

both sides, one from Senator DURBIN and the other from Senator LEAHY.

The clerk will report.

The legislative clerk read as follows:

Senator Durbin's question to both sides: What is the standard of proof for the movant or petitioner in impeachment proceedings such as the extant case?

The PRESIDENT pro tempore. Do you wish to respond, Mr. Turley?

Mr. TURLEY. Senator DURBIN, the standard which we will be addressing when we get to the merits of the case has been subject to considerable historical debate. I will give what I believe is the weight of that historical record.

It is true that the Constitution does not enunciate a specific standard in terms of a burden of proof. We do not agree with the House that they refer to high crimes and misdemeanors as a standard. That is not a standard of proof; that is the definition of a removable offense. There is a difference.

So what we would suggest is that the Senate can look at a known standard, such as beyond a reasonable doubt. Beyond a reasonable doubt, of course, is the standard for a criminal case. The Constitution is written in criminal terms of high crimes and misdemeanors. That is one of the reasons why historically you have had these articles crafted closely to the Criminal Code. In fact, many impeachments actually took directly from a prior indictment and made the indictable counts the Articles of Impeachment.

The House has argued that standard is not necessary and too high. Well, we would submit to you—and we will certainly argue this when we get to the merits—that in the House recently, when they held a Member up for censure, they had a clear and convincing standard, that you must at least be satisfied with clear and convincing evidence. In my view, as an academic, it must be somewhere between clear and convincing and beyond a reasonable doubt.

What is more clear, Senator, is what it is not; that is, if you read the impeachment clauses, the clear message is that you can't just take facts that are in equipoise—allegations supported by one witness and denied by another—and just choose between them; that the facts have to, in your mind, go beyond a simple disagreement and be established, in our view, at a minimum by clear and convincing evidence.

The PRESIDENT pro tempore. Representative SCHIFF.

Mr. Manager SCHIFF. Mr. President, Senators, the Senate has considered and rejected the adoption of any particular standard, such as beyond a reasonable doubt. What the Senate has determined in the past in these cases is that, essentially, each Senator must decide for themselves, are they sufficiently satisfied that the House has met its burden of proof, are they convinced of the truthfulness of the allegations and that they rise to a level of high crimes and misdemeanors.

It is a decision where—and we can get into precise language the Senate

has used in the past, but the Presiding Officer has instructed each Senator to look to their own conscience, to look to their own conviction, to be assured they believe that the judge in this case has committed the acts the House has alleged. So it is an individual determination, and the Senate has always rejected adopting a specific Criminal Code-based standard, such as beyond a reasonable doubt or a civil standard of convincing or clear and convincing proof because it is an individual Senator's decision.

It also reflects the fact that, as the Framers articulated, this is a political process—not political in the partisan sense but political in that it is not a criminal process. It is not going to deprive someone of their liberty. What it is designed to do is to protect the institution.

So I think the question for each Senator is, Has the House sufficiently proved the case that, in the view of each Senator, to protect the institution, there must be a removal from office? So it is an individual determination.

The PRESIDENT pro tempore. Thank you very much.

And now will the clerk read the question from Senator LEAHY.

The assistant legislative clerk read as follows:

Senator Leahy's question to both sides: The Senate Judiciary Committee requires a sworn statement as part of a detailed questionnaire by a nominee. Until this questionnaire is filed, neither the Judiciary Committee nor the Senate votes to advise and consent to the nomination. Would not perjury on that questionnaire during the confirmation process be an impeachable offense?

The PRESIDENT pro tempore. Professor Turley.

Mr. TURLEY. Thank you, Mr. President. Thank you, Senator LEAHY.

In my view, yes, that is if you commit perjury in the course of confirmation, that would be basis for removal. In fact, I believe Mr. SCHIFF made reference to perjurious statements by Judge Porteous. We will be addressing that because that is not charged.

What would have to be done is the House would have to accuse someone of perjury as in the Hastings case and have perjurious statements, and then I could stand here and tell you why there is no intent to commit perjury or why the statements were, in fact, true.

While Mr. SCHIFF referred to perjury, once again, perjury is not one of the Articles of Impeachment. And what I would caution—even though it can be, I would again caution this should not be an ad hoc process by which you can graft on actual criminal claims by implying them in language issued by the House.

The PRESIDENT pro tempore. Congressman SCHIFF.

Mr. Manager SCHIFF. Thank you, Mr. President, Senators. This essentially is what article IV is about which charges Judge Porteous with making false statements to the FBI and to the Senate during his confirmation proc-

ess, and the answer is yes, absolutely. But I think what is very telling here is that counsel has conceded that, yes, if someone perjures themselves in the confirmation process they can and should be impeached but by definition that is conduct which has occurred prior to their assumption of Federal office. If someone can never be impeached on the basis of prior conduct, his answer should have been no, but plainly counsel recognizes there are circumstances where impeachment is not only appropriate but inevitable and essential. And where someone lies to get the very office that they are confirmed to, to deprive him of that office, to deprive him of the ill-gotten gain of that deception I think is not only constitutional but essential to uphold the office as well as to uphold the confirmation process itself.

The PRESIDENT pro tempore. Thank you very much. That concludes the argument on the motions.

#### MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to legislative session for a period of morning business with the Senator from Florida, Mr. LEMIEUX, recognized to speak therein for up to 15 minutes.

Senator LEMIEUX.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Tennessee.

Mr. CORKER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEMIEUX. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### FAREWELL TO THE SENATE

Mr. LEMIEUX. Madam President, I rise to pay tribute to the body with which I have had the privilege of serving for the past 15 months. Being a U.S. Senator, representing 18½ million Floridians, has been the privilege of my lifetime, and now that privilege is coming to an end. As I stand on the floor of the Senate to address my colleagues this one last time, I am both humbled and grateful, humbled by this tremendous institution, by its work, and by the statesmen I have had the opportunity to serve with, who I knew only from afar but now am grateful that I can call those same men and women my colleagues.

No endeavor worth doing is done alone. And my time here is no exception. In the past 16 months, I have asked the folks who worked with me to try to get 6 years of service out of that time, and they have worked tirelessly to achieve that goal.

My chief of staff Kerry Feehery, my deputy chief of staff Vivian Myrtetus, my State director Carlos Curbelo, Ben Moncrief, Michael Zehy, Ken Lundberg, Melissa Hernandez, Maureen Jaeger, Danielle Joos, Brian Walsh, Frank Walker, Spencer Wayne, Vennia Francois, Victor Cervino, Taylor Booth, and many, many others have made our time here worthwhile, and I thank all of them. I specially thank Vivian and Maureen who left their families and gave up precious time with their children to come to Washington to support me in these efforts.

I am also thankful to the people who work in our State office. Time and time again when I travel around Florida I am encountered by people who have received such a warm reception from the men and women who serve us in Florida and help people deal with problems with the Federal Government. I am grateful for their work.

Senator MCCONNELL has provided me with opportunities beyond my expectations. He is a great leader, and I am grateful to him. Senators ALEXANDER, BURR, CORNYN, KYL, MCCAIN, CORKER, and many others have taken me under their wings and mentored me, and I am appreciative of them.

Chairmen ROCKEFELLER and LEVIN, we have had the opportunity to do great work together in your committees. I thank you for that. Senators CANTWELL, KLOBUCHAR, LANDRIEU, WHITEHOUSE, and BAUCUS, we have worked together in a commonsense way to pass legislation that is good for the American people, and I am appreciative of your efforts.

Senator Mel Martinez, who ably held the seat before me, has been generous in his advice and counsel. Senator NELSON and his wife Grace have been warm and welcomed Meike and I to Washington. I am thankful for your courtesy. I thank Governor Crist. He has afforded me tremendous opportunities for public service, and I am grateful.

I want to say a special thank you to my parents. My grandfather, in 1951, drove his 1949 Pontiac from Waterbury, CT, to Fort Lauderdale, FL, with his wife and five kids piled in the back. He didn't know anybody. He didn't have a job. But he went there to make a better life for his family. He worked in the trades, in construction. He built houses and he taught my father the same thing. And as my father worked in the hot Florida Sun, his ambition for his son was that he would one day get to work in air-conditioning. I have achieved that goal and so much more because of their sacrifice. Mom and Dad didn't go to college but they sent me to college and law school, and I will be forever grateful for what they have done for me.

My most heartfelt appreciation goes to my wife Meike. When I learned of this appointment, I met her at the door of our home in Tallahassee and she was crying. She was not just crying because she was happy; she was crying because she was worried. We at the time had

three small sons—Max, Taylor and Chase, 6, 4, and 2. She knew something that others didn't know—that we were going to have another baby and that baby was born here in Washington, our daughter Madeleine.

Throughout all of my travels, she has been an unfailing support for me, I love her dearly, and I am appreciative to her.

It has been the privilege of my life to serve here, but I would not be fulfilling my charge in my final speech if I did not tell you what weighs on my mind and lays upon my heart about the direction of this country. So what I say to you now is with all due respect, but it is with the candor that it deserves.

The single greatest threat to the future of our Republic and the prosperity of our people is this Congress's failure to control spending. In my maiden speech, I lamented a world where my children would one day come to me and say they would find an opportunity in another country instead of staying here in America because those opportunities were better there. In 1 year's time that lament has proven to be too optimistic, because the challenge that confronts us will not wait until my children grow up.

When I came to Congress just 15 months ago, our national debt was \$11.7 trillion. Today, it stands at \$13.7 trillion. It has gone up \$2 trillion in 15 months. It took this country 200 years to go \$1 trillion in debt. Our interest payment on our debt service is nearly \$200 billion now. At the end of the decade, when our debt will be nearly \$26 trillion, that interest payment will be \$900 billion.

When that interest payment is \$900 billion, this government will fail. And long before that time the world markets will anticipate that and our markets will crash. This is not hyperbole; it is the truth. Not since World War II has this country faced a greater threat. Not since the Civil War has this threat come from within.

How has Congress arrived at this moment? For the past 40 years, Congress has spent more than it could afford. It has borrowed from Social Security and foreign governments, delaying making honest choices and prioritizing on what it should spend. Budgeting in Washington seems to be nothing more than adding to last year's budget. We are funding the priorities of the 1960s, 1970s, 1980s, and 1990s without any real evaluation of whether those are still good priorities and certainly not to see whether they are being done efficiently and effectively: It is as if a teenage child received not only all the gifts on their Christmas list this year but the gifts on all their Christmas lists going back to when they were three.

It is clear Congress is capable of solving this problem with business as usual. What is needed is across-the-board spending caps to right the ship. An across-the-board spending cap will necessitate oversight and require prioritization. Congress will finally

have to do what businesses and families do all across this country: Make tough choices, make ends meet.

I have proposed such a cap. I have proposed going back to the 2007 level spending across the board. Was our spending in 2007 so austere that we could not live with it just 3 years later? If we did, we would balance the budget in 2013 and we would cut the national debt in half by 2020 and you would save America.

Unlike most problems that Congress addresses, this problem is uniquely solvable by Congress. Congress can't win wars. Only the brave men and women in our military, who we especially remember on this day, December 7, of all those who have served for our country in all of our wars to keep us safe and free, only those men and women can win a war. Congress cannot lead us out of recession. Only job creators and businesses can create jobs. But this problem is solely of Congress's making and uniquely solvable by this body.

What Congress should do is strengthen its oversight. The lack of oversight in Washington is breathtaking. Evaluate all Federal programs. Keep what works; fix what you should; get rid of the rest. Return the money to the people and use the rest to pay down this cataclysmic debt.

The recent work of the Debt Commission is a good start, and I commend my Senate colleagues who voted for this measure. It was courageous for them to do so.

But out-of-control spending is not just a threat because it is unsustainable; it is also changing who we are as Americans. Remember, our Founders told us that the powers delegated to the Federal Government were "few and defined," the powers to the State "numerous and indefinite," extending to "all the objects which in the course of affairs, concern the lives, liberties and properties of the people."

The current size and scope of the Federal Government is corrosive to the American spirit. The good intentions of Members of Congress to solve every real or perceived problem with a new Federal program, and the false light of praise that attaches to the giving away of the people's money, endangers our Republic. Every new program chips away at what it means to be an American, harms our spirit, and replaces our self-reliance with dependency, supplants an opportunity ethic with an entitlement culture. It is at its base un-American.

It is not the Government's role to deliver happiness. Rather, it is its role to stay clear of that path to allow our people to pursue that God-given right.

What has created our prosperity, after all, is not our government, it is our free market system of capitalism. It is through the healthy cut and thrust of the marketplace that new technologies, new jobs, and new wealth are created. Through that dynamic process some win and some lose, but it

allows all of our people, regardless of their race, gender, creed, color, or background the opportunity to succeed or fail. And it ensures for us that unique expression “only in America” is not just a refrain from the past but an anthem for the future.

Can you imagine the tragedy if the downfall of the American experiment was caused by a failure of this Congress to control its spending? The challenge of this generation is before you and it is not beyond your grasp. There is nothing we as Americans cannot do. We have fought imperial Japan and Nazi Germany at the same time and beaten both. We have put a man on the Moon. We have mapped the human genome. And in the spare bedrooms and garages and dorm rooms of our people, our citizens have created the greatest inventions and the greatest businesses the world has ever known, which have employed millions of people and allowed them to pursue their dreams, all in the freest and most open society in the history of man.

We are that shining city on the hill. We are that beacon of freedom. We are that last best hope for mankind upon which God has shed his grace.

President Theodore Roosevelt said that one of the greatest gifts that life has to offer is the opportunity to do work that is worth doing. I can't think of a greater gift than the work that lies before you: righteous in its cause, noble in its purpose, and essential for the prosperity of our people.

I will always cherish the relationships I have gained here and the work we have done together. God bless you, God bless the U.S. Senate, and God bless our great country.

I yield the floor.

## RECESS

The PRESIDENT pro tempore. The Senate stands in recess until 2:30 p.m.

Thereupon, the Senate, at 12:49 p.m., recessed until 2:30 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

## IMPEACHMENT OF JUDGE G. THOMAS PORTEOUS, JR.—Continued

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 7]

Akaka	Coburn	Hatch
Alexander	Cochran	Inouye
Barrasso	Collins	Isakson
Begich	Crapo	Johanns
Bennet	Dorgan	Klobuchar
Bennett	Durbin	Kyl
Bingaman	Enzi	Leahy
Bond	Feingold	Levin
Brown (OH)	Franken	Lugar
Burr	Grassley	McCain
Cantwell	Gregg	McCaskill
Cardin	Hagan	Merkley

Mikulski	Sessions	Udall (NM)
Murray	Shaheen	Vitter
Nelson (NE)	Shelby	Voinovich
Nelson (FL)	Snowe	Warner
Pryor	Specter	Webb
Reed	Stabenow	Whitehouse
Reid	Udall (CO)	Wyden

Mr. REID addressed the Chair.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Mr. President, is a quorum present?

The PRESIDENT pro tempore. A quorum is present.

The Senate will resume consideration of the Articles of Impeachment against Judge G. Thomas Porteous, Jr.

The Chair understands that final arguments for the House on the Articles of Impeachment will be presented by Representative SCHIFF and Representative GOODLATTE. Mr. SCHIFF has asked to speak first. Mr. SCHIFF, do you wish to reserve time for closing, and, if so, how much time?

Mr. Manager SCHIFF. Mr. President, if it is permitted, after I make some brief introductory remarks, I will turn it over to my colleague, Mr. GOODLATTE, to speak. When he is finished speaking, we would like to reserve the balance of our time unless we are required to set that up in advance.

The PRESIDENT pro tempore. You may proceed.

Mr. Manager SCHIFF. Mr. President and Members of the Senate, this is a case about a State court judge from Gretna, LA, who had a gambling problem and a drinking problem, and as a result of both of those problems also had serious financial problems. He was constantly short of money.

This judge entered into a corrupt scheme with lawyers and bail bondsmen who could help him lead a lifestyle he could not otherwise afford. He sent the lawyers cases. They kicked back money from those cases to the judge, and they paid for many of his meals, his liquor, his parties, even some of his son's expenses.

He set bonds for the bail bondsmen at the amounts that would maximize their profits. He expunged the convictions of their employees, and they also paid for many of his meals, his trips, his home repairs, his car repairs, and lavish gifts.

The White House was not aware of this corrupt activity and nominated the judge to the Federal bench. The judge misled the Senate about his background, concealed the kickbacks and graft, waited until after his confirmation hearing but before he was sworn in to expunge the conviction of another bail bond employee, and falsely told the Senate that there was nothing in his background that would adversely affect his confirmation.

Unaware of what the judge had been engaged in, he was confirmed. The very reason why the information sought by the Senate was so material—whether he had a drinking problem; whether he had a gambling problem; whether he lived beyond his means; whether he had engaged in conduct that would make

him the subject of compromise or coercion—was to prevent the damage to the institution of the judiciary that would be caused by putting a corrupt man on the bench.

What happened when the judge took the Federal bench was all but predictable: The corruption continued. The judge declares bankruptcy; he files with a false name and signs under penalty of perjury; he hides assets; falsely states his income; secretly takes out a new credit card; violates the bankruptcy court order by incurring new debt; he files false judicial financial disclosures stating that he has no more than \$30,000 worth of credit card debt when he owes over \$100,000 on his credit cards; and, most pernicious to the interests of his creditors, he keeps on gambling.

The judge is assigned a complex case and a trial that has been years in the making, pitting a hospital against a pharmacy, and worth many tens of millions of dollars. Six weeks before trial, one of the lawyers who had been paying him kickbacks in the State court is brought in at the last minute to represent the pharmacy.

The hospital smells a rat. They do not know about the kickbacks, but they are suspicious about why an attorney with no experience in the case or complex bankruptcy litigation would be brought in. So they ask around, and they do not like what they hear. They ask the judge to recuse himself and he refuses, falsely representing that he never received money from the attorneys but once, and even that was only a campaign contribution that went to all of the judges of that parish.

The case goes to trial, and is taken under submission by the judge. While he is considering how to rule, he goes fishing with the lawyer who paid him the kickbacks and hits him up for \$2,000 more in cash. The two partners at the law firm put the cash in an envelope, and the judge sends his secretary to pick it up. At the law firm, the judge's secretary asks: What is in the envelope? The lawyers' secretary rolls her eyes. “Never mind,” the judge's secretary says, “I don't want to know.”

The relationship with the bail bondsman is not over either. He can no longer set bonds for them, but he can help them recruit other judges who will step into his shoes by vouching for their character, by bringing them together, and he does. And now we are here.

Everyone around the judge has fallen. The bondsmen have gone to jail. The other State judges he helped recruit have also gone to jail. The lawyers who gave him the cash have lost their licenses and given up their practices. Most of all, the institution itself has suffered greatly. Litigants and the public in New Orleans wonder, in seeing the example of this judge, whether they too must pay a judge in cash and under the table, do the home or car repairs or other favors for the judge to