

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

passed, and the question was: Well, Counsel, what if a company produced a book and wanted to publish a book, would this statute prohibit that? What was the answer? Yes.

Well, the Supreme Court said: Wait a minute. This is a serious thing. So you—Congress—passed a law that prohibits a group of American citizens from publishing a book that might have something to do with an election? This is a big deal. We have laws that protect pornography and all kinds of things, but the first amendment was written for free political speech.

Anyway, I don't want to go into it today, I have talked a lot about it before, but I wanted to push back a little. I am very disappointed because my colleague and the President are attempting to politicize a very significant first amendment issue that we knew existed when this bill was passed. The New York Times, which supported it, was a corporation. They can write editorials on the day of an election. But if the Ford Motor Company gets tired of GM getting billions and billions of dollars from the Federal Government, can they not run an ad and say: Don't do this.

Anyway, we will be voting soon on a very important piece of legislation, and so I am pleased to be working with Senator CLAIRE McCASKILL, my Democratic colleague from Missouri, to say we need to do better about spending, and we do.

What happens in this body is, we too often find ways to get around the budgets we pass. Last year, we passed a budget that I thought spent too much, but it passed and it is our budget and it calls for spending over the next 5 years to have around 1 to 2 percent growth. But, historically, we have been violating that. Historically, we find this gimmick, this way to go above that. It is going above that, and I can demonstrate how baseline increases in spending compound themselves over the years and get us into serious financial trouble. What we need to do is stay with our budget.

We need to have an option to go outside the budget or above the budget in case of an emergency—there is no doubt about that—but we have too often been able to get around the budget through manipulation and through emergency spending designations. Our bill has a number of Democratic Senators who are supporting it, and I think most Republicans will support it. I think we have an opportunity to pass it, and it would provide some integrity to our process.

The American people aren't trusting us. I think they are right not to trust us and I am prepared to debate that. I can show they have a right not to trust the budget numbers we put out because we don't stick with them. So this amendment would say that for 5 years we will take the very numbers that were in last year's budget—the budget we are operating under today—and we would place them in a statute by num-

ber. The amendment would say how many millions of dollars we will allow to be spent this year in defense numbers and nondefense numbers. When we do that, if there comes an attempt to violate the budget and to spend more, then a Senator could raise a point of order and it would take a two-thirds vote of the Senate to override that point of order.

I think that is good, sound legislation. Make no mistake, it will put some teeth in the budget. There are those of us who know we have given in too often to the desire to spend more because we get multiple demands from our citizens and we sometimes are unable to say: Well, I do need to help you, but I am going to have to cut over here. What we do say is, I can't reduce anything. Now that would make those people uneasy and unhappy with me. But I want to help this person, so I will just increase my spending and go over on the debt and over the budget limit.

I am of the belief that this legislation, though modest, is very consistent with the numbers President Obama talked about last night. In fact, I think it is almost in perfect harmony with the freeze he suggested should happen last night. This would actually allow a 1- to 2-percent increase, as I said, in defense or nondefense spending. This would be the kind of thing that would be in harmony with the President's proposal.

The American people are cynical. We say these things—the President says these things, Members of the Senate say these things—but our spending, when we look back at it, doesn't do so well. Last year our domestic discretionary spending, the money we actually controlled in the Senate, increased 12 percent, which is a number above what we can realistically justify. Remember, we also had, on top of that, the stimulus package. A lot of that money hasn't been spent—maybe a third of it. That is pouring into the economy.

Now is the time for us to get hold of baseline spending. I believe we can do it. These are some of the objections we have had about it. Would it prevent the Federal Government from responding to emergencies? No. I point out the emergency spending bills that came up before Congress were consistently passed with huge majorities. For example, the Defense bill on the war against terrorism and tsunami relief, 100 to 0; on supplemental veterans health care, we had 99 to 1; the Katrina spending was passed by unanimous vote; the second emergency for Katrina, 97 to 0; another Katrina vote, 93 to 0; supplemental appropriations for disaster loans, no budget point of order even raised; another Hurricane Katrina supplemental, 80 to 14; Emergency Economic Stabilization Act, 74 to 25.

The votes have been high. But every one of these things does not need to be passed perhaps at the level initially proposed. Sometimes you may support Katrina or some other supplemental

and you think the numbers are too high and you are going to object and the appropriators can come back with a smaller number and it would pass. I say that is the process we work with.

We are violating the budget act too much. I urge my colleagues to consider this legislation and vote for it. Would it prevent Congress from adequately funding missions in Iraq and Afghanistan? The answer to that is no. The 67-vote threshold would not apply in Iraq and Afghanistan and our war against al-Qaida because the amendment explicitly states this rule does not apply "in the case of the defense budgetary authority, if Congress declares war or authorizes the use of force," which we have done in these situations.

In wartime it does not constrict our ability. We still have to vote for it and make sure we have the vote for it, but we don't have to have a supermajority for votes. I think that is the important part of it.

Some would say you are attempting to balance the entire budget by reducing nondefense discretionary spending, which is a relatively small part of the budget. I would say we know this will not fully balance the budget, but I can demonstrate, and have, that the growth in spending that is occurring on the discretionary accounts in the last several years has far exceeded the growth of Medicare and Social Security, and it is crowding out our ability to fund Medicare and Social Security. It is a threat to us, to those programs, as well as to the long-term fiscal status of our country.

Finally, I point out that I just left the Budget Committee hearing. Mr. Elmendorf, the CBO Director, testified today and indicated that, if several more things that are likely to occur, which he did not use in his calculations, take place the number would be much worse, much higher. He said we are facing a critical economically threatening force of debt that we have to act better about. Chairman CONRAD and Ranking Member GREGG said the same thing in their opening statements.

I point out what he reaffirmed, their score, that under the present path we are on, we now pay, in 2009, \$200 billion per year in interest. That is what we paid to people who loaned us money, the public debt. In about 2019, 10 years, that debt will triple from \$5.7 trillion to over \$17 trillion, and the interest we pay in 1 year on that debt is \$799 billion.

When you think about it, the Federal Highway Program is about \$40 billion or \$50 billion. The aid to education is not much more than that. This is going to crowd out all kinds of spending that so many of my colleagues would like to see happen. We are either going to have massive increases in taxes or major reductions in spending just so we can budget and pay for the interest on this debt. He says it is unsustainable. This is a nonpartisan person.

The Concord Coalition has a great focus on excessive spending in this

country. The Concord Coalition supports the amendment that Senator McCASKILL and I are offering; so does the Committee for a Responsible Federal Budget, a great bipartisan group that has been watching budget issues for many years and is composed of some of the previous budget directors and experts on these matters, a very responsible, respected group. The Heritage Foundation, a solid group of conservative scholars who have written persuasively about the dangers of debt, as well as the National Taxpayers Union, which represents individual Americans who realize the threat to our country from soaring debt and bigger and bigger spending, all support this legislation.

I think it is the kind of bipartisan legislation that will send a message not just to our Congress that we are going to contain spending but also to the whole world that we are putting in place some things that indicate we are going to be serious about avoiding this path we are on.

This is not made up. This is based on present commitments of the U.S. Government in law based on projections of income that we will receive and the spending levels that are surging. I hope our colleagues will seize on this. I think it will help the stock market. I think it will help our own focus. It would be a statement by Senators that we are serious about this, and we will work together to get it done. I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The Senator from Nebraska is recognized.

Mr. JOHANNIS. Madam President, I rise today to speak about the same topic the last Senator spoke about. Let me, if I might, start my comments today by complimenting Senator SESSIONS. I look at that graph that was just up and the one thing it points out to me in very vivid detail is that spiraling cost, that straight-up cost, is only to pay the interest. It does not even start to pay down the principal.

I stand here today before offering some comments about this further, thinking how much we would unleash the potential of this country if we just sent a signal that we were getting serious about our spending, our debt load, and we were intent on addressing that.

That is what brings me to the floor of the Senate today. I rise today to speak against raising the debt ceiling. This is a decision that should not be taken lightly. No one in this body should take this decision lightly. It is a serious matter, enormously serious. Our country has debt, and it is important that we start to deal with these commitments and the spending that is just out of control.

Ralph Waldo Emerson once said: "Pay every debt as if God wrote the bill." Yet I could not support increasing the amount that the Treasury can borrow by \$1.9 trillion—it is the largest increase ever contemplated—in the

current environment of spending the people's money as if it meant nothing. You see, what is missing for me, to get to a point where you could raise the debt ceiling, is a commitment, a plan, a serious plan, a roadmap on how we get our spending under control.

The orchestra, sadly, continues to play oblivious to our government barreling down on this entitlement-and-spending iceberg which is coming our way. There is just no doubt about it.

If this increase passes, the debt limit will have increased about 35 percent in the last year. Think about that: 35 percent in the last year. We are not talking about a few million dollars or billion dollars. We are talking about trillions of dollars.

Let me repeat that. Since this administration took the reins, our debt ceiling will have increased by over one-third.

We as parents teach our children, we say: Money doesn't grow on trees. How many times did I tell my kids that? But it seems as if the U.S. Government has missed this sage lesson. The latest proposed increase is undoubtedly the largest increase in history, more than double the previous record of \$984 billion.

Since arriving here I have consistently argued for setting priorities and against wasteful spending. I would like to say again, and I have said this on the Senate floor, as my time as Governor of Nebraska went on I realized there were no easy choices in balancing the budget, but we had a constitutional mandate to balance the budget back home in Nebraska. What is more, our State constitution prohibited us from borrowing money.

What did that mean? I couldn't balance the budget by issuing debt. This whole idea of the Federal Government issuing more and more debt was a foreign concept back home.

When I came out here to join the President's Cabinet, I did not have to turn to the last Governor and say: I am sorry about all that debt I took on for the State. There is no debt in Nebraska. We pay our bills. Since arriving here, though, I have begun to realize this government tries to be all things to all people every day and all day. The U.S. Government simply cannot continue on that path. We believe back home that less government is better government.

Many of my colleagues would probably come to the floor and stand and disagree with that. They may believe that you have to literally spend your way out of these problems, you have to spend your way to wealth. But there is nothing in our heritage that would lead me to the conclusion that is the right approach.

Even if you disagree, we can have a respectful debate. I am hard pressed to find anyone, though, who would argue with the reality of the numbers. I used to tell my cabinet when I was Governor, when we were dealing with tough budget issues: Look, folks, this is not magic; it is math.

And the numbers do not lie. The numbers tell us that the Nation's fiscal course is not sustainable. By the end of this year, our debt held by the public will be more than 60 percent of the gross domestic product. Think about this. Among internationally recognized economic thresholds, 60 percent is generally known as the tipping point toward an unsustainable nation. The European Union actually treats it that way. You cannot even be a member of the European Union if your debt exceeds 60 percent of your gross domestic product. Think about this. This great Nation would not be eligible to join the European Union.

Looking down the road, within 10 years our publicly held debt will approach the 90-percent mark. You see, once that snowball gets going down that mountain, good luck of ever stopping the avalanche.

We will not be able to catch up with this runaway debt if we do not start dealing with it now. We are, in my judgment, on the verge of a vicious cycle that requires more taxes, more debt to be taken on by American families and sent overseas to foreign creditors. If we allow our country to slip into this cycle—and we are dangerously close to it now—then that shining city on the hill former President Reagan would often speak about is more dim, if not dark.

Instead of voting to increase the debt limit and simply kicking the fiscal can down the road, we need, first, to devise some concrete interventions. Unfortunately, the President's 2010 budget proposes a \$1 trillion deficit, on average, for each of the next 10 years. With that vision, debt limit increases are going to be very commonplace around here. The cost of bearing such debt will swallow up our Nation's resources. It will diminish productivity.

I know the temptation is great—I saw it last night in the President's speech. I say this very respectfully—the temptation is great to say, you know, folks, these are the last guy's problems. This is the problem I created. All I can say is this: What that reminds me of would be like me becoming the mayor of Lincoln—and I served two terms as mayor there—and this time of the year, you have terrible pothole problems. It would be like me saying: Those potholes there were caused by the last guy. I will fix the ones that arose during my tenure.

I think what the American people are asking us to do is to start working together to solve the problems. But, unfortunately, these are not just potholes in the road of our Nation's history, these are massive problems that are going to seriously impact our children and grandchildren and bring down their quality of life.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWBACK. Madam President, how much time is remaining on our side?

The PRESIDING OFFICER. Four minutes fifty-five seconds.

Mr. BROWNBACK. Madam President, I am happy to go back and forth if that would be the agreed-upon order of things. That would be certainly acceptable to me. I wanted to make sure what time we had on our side.

The PRESIDING OFFICER. Without objection, the Senator from Vermont is recognized.

NOMINATION OF BEN BERNANKE

Mr. SANDERS. In a little while we are going to be casting votes on an issue of enormous consequence, and that is whether we reappoint Ben Bernanke as Chairman of the Fed. I am here to argue that would be a very bad decision; that we should reject this nomination; that we need in this country a new Wall Street which understands its function is not simply to make as much money as it can for extraordinarily wealthy people on the Street, but to begin to interject the function of Wall Street into our productive economy, make credit available to small and medium-sized businesses so we can break out of this horrendous recession, which is causing so much pain from one end of this country to the other.

In order to create a new Wall Street, we need a new Fed, and we need a new Fed Chairman who is going to provide new leadership. The same old, same old is not going to work. Everybody in America agrees and understands that a little over 1 year ago, our Nation—in fact the world's financial system—came to the edge of a major collapse.

Everybody also understands that the function of the Fed is to protect the safety and soundness of our financial institutions. That is its main function. Can anybody deny with a straight face that the Fed and its Chairman, Mr. Bernanke, failed at its task? They failed. This is not a personal attack against Mr. Bernanke.

But while Wall Street became converted into the largest gambling casino in the history of the world, where was Mr. Bernanke and the Fed, whose job it is to protect the safety and soundness of our financial institutions? They were not there. It seems to me to be a very bad idea to reward somebody with reappointment who failed at an enormously important task which has driven this country into a severe recession so that 17 percent of our workforce today is either unemployed or underemployed.

Millions of our fellow Americans have lost their homes; they have lost their savings; they have lost their ability to send their kids to college; they have lost their hopes for the future. Mr. Bernanke failed at his job. He should not be rewarded with reappointment.

Further, many of us, after 8 years of the Bush administration, said it is time for a change. It is time to change the priority of this Nation, time to

move us in a new direction. The evidence is overwhelming that from an economic perspective as well as many other perspectives, the Bush administration failed.

Let me quote from the Washington Post earlier this month. This is what they said about the Bush economy:

The past decade was the worst for the U.S. economy in modern times. It was, according to a wide range of data, a lost decade.

Let me repeat.

A lost decade for American workers. There has been zero net job creation since December, 1999. Middle income households made less in 2008, when adjusted for inflation, than they did in 1999.

A lost decade. Standard of living for American workers down, creation of wealth down for American workers.

Ben Bernanke was appointed by George W. Bush to be Chairman of the Fed. He was a member of the Bush administration. In fact, he was the chairman of President Bush's Council of Economic Advisers.

Why do you want to reappoint someone who not only failed at his job as Chairman of the Fed, in terms of protecting the safety and soundness of our financial institutions, but was an architect of the Bush economy, which was a disaster for American workers? We need a new direction at the Fed.

It is not only looking back at the failures of Mr. Bernanke, it is looking forward and saying, how can the Fed respond to begin to protect the middle class and working families of our country? Here is something that has not been discussed enough. The Fed today has enormous powers.

Many will remember that as part of the bailout, Mr. Bernanke and the Bush administration not only pushed for a \$700 billion bailout for Wall Street, but on top of that Mr. Bernanke provided trillions of dollars—let me underline that—trillions of dollars in zero-interest loans to large financial institutions.

As a member of the Budget Committee, I had the opportunity to ask Mr. Bernanke which financial institutions received these trillions of dollars. I do not think that is an unreasonable question on behalf of the American people. Mr. Bernanke said, in so many words: Sorry, Senator, not going to tell you. The American people do not have to know who received trillions of dollars of their money. That to me is totally unacceptable. We need transparency at the Fed. Mr. Bernanke has not provided that transparency.

I have introduced legislation to bring that transparency to the Fed. Someone whose views are very different from mine on many issues, RON PAUL in the House, brought forth similar legislation. We need transparency. We need a Chairman of the Fed who will give us that transparency. That is something Mr. Bernanke can do tomorrow. In my State of Vermont, and I am sure in your state of New York, Madam President, people are calling you every single day and they are saying: We are

sick and tired of paying 25 or 30 percent interest rates on our credit cards from the same banks and bunch of crooks that we bailed out who got us into this recession in the first place.

Imagine that. You have people who act on Wall Street in a reckless, irresponsible, illegal way. Taxpayers bail them out, and they say: Thank you, taxpayers. By the way, we are going to raise your interest rates on your credit cards. Have a nice day.

All over America, people cannot believe that. They are outraged this is happening. Well, you know what. Mr. Bernanke and the Fed have the authority today to lower interest rates on credit cards. They could do that today, and that is what they should do, because one of their responsibilities is to protect consumers against outrageous and fraudulent activities. In my view, charging people 25 or 30 percent is outrageous and fraudulent and usurious.

All over this country—the President mentioned it last night, appropriately so—small and medium-sized businesses that are making a profit are crying out for low-interest loans in order to expand their businesses and to hire new workers.

One of the great economic problems we are having as a Nation—the President touched on it last night—is the need for small productive businesses to get the low-interest loans they need.

Well, Mr. Bernanke was there with zero-interest loans for large, failed, fraudulent, dishonestly run Wall Street firms, but he is not there for small businesses all over this country that desperately need low-interest loans. The Fed has the authority today—not tomorrow, today—to provide low-interest loans to small and medium-sized businesses so that we can begin to hire new workers and bring our economy out of this severe recession we are currently in.

The reason, as I understand it, that the taxpayers of this country, against my vote, I should say, were asked to bail out the crooks on Wall Street was because they were too big to fail. You see, if a small business goes under, that is okay. Someone has worked their whole life building the business, the business fails, no problem. We do not help them. But if you are a big financial institution and you engage in reckless, illegal behavior, we bail you out because if you go down, you are going to take a large part of the economy with you, you are too big to fail.

Many of my colleagues might be surprised to know that three out of the four largest financial institutions we bailed out because they were too big to fail are bigger today than they were before we bailed them out because they were too big to fail. That may make sense to somebody, not to this Senator.

It seems to me that what common sense suggests is that we break up these large financial institutions so, A, the American people are never again put in the position of having to bail them out because they are too big to