

engage in meaningful efforts to balance the budget. As my colleague from Alabama, the ranking member of the Senate Budget Committee, notes, it has been more than 770 days since Democrats passed a budget. That is disgraceful. For over 2 years, congressional Democrats have simply abdicated their most basic constitutional responsibility, and here is why. They have refused to cut spending, and they know balancing the budget for new taxes alone would be perceived as a full-blown assault on personal liberty and limited government. So instead of offering up a bogus budget, as the President did, and get laughed out of town, or offering up a proposal for balance that satisfies their liberal base, raises the tax burden to historic levels, and inspires the vitriol of their constituents, Democrats decided to keep their mouths shut.

Where does that leave us? The answer, to me, is clear. We need to pass a balanced budget constitutional amendment. This is where the entire Republican caucus stands in the Senate. The amendment I introduced, S.J. Res. 10, is supported by every single Senate Republican. I bet it is the first time all Republican Senators have supported it. It is a good amendment that benefited from the input of many Senators, and it is a necessary amendment.

Some people—the sophisticated set—argue this is not a serious proposal. The American people beg to differ. They know Congress will not balance the budget and shrink the size of government without meaningful constitutional restraints. The actions of Democrats and President Obama over the last few months are all the evidence we need to support this hypothesis. Facing a full-blown debt crisis, they still prefer to kick the spending can down the road.

I want to be clear that I am deadly serious about this proposal, and so are the people of Utah. I have been pleased to work side-by-side with my colleague from Utah, Senator MIKE LEE, on the balanced budget amendment, and Senator CORNYN and all the other Republicans. Some people might say MIKE LEE and I are an odd couple. I have a few years on him, and I don't tend to be as animated as he is. He is a great young man with a lot of energy. But we share at least one thing, an absolute commitment to passing a balanced budget constitutional amendment and sending it to the people in the States for ratification. The people are demanding that we act, and it is well past time that we recognize their constitutional sovereignty and allow them to exercise it through State ratifying conventions.

I would like to commend Senator LEE for his tireless work on this amendment. He is not the only one who deserves thanks, however. My colleagues, Senators CORNYN, KYL, TOOMEY, DEMINT, RUBIO, PAUL, and many other Republicans were essential in the development of this amendment,

but it is special for me to be working with my friend, Senator LEE, on this critical constitutional amendment. He is a legitimate constitutional scholar, a steadfast advocate of our constitutionally limited government, and a hero to many. I could not be more proud to stand with him and lead this fight for the people of Utah and the taxpayers of this country.

If the American people said anything last fall, it is they want their representatives in Washington to listen to them. They know we will not get it right every time, but they know we should always do our best to represent their values and their interests. This Congress needs to listen to the people. It needs to get these trade agreements done without holding them hostage to unrelated spending. It needs to say no to more bailouts, and it needs to pass a balanced budget constitutional amendment.

In this country, the people are sovereign. I would have to say, if we would pass that constitutional amendment through the Senate, I believe we would get it through the House, and then it is up to the States. We still have to get three-quarters of the States to ratify it.

To the extent that Democrats hate the constitutional amendment and hate that kind of restraint on their spending practices, they can lead the battle in the States. The problem is, they know this constitutional amendment would be ratified so fast our heads would be spinning.

We need 38 States to ratify a constitutional amendment, and that is not easy under anybody's view. In this country let's let the people decide that. They are sovereign. It is well past time that Congress and the President listen to them.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

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

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

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

DECLARATION OF WAR

Mr. DURBIN. Mr. President, as has the Presiding Officer, I have served both in the House of Representatives and in the U.S. Senate, and during the course of my career, I have been called on to make many votes. Most of them fade into obscurity after they are cast and are never recalled, but there are a few we will remember for our lifetimes.

I would say the highest level in that category are the times when we are called upon as Members of Congress to consider a declaration of war. Many of us have lost sleep over those decisions. We have thought about those votes long and hard. No matter how just the war may be or how important it may be, we cannot help but reflect on the fact that at the end of the day, people will die as a result of our decisions if we go forward in terms of a declaration of war. I have lost sleep over those decisions.

I have tried during the course of making those decisions to be guided by several principles.

First, as Members of the Congress, both in the House and the Senate, we swear to uphold and defend the Constitution. I feel as though that Constitution is my starting point for my responsibility and my rights as a Member of the U.S. Senate when it comes to this issue.

The Constitution is very clear in article I, section 8, clause 11, that only the Congress can declare war. The decision was made by our Founding Fathers that the people of the United States literally would have a voice in this decision. It wouldn't be a decision made only by the Chief Executive because ultimately the people and their families and their children would pay the price of a war in human terms—the loss of life—and, of course, in the cost of war borne by our Nation.

I am also guided by my responsibility to the people who were kind enough to give me this opportunity to serve. I think about my State of Illinois and the families, the mothers, fathers, and children all across that State who could be affected by a decision if our Nation goes to war.

I also like to think about whether the war is absolutely necessary in terms of the defense of the United States of America.

Some cases are easier calls. When we were attacked on 9/11, many of us knew that 3,000 innocent Americans had died at the hands of terrorists. I didn't hesitate to vote for a declaration of war against those forces in Afghanistan responsible for that attack on the United States.

We went through a parallel debate at the same time about the invasion of Iraq. I did not believe the previous President made a compelling case for the invasion of Iraq. If my colleagues will recall, at that time the debate was about weapons of mass destruction that could threaten the Middle East or even the United States. I voted against that declaration of war on Iraq. Twenty-three of us did in the Senate—22 Democrats and 1 Republican. We came to learn that there were no weapons of mass destruction. Many of the threats which gave rise to the President's request turned out to not be factual at all. Well, we are finally—finally—more than 10 years later, starting to bring those troops home from Iraq, and we have paid a heavy price in Americans

killed and maimed and in the cost to our Nation.

Each time we have been challenged as a Senate and as a House to consider a declaration of war, I have thought long and hard about it: my constitutional responsibilities, my responsibilities to the people of my State, and whether such a war was absolutely necessary.

Now we are engaged in three wars—wars in Iraq, Afghanistan, and in Libya. Shortly, we will be considering the authority of the President of the United States to continue our involvement in Libya. I am going to apply the same constitutional standard and standards of judgment to that decision that I have to every other declaration of war or every other approval of engagement in hostilities by the United States as I have in the past.

This President is my friend. He was my colleague in the Senate. We are of the same political party. But when it comes to an issue of this gravity, we have to move beyond any personal considerations when it comes to the President and think about our Nation, our Constitution, and our responsibility to the people we represent.

We have learned during the course of our history that Presidents don't always come to Congress when they initiate a war. President Franklin Roosevelt did. He came to Congress shortly after—in fact, the day after—the attack on Pearl Harbor in December of 1941 and asked for the authority and permission to go forward with a war that would be waged against those who would attack us. Then came the Korean conflict, which was not characterized in official terms as war because President Truman didn't come to Congress asking for that authority.

I had two brothers, incidentally, who served in the U.S. Navy during the Korean conflict. They always used to jokingly say it was a police action with real bullets, and I know, because many innocent Americans died in the course of that Korean conflict. Yet there was no formal declaration of war.

Vietnam was a war I paid much closer attention to because it came at a time when I was in college and law school, and my friends were being asked to serve. Again, there was no official declaration of war.

After Vietnam and after the tremendous loss of life and all the controversy associated with it, there was a debate in the Halls of Congress about whether we needed to be more specific in terms of the authority of a President to go to war. So Congress enacted the War Powers Resolution in the 1970s, which spelled out in specific terms the responsibility of the President when he would ask this Nation to go to war.

That bill, having passed both the House and the Senate, was sent to President Nixon, who vetoed it. He viewed it, as most Presidents have then and since, as an intrusion on his authority as Commander in Chief. But the Congress decided to pass the War

Powers Resolution over the veto of President Nixon, reaffirming the constitutional authority and right of Congress when it came to a declaration of war.

Now we find ourselves in a situation where Congress has voted on going forward with the war in Iraq—and, as I mentioned earlier, I was one of those who voted against it—going forward with the war in Afghanistan—I was one who voted for it; all Senators did, I might add, from both political parties—and now a question of Libya.

Several months ago, the situation in Libya became so grave that the President of the United States met with our leaders in the military and leaders of other nations to ask what should be done. Muammar Qadhafi, the rogue leader of Libya, was literally attacking and killing his own people in the streets of his country, and there was a widespread public reaction against it from the Arab League, of which Libya was a member, as well as the European Union, the United Nations, and others.

President Obama made the decision then to consult with Members of Congress about what we should do. I was fortunate enough, being a member of leadership, to be part of the conference call when the President was on the line with leaders—Democrats and Republicans—in the House and Senate and spelled out what he believed was the grave threat to the innocent people of Libya.

At that point, this was a question as to whether Benghazi was going to fall and whether Muammar Qadhafi would consolidate power and take retribution against those who had been in opposition to his government. He said he was going to take to the streets with his military and kill them like rats, and we took him at his word, and the President felt the civilized nations of the world had to act.

Acting in consultation and in concert with the Arab League and the United Nations and NATO, the President spelled out a course of action. He told us in these early consultations that the United States involvement would be very limited, perhaps more intense at the outset than as any conflict progressed, and that we would not commit land troops to Libya, and that basically the leadership of this effort would be under the auspices of NATO, and we would be in a supportive role—a role which would diminish over time. That was the President's promise, and that was what was executed.

Now, more than 2 months later, the question has arisen: Well, what is this President's responsibility under the Constitution? What is the Congress's responsibility under the Constitution? Are we engaged in a war?

I might say that I sat down before coming to the floor and carefully reread the War Powers Resolution. Although we characterize it in many different ways, the language of this War Powers Resolution is, in some areas, difficult to apply to every situation. It

makes reference throughout “to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”

We translate that in our debates, and I have been party to many over the course of the time I have served in the House and the Senate, as to whether we are talking about a defensive military action or an offensive military action.

I do not think there is any question—not in my mind—that a President as Commander in Chief has the authority, without seeking congressional approval, to defend the people of the United States and its territory. Certainly, we would not expect the President to wait for Congress to convene, debate, and vote if the United States and its citizens are under attack.

But what of those other circumstances where we are initiating military action that is not strictly in defense of the United States? Are those so-called offensive military actions hostilities? Do they require a President to come forward and to ask of Congress authority to go forward with the U.S. involvement in those military hostilities? That is where we find ourselves today.

More than 60 days after the initiation of our involvement in Libya, the debate is still on in the Senate as to whether we need to authorize the President to continue our efforts in Libya and whether that authorization should be under the War Powers Resolution.

I think it should. That is why I have come to the floor today. I joined with Senator BEN CARDIN in introducing a proposal, a Senate joint resolution, which we have circulated, which would give the President the authority, if passed, to continue the hostilities in Libya under the War Powers Resolution, expressly stating that it would not involve land forces, ground troops, and that it would have a time certain to end—in our case, by the end of this calendar year—subject to another decision by Congress as to whether it should go forward.

I believe that is still the right course of action. I am hopeful that before the end of the day there will be action taken by some of my colleagues here in Congress to come forward with a bipartisan resolution which parallels what I just described.

I might add there is some controversy, and it is worthy of at least debate, as to our current situation in Libya and whether it fits squarely within the War Powers Resolution.

Bob Bauer, who is general counsel to the President of the United States, argues it does not. Yesterday, in a conference call, Mr. Bauer was asked specifically whether he thought the War Powers Resolution was applicable to the current situation in Libya. Here is what he said. When he was asked: Could you explain? he said:

Certainly. As I mentioned, as my colleague was going through the nature of the mission and how it changed, we're now in a position where we're operating in a support role. We're not engaged in any of the activities that typically over the years in war powers analysis is considered to constitute hostilities within the meaning of the statute. We're not engaged in sustained fighting. There's been no exchange of fire with hostile forces. We don't have troops on the ground. We don't risk casualties to those troops. None of the factors, frankly, speaking more broadly, has risked the sort of escalation that Congress was concerned would impinge on its war-making power.

So within the precedents of a war powers analysis, all of which typically are very fact-dependent, we are confident that we're operating consistent with the resolution. That doesn't mean that we don't want the full, ongoing consultation with Congress or authorization as we move forward, but that doesn't go to our legal position under the statute itself, and we're confident of that.

I respect Mr. Bauer, but I respectfully disagree with him. I believe that what we are engaged in in Libya is a matter that should come under the War Powers Resolution. I believe that we should as a Congress consider it under the War Powers Resolution.

I think that is the right course of action. It will give the President clear authority, and it will also establish the clear authority of Congress in this particular situation.

Let me add quickly, I think the President was right in what he did initially. I believe the use of American military technology—which was primarily our initial investment—was certainly warranted. Working with NATO, we created an atmosphere where the NATO forces could not be in harm's way, would be safe in their early efforts to stop Muammar Qadhafi in his efforts to kill the civilians in his country.

I also believe the President was right from a foreign policy viewpoint by not doing this unilaterally but working with the Arab League, the European Union, and the United Nations.

The fact that we have for the first time in history NATO forces working in concert with the Arab League is, I think, a very positive thing, and I salute the President for doing it.

I think his goal and motives were good in this effort, and I would vote, if asked, to continue this effort under the War Powers Act affirmatively based on all the briefings I have received.

Having said that, I believe we should pursue the course that Senator CARDIN and I suggested in our resolution, that we should, in fact, deal with this matter under the War Powers Resolution. We should debate and take action on it here in the Senate.

I am hopeful that soon—perhaps before the end of the day—there will be some effort under way in a bipartisan fashion to do just that.

At the end of the day, we will be asked by future generations if we kept true to our oath under the Constitution, which requires us to face difficult debates and decisions, and there are none more difficult than this.

We are also going to be asked by the people we represent in terms of the cost in human life and the cost to American taxpayers whether we engaged in the debate and determined it was the appropriate thing to do.

I have, like so many Members of the Senate and Congress, had the sad duty to attend the funerals of those who have fallen in combat in service to our country. It is sad to face their families and realize they have paid the ultimate sacrifice to our Nation. I think that requires us, even in circumstances where the facts are debatable, to err on the side of exercising our constitutional authority.

I hope before the end of the day this bipartisan resolution will come to the floor—and certainly before the end of the week—and that we debate it and act on it before the end of this work period.

Again, let me make it clear, I think the President is right in what he is doing. But I think we have a responsibility that goes beyond Mr. Bauer's conclusion—a responsibility to decide that this offensive use of military force, even for a good purpose, a good humanitarian purpose, is one that requires the authorization of the American people through their Members of Congress.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FRANKEN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that morning business be closed.

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

Morning business is closed.

THE PRESIDENTIAL APPOINTMENT EFFICIENCY AND STREAMLINING ACT OF 2011—MOTION TO PROCEED—Continued

Mr. REID. Mr. President, I ask unanimous consent that the Senate resume consideration of the motion to proceed to Calendar No. 75, S. 679. I send a cloture motion to the desk and ask the clerk to report.

CLOTURE MOTION

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

The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the

Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 75, S. 679, the Presidential Appointment Efficiency and Streamlining Act of 2011:

Harry Reid, Joseph I. Lieberman, Thomas R. Carper, Frank R. Lautenberg, Sherrod Brown, Barbara Boxer, Sheldon Whitehouse, Patty Murray, Robert P. Casey, Jr., Christopher A. Coons, Joe Manchin III, Debbie Stabenow, Jon Tester, Benjamin L. Cardin, Jeanne Shaheen, Kent Conrad, Richard J. Durbin.

Mr. REID. Mr. President, I am disappointed that we had to file cloture again. I would hope, though, that in the ensuing days, the Republicans on the other side will let us get on this bill.

This is a bill Senator MCCONNELL and I started working on when we were both whips many years ago. The purpose of the bill is to eliminate the need to have all of these nominations to these relatively minor posts confirmed by the Senate. And the work done by the chairman and ranking member of the Budget Committee, Senators SCHUMER and ALEXANDER, has been exemplary.

We now will have—when this legislation passes, and I really think it will pass, even if we have to invoke cloture on the motion to proceed and on the bill itself—hopefully that will not be necessary, but if we do, that is what we will have to do. This bill would take away the necessity of our having to do some 200 nominations for some of these minor posts I talked about.

I hope we can get on this bill when we come back next week. It will be the right thing to do. There is so much to do. This would set the tone of this work period that has not been so good to this point.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that at 11 a.m. on Tuesday, June 21, 2011, the Senate proceed to executive session to consider Calendar No. 34, the nomination of Michael H. Simon, of Oregon, to be U.S. district judge for the District of Oregon; that there be 1 hour of debate equally divided in the usual form; that upon the use or yielding back of that time, the Senate proceed to vote without intervening action or debate on Calendar No. 34; that following this vote, the Senate recess until 2:15 p.m. for the weekly party conferences; that at 2:15 p.m., the Senate consider Calendar No. 183, Leon E. Panetta to be the Secretary of Defense for our country; that there be 2 hours of debate equally divided between the two leaders or their designees; that upon the use or yielding back of that time, the Senate proceed to vote without intervening action or debate on Calendar No. 183; that the motion to reconsider be considered made and laid upon the table, with no intervening action or debate, no further motions be in order to