

which I have been directing toward Solicitor General Kagan involves the question as to whether she would have voted to grant cert. I believe that is an appropriate question, whether she would agree that a case ought to be heard. There is a view that questions ought not to be asked as to what a nominee would do once a case is pending before the Court. I think even that doctrine has some limitations. I think cases such as *Brown v. Board of Education*, cases such as *McCulloch v. Maryland*, cases which are well established in the law of the land, ought to be the subject for commitment. But I think there is no doubt—in my opinion, there is no doubt—we should ask her whether she would take a case such as the Terrorist Surveillance Program, or a case such as the litigation involving the claims brought by the survivors of victims of 9/11.

The hearings next week on Solicitor General Kagan will give us an opportunity to move deeply into a great many of these important subjects. While it is true that in many instances we do not get a great deal of information from the nominees, I think the hearings are very important to inform the public as to what goes on with the Court. This is in line with the efforts which I have made to provide for legislation which would call for televising the Supreme Court. The Judiciary Committee has twice passed out of committee, by significant votes—once 12 to 6 and once 13 to 6—legislation which would call for the Supreme Court to be televised.

The Congress of the United States has the authority to make directives on administrative matters—things such as how many Justices constitute a quorum, when they begin their term, how many members there are of the Supreme Court. Congress has the authority to mandate what cases the Supreme Court will hear, and—in the cases which I intend to ask Solicitor General Kagan, such as the terrorist surveillance program—whether she would have granted cert.

There are underlying concerns, which I have raised today, of a certain disrespect which characterizes a good many of the Supreme Court opinions. For example, the opinion by Chief Justice Rehnquist in striking down the legislation protecting women against violence, notwithstanding a very voluminous record—a radical change in the interpretation of the Commerce Clause—where the Court, through Chief Justice Rehnquist, said that the Court disagreed with Congress's "method of reasoning."

It is a little hard to understand how the method of reasoning is so much improved when you move across the green from the Judiciary Committee hearing room past confirmation; or where you have the language used by Justice Scalia—and I have quoted some of it earlier—in the case of *Tennessee v. Lane*, where Justice Scalia had objected to the congruence and propor-

tionality standard, which he said was a flabby test and a standing invitation to traditional arbitrariness and policy decisionmaking.

Then he went on to criticize his colleagues for, as Justice Scalia said, inappropriate criticism of an equal branch. This is what he had to say about the proportionality and congruent standard.

Worse still, it casts this court in the role of Congress's taskmaster. Under it, the courts—and ultimately this Court—must regularly check Congress's homework to make sure that it has identified sufficient constitutional violations to make its remedy congruent and proportional. As a general matter, we are ill-advised to adopt or adhere to constitutional rules that bring us into constant conflict with the coequal branch of government. And when such conflict is unavoidable, we should not come to do battle with the United States Congress armed only with a test of congruence and proportionality that has no demonstrable basis in the text of the Constitution and cannot objectively be shown to have been met or failed.

So that is fairly strong language in disagreeing with what the Court has done in establishing the test. And Justice Stevens minced no words in his criticism of *Citizens United* in saying that the decision by the Supreme Court showed a disrespect for Congress. There the Court, in *Citizens United*, overruled both *McConnell v. Federal Elections Commission* and the *Austin* case. Overruling *Austin* was very significant, Justice Stevens noted, because Congress specifically relied on that decision in drafting *McCain-Feingold*. Justice Stevens then said that pulling out the rug beneath Congress in this matter "shows great disrespect for a coequal branch."

Well, my colleagues, the Congress has an opportunity to assert itself, to demand the appropriate respect which the Constitution calls for and has been implemented under the doctrine of separation of powers. We can find ways to make sure that commitments about respected congressional fact-finding will be observed, or that the rule of stare decisis will be respected; that when there are major decisions coming before the Supreme Court of the United States which involve the power of Congress vis-a-vis the executive branch, that those decisions will be made.

So let's sharpen our lines of questioning, colleagues, as we move forward to the hearings on Solicitor General Kagan a week from today.

I thank the Chair, and I yield the floor.

I had noticed my colleague standing there. I hope I haven't kept him waiting too long.

Mr. BUNNING. The Senator can speak all he likes.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

#### AMENDMENT NO. 4380

Mr. BUNNING. Mr. President, I rise to speak in morning business on my

amendment to the extenders package, Bunning amendment No. 4380.

First, let me explain why this amendment is needed. When the Senate passed the first version of the extenders package in March, the bill extended all parts of the alternative fuel credit that expired at the end of last year. This included the coal-to-liquids portion of the alternative fuel credit.

I was pleased to hear President Obama mention coal to liquids as an important part of our energy strategy in his State of the Union Address earlier this year. That is why I am surprised to see coal to liquids deliberately excluded from the extenders package, first in the Reid substitute and again in the Baucus substitute.

Let me be clear: The bill doesn't just omit or remain silent on the coal-to-liquids credit. This bill specifically says that the coal-to-liquids credit expired on December 31, 2009, and isn't renewed. That is in the bill.

My colleagues probably know that I have many problems with the underlying bill. It adds tens of billions to our national debt and it contains job-killing tax increases. Options to pay fully for this bill by cutting spending have been offered and rejected, so our children and my grandchildren will foot the bill. But I thought that one element both parties could agree on is that expired tax provisions that taxpayers count on—and have been extended routinely in the past—should be extended.

My amendment is simple: It ensures that the coal-to-liquids portion of the alternative fuel credit will be extended until the end of the year, just like the other expiring parts of the alternative fuel credits included in this bill. The Senate already voted to extend all parts of the alternative fuel credit when it passed the extenders package last March.

Many difficult innovative fuels qualify for the alternative fuel credit, but coal to liquids is the only one that specifically requires reduced emissions. The reduction was originally 50 percent but was raised to 75 percent last year as a bipartisan agreement. I do not understand why the extenders package fails to extend the only part of the alternative fuel credit that called for reduced emissions.

My colleagues who are deficit hawks will be glad to know that this amendment will not add one dime to the deficit. This is because no coal-to-liquids projects will come on line in 2010, so no tax credit will be received. However, if the credit is allowed to remain expired and is not renewed, this will have a very damaging effect on investments in this extremely promising technology.

My amendment is also bipartisan. I am grateful to Senators ROCKEFELLER, BYRD, and ENZI, who are cosponsors. I know that the Senator from Montana, who is the manager of the extenders

package and the chairman of the Finance Committee, is familiar with the coal to liquids because of its potential benefit to his home State.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Billings Gazette entitled "Crow Coal-To-Liquids Plant Could Be Boon for Montana," at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BUNNING. The article describes the efforts of the Crow Nation to build a coal-to-liquids plant on a reservation in Montana in one of the poorest counties in the entire Nation. The project will be designed with carbon capture and storage. The Crow Nation hopes to begin producing the fuel 6 years from now, but losing the benefit of the alternative fuel credit would be a serious setback. The tribe is already hearing about investors who are now reluctant to invest in the project because of the uncertainty around coal to liquids.

Because the Senator from Montana has a reputation for fighting to keep jobs in his home State, I hope he will support the Crow Nation's request to extend the coal-to-liquids credit in the extenders package.

Failing to extend the credit has the potential to destroy thousands of jobs that are planned in an extremely poor county in Montana.

This is not something that can wait for a yet-to-be determined energy bill. Almost all of the alternative fuel credit is already contained in the extenders package.

It makes no sense to specifically exclude parts of the alternative fuel credit in this bill, with the promise that it will be looked at later. It will only become more difficult, the longer the credit is expired.

It will only make extending coal-to-liquids that much harder if it is delayed to a bill that has not been written yet and will probably be filled with controversial items.

I am certain the Senator from Montana understands the political reality that the extenders package is the last best opportunity to extend a provision that is very important to his home State.

I hope the Senator from Montana will support the Bunning-Rockefeller-Byrd-Enzi amendment and include it in any new substitute he introduces to the extenders package.

Coal-to-liquids is an important part of our national energy strategy. President Obama has recognized this in his State of the Union Address.

We will never end our dependence on foreign oil until we develop alternative sources of fuel.

Coal is abundant and it is here in America. It is not owned and used as leverage against us by hostile nations.

American coal can be used in a way that both reduces emissions and fuels our energy needs.

It would be a tragic mistake to turn our backs on coal-to-liquids when it is

a crucial part of America's strategy to end our dependence on foreign oil.

I urge my colleagues to support this amendment.

#### EXHIBIT 1

[From the Billings Gazette, Aug. 10, 2008]

#### CROW COAL-TO-LIQUIDS PLANT COULD BE BOON FOR MONTANA

(By Matthew Brown)

CROW AGENCY, MT.—A \$7 billion coal-to-liquids plant proposed for southeastern Montana's Crow reservation promises an economic boon for the region, but must first overcome economic and political hurdles that have kept any such plant from being built in the United States.

The Many Stars plant—a partnership between the tribe and Australian-American Energy Co.—would convert the reservation's sizable coal reserves into 50,000 barrels a day of diesel and other fuels.

State officials said Friday it represents the most valuable economic development project in Montana history.

"We're talking about one of the most technologically advanced, sophisticated energy projects on the planet," Gov. Brian Schweitzer said at a news conference detailing the project.

Covering the plant's \$7 billion price tag will be a challenge in the current economic slowdown. And environmental groups have pledged to step in to oppose the plant if it does not include measures to capture greenhouse gases.

Yet Australian-American Energy Chairman Allan Blood said he was 90 percent certain the Crow project would be completed.

"In my country we have a record of people who have visions and dreams and make them happen," Blood said.

Over the next several years, the company plans to sink \$100 million into preliminary engineering and environmental work, with a goal of starting construction on the plant by 2012. It could begin producing fuel by 2016.

For Crow leaders, the project offers an opportunity to lift the tribe out of poverty. Up to 4,000 people would be employed during its construction. And up to 900 permanent jobs would be created with the plant and a new mine on the reservation that would supply the coal.

"Our kids will have something to look forward to," said tribal Chairman Carl Venne. "Not the six or seven or eight dollars an hour they are making now just to get by. You're looking at \$70,000, \$80,000—even \$100,000-a-year jobs."

But representatives of several environmental groups said they remained wary. An agreement between the tribe and Australian-American Energy calls for the Crow to commit up to 50,000 acre-feet of water annually to the project. One acre-foot is equal to nearly 326,000 gallons.

That prospect is raising flags for southeastern Montana's ranching community, which is worried the project could deplete precious water supplies.

Also, while the tribe and company have pledged to capture 95 percent of the plant's emissions of carbon dioxide—a main contributor to global warming—environmentalists said living up to that promise could be difficult.

Without capturing those emissions and storing the gas underground, coal-based liquid fuels can churn out significantly more greenhouse gases than conventional petroleum, according to the U.S. Department of Energy.

"(Coal-to-liquids) developers have been saying we'll do something about carbon, but they've been unwilling to put it into their permits. It's been a lot of empty promises,"

said Bruce Nilles, director of the Sierra Club's national campaign against coal plants.

Officials with Australian-American Energy said the Crow plant would be built on the assumption that Congress, in the next few years, will pass legislation compelling companies to capture carbon dioxide. Such laws do not yet exist.

Working in the project's favor are high oil prices and the idea of replacing imported oil with homegrown fuels derived from coal. Despite a recent slide, crude prices closed above \$115 a barrel on Friday.

Still, industry officials said the economic downturn has reduced investors' willingness to sink cash into large projects such as the Many Stars plant. Meanwhile, costs have soared due to rising global demand for construction materials and skilled labor.

"You have the optimum oil scenario playing out with prices skyrocketing, but you have the bottom dropping out of Wall Street," said Corey Henry with the Coal-to-Liquids Coalition, a group funded by the mining industry. "It's been tough sledding to try to get the money to build these plants."

About a dozen coal-to-liquids plants are on the drawing boards in the United States. Only two such plants exist worldwide; both are in South Africa.

The biggest hurdle in the United States will be getting the first few plants built, Henry said. Once those are operational, he predicted investors would be more willing to fund similar plants.

Blood said he was not concerned, noting he initiated one coal-to-liquids project in Australia that was later sold for \$5 billion. In June, he announced a second project in Australia, a \$2 billion plant to convert coal into liquid fertilizer.

"You hear about the problems in the capital markets, but what people don't hear is there are dozens and dozens of projects, hundreds of projects, being funded," Blood said.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Montana.

Mr. BAUCUS. Mr. President, I note with great interest the comments of my good friend from Kentucky, Senator BUNNING, about the need for coal-to-liquids technology. I agree. I agree wholeheartedly. In fact, as the Senator from Kentucky undoubtedly knows, I have urged this technology. He also knows regrettably the other body is opposed to this technology. We have had some difficulty in finding a way to resolve coal to liquids in both the House and the Senate.

I might say to my friend from Kentucky, I am not sure that adding this provision is going to speed the passage of the so-called extenders bill. In fact, I might tease my good friend from Kentucky by saying I think my friend from Kentucky is opposed to passage of the extenders bill.

Maybe, if I could ask the Senator, if he would support passage of the extenders bill?

Mr. BUNNING. Most of them.

Mr. BAUCUS. Again, Mr. President, I am teasing. I ask my friend, somewhat in jest, if he were to fully support passage of the extenders bill if this provision he mentioned were in the bill? The fact is, we are having a hard time passing the extenders bill. Anything we add to the extenders bill is one more additional weight. I do not think that would further the passage of the bill at

this time. Rather, I think the appropriate place for coal-to-liquids technology will be in the Energy bill and there will be an Energy bill, of that I am positive. There is a question of what will be contained in that energy bill, but there will be one, I am sure, brought up on the floor of this body to help make this country more secure in its national energy position so we are less reliant on foreign countries to produce energy.

#### MONTANA DISASTERS

Mr. BAUCUS. I also rise to call attention to a pair of disasters that recently struck Montana and pledge my support for the recovery effort. Last week the Big Sandy Creek spilled over its banks and flooded into the Lower Box Elder Road and the surrounding area. The flooding displaced 30 families at the Rocky Point Boy's Indian Reservation in north central Montana.

As is the tradition in our States, folks with the Chippewa Creek Tribe are pulling together to help one another. The Vo-Tech Center in Box Elder has been converted to a makeshift home for those left homeless by the flooding. The American Red Cross of Montana is providing beds and other services at that center. The area is still under a stage two flood advisory. I just talked to the chairman of the Rocky Boy's about half an hour ago, who told me there have been about 7 inches of rain there and he had an extremely difficult time with the water problems and sewage problems. Homes have been displaced. He has never seen anything like it.

Initial estimates exceed \$1 million at this point. I will work with the Bureau of Indian Affairs and Indian Health Service to see that Rocky Boy's receives the assistance they need. I might add I will work with any agency that is relevant to make sure the people at Rocky Boy's Indian Reservation receive the assistance they need.

Just as folks at Rocky Boy's began assessing damage yesterday afternoon, another disaster beset Montana. A tornado with wind speeds between 111 and 135 miles an hour crashed into our State's largest city—Billings. Folks in Yellowstone County have not seen such a destructive twister since 1958.

The tornado hurled hail the size of golf balls, ripped the roof off our sports arena, the Metrapark—that is the largest facility, I might add, in Billings, MT. After striking it, it tore through a number of nearby small businesses. The tornado left a path of destruction in its wake—power outages, flooding in some places up to 2 feet of water. The winds damaged at least 10 businesses in Billings: the Main Street Casino, a laundromat, a dance studio, Reiter's Marina. The tornado also ripped the roof from Fast-Break Auto Glass. The roof was later found in a nearby creek. Witnesses saw big pieces of metal hanging from power lines near the arena. Insulation and metal debris was

thrown far across town. One look at these photos gives one a sense of the size of the destruction.

I might add, if you look at the photo to my right, that is what is left of the Metra arena, Billings' largest facility. You can see the Metra almost entirely destroyed, roof completely gone, walls collapsing. I talked to two county commissioners and the mayor today and they explained the deep problems they have with reconstructing this facility, to say nothing about all the bookings that have been made about 2 years in advance that have to be dealt with because of this destruction.

The Metra sports arena is part of the fabric of life in Billings. Montanans gathered at the Metra to cheer on the Billings Outlaws, for example, an indoor football team. Fans say their home field advantage is recognized around the league. The arena also houses the Chase Hawks Memorial Rough Stock Rodeo. Lots of events take place in this arena. I was there a couple of months ago for a high school graduation. Event after event occurs, it seems, around the clock at this arena. It is totally destroyed by the tornado.

The Metra was also visited by American Presidents—President Kennedy, President Reagan, President Clinton, and President Bush. It is part of our State's history. In Montana we work together to solve problems and we will work together through this disaster as well. Yesterday, utility crews worked to shut off a gas leak at a commercial strip mall near Main Street. Crews were also working to repair downed power lines.

Yellowstone County requested a state of emergency, requested that declaration from our Governor last night. They were given an oral declaration and clearly will receive a written declaration today.

The Montana National Guard has deployed to the area to help keep security around the crumbling arena. I am committed to working with local officials, the Governor, as well as Senator TESTER and Congressman REHBERG to coordinate any and all possible Federal assistance, coordinating with all Federal agencies to make sure all resources are available when requested. I have sent my staff to work with local and State officials on the ground to assess the extent of the damage and I will be there every step of the way during the recovery and rebuilding process.

My thoughts and prayers are with the people of Billings, particularly those injured during the storm and those whose property and homes were damaged by the winds.

Today, business owners are returning to the rubble that once was their place of business, their livelihood. Many homeowners are drying out as floodwaters recede. They will work hard in the coming days and months to make sure every Federal resource is made available to help folks in Billings as well as the Rocky Boy's Reservation as

they recover from these twin disasters. Our officials have done this before and nobody can handle this better than the great team we have in Montana.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. WICKER. I ask unanimous consent Senator CARDIN and I be allowed to engage in a colloquy for 20 minutes.

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

#### INTERNATIONAL DUE PROCESS RIGHTS

Mr. WICKER. Mr. President, I am appreciative that I am able to join today with my friend and colleague, Senator CARDIN. I appreciate his joining me today to discuss an issue of great concern to both of us and to human rights advocates around the world. That is the ongoing trial in Russia of Mikhail Khodorkovsky and his business partner Platon Lebedev. In June of last year, Senator CARDIN joined me in introducing a resolution urging the Senate to recognize that Khodorkovsky and Lebedev have been denied basic due process rights under international law for political reasons. It is particularly appropriate, I think, that Senator CARDIN and I be talking about this this afternoon because in a matter of days, Russian President Medvedev will be coming to the United States and meeting with President Obama. I think this would be a very appropriate topic for the President of the United States to bring up to the President of the Russian Federation.

I can think of no greater statement that the Russian President could make on behalf of the rule of law and a movement back toward human rights in Russia than to end the show trial of these two individuals and dismiss the false charges against them.

Since his conviction, Khodorkovsky has spent his time either in a Siberian prison camp or a Moscow jail cell. Currently, he spends his days sitting in a glass cage enduring a daily farce of a trial that could send him back to Siberia for more than 20 years. Amazingly, Mikhail Khodorkovsky remains unbroken.

I think it appropriate that President Obama and Secretary of State Clinton have committed to resetting relations with the country. I support them in this worthwhile goal. Clearly, our foreign relations can always stand to be improved. I support strengthening our relations, particularly with Russia. However, this strengthening must not be at the expense of progress on the issue of the rule of law and an independent judiciary. The United States cannot publicly extol the virtues of rule of law and an independent judiciary and at the same time turn a blind eye to what has happened to Khodorkovsky and Lebedev.

I urge President Obama and Secretary Clinton to put the release of these two men high on the agenda as