

Aside from the fact that I think that is not a fact, that the Court always sides with big corporate interests against the average American—that is, obviously, a very politically charged statement—the question is, Is it really appropriate to ask a potential judicial nominee whether that nominee is going to side with big corporate interests or whether the nominee would want to side with some other kind of interest in the litigation? Well, I think it is appropriate to ask whether the nominee has biases one way or the other that would preclude him or her from deciding a specific case on the merits of that case as opposed to whether, from a general philosophical standpoint, that nominee would be on the side of big corporate interests or always against the big corporate interests.

When Chief Justice Roberts was before our committee, he was asked a question like this, a question about whether he thinks it would be appropriate to rule for the big guy or the little guy, and I think he said it correctly. He said: If the law supports the big guy, then the big guy should win the case. If the law supports the little guy, then the little guy should win the case. You do not go on the bench with an idea that: I am always going to rule against the big guy or—commenting on Senator LEAHY's statement here—I am going to rule against big corporate interests. That presents a dilemma, by the way, where you have corporation A suing corporation B. I do not know how you are going to resolve that if you are always going to rule against big corporate interests.

But the point is, to go on the bench with that attitude would be wrong. The big corporation might have the right law and facts in a particular case. In another case, the person suing or being sued by the big corporate interest might have the law and the facts on their side. That should be the determination of how the case comes out, not your preconceived notions—for example, your intention to always rule against "big corporate interests."

Here is another example: One of my colleagues on the Judiciary Committee on a television program said he wanted to see a nominee who would be hard on Executive power. We have three branches of government: the executive, the legislative, and the judicial. The Constitution sets up a delicate balance among those three branches of government, and there is a constant tension between the powers exerted by the branches and against the branches. Those tensions result in litigation sometimes.

Sometimes there is a claim that the Executive is taking too much power unto himself. That charge was made against virtually every President who, in my memory, has ever served. It certainly is being made against the President today. But you do not go on the

bench with the notion that: If a case ever comes before me involving a contest of whether the Executive has the power to do something versus the legislature, for example, I am going to rule against the Executive. I am going to be hard on Executive power. That would be wrong. You do not even know what the facts of the case are and what the precedents might be relating to those particular facts.

The ACTING PRESIDENT pro tempore. The Senator has used 7 minutes.

Mr. KYL. Thank you, Madam President. I appreciate it.

I will conclude with this particular example: You want a judge who is going to be on the Court to say: I understand the balance of power. I have read the law, and I understand the precedents that relate to this particular kind of fact pattern. And based on the law and based on these facts in this particular case, I believe that either the Executive should have the power or not. But I do not come to that conclusion based upon a preconceived political, ideological notion that we need to rein in Executive power any more than I believe we should rein in legislative power or judicial power.

This is what a lot of us mean when we talk about judicial activism. It is the difference between someone who comes to the Court with firmly held philosophical beliefs that would cause that individual to be more predisposed to rule on the basis of those beliefs than on the facts of the case or the law in any particular situation. So when my colleagues on the Democratic side say they are looking for a nominee who will have a penchant for ruling in a particular way in particular cases, you will see objections from people like me who will say: No, that is wrong. That is activism. That is basing decisions on ideology rather than on what the law is.

I will conclude by saying this: The President has it fully within his power to nominate a candidate for Supreme Court Justice who generally has been seen as deciding cases based on their merits rather than from an ideological perspective. But to the extent the President chooses someone who has been very active politically and has expressed strong political views or who from the bench has seemingly made decisions based upon a preconceived ideological notion rather than on the basis of the facts and law to come before him or her, in that situation, then, you would tempt opposition and potentially even a filibuster depending upon how serious the situation was or how extraordinary it was, to cite the particular phrase.

So I hope that sort of sets the groundwork here for our evaluation of the President's nominee and for a public understanding of the circumstances under which some of us would oppose a nominee and under which perhaps even, in an extraordinary situation, a filibuster would result. I certainly hope that is not the case, that that does not happen.

I am sure the President realizes that if he nominates someone who does come clearly to the attention of the Senate from a perspective of even-handed justice, that nominee will be treated fairly, that the process could move much more quickly, and that the outcome can be much more favorable.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

#### NASA

Mr. CORNYN. Madam President, this week President Obama is scheduled to visit the Kennedy Space Center in Florida. Many Americans expect the President to explain his vision for human space flight in the decades ahead. I would say this vision is long overdue.

One year after celebrating its 50th anniversary, as well as the 40th anniversary of the first Moon landing, the White House has proposed a budget that will force NASA to abandon its historic role in space exploration. The administration has stated its intention to terminate NASA's Constellation Program, our Nation's flagship endeavor to return Americans to the Moon and beyond. After \$9 billion invested over 7 years, the President would leave NASA adrift and without a mission. I hope the President will announce that he has thought better of that initial decision, and this morning I would like to take a few minutes to explain why I think he should do so.

Texas is proud of our close connection with NASA's human space flight program, and we recognize how it has helped transform the greater Houston area into a high-tech leader. Johnson Space Center has helped send astronauts into space for nearly four decades. We would love for the President to visit the Johnson Space Center and see how we have helped our astronauts complete their missions and return home safely.

We remember the region endured several years of challenges following the termination of the Apollo Program in 1974. We saw some of the brightest minds at the Johnson Space Center end their careers. The future of the entire industry seemed uncertain.

NASA Administrator Charles Bolden was recently quoted as saying:

With all due respect to everybody who opposes the budget—

In other words, the cut of the Constellation Program—

a very serious and real concern is the jobs.

Now, he was correct in one way: the cancellation of Constellation, combined with the retirement of the space shuttle, could cost the region as many as 7,000 direct jobs, according to the Bay Area Houston Economic Partnership. With all due respect to General Bolden, Texas support for human space flight is not merely based on parochial concerns. We understand the local economic impact would be nothing compared to the strategic opportunity cost for the United States of America.

For one thing, the end of the Constellation Program will increase our dependence on Russia to transport Americans to the International Space Station—a space station built with billions of American taxpayer dollars. Earlier this month, NASA signed a \$335 million contract with Russia that will cost our country nearly \$56 million per seat on Russian spacecraft—or about \$8 million more per seat than what NASA paid in 2007. So we are literally having to depend on Russia to transport American astronauts to the International Space Station. Many Americans are already concerned about this arrangement. Many Americans suspect the Russians will raise the price once the shuttle program is ended because we will be completely dependent on them to transport our astronauts. Indeed, the head of the Russian space agency recently stated his eagerness to renegotiate costs to access the International Space Station following the retirement of the space shuttle.

Soon, Russia will not be the only nation to surpass the United States in human space flight. The governments of China and India have also accelerated their investments. All of these nations are investing in human space flight not only because they want their flags to be the first on Mars but also because they know those investments will generate a good return.

Innovations that will help humans survive and thrive in space will likely create as many spinoff technologies in the 21st century as we saw in the first decades of the space age. If we do not incubate these life-supporting technologies here in America, our children will have no choice but to import them from other countries. Apollo 13 astronaut Jim Lovell put it this way. He said the end of the Constellation Program “will have catastrophic consequences on our ability to explore space and the spin-offs we get from space technology.” He said: “They haven’t thought through”—talking about the administration’s proposed cut in the Constellation Program—“the consequences.” I think that is correct.

The White House has said it believes the private sector can play a larger role in space exploration, and I would say they are right—to a point. We certainly want to encourage private investment and public-private partnerships in the development of space technologies. We want to help NASA become an even better partner with aerospace entrepreneurs. Leveraging the potential of the private sector is no less an imperative in space exploration than it is in other fields of innovation. But NASA cannot pass the baton of human space flight to a runner who is still trying on its shoes. The private sector requires years of further development before it can send a human being to the Moon or compete with America’s international rivals.

The Aerospace Safety Advisory Panel—a group of independent experts

created by Congress—reported in January that:

No manufacturer of Commercial Orbital Transportation Services is currently qualified for human-rating requirements, despite some claims and beliefs to the contrary.

The panel has warned:

To abandon the [Constellation program] for an alternative without demonstrated capability or proven superiority is unwise and probably not cost effective.

NASA was assigned the constellation mission for the same reason it took on Apollo: It remains the only entity in our country capable of getting the job done.

So what should President Obama say when he visits the Kennedy Space Center this week? I would like to offer just a few thoughts.

First, I hope President Obama would recognize the tremendous uncertainty his administration has created by proposing to end the Constellation Program without identifying a viable alternative.

Second, he should make clear that Congress has the last word on the Constellation Program—which we do—and that NASA will follow the current law during this fiscal year and every year Congress continues to fund the program.

Third, I hope he would articulate a clear vision for the future of human space flight in our country, and that vision would include a clear exploration mission, a timeline, goals, and a destination. And I hope his vision would include a new commitment to the Constellation Program, which remains America’s best bet to ensure America’s continued leadership in human space exploration.

Fourth, I hope he would make a budget request that will fund this vision and that it will carefully be aligned with this exploration plan.

Just yesterday, a number of American heroes made clear what a vision for American space flight should look like. More than two dozen former astronauts and flight directors, as well as a former NASA Administrator, wrote an open letter to the President. They wrote, in part:

America’s greatness lies in her people: she will always have men and women willing to ride rockets into the heavens.

America’s challenge is to match their bravery and acceptance of risk with specific plans and goals worthy of their commitment.

NASA must continue [to be] at the frontiers of human space exploration in order to develop the technology and set the standards of excellence that will enable commercial space ventures to eventually succeed.

I hope President Obama listens to those words. I hope the President listens to Congress, which has given broad bipartisan support to the Constellation Program over many years. And I hope he listens to the millions of Americans who understand that human space flight represents our Nation’s future, not merely its past.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Texas.

Mrs. HUTCHISON. Mr. President, President Obama is going to travel to Florida where many expect him to discuss the adverse reaction to his proposed budget for NASA and possible alternative options for the future of America’s manned space exploration capability. I know members of the NASA family and everyone living in communities that directly support the space program—from Maryland to Utah to Florida to Alabama to Louisiana and Texas—are, at the very least, uncertain about the President’s budget proposal and how it would affect America’s leadership role in space exploration. I share those concerns. Every American should share those concerns, because it will determine our role in science, space, research, exploration, and so much that will determine our future economically and in security.

I hope the President has heard the concerns that have been raised since the budget was proposed and that he will take the opportunity to meet with the individuals who have worked hard to keep America in the forefront of space exploration for the last four decades. I also hope the President will recognize that he has an opportunity to reach out on a truly bipartisan basis for a new plan for NASA’s future that prioritizes scientific research, protects our \$100 billion investment in the International Space Station, and ensures that America retains independent human space flight capability.

Last month, I introduced legislation that would provide such a framework. Identical companion legislation has been introduced in the House of Representatives by SUZANNE KOSMAS, a Democrat from Florida, BILL POSEY, a Republican from Florida, and others. This can be a starting point for bridging the differences between the President’s proposal and the views of many in Congress. We may miss this opportunity to work together to build on America’s legacy of space leadership unless the administration looks at its current approach and makes some alterations.

The budget proposal put forward by the administration has created an unnecessary choice between the President’s plans for increased research and development and the necessary transition to the next generation of technology on the one hand and maintaining a viable space station and an American human space flight capability over the next few years on the other. We can do both.

Let me be clear why I believe the President should make his visit to Florida the beginning of a renewed discussion on the country’s civil space program. I believe the President’s advisers, in reaching for a bold new direction for NASA, failed to take into account some very important realities of our space program. The decision made in 2004 to discontinue the shuttle program at the end of 2010 was based on an International Space Station service end date of 2015. Two years ago this

Congress, in an overwhelming bipartisan vote, enacted the NASA authorization bill of 2008, which stated that the space station should be kept in service until at least the year 2020. In the bill, we also required NASA to ensure that the capability to continue shuttle flights in support of the space station should be preserved for a period of time to give the new administration a chance to consider its plan for NASA.

The Obama administration ordered a full review of U.S. human space flight plans as part of its 2010 budget request and eventually deferred a final proposal until the 2011 budget request. One of the important points made by the review committee, chaired by the eminently qualified Norman Augustine, was that the space station should be extended until 2020, which is what Congress has already said is the policy of our country. The President's proposal accepts the recommendation which is consistent with the 2008 bill and which I believe is vital to making full use of the scientific research capacity that is only just now being made available with the completion of the space station assembly. However, I remind my colleagues that the space station was designed and built with the idea that the shuttle would be available to keep it supplied and maintained, and to be able to bring large replacement or spare parts up should they be needed in order to keep the space station functioning. The parts and equipment being flown on the last three remaining shuttle flights were selected from over 1,400 total items based on what would be needed for the station to be extended until 2015.

So while I commend the decision to extend the life of the station until 2020, flying the remaining shuttles scheduled for this year before completing an analysis of the station's needs based on a 2020 service date would surely be a mistake. We need to determine the parts and equipment needed to extend the station's life and ensure we have the capability to deliver them to the station. If we were to end the shuttle program as scheduled this year, we would be dependent on the Russian Soyuz vehicle and other possible cargo vehicles which lack the capability that the shuttle provides. Now let me remind all of those who are interested in the cost that using the Soyuz costs over \$50 million per person. Probably a minimum of six per year—well, six over a 2-year period, so at least three per year—would be about \$150 million a year. This is \$150 million that we could be using to extend America's capabilities for its crewed vehicle that we have on the drawing boards—the Constellation program. We could be putting that money to our use rather than paying the Russians for the Soyuz, for using their vehicle. The President's proposal fails to recognize this, thereby endangering our ability to sustain the station until 2020. My legislation would address this deficiency by keeping the shuttles as an option at a reduced rate

of two flights per year, but only until it can be determined that the station has parts and equipment on hand to keep functioning until 2020 in the absence of the shuttle's capability.

The President's proposal also relies on a still emerging commercial space industry to develop the launch and crew-carrying capability to replace the shuttle. I support the development of a commercial capability, but as a supplement to a NASA capability, and with the development—and proving out—of a cargo capability. We should take this first step in commercial development before committing our entire national human space flight effort to launch systems that would be another generation beyond the cargo capabilities currently being developed.

I remind my colleagues that much of the “business case” for a commercial system is based on the assumption of a viable space station. If the risk to station survivability presented by the President's proposal is not addressed, the case for investment in a commercial sector may weaken and the development of these capabilities may not even materialize. If this happens, America would have no long-term space flight capability and would need to rely completely on other nations for access to space. If an accident or technical issue results in the Russian Soyuz being unavailable for any extended period of time, the space station would very likely have to be abandoned and deorbited within a matter of months. Taking that level of risk is entirely unacceptable for a nation with our history of space leadership.

A nation with our heritage of stretching beyond the possible and reaching for the heavens deserves more. We need an approach that ensures the sustainability of the station, facilitates the transition to a replacement for the shuttle, and reduces the gap in our Nation's ability to reach space. My legislation would address these issues by allowing for the extension of shuttle if needed for station sustainability and authorizing the accelerated development of a NASA-owned replacement to the shuttle such as a shuttle-derived design using existing systems and capabilities and the current contractor workforce, which might be available in time to shorten our reliance on other nations for access to space after the shuttle is retired. All of this can be done while allowing for the change in NASA's long-term mission and the increase in scientific research and technology funding envisioned in the President's proposal. Simply moving—and this is how we can do it within a budget that does not increase spending—we can move the remaining shuttle flights scheduled for this year into 2011 and 2012, and adding the backup flight already prepared as a contingency would provide enough flexibility to complete the analysis of station needs and guarantee a cargo capability for an additional 2 years. It is possible to accomplish even this mod-

est but critical goal while holding the line on spending at the level in the President's budget. That is key, that we can do this within the President's own budget, yet extend our capabilities to have our control over the shuttles that would provide the space station what it needs to continue as we assess the needs to go on until 2020.

The principles necessary to bridge the gap between the President and Members of Congress have been set forward by my legislation that has also been introduced in the House. All that is needed to align these principles with the President's goals and existing budget realities is a willingness to make the effort and take the same risks that have been hallmarks of our Nation's commitment to space exploration. The bipartisan foundation is there to make a cooperative effort.

I stand ready to work with the President to bridge the differences between his budget proposal and the views of many in our Nation and many in Congress that the proposal places too much faith in unproven private sector alternatives to a NASA-managed replacement for the space shuttle and does not address the critical need to ensure the full and complete utilization and return on the investment in the International Space Station. For the sake of our Nation's space program and future generations of space pioneers, I hope when the President returns from his trip to Florida, he will accept my invitation to work together on a comprehensive space flight proposal that is worthy of our Nation and one that I think all of us who have worked on this issue for years—I am the ranking member of the Commerce Committee and I have been the chairman of the Space Subcommittee. I know we can do this. Senator NELSON of Florida, Senator LEMIEUX of Florida know this issue so well. We can do this if the President will work with us to come forward with a plan that is budget responsible and has the capability to extend our shuttles and make sure we utilize the investment we have already made in the space station.

Thank you, Mr. President. I yield the floor.

**THE PRESIDING OFFICER.** The Senator from New Hampshire.

**MR. GREGG.** Mr. President, I ask unanimous consent to proceed as in morning business for 15 minutes.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

#### FINANCIAL REFORM

**MR. GREGG.** Mr. President, I rise to speak a little bit about one of the major issues which we are about to take up here in the Senate and which has been discussed at considerable length throughout this country, and especially here in Washington, over the past 2 years as we have dealt with the financial crisis, and that is the issue of fiscal reform and financial reform.