

amount of broadband spectrum to empower the 21st century economy here—cell phones were invented in the United States, in fact, mostly in my home State of Illinois—and making sure this is the country where not just 1G and 2G and 3G were invented and deployed, but to make sure 5G and 6G and 7G are also deployed first in the United States and not in a country such as China or India.

According to the Federal Communications Commission, the U.S. Treasury has already collected \$50 billion in spectrum receipts since 1993. Senator REID's plan does authorize such auctions, but it is missing a key element to ensure they are very successful. Unfortunately, like many other agencies in the administration, the Federal Communications Commission has worked to promulgate regulations that stifle innovation and economic growth. It is important for Congress to prohibit the FCC from establishing new, similar rules or conditions that are outside the scope of technical, ethical, or geographic qualifications. Such conditions, for example, the "net neutrality" provisions, will only serve to depress the market value of the spectrum; therefore, decreasing government revenues and lowering our ability to reduce the deficit in this way.

One recent study found that "Congress has tremendous discretion about the amount of proceeds it could raise in exchange for spectrum" because "the amount of money that an auction can raise for the [U.S.] Treasury [and the government] is impacted at least in part by controllable decisions about how the auction configures the spectrum for sale and the conditions imposed on it." The study analyzed a previous spectrum auction to estimate the potential receipts from future actions based on conditions the FCC may or may not impose. The researchers found that the full auction potential of the broadcast spectrum with no conditions imposed would raise as much as \$91 billion, whereas the same auction with heavy and unappealing conditions, such as net neutrality, would only raise \$26 billion. That is a difference of \$65 billion. We could raise, to lower our deficit, 250 percent more in funds with an incentive auction if we ensure that the FCC does not impose market-killing restrictions.

My proposal would place limits on the FCC, in addition to establishing a number of other prohibitions to make sure the FCC does not artificially reduce the spectrum value, to lower our deficit. The Kirk amendment would prohibit the FCC from restricting participants in any auction and from prescribing certain rates, terms, or services that may be offered by bidders in order to encourage the most robust participation and license bidding. To avoid future devaluation of spectrum licenses, the amendment would also prohibit the FCC from changing the rules of the game after an auction was completed.

But simply selling spectrum voluntarily given up by broadcasters is not enough to solve our credit crunch. We know that wireless subscribership in the United States has increased more than 400 percent in the last 15 years, and experts expect mobile data traffic to be 35 times higher in 2014 than it was back in 2009. Yet only 22 percent of all viable wireless frequencies are licensed for mobile broadband. Industry experts anticipate spectrum will be exhausted in the most populous markets by 2014. Such a restriction then would stunt wireless and other technological development in the United States because we will not have enough bandwidth to continue innovating. Internet service will then slow and calls will be dropped. We should not let this scenario unfold. We should reach our full technological potential because broadband development is a key job creator for the 21st century.

According to one estimate, the information and communications industry contributed more than \$1.7 trillion to the U.S. gross domestic product in 2009 or over 12 percent of our total national income. Another study found that broadband provides additional annual consumer benefits of roughly \$32 billion per year. It is widely acknowledged that wireless broadband also generates productivity gains of approximately \$28 billion annually, and one cost estimate even puts productivity gains from the development and use of wireless broadband at almost \$860 billion in 2016. In my own State of Illinois, this study estimates that the savings from increased productivity will reach about \$5.8 billion in 5 years. This demonstrates that every sector of our economy benefits from wireless development.

For example, broadband development will vastly improve health care services for seniors. One study finds that reduced medical costs, reduced costs of institutionalized living, and increased output generated by seniors and disabled individuals will save about \$927 billion between 2005 and 2030. Advancements in wireless technologies aim to reduce the burden on the chronically ill by providing remote monitoring of medical functions and to save lives through public safety interoperable networks.

Yet very little of this will be achievable unless we make more spectrum available to the civilian sector. Not surprisingly, the Federal Government itself is the largest and most stubborn squatter on the spectrum. According to the Technology Policy Institute, the government currently has exclusive or shared ownership of more than half the ideal spectrum for wireless development.

Much of the spectrum is not even being used or used inefficiently by the government. Unfortunately, it is largely unknown how exactly Federal agencies and departments are using the spectrum and which spectrum we could better use on the civilian side.

My amendment, in short, would establish a process identical to the successful Base Realignment and Closure Commission to determine which Federal spectrum should be offered for sale or shared use by the private sector. While the government has much of this authority, it consistently fails to utilize it.

A BRAC-like commission for the spectrum is a key model for its reallocation and would help accelerate the development of broadband in the United States, without the standard congressional roadblocks that would inhibit development.

The amendment also provides assurances that the government will vacate spectrum once the process is complete and requires the Office of Management and Budget to intervene in the relocation process if agencies are failing to comply with the relocation plan and penalizing agencies if they do not meet the BRAC timeline.

The Kirk amendment would provide the telecommunications industry with a certain path forward for reliably clear spectrum to advance employment in the United States through wireless advancement.

I urge congressional leaders to consider this proposal. It comes from neither Republican nor Democratic sides. It is one of the most valuable assets that the government is currently squatting on and could be part of an overall deficit reduction plan totalling upward of \$90 billion, but I think that benefit understates the true potential. Because if we set a goal of the United States being the country that offers the most broadband wireless spectrum, then we ensure that this critical 21st century industry remains in the United States and that the pace of innovation in wireless always is fastest in America as opposed to Asia or Europe.

That is why I put the amendment forward. I would seek its adoption as part of our deficit negotiations.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 15 minutes.

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

#### THE DEBT CEILING

Mr. WHITEHOUSE. Mr. President, Senate majority leader HARRY REID has presented a plan to address our deficits and to end the debt ceiling impasse that threatens to cripple our economy.

The Treasury is projected to run out of money next week and time is running short. Senator REID has shown great leadership with his pragmatic package. Leader REID's proposal would give the Treasury the authority to ensure the United States does not default on its debt, while at the same time cutting \$2.7 trillion from our budget.

The unprecedented set of cuts would have a significant effect in balancing

our budget and restoring fiscal sustainability to the Federal Government. I wish to highlight one key fact. Unlike the House Republican budget and unlike the so-called cut, cap, and balance plan, Leader REID's plan will preserve Social Security, Medicare, and Medicaid.

Protecting Social Security and Medicare benefits is particularly important. The Republicans have long coveted Social Security and wanted to turn it over to Wall Street. George Bush tried and failed to do this because the American people wanted none of it, but they tried.

The House Republican budget attacked Medicare, effectively turning it over to the private health insurance industry in 10 years. When the American people found out this was hidden in the Republican budget, they wanted none of it. Huge majorities of the American public disapproved of the Republican budget attack on Medicare.

But instead of relenting, the Republicans came back with cut, cap, and balance. Hidden behind that slogan was an even worse attack on Medicare. The House budget would have raised senior's costs more than \$6,000 a year. Cut, cap, and balance would have gone \$2,500 beyond that. Cut, cap, and kill Medicare was a better name for it.

Against that relentless Republican effort to go against the will of the American people and kill off Medicare, Leader REID's proposal protects this vital program and the freedom and security it provides to American families.

Make no mistake about it, our deficit reduction plan will not be easy. It will cut discretionary spending by \$1.2 trillion over the next decade. These budget reductions will require some tough but necessary choices. The plan would also count for an accelerated wind-down of U.S. forces in Iraq and Afghanistan, saving \$1 trillion in the process.

Our troops in the Middle East deserve our admiration and praise for so successfully carrying out their missions. We must, however, continue to press for a strategy that will bring our troops home as soon as we safely can.

The Reid deficit plan would find an additional \$40 billion savings by cutting fraud and abuse in tax compliance and a number of nondefense Federal programs and \$60 billion in other savings, including cutting unnecessary spending on agricultural subsidies and auctioning off electromagnetic spectrum that the government currently holds.

Finally, by cutting the budget by over \$2 trillion, we will have to borrow less money than anticipated, and that will save an additional \$400 billion in projected interest costs. In total, the Senate Democratic plan on which we will vote would cut the deficit by \$2.7 trillion over the next 10 years.

While Senator REID's proposal would not address the tax gimmicks and loopholes throughout our Tax Code that help favor the well-connected, this

omission does not mean Democrats have given up on ensuring that there is shared sacrifice as we work to balance the budget.

Instead, this package acknowledges the political realities of the moment. Many House Republicans have flatly refused to entertain raising any revenue: not one tax loophole, no cutting of taxpayer subsidies to profitable oil companies, no closing down of offshore tax havens. That is wrong. The Reid package reserves the tax side of budget reform for another day.

We look forward to a robust discussion in the weeks and months ahead over Republican priorities that put special interest loopholes ahead of the interests of American families and ahead of the interests of the American economy.

The Reid plan would establish a bipartisan commission to recommend budget changes and those recommendations would then be guaranteed an up-or-down vote in both Houses of Congress before the end of the year. These recommendations should focus on cutting the unjustifiable tax giveaways—the tax earmarks—that allow profitable companies to avoid taxes entirely and permit megamillionaires and billionaires to pay lower effective tax rates than do middle-class families.

The Reid plan meets the Republicans' initial demands in the debt ceiling negotiations. It cuts \$2.7 trillion from the budget—greater than the amount by which the debt limit would be increased—and leaves tax reform for the next round of budget reform. But it does not yield to the Republican attack on Social Security, Medicare or Medicaid.

I hope Republicans in the Senate and the House will appreciate the balance of Senator REID's approach and support it. But what if they do not? The House is in disarray. The Speaker does not appear to have the votes. Some of the extremists will not take yes for an answer, and some of the most extreme appear to relish the prospect of America's economy colliding with the debt ceiling.

Let's consider what should occur if Congress fails to lift the debt ceiling. Congress will have sent President Obama three different messages, and they create an irreconcilable conflict. Think about it. Message 1 is: We want him to spend money on all these things. We want him to conduct our wars and our national defense. We want him to send out Social Security checks. We want him to pay the doctors and the hospitals that provide Medicare services. We want him to keep guards on our borders and in our prisons, keep air traffic controllers in the towers, run the rest of the Federal Government.

We tell the President to do that by passing laws. It is by law that the President does these things. Message 2 that we send is: Here is the money we will allow him to collect for the Treasury to pay for all those things. Again,

it is by law that we authorize the President to collect that money for the Treasury—by law.

There is a slight problem. The things we have instructed the President to do by law add up to a lot more expense than the money by law we allow him—the executive branch—to collect. So the executive branch has had to borrow—and borrow they have—up to \$14 trillion.

If we do not lift the debt ceiling, we send message 3: Do not borrow any more. We do not change message 1, and we do not change message 2. We just add message 3: Do not borrow any more.

As anyone can see, there is no way to reconcile those three instructions. One, by law, we tell the executive branch to send out all these checks and make payments; two, by law, we appropriate too little money to pay for what we have told the executive branch to do; and, three, by law, we would tell the executive branch of government they cannot borrow the difference.

That creates an irreconcilably mixed signal. Do this, but there is not enough money, and do not borrow. This is irresponsible and it is bad government. If Congress wants to stop paying the troops, stop sending out Social Security checks, shutter agencies of the Federal Government or defund Medicare, we should have a proper debate and say so and be responsible for it.

But we have not, and that failure creates an impossible situation for the executive branch under our constitutional principles of separation of powers. Remember why officials in the executive branch pay the soldiers and contractors who support our war efforts. Because Congress has told them to. Congress has the power of the purse.

Remember why the executive branch sends out Social Security checks and payments to doctors and hospitals for providing Medicare services. Because Congress has told them to. Congress has the power of the purse. Remember why the President pays the salaries of Border Patrol agents and prison guards and air traffic controllers and FBI agents and staff in our veterans hospital. Because Congress has told him to do that. Congress holds the power of the purse.

Who is responsible for not giving the President enough money to pay for all of this, for forcing the Treasury to borrow? Congress has set how much the executive branch can collect because Congress has that power of the purse.

Now we are telling the President to do all we have told him to do but without enough money and do not borrow. We all learned in civics that Congress has the power to make laws and the power of the purse. We learned that the President has the solemn obligation to faithfully execute the laws Congress has passed. That is the basic structure of American Government.

Outside of a few narrow and specific areas that are assigned exclusively to the executive or judicial authority by

our Constitution, the constitutional rule is clear: Congress instructs the President by law what to do, and the President faithfully executes those laws.

But what happens if Congress will not instruct clearly? What happens under our Constitution when faithfully executing one law Congress has passed requires the President to fail to faithfully execute another law? How can the President faithfully execute irreconcilably conflicting instructions from Congress?

As a matter of constitutional principle, there is only one logical resolution I can see to this constitutional predicament which Congress has created.

When the matter is sufficiently grave to merit the President's attention, and when Congress sends irreconcilable messages for the President to faithfully execute, a zone of executive discretion must necessarily open to allow the President to make the best decisions for the American people in the area where Congress has sent those irreconcilable mixed signals.

Of course, the instant Congress resolves its conflicting signals, stops speaking out of both sides of its mouth, and sends a clear direction, that zone of executive discretion disappears. Congress has the power. Congress makes the laws. Congress controls the purse. Whatever fiscal path Congress instructs the President to embark on, he must faithfully execute that instruction from Congress.

But Congress can't put the President in the untenable position of having to fail in the "faithful execution" of one set of laws in order to "faithfully execute" another. That is exactly where it seems to me we would put the President if we failed to lift the debt ceiling.

The damage to the country from such failure would be profound. At least 40 cents of every Federal dollar would suddenly stop flowing into the economy. Considering what would have to be done with the remaining 60 cents, it is not very likely that the Federal regulatory process would keep running. That means every job in the country, depending on a Federal permit or Federal approval or a Federal grant or a Federal contract, would likely grind to a halt.

There would be a jump in interest rates that would hit Federal, State, municipal, corporate, and family budgets. A lot of other stuff might also go wrong, but those three are a bare minimum, and they alone would constitute a brutal shock to our struggling economy. The damage would be grave.

Bad enough if Congress instructed the President to do this kind of damage, but do we really expect him to do that sort of damage without our clear instruction? The scale of this damage lights up in sharp contrast to the constitutional predicament Congress would create through Congress's failure and inaction to send clear direction.

The 14th amendment provision, that the public debt of the United States of America "shall not be questioned," may or may not be controlling here. That specific amendment is not my point. My point is a more basic one: How, under our separated powers, when Congress gives conflicting directives, does the President "faithfully execute" those conflicting directives? The conflicting directives problem is ultimately a problem for Congress to solve. But until Congress sorts itself out and gives a clear directive, all that can be constitutionally expected of the President is to do the best he can for the country. He cannot "faithfully execute" conflicting directives.

In a sense, conflicting directives by Congress are a form of abdication by Congress—an abdication of the duty imposed on Congress by article I of the Constitution to make and pass laws. It is only reasonable and proper to infer that the constitutional duty of Congress to make and pass laws implies that the Congress will make and pass laws that are capable of faithful execution by the executive.

A Congress that cannot meet that standard is in no position to complain that the executive branch has usurped its authority. More to the point, the constitutional cure is always right in Congress's hands: Sort out your differences; give the executive branch the direction it is Congress's duty to provide.

To me, at least, this is a reading of the separation of powers in the U.S. Constitution that makes sense, that is consistent with the underlying principles of that great document, that is practical and workable, and that allows for governance rather than paralysis in circumstances when congressional dysfunction deprives the President of the clear legislative direction that by clear implication is Congress's duty to provide.

I hope before we pitch over the looming fiscal precipice, the executive branch gives these views thoughtful consideration.

I yield the floor.

#### ORDER OF PROCEDURE

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that pursuant to the order of July 21, 2011, and after having notified the Republican leader, we proceed, at 2 p.m. today, to executive session for the consideration of Calendar No. 276, Robert S. Mueller III, of California, to be Director of the Federal Bureau of Investigation. It is my understanding this debate is to take 2 hours; is that true?

The PRESIDING OFFICER. Under the order of July 21, the Senator is correct.

Without objection, the majority leader has the authority under that order.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

#### THE DEBT LIMIT

Mr. TOOMEY. Mr. President, I will address the issue of the pending debt limit.

Although the President's most recent speech on this did not give me great cause for confidence, I still hope he will drop his insistence on the huge tax increase in return for making the meaningful spending cuts and reforms that we need. I hope, most of all, he will drop his opposition to putting our budget on a path to balance.

That is the big item I think we need in this debate. I think we ought to be willing to raise the debt limit, as I am, if in return for that we would have a commitment of the President to put us on a path to a balanced budget, as President Clinton committed to and he achieved with a Republican Congress back in 1995. I hope we will reach an agreement that solves the underlying problem prior to August 2.

I am here this afternoon because I think we all have to acknowledge that we are late in the process, and I think it is indisputable that there is at least a possibility that August 2 will arrive without having raised the debt ceiling, whatever our personal preferences might be about that.

In my view, since that is a possibility, it is essential that the Federal Government have a plan for what we will do if those circumstances arise. Specifically, what is going to have to happen is the government will have to spend some period of time—probably a very brief time, but a period of time nevertheless—operating exclusively on the ongoing tax revenues that will be coming in without the ability to go out and borrow additional money. That means necessarily that somebody is going to make decisions about prioritizing payments, by some criteria that somebody will come up with.

Rather than simply wait and stumble into this period and discover what somebody has come up with, I think we ought to lay out a plan. So that is what my recently introduced legislation is meant to do.

Some of us have made this argument for a long time. We saw this day coming, and we have known that we would face a difficult time raising this debt ceiling. It has always been possible that we would not do it by August 2. I have been arguing that we ought to have this plan.

Unfortunately, the administration has persisted in denying that it is even possible to prioritize. It is ridiculous. It is going to happen. They are predicting that we are going to default on our bonds if we go past August 2 without having raised the debt ceiling.

In a letter to Congress, Treasury Secretary Geithner said:

This would be an unprecedented event in American history. A default would inflict catastrophic, far-reaching damage on our Nation's economy.

President Obama said this in May of this year:

If investors around the world thought that the full faith and credit of the United States