of morning business for 1 hour, with the time equally divided between the two leaders or their designees, with the Senator from Vermont, Mr. SANDERS, controlling 15 minutes of the majority time.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank my good friend from Nevada, the majority leader. Before I speak, I see the distinguished Republican leader. I will reserve my time and allow him to speak, of course.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

JOB GROWTH

Mr. MCCONNELL. Mr. President, I thank my friend from Vermont. I hope I will not inconvenience him. I have a very short opening statement. I thank him for giving me the opportunity to make this statement.

As always, we appreciate the President coming to the Capitol last night. I take him at his word when he says he wants to work with us on issues that benefit the Nation and in particular to grow jobs. I would like to speak this morning about two areas in particular that meet the criteria of bipartisan achievements and job growth—agreements to increase our exports and finding more American energy. Those are two areas upon which we ought to be able to find bipartisan agreement.

The President called for increased exports and for the Congress to pass trade agreements that have languished under the current majority in the Senate. Republicans agree with the need to increase trade and with the need to ratify trade agreements with Colombia and other important trading partners that so far have met resistance on the other side of the aisle. We also support passing a sensible bill to help Pakistan establish reconstruction opportunity zones that actually increase trade and do not impose self-defeating restrictions. We agree with the President's call to pass these agreements. We agree that these agreements will lead to more American jobs. The Congress should act on these agreements.

The President also called for producing more American energy. This is an area with a huge opportunity for American jobs that cannot—cannot—be sent overseas. We agree with his call for more clean energy produced here in America. We agree with his call for building more nuclear plants. We agree with his call for increased offshore exploration for oil and gas. We agree with his call for development of clean coal technologies. We should build a new generation of clean nuclear plants in this country. Senate Republicans support building 100 new plants as quickly as possible. We hope Democrats will join us in that effort, particularly now with the President's call to action. The President could start by moving forward on the nuclear loan guarantee program that was included in the bipartisan 2005 Energy bill. He could also put forward a plan for dealing with the waste that comes from these plants in a safe and secure manner.

The President and I agree on the need to meet in the middle to find bipartisan agreement to grow jobs. I have outlined two specific areas where the President and Republicans in Congress agree. We know that increased American energy, without a new national energy tax, will grow good jobs. We know that increasing markets for our farmers, entrepreneurs, and manufacturers overseas through trade agreements will grow good jobs. We can get these done, and I hope the President will join us in calling on the majority to bring these issues to the floor in the Senate.

One thing we had hoped to hear more about from the President last night was the administration's handling of the attempted Christmas Day bombing. After 9/11, all Americans recognized the need to create and coordinate myriad tools of defense, security, and intelligence to protect us from future attacks. That is why Americans are so troubled by the fact that the administration seems to have lost sight of this essential requirement for national security out of a preoccupation with reading the Christmas Day bomber his Miranda rights. Apparently, there was little, if any, coordination among key components of the administration's national security apparatus on how to treat this terrorist who nearly killed 300 innocent people over Detroit on Christmas Day. Shockingly, the administration then made the hasty decision to treat him as a civilian defendant, including advising him of the right to remain silent, rather than as an intelligence resource to be thoroughly interrogated in order to obtain potentially lifesaving information.

Republicans have issued a letter to Attorney General Holder demanding answers to some of the vital questions that arise out of the administration's handling of this attempted attack. It is critical that Americans have a full and timely understanding of the policy and legal rationale upon which the ill-advised decision surrounding this narrowly averted calamity was made. Until these concerns are addressed, Republicans will continue to raise them on behalf of the American people.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand I have 10 minutes.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. LEAHY. Mr. President, I hope the American people watched and heard President Obama's speech last night and were reassured. I know I was. There are so many things that he covered, I will not try to repeat all of them. I would like to expand on one of the very important matters he raised. On this, I will wear my hat as chairman of the Senate Judiciary Committee.

The Supreme Court's 5-to-4 decision last week in Citizens United v. Federal Election Commission. That decision threatens to allow corporations to drown out the individual voices of hard-working Americans in our elections. By overturning years of work in Congress, years of work by both Republicans and Democrats alike—campaign finance laws, and by reversing a century of its own precedent, the conservative, activist bloc on the Supreme Court reached an unnecessary and improper decision that is going to distort future elections. The Citizens United decision turns the idea of government of, by, and for the people on its head. It creates new rights for Wall Street at the expense of Main Street.

Congress, on behalf of the American people, struggled for years to enact campaign finance reform. Virtually every American wanted campaign finance reform. We finally did that in a bipartisan way in the landmark 2002 McCain-Feingold Act overcoming a filibuster and passing it with a bipartisan supermajority. This milestone campaign finance reform strengthened the laws, protecting the interests of all Americans by ensuring a fair electoral process. It was a matter of serious consideration by Congress, and was signed into law by President George W. Bush.

In the 2003 case McConnell v. the Federal Election Commission, the United States Supreme Court upheld the key provisions of the McCain-Feingold Act against a First Amendment challenge. That was consistent with 100 years of judicial precedent and law, including a longstanding criminal law prohibiting corporations from contributing to Federal election campaigns. We have long prevented corporate contributions to Federal campaigns, at least since the time of President Teddy Roosevelt. The prohibitions included in the Tillman Act were signed into law in 1907.

Now only 6 years after upholding 100 years of precedent, resolving the question in McConnell, and after a number of other Supreme Court opinions upholding these campaign regulations as needed to ensure fairness in elections, a thin majority of the Supreme Court, made possible by President Bush's appointment of Justice Alito, has thrown out important parts of the law, and they have run roughshod over a long line of longstanding Court precedent. This is a threat to the rule of law. It overrules congressional efforts to keep powerful, monied interests from swamping individual voices and interests. This decision puts the special interests of big oil, banks and insurance companies ahead of the interests of the American people, and it risks corrupting our political process. It shows no deference to Congress and no respect for the rule of law as reflected in

the precedents of the Supreme Court. I agree with Justice Stevens, who wrote in his extraordinary dissent in Citizens United:

[T]he court's ruling threatens to undermine the integrity of elected institutions across the nation. The path it has taken to reach its outcome will, I fear, do damage to this institution.

At his confirmation hearing, Justice Alito, under oath, testified that the role of the Supreme Court is a limited role. It has to do what it is supposed to do vigilantly but also has to be equally vigilant about not stepping over the bounds and invading the authority of Congress. That was then when he was seeking confirmation. This is now. As Justice Stevens' dissent makes clear, the narrow majority of the Justices, including Justice Alito, substituted their own preferences for those of the duly-elected Congress, despite 100 years of the Supreme Court's own precedents.

This is the most partisan decision since Bush v. Gore. That decision by the activist conservative bloc on the Supreme Court intervened in a presidential election. This decision is broader and more damaging in that they have now decided to intervene in all elections. Just as in Bush v. Gore, last week, the conservative activists currently on the Supreme Court unnecessarily went beyond the proper judicial role to substitute their preferences for the law. Last week's decision is only the latest example—yet perhaps the most extreme—of the willingness of a narrow majority of the Supreme Court to render decisions from the bench to suit their own ideological agenda.

I believe that the activist conservatives now on the Supreme Court got this decision dramatically wrong as a matter of constitutional interpretation and also common sense. Corporations are not the same as individual American men and women. They do not have the same rights, the same morals, the same ideals. They do not vote. They do not have the same role in our election as individual citizens. When the Supreme Court made its landmark decision to ensure election fairness through the constitutional protection of the principle of one-person-one-vote, it did the right thing. Last week, the conservative bloc undermined that core constitutional principle by imposing its view that moneyed corporations should dominate the airwaves and election discourse. Rather than abiding by the limitations that Congress has developed to ensure a multitude of voices in the marketplace of election contests, they decided that the biggest corporations should be unleashed so that they can be the loudest and most dominant at the expense of our democratic principles.

At the core of the first amendment is the right of individual Americans—individual men and women—to participate in the political process, to speak and, crucially, to be heard. That is what the campaign finance laws were designed to ensure; that American men and women could be heard and fairly participate in elections. This right is fundamental to the legitimacy of our democracy—to our ability to govern ourselves because it is the foundation of our other rights.

Last week's decision puts these inalienable rights at risk by ignoring not only the extensive findings of Congress in passing the law but also logic and reality. The loud megaphones that can be bought by corporate money can drown out the unamplified voices of individual Americans. This is true even in an age when the Internet has vastly expanded avenues for citizens to speak to each other. The campaign finance laws passed by Congress reflected clear reasons for treating individuals and their free speech rights differently from corporations and their money. We have done so for at least 100 years. We sought additional reforms after the corruption of Watergate, and again at the turn of this new century. Those reforms and reasonable regulation are now left in tatters.

The purported principles of the conservative activists cannot be limited to section 441b of title 2 of the United States Code, as amended by section 203 of the McCain-Feingold Act. If corporations can use their wealth to make independent expenditures for electioneering because they are now suddenly being given, by five people on the Supreme Court, constitutional rights in elections, what can prevent them from contributing to individual campaigns? What principle allows us to bar foreign corporations—foreign corporations—from likewise engaging in campaign communications?

The largest companies garner annual profits of hundreds of billions of dollars. They are doing this even during one of the greatest financial disasters in our Nation's history. If even a fraction of that money were directed toward political activity, those companies would have the financial power to dominate and determine this country's elections and the laws of this country. To put this in perspective, as Doug Kendall of the Constitutional Accountability Center pointed out after the decision, if Exxon-Mobil diverted only two percent of the $45 billion in profits it generated in 2008, ''this one company could have outspent both presidential candidates and fundamentally changed the dynamic of the 2008 election.'' The same could be said for numerous other companies who will now be able to dwarf the contributions and voices of individual Americans.

The risks of this new ruling extend even further. The conservative activist majority in Citizens United fails to make clear whether the new ''rights'' it has conferred are limited to American corporations or if they apply to foreign corporations. Can the Chinese or subsidiaries of Chinese corporations or Saudi oil companies now also spend unlimited amounts of money and come in and decide, in effect, American elections?

Saudi Aramco is estimated to be worth $781 billion. Petro China's estimated net worth is $100 billion, with profits rivaling Exxon Mobil's, in the tens of billions each year. Likewise, Venezuelan oil takes in tens of billions a year. A German insurance company named Allianz is worth $2.5 trillion. Another insurance concern, ING Group, is valued around $2 trillion. HSBC Holdings is valued at almost $2.5 trillion, with annual sales of almost $150 billion. Bank of American itself has sales of over $100 billion a year. Then there are the Wall Street firms and investment houses, which certainly will not support planned banking industry reforms.

It is hard to envision this is what the Founders, who threw off the shackles of oppression, meant to enshrine in the Constitution when they wrote the First Amendment. It is also hard to understand how these conservative activists, who sound incessant alarm bells about the dangers of applying foreign law and recognizing rights for noncitizens in our courts, now cannot understand the threat of this encroachment on the very core of our democracy. The Citizens United decision is disconnected from the plain text and history of the Constitution, the careful policy choices of the elected branches, and the guidance of the Supreme Court's own legal precedents and the rule of law.

I am also disappointed with the Justices, who as nominees before the Senate, when they were testifying under oath, proclaimed their belief in judicial modesty and judicial restraint, could then turn around and so brazenly ignore the proper judicial role and in so cavalier a manner overturn Supreme Court precedent and override the rule of law. In his dissent, Justice Stevens noted that ''there were principled, narrower paths that a Court that was serious about judicial restraint could have taken.'' In deciding an unnecessarily broad question—when the parties themselves advanced numerous, narrower grounds of decision—the ''majority has transgressed yet another 'cardinal' principle of the judicial process.''

I cannot remember a time in my 36 years in the Senate when I have come to this floor to criticize even decisions I disagree with, but this one I am because it goes to the very core of our democracy, and it will allow major corporations, which should have laws written to control their effect on America, to instead control America. That is not the America I grew up in. It is not the America Vermonters believe in, where individuals have a right to speak but not mega corporations.

How did the Court come to the opposite conclusion about the rights of corporations to spend unlimited money on elections from that enshrined in our laws and prior Supreme Court decisions? Did we amend the Constitution to somehow equate corporations to people? No, we did not. Nowhere does the Constitution even mention corporations. Did we modify the first

amendment? No. The first amendment reads as it did 6 years ago—indeed, as it did 219 years ago, when the Bill of Rights was ratified, and the 14th State in the Union—Vermont—ratified the Constitution.

As Justice Stevens noted in his dissent:

> The only relevant thing that has changed since Austin and McConnell is the composition of the court.

Six years ago Justice Sandra Day O'Connor, who was part of the Supreme Court's majority upholding the limits on corporate spending in the McCain-Feingold Act, retired. The meaning of the Constitution should not change from one year to another due to the replacement of one Justice. As the dissenting Justices noted:

> [T]he final principle of judicial process that the majority violates is the most transparent: stare decisis. . . . But if this principle is to do any meaningful work in supporting the rule of law, it must at least demand a significant justification, beyond the preferences of five justices, for overturning settled doctrine.

As judicial nominees often testify, the rule of law depends on the stability provided by the consistent application and interpretation of the Constitution and the laws. So does the ability of Congress to act to pass laws. The Latin phrase that lawyers use to talk about the importance of respecting and following prior court rulings or precedent is ''stare decisis.''

As Justice Stevens wrote in the dissent:

> Stare decisis protects not only personal rights involving property or contract but also the ability of the elected branches to shape their laws in an effective and coherent fashion.

That is why every Supreme Court nominee that I can recall who has appeared before the Judiciary Committee has been asked whether he or she is committed to following precedent. This is central to assuring us and the country that a Justice will be committed to the rule of law and understands the role of a judge. Courts should only depart from precedent with ample justification. As Justice Stevens wrote in dissent:

> No such justification exists in this case, and to the contrary there are powerful prudential reasons to keep the faith with our precedents.

The same five Justices willing to overturn well-established precedent to create broad new rights for corporations in Citizens United had no trouble severely limiting free speech rights for individuals. In a 2007 case, Morse v. Frederick, Chief Justice Roberts, joined by Justices Scalia, Alito, Thomas and Kennedy, held that the First Amendment did not protect an 18-year-old student from being suspended for holding up a banner across the street from a school during the 2002 Olympic Torch Relay. They held the principal could suspend that student, a legal adult, for displaying the banner, not on school grounds, but across the street from the school. All that was needed was for the school administrator to believe that the banner somehow promoted illegal drug use and was therefore against the school's policy. Perhaps if that student had incorporated, these five Justices would now find his First Amendment rights protected. These are the same Justices who recently reached out to ban the streaming of public trial proceedings on a matter of public interest, as well, on similarly flimsy grounds in order to impose their own preferences.

It is also difficult to understand the lack of concern in Citizens United for the potential of massive corporate spending to distort elections in light of the Supreme Court's ruling issued only months ago in Caperton v. Massey. In that case, Justice Kennedy wrote that the possibility of bias due to campaign contributions in a state judicial election meant that the judge was wrong not to recuse himself from deciding a case involving a defendant who had spent $3 million supporting his election campaign to the bench. I agreed with that decision. There, Justice Kennedy wrote:

> We conclude that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent.

What I do not understand is how these same standards and obvious logic were not applied to corporate spending in election campaigns.

Last week's decision and its troubling inconsistency with the Court's other interpretations of the Constitution leaves with us serious questions about how to ensure that our elections are not corrupted by unchecked corporate spending. It also reinforces the profound concern I have had about the real-world consequences of the Supreme Court's recent decisions for hard-working Americans—real Americans—on issues such as equal pay for equal work; the power of Congress under the 14th and 15th amendment, to pass civil rights laws, such as the Voting Rights Act; and issues thought to be long settled, such as the meaning of Brown v. Board of Education. The newly constituted Supreme Court seems determined to accrue to itself the powers given by the Constitution to Congress and to rewrite long-established precedents, certainly acting contrary to what these same Justices said in their sworn testimony when they were being confirmed. The Judiciary Committee has explored these concerns in a series of recent hearings, and we will hold a hearing soon to examine the impact of the Citizens United decision. This case is just the latest example of why every seat on the highest court affects the lives of everyday Americans.

I think every one of us, as Americans, must work to ensure that the system of checks and balances envisioned by the Founders is not cast aside by the whimsical preferences of five Justices overriding the rights of 300 million Americans. I look forward to working with President Obama and Senators from both sides of the aisle as we try to restore the ability of every American to be heard and effectively participate in free and fair elections.

Again, I can only emphasize that I do not recall a time in my 36 years coming here to speak about Supreme Court decisions I disagree with, even though there have been many. But this is so egregious that, as chairman of the Senate Judiciary Committee, I would feel I was neglecting my duties if I did not come and speak against it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 2960 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

DISCRETIONARY CAPS

Mr. SESSIONS. Mr. President, I would like to share a few comments on the Sessions-McCaskill discretionary caps amendment that would limit spending to the budget items and budget levels we passed.

Before doing so, I would like to say I was disappointed last night that the President and my good friend and very effective leader of the Judiciary Committee, Senator LEAHY, have politicized a very important decision of the Supreme Court of the United States. The Justices didn't take an oath not to reverse bad precedent. They swore an oath of fidelity to the U.S. Constitution, and the first amendment guarantees the right of free speech.

For over a decade, I warned against this, and others warned this legislation we were passing violated the first amendment of the U.S. Constitution. In fact, one of the supporters of the amendment, Senator FEINGOLD, at one point offered a constitutional amendment to amend the first amendment because he recognized this campaign restriction on spending during an election cycle ran afoul of the Constitution, but at some point they decided to go forward with it.

I would say two things about it. How it happened was this: During oral arguments on the showing as to whether a corporation which had produced a film about one of the Presidential candidates could show that film before an election and which was being blocked by the court—where they said you can't show a film about an election candidate, and they objected, saying: This is free speech—the Supreme Court asked this question during oral argument to the government's lawyer who was defending the statute we unwisely