

I approach this matter regretfully and soberly but with apprehension about what the Obama administration is trying to do to our 225-year-old Constitution. I call upon Members of both parties in this Senate to rise in solemn defense of this institution and the constitutional principle of the separation of power.

I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Alaska.

#### THE STOCK ACT

Mr. BEGICH. Before I speak on my formal comments, I just want to say one thing. I know the Senator from New York was here a little bit ago talking about the STOCK Act. She made an incredible presentation to us in the Homeland Security and Government Affairs Committee, and I am grateful she is moving forward on that. We actually added a piece to the STOCK Act that I think makes it a lot stronger than it was by making sure that as officials report their transactions, they are done electronically and are searchable. That means anybody in this country can go to the Senate's Web site and find the information about their Senator.

As you know, as a new person in this office, as I am, when we file our disclosure forms, they are sent to the Senate Clerk, and then if you want them, they have to copy them and send it off to someone else. You cannot search for them and you cannot get them, which is unbelievable. So we made sure in the committee that if we do this act—I think it is a strong act; it is something we should do—we make sure it is searchable and available electronically in this age we live in today.

I already put my disclosure form on my Web site. I have put it on there since the day I came into office. I think people need to know exactly what their Senator's investments are. If they have spouses—in my case, all of my spouse's information is on there even though I am not required to do it. I put it on there because I think people need to know the household income of their Senator and where it comes from and where their investments are. We over-report. After I fill out the forms, we have an attorney review it, and he always tells me we are giving too much information. I have to remind him that is what I am doing. That is the way I think it should be done.

Again, I congratulate the Senator from New York who was here for the work on the STOCK Act, and I am glad I could participate in making it even stronger.

#### NOME REFUELING SITUATION

Mr. BEGICH. Madam President, I seek to speak on the floor to speak of my residence of Alaska, a State that constantly overcomes adversity in its tough winters. This year has been an especially tough winter.

Alaska's history is marked by stories of people coming together to overcome extreme hardships and save their communities. None is more memorable than the 1925 Serum Run, when diphtheria ravaged the remote Arctic community of Nome. The needed vaccine was raced to the community by a team of 20 mushers and some 150 sled dogs. They faced brutal February weather and extreme cold, with winds and snowdrifts, and carried their precious cargo—the vaccine—some 700 miles in just 5½ days. It is a speed record that has never since been broken, and it saved the community. The feat is memorialized by the 1,000-mile Iditarod sled dog race known as the last great race on Earth.

This year, the city of Nome faced a 21st-century challenge: the need for energy. The fall fuel barge—the last scheduled before winter set in—was blocked first by a mammoth October storm which swept up western Alaska and then by heavy sea ice. The barge had to turn back, but without the delivery Nome would run out of fuel by March. Nome is not connected by road, and the earliest the next barge would arrive would be this June. Flying in 1.3 million gallons of fuel would have taken 300 flights and would have boosted the cost of an already expensive gasoline and home-heating fuel to over \$9 a gallon. As you can see here, the price of fuel in the community right now is over \$5 a gallon.

The Sitnasuak Native Corporation and Vitus Marine proposed to do what has never been done before: bring over 1 million gallons of diesel fuel and gasoline to Nome in the dead of winter. They contracted with a Russian-flagged tanker, the Renda, which was ice-capable and double-hulled.

To ensure the safety of the delivery, the Coast Guard immediately recognized it had a mission and the right equipment. The Coast Guard icebreaker Healy had just completed a lengthy scientific tour off the Arctic. Rather than return home, they stayed on the job as winter set in, breaking open lanes through the ice to allow the tanker to arrive.

The Healy and the Renda encountered conditions more severe than anticipated, with colder temperatures, stronger winds, and thicker ice. Some days their progress was frozen, literally, but the Healy pressed on through the ice. With the determination that is the hallmark of the U.S. Coast Guard, they succeeded. They did not make it to Nome Harbor, which was frozen solid, but close enough to top off the city's fuel tanks through a half-mile-long hose. Now they are on their way back home but not out of the ice yet. The Healy and the Renda still have several hundred miles before they reach open water.

I take to the floor today to offer my thanks and congratulations to Captain Beverly Havlik and the men and women aboard the Healy for a job well done and also the crew of the charter

tanker, the Renda, and many others who helped ensure that the transfer of fuel was safe, workers from the Sitnasuak Corporation, Vitus Marine, the city of Nome, State of Alaska, and others who have played their part, even the University of Alaska researchers who flew aerial drones to inspect ice conditions in advance of the approaching vessels. Together they proved that winter operations are possible even in the most challenging circumstances.

I speak today not just to congratulate all those who pitched in to help refuel this community but to consider its broader implications and lessons.

First, America is an Arctic nation. The residents of cities such as Nome and Kotzebue and Barrow and numerous smaller villages thrive in the often challenging but rich Arctic environment. The Alaska Native peoples have thrived for generations and for thousands of years, living off the resources of the land and the sea.

Second, the Arctic offers much to our Nation. Its offshore oil and natural gas is our most promising energy province, which is actively being considered by industry. Trade routes over the top are increasingly being explored by shippers eager to cut up to 40 percent off trade routes between the east and the west.

Yet, while we are an Arctic nation, we lack the basic infrastructure to serve its people, to fulfill our responsibilities and take advantage of its opportunities. But it is not just me saying it. Just today the Northern Waters Task Force released a report calling for a better Arctic infrastructure. The Healy is our Nation's only operational polar icebreaker, and it is only rated as a medium-duty vessel. Our two heavy-duty icebreakers are both idle. The 36-year-old Polar Star is being retrofitted and should be operational again soon, but it has been proposed to send her sister ship, the Polar Sea, to the scrap heap.

Since taking office, I have repeatedly called for recapitalizing the Nation's icebreaker fleet. A comprehensive Coast Guard study recently found that 6 to 10 icebreakers are needed just to meet the Coast Guard's statutory responsibilities. Until we have a firm plan to meet these needs, I have introduced legislation with Senator CANTWELL to halt the dismantling of the Polar Sea until all options can be considered. Without icebreakers, we can neither meet our responsibilities nor take advantage of our opportunities as an Arctic nation. We are falling behind Arctic nations such as Russia, China—which is not an Arctic nation but is building icebreakers—Canada and others as well. Russia is building a year-round Arctic port. Canada is conducting military operations. And, as I mentioned, China is building new icebreakers.

America must build its Arctic infrastructure, such as a deepwater port to maintain our national presence as other nations make their claims to the

Arctic. We need to maintain spill response capabilities, enhance communications, track the increasing vessel traffic using polar routes, strengthen communications and the base scientists who are researching the changing Arctic ecosystem.

In addition, we need the legal framework to support our Arctic presence, and that means ratification of the Law of the Sea Treaty. We need a robust scientific program to track changes in the Arctic which in the past has operated like a global air-conditioner.

But scientists say, and the residents of the region confirm, that the Arctic is warming. As its ice pack diminishes, it is changing our weather. The National Oceanic and Atmospheric Administration, NOAA, says there were a record 12 weather disasters in the United States costing more than \$1 billion each in 2011. The hurricane force storm that blocked the fuel delivery to Nome isn't the only unusually severe weather facing my State. South central Alaska has had—and I will repeat this when I say it—24 feet of snow—24 feet of snow so far this winter. The cities of Cordova and Valdez know a thing or two about heavy winter snowfalls, but this is an unusual one for them.

In Cordova, buildings collapsed and avalanches cut the town off from its airport. That is a true concern since, like 80 percent of the rest of Alaska, Cordova is not connected by roads to the rest of the State.

The Army and Air National Guard sent soldiers and airmen to the scene, and the State of Alaska sent over 100 State responders and heavy equipment to the town by the State ferry system. The whole town, along with the Guardsmen and the State workers, pitched in and worked around the clock to clear the snow off the streets and roofs as another snow and rain system was about to hit. The only problem: Alaskans can be rather enthusiastic and kept breaking every single one of those snow shovels. Eventually they ran out and had to have more snow shovels shipped in from out of State.

Other parts of the State are affected as well. Boats capsized in the fishing port of Kodiak due to the heavy snow. Yesterday, once again, the Coast Guard came and performed their duty—not only one but two rescues of the crews of fishing vessels that sank near Kodiak Island.

NOAA is closely watching the heaviest sea ice in decades in the Bering Sea, which threatens to close the important crab fisheries and destroy millions of dollars in fishing gear.

Some politicians downgrade public service and say government can't do anything right. I am grateful for the government's response. I am grateful to the Coast Guardsmen on the Healy who gave up their holiday with their families to ensure Nome got its fuel, and I am grateful to the Alaska National Guard and State and local governments working to help dig out Cordova and Valdez.

I know my time has expired, but I wish to say there is no question in my mind that the work the Coast Guard did, the National Guard, and many others, set us on a course to again recognize the incredible people who are doing incredible things in our State and around the country. As we continue to look at the vast resources of the Arctic, more of these resources will be necessary, and I know one thing about Americans, about Alaskans, and that is we will be ready to take on the challenges of the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

#### RECESS APPOINTMENTS

Mr. LEE. Madam President, in defense of the Constitution, I stand against an action taken recently by our Chief Executive. President Obama's January 4, 2012, appointments to the Consumer Financial Protection Bureau and to the National Labor Relations Board are different in kind than previous recess appointments made by Presidents of the United States made by both political parties. These four appointments are unconstitutional because they did not, as required by article II, section 2, receive the "advice and consent" of the Senate, even though such advice and consent was necessary under the circumstances.

President Obama has asserted that the appointments are constitutional under the recess appointments clause. That clause provides that the President may "fill up all Vacancies that may happen during the Recess of the Senate." That clause does not apply here, however, because the Senate was not in recess when President Obama made the appointments in question.

In making these appointments, the President did not state that he believes an intrasession adjournment of less than 3 days constitutes a recess, and there can be little dispute that such a brief adjournment as occurred between January 3, 2012, when the second session of the 112th Congress officially began, and January 6, 2012, when the next pro forma session of the Senate occurred, does not, in fact, constitute a recess for purposes of the recess appointments clause.

The Department of Justice has consistently maintained that an intrasession adjournment must be longer than 3 days to constitute such a recess. The text of the Constitution evidences that the Framers did not consider an adjournment of less than 3 days to be constitutionally significant. Indeed, in article I, section 5, we read that "neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days."

Now, at the time these appointments—the appointments in question—were made, the Senate had not received consent from the House of Representatives to adjourn for a period of time of

more than 3 days. If an intrasession adjournment of less than 3 days were to be considered constitutionally sufficient for the President to exercise his recess appointment power, it is unclear what, if anything, might prevent the President from routinely bypassing the Constitution's advice-and-consent requirement and appointing nominees during even weekend adjournments.

The Department of Justice's Office of Legal Counsel asserts that the President may unilaterally conclude that the Senate's brief pro forma sessions do not constitute sessions of the Senate for purposes of the recess appointments clause. But this assertion is deeply flawed. It is for the Senate and not for the President of the United States to determine when the Senate is in session. The Constitution expressly grants the Senate the power to determine the rules of its own proceedings.

Granting the President unilateral power to override the Senate's determination of when it is in session would undermine the constitutional prerogative and violate the Constitution's fundamental principles of separation of powers.

The OLC memorandum on which the President relies asserts that the "touchstone" for determining when the Senate is in session is "its practical effect: viz. whether or not the Senate is capable of exercising its constitutional function of advising and consenting to executive nominations." This analysis contradicts the text and the original understanding of the recess appointments clause.

The purpose of that clause, we read in Federalist No. 67 which was authored by Alexander Hamilton, was to avoid obliging the Senate "to be continually in session for the appointment of officers." Nothing in either the Constitution's text or in the debate surrounding the recess appointment clause suggests in any way that the President should have the unilateral power to appoint officers and judges at times when the Senate is regularly meeting, even if that body is not conducting substantial business.

In addition, the OLC memorandum's functionalist argument fails on its own terms. During the Senate's pro forma sessions, including its session on January 6, 2012, the Senate was manifestly capable of exercising its constitutional function of advice and consent. Notably, at one such pro forma session on December 23, 2011, the Senate passed a significant piece of legislation demonstrating that it is, in fact, capable of conducting business—meaningful business—at such sessions.

But regardless of how much business the Senate conducts during pro forma sessions or how much business it indicates in statements that it intends to conduct in advance of such sessions, the Senate has been and continues to be capable of conducting business at such sessions—including advising and consenting as to nominations for the President should it decide to do so.