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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, whose inward fellowship means peace and power, dissolve the barriers that keep our souls from You. Deliver us from the self-sufficiency that will not recognize our need of You. Save us from spiritual blindness that sees the visible but is unaware of the invisible and eternal.

Lord, teach our lawmakers how to be victors over life and not victims of it and that to live worthily, they must put their faith in You. Whether on the mountaintop or in the valley, may they ever be aware that You are walking beside them. Give them, therefore, the wisdom to comprehend Your perspective, plan, and purpose.

We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 29, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WARNER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each. There will be no rollcall votes today. The next vote will occur at 5:30 p.m. on Monday, February 1. The vote will be on the motion to invoke cloture on the nomination of Patricia Smith to be Solicitor at the Department of Labor. I advise Senators that they should be here to vote. We are not going to extend the vote on Monday. We must finish the vote about 10 to 6. There will be a strict enforcement of that time. We have to finish for obvious reasons because the 30 hours starts running when we complete the vote. If we go past 6 o'clock, it is past midnight. We want to make sure the vote is over at 10 to 6. Everyone is forewarned that if they are late, they will not be counted as voting.

SUCCESSFUL LEGISLATIVE WEEK

Mr. REID. Mr. President, we had a very successful week legislatively. I extend my appreciation to Senators on both sides of the aisle, especially my friends on the Republican side. There were no 30 hours used. It worked out extremely well. There was ample time for debate, and there were issues that

were of concern to both parties. Of course, the issues are important to the country.

Without belaboring the issues on which we voted, I wish to spend just a minute on two issues—first, the pay-go rules we passed.

The Presiding Officer has been a great asset to the Senate. He has worked with the chairman of the Budget Committee, Senator CONRAD, and others to focus on finances of our country. The Presiding Officer was a very successful Governor of the Commonwealth of Virginia and noted for what he did with budgetary matters in Virginia.

Pay-go rules are so important. We have rules now, like people have in their individual homes. We are working to do what people who work for a living do, and that is spend money we have. It is not as if we are inventing something new. During the Clinton years, we had pay-go rules. As a result of that, we were able to spend less money than we were taking in. For the first time in decades, in the last 3 years of the Clinton administration, we paid down the national debt by hundreds of billions of dollars. So I hope, looking into the future, we can continue doing that; that is, do it again. It is so important.

I extend my appreciation to Members of the House of Representatives, especially the Speaker and the majority leader, STENY HOYER. They have been focused on this pay-go for more than a year.

We were finally able to get it done over here. It is going to be good for the country. I think the things we did will continue to focus on the money that we do not have and the way we have to get our budget in order. I am especially happy we were able to give the doctors 5 years' reprieve from the Draconian rules that were facing doctors who take Medicare patients.

The other issue I wish to spend a minute on is last evening, again with the cooperation of all Senators, we

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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were able to pass the Iran sanctions law. It is so important. We all know what that country is doing to its citizens. It is time this country of ours stepped forward and did some things to focus on what they are doing; that is, what Iran is doing. The legislation we passed will certainly allow this to take place.

We have a conference with the House. I will have a conversation later today with the chairman of the committee over there, HOWARD BERMAN, who has been such a good friend of mine personally. He and I came to Washington together in the House of Representatives, but he has also been a great representative of our country in his chairmanship of the Foreign Affairs Committee in the House.

Senator MCCAIN had an amendment about which he is concerned. I appreciate his not offering it last night because it would have caused other amendments from this side being offered.

As a result of the cooperation between both sides of the aisle, we got this legislation passed. We hope to get it out of conference quickly and have the President sign it. It is certainly what we need to do. Iran is a country on which all the world is focusing. We must do everything we can to stop them from acquiring nuclear weapons.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak in morning business for up to 25 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CITIZENS UNITED DECISION

Mr. WHITEHOUSE. Mr. President, I rise this morning to join Chairman LEAHY's eloquent and inspiring remarks of yesterday and express my strong disagreement with the Supreme Court's decision released last week in *Citizens United v. the Federal Election Commission*.

In this astonishing decision, the slimmest of 5-to-4 majorities overturned legal principles that have been in place since Theodore Roosevelt's administration. The five Justices who make up the Court's conservative bloc opened floodgates that had for over a century kept unlimited spending by corporations from drowning out the voices of the American people. It would be hard to call this decision anything other than judicial activism.

Let me start by reminding my colleagues of the long history of success-

ful and appropriate regulation of corporate influence on elections. Federal laws restricting corporate spending on campaigns have a long pedigree. The 1907 Tillman Act restricted corporate spending on campaigns. Various loopholes have come and gone since, but the principle embodied in that law more than 100 years ago—that inanimate business corporations are not free to spend unlimited dollars to influence our campaigns for office—was an established cornerstone of our political system. Monied interests have long desired to wield special influence, but the integrity of our political system always has had champions—from Teddy Roosevelt a century ago to Senators MCCAIN and FEINGOLD in our time, who won a bruising legislative battle with their 2002 bipartisan Campaign Finance Reform Act.

Last week, that activist element of the Supreme Court struck down key protections of our elections integrity, overturned the will of Congress and the American people, and allowed all corporations to spend without limit in order to elect and defeat candidates and influence policy to meet their political ends. The consequences may well be nightmarish. As our colleague, Senator SCHUMER said, one thing is clear: The conservative bloc of the Supreme Court has predetermined the outcome of the next election; the winners will be the corporations.

As my home State paper, the *Providence Journal*, explained:

The ruling will mean that, more than ever, big-spending economic interests will determine who gets elected. More money will especially pour into relentless attack campaigns. Free speech for most individuals will suffer because their voices will count for even less than they do now. They will simply be drowned out by the big money. The bulk of the cash will come from corporations, which have much more money available to spend than unions. Candidates will be even more unlikely to take on big interests than they are now.

What could make a big interest more happy than that? The details of this case were quite simple. *Citizens United* is an advocacy organization that accepts corporate funding. It sought to broadcast on on-demand cable a lengthy negative documentary attacking our former colleague, now-Secretary of State Clinton, who was then a candidate for President. The law prohibited the broadcast of this kind of corporate-funded electioneering on the eve of an election. *Citizens United* filed suit, arguing that this prohibition violated the first amendment. The conservative Justices agreed, holding that all corporations have a constitutional right to use their general treasury funds, their shareholder funds, to pay for advertisements for or against candidates in elections.

Although the decision was cast as being about the rights of individuals to hear more corporate speech, its effect will be with corporations—big oil, pharmaceutical companies, debt collection agencies, health insurance companies, credit card companies and banks, tobacco companies—now all moving

without restriction into the American election process.

To highlight the radical nature of this decision, let me put this in the context of true principles of judicial conservatism. Justice Stevens explained in his dissent that the principle of *stare decisis*—"it stands decided"—assures that our Nation's "bedrock principles are founded in the law rather than in the proclivities of individuals."

It is jarring that the unrestrained activism of the conservative bloc on the Supreme Court led them to pay so little heed to longstanding judicial precedents, brushing them aside with almost no hesitation. Justice Stevens noted that "the only relevant thing that has changed [since those prior precedents] . . . is the composition of this Court."

Is it truly just a coincidence that this same bloc of Judges just last year invented a new individual constitutional right to bear arms that no previous Supreme Court had noticed for more than 200 years or is something else going on here where core Republican political goals are involved? Is *stare decisis* now out the window, at least with the Republican activist judges?

Another supposed conservative principle thrown aside by these activists was the approach to constitutional interpretation that focuses on the original intent of the Founders. Read the opinions. By far, the most convincing discussion of that original intent appears in Justice Stevens' dissent, not in the majority opinion or in Justice Scalia's concurrence. Justice Stevens, in dissent, correctly explains that the Founding Fathers had a dim view of corporations. They were suspicious of them. They considered them prone to abuse and scandal, and that those corporations that did exist at the time of the founding were largely creatures of the State that did not resemble contemporary corporations. Justice Stevens rightly describes it as:

. . . implausible that the Framers believed "the freedom of speech" would extend equally to all corporate speakers, much less that it would preclude legislatures from taking limited measures to guard against corporate capture of elections.

This lack of historical awareness is, as I will explain, not the only flaw of the majority opinion. Only the dissent points out the most basic point:

. . . that corporations are different from human beings . . . corporations have no consciences, no beliefs, no feelings, no thoughts, no desires.

I would add they have no souls. The dissent explains:

Corporations help structure and facilitate the activities of human beings, to be sure, and their "personhood" often serves as a useful legal fiction. But they are not themselves members of "We the People" by whom and for whom our Constitution was established.

The majority just bypasses this elemental point.