

However, despite the fact that you were indisputably the author of what became the routine use of pro forma sessions to prevent recess appointments and even though you are obviously well aware that the Senate is able to conduct significant business during a scheduled pro forma session, you have, on multiple occasions, publicly expressed your support for President Obama's efforts to bypass the Senate with regard to these nominations. For example, while appearing on the January 15, 2012 edition of "Meet the Press," you stated unequivocally that the President "did the right thing" in making these appointments. And, while you did acknowledge in the interview that it was you who established the procedure of using pro forma sessions, you also stated that "President Bush didn't have to worry about recess appointments because [you] were working with him," and that "[you] believed then, [you] believe now, that a president has a right to make appointments." You made similar arguments this week on the Senate floor.

This purported explanation directly contradicts remarks you made on the Senate floor during the Bush Administration wherein you explicitly indicated that the purpose of the pro forma sessions was to prevent President Bush from making recess appointments. On November 16, 2007, you stated that "the Senate would be coming in for pro forma sessions during the Thanksgiving Holiday to prevent recess appointments," and that you had made the decision to do so because "the administration informed [you] that they would make several recess appointments." On December 19, 2007, you stated that "we are going into pro forma sessions so the President cannot appoint people we think are objectionable. . . ." After reading these statements, it is clear that, under the Bush Administration, you believed that the use of pro forma sessions was sufficient to prevent the President from making recess appointments and that the practice was undertaken specifically because you were unable to reach an agreement with the President regarding specific nominees.

This apparent shift in your position raises a number of concerns. Most specifically, it appears that you believe the importance of preserving Senate's constitutional role in the nomination and appointment process varies depending on the political party of the President. Because we hope that this is not the case and because we hope that you, as the Senate Majority Leader, have taken seriously your responsibility to protect and defend the rights of this chamber, we hope you will answer the following clarifying questions:

1. In your view, what specific limitations does the Senate's use of pro forma sessions place on the President's power to make recess appointments under the Constitution?

2. Would it have been constitutional, in your view, for President Bush to have made recess appointments during the time the Senate, under your leadership, was using pro forma sessions? If so, for what purpose did you establish the practice of using pro forma sessions in the first place? If not, why do you now believe it is constitutional for President Obama to make recess appointments under similar circumstances?

3. In your view, did the Senate's passage of the Temporary Payroll Tax Cut Continuation Act of 2011 comply with the constitutional requirements for the passage of legislation?

If so, do you disagree with the President's argument that the Senate was "unavailable" to perform its advice and consent duties during the recent adjournment?

Needless to say, these are very serious matters. While there are many issues that divide the two parties in the Senate, includ-

ing the very appointments at issue here, we hope that you share our view that neither party should undermine the constitutional authority of the Senate in order to serve a political objective.

Thank you for your attention regarding this matter.

Sincerely,

Orrin Hatch, Jim DeMint, Ron Johnson, Mike Johanns, John Cornyn, Marco Rubio, Rand Paul, Mike Lee, Michael B. Enzi, John Boozman, Pat Roberts, Chuck Grassley, John Hoeven, Roger Wicker, Pat Toomey, Dan Coats, Rob Portman, Mike Crapo, Scott Brown, Jeff Sessions, Dick Lugar, Lindsey Graham, Jerry Moran, Kelly Ayotte, James Risch, David Vitter, Saxby Chambliss, John Thune, John McCain, John Barrasso, Richard Burr, Thad Cochran, Roy Blunt, Johnny Isakson.

Mr. HATCH. These so-called recess appointments were unlawful because there was no legitimate recess in which they could be made.

There are many disagreements about policy and political issues. That is to be expected. But the integrity of our system of government requires that even the President must, as he said in the State of the Union Address, play by the rules. President Obama broke the rules in order to install the individuals he wanted. That action weakened the Constitution, our system of checks and balances, as well as both the Senate and the Presidency.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### EGYPT

Mr. LEAHY. Madam President, I would like to draw the Senate's attention to recent developments in Egypt, and I begin by referring to the outburst of violence yesterday by rival soccer fans after a match in that country in which 73 people were reportedly killed and hundreds injured.

This is a shocking tragedy, and I want to express my condolences to the Egyptian people and the families of the victims.

Last week tens of thousands of Egyptians gathered in Tahrir Square in Cairo to celebrate the 1 year anniversary of the popular revolution that overthrew former President Hosni Mubarak. That courageous and largely peaceful expression of popular will was inspirational to people everywhere, including millions of Americans.

The United States and Egypt share a long history of friendship and cooperation. Thousands of Americans travel and study in Egypt, and over the years we have provided tens of billions of dollars in economic and military aid to Egypt. Our countries share many interests, and it is critically important that

we remain friends and allies in that strategically important part of the world during this period of political, economic, and social transition.

During the past 12 months, Egypt has been governed by a group of senior military officers, each of whom held positions of leadership and privilege in the repressive and corrupt Mubarak government. To their credit, for the most part they did not attempt to put down the revolution by force, and they pledged to support the people's demand for a democratically elected civilian government that protects fundamental freedoms.

The transition process is a work in progress. On the positive side, two democratic elections have been held and a new Parliament has been seated. On the negative side, civilian protesters have been arrested and prosecuted in military courts that do not protect due process, and in December Egyptian police raided the offices of seven nongovernmental organizations, including four U.S.-based groups whose work for democracy and human rights has for years been hindered by laws and practices that restrict freedom of expression and association. Files and computers were confiscated, and some of their employees have been interrogated.

There are also reports that as many as 400 Egyptian nongovernmental organizations are under investigation, allegedly for accepting foreign donations. Apparently, to the thinking of Egypt's military rulers, there is nothing wrong with the Egyptian Government receiving billions of dollars from U.S. taxpayers, but private Egyptian groups that work for a more democratic, free society on behalf of the Egyptian people and that cannot survive without outside help do so at their peril.

Despite repeated assurances from Egyptian authorities that the property seized from these organizations would be promptly returned, that has not happened. To the contrary, the situation has gotten worse as several of their American employees have been ordered to remain in Egypt. Some of them have obtained protection at the U.S. Embassy. With each passing day there are growing concerns that these groups could face criminal charges for operating in the country without permission.

This is a spurious charge, since registration applications were submitted and deemed complete by the government years ago, because the organizations regularly reported to officials on their activities, and since, while registration was pending, they were permitted to operate. Ironically, while the previous regime did not seek to expel them for their prodemocracy work, Egypt's current authorities, whose responsibility it is to defend and support the democratic tradition, are attempting to do just that.

There is abundant misinformation about the work of the American-based

organizations, with some Egyptian officials accusing them—without offering any evidence—of trying to subvert Egypt's political process. Without belaboring the point, their work was no secret as they had nothing to hide. They were helping to build the capacity of Egyptian organizations engaged in peaceful work for democracy and human rights, supporting the development of political parties, and working with Egyptian groups to provide non-partisan voter education.

The military argues that since these groups were not registered, they were in violation of Egyptian law, but this is a transparently specious excuse for shutting them down. Their repeated applications for registration were neither granted nor denied. The government simply chose to ignore them.

Egyptian officials also insist that this is simply a matter of upholding the rule of law, but the complaint against these organizations was issued by a Minister with no direct authority over legal matters, and a negative propaganda campaign was unleashed in the state-controlled media. The conduct of the raids, seizure of the files and computers, interrogation of the employees, and the no-fly order have not been conducted consistent with legal standards but instead seem to be politically motivated. No warrants have been issued, no charging documents made public, and no inventory of seized property made available.

Many suspect that the force behind this crackdown is Minister of International Cooperation Faiza Aboul Naga, who was described in a Washington Post editorial this week as “a civilian holdover from the Mubarak regime” and “an ambitious demagogue [who] is pursuing a well-worn path in Egyptian politics—whipping up nationalist sentiment against the United States as a way of attacking liberal opponents at home.” Given Minister Aboul Naga's recent statements, I strongly believe that no future U.S. Government funds should be provided to or through that ministry as long as she is in charge. As the chair of the Appropriations Committee's Subcommittee on the State Department and Foreign Operations, I am confident there is strong support in Congress for this position.

A related issue is the Egyptian military's continued use of vaguely worded emergency laws to silence dissent. While it is encouraging that the head of the military, General Tantawi, announced plans to lift the 30-year state of emergency, that is only a first step.

As I have mentioned, for decades the United States and Egypt have been friends and allies. While we have differed over issues of democracy and human rights, our two countries have worked together in pursuit of common goals. Our partnership needs to be strengthened and broadened to respond to the interests and aspirations of the Egyptian people themselves. Our long-standing legacy of cooperation with

the Egyptian Government is now in jeopardy, and it is in the interests of both countries that this crisis is promptly and satisfactorily resolved and that we focus instead on moving forward to build an even stronger and enduring relationship.

In December, President Obama signed into law the Consolidated Appropriations Act for 2012. Section 7041(a)(1) of division I of that act provides that prior to the obligation of \$1.3 billion in fiscal year 2012 U.S. military aid for Egypt, the Secretary of State shall certify that “the Government of Egypt is supporting the transition to civilian government including holding free and fair elections; implementing policies to protect freedom of expression, association, and religion, and due process of law.”

These unprecedented requirements, which I wrote, were included for two reasons. First, we want to send a clear message to the Egyptian people that we support their demand for democracy and fundamental freedoms. Second, we want to send a clear message to the Egyptian military that the days of blank checks are over. We value the relationship and will provide substantial amounts of aid, but not unconditionally. They must do their part to support the transition to civilian government. If the assault against international and Egyptian nongovernmental organizations continues, several of the requirements for certification could not be met.

Egypt has an extraordinary history dating back thousands of years. Anyone who has stood at the base of the pyramids cannot help but be in awe of what that society accomplished centuries before Columbus arrived in America. It is a destination for thousands of American tourists and students each year. It has the potential to be a strong force for democratic change and moderation in the Middle East and north Africa.

I hope the Egyptian authorities fully appreciate the seriousness of this situation and what is at stake. They need to permit these organizations to reopen their offices, return the confiscated property, end investigations of their activities and the activities of Egyptian groups, and register them without conditions so they can continue to support the democratic transition.

I ask unanimous consent that the Washington Post editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 31, 2012]

EGYPT'S WITCH HUNT THREATENS A RUPTURE WITH THE U.S.

(Editorial)

There is a grotesque incongruity in the tour around Washington this week of an Egyptian military delegation even as seven Americans who work for congressionally funded pro-democracy groups are prevented from leaving Cairo and threatened with criminal prosecution. What makes it worse

is that the ruling military council refuses to recognize the seriousness of the crisis it has created in the U.S.-Egyptian alliance.

The persecution of the Americans, which has been escalating since their offices were raided Dec. 29, is an extraordinary provocation by the generals who succeeded Hosni Mubarak. Despite repeated appeals, including by President Obama, military council chief Field Marshal Mohammed Hussein Tantawi has failed to deliver on promises to call off the witch hunt and return confiscated funds and property. Over the weekend, three of the Americans, including the son of Transportation Secretary Ray LaHood, moved into the U.S. Embassy compound in Cairo out of fear for their safety.

Meanwhile the Egyptian military delegation, headed by Fouad Abdelhalim, defense minister for arms affairs, is here on a business-as-usual mission to discuss security cooperation—including the weapons purchases Egypt makes with the \$1.3 billion in U.S. military aid it receives each year. The generals regard this funding as an entitlement, linked to the country's peace treaty with Israel. They appear to believe that Washington will not dare to cut them off, even if Americans seeking to promote democracy in Egypt are made the object of xenophobic slanders and threatened with imprisonment.

Preserving the alliance with Egypt, and maintaining good relations with its military, is an important U.S. interest. But the Obama administration must be prepared to take an uncompromising stand. If the campaign against U.S., European and Egyptian NGOs is not ended, military aid must be suspended.

Administration officials say Gen. Tantawi has been warned repeatedly that the aid money is at risk. But they tend to blame Congress, which attached conditions to the 2012 military funding over the administration's objections. Before aid is disbursed, the administration is required to certify to Congress that Egypt is holding free elections and protecting freedom of expression and association. Officials acknowledge that no certification will be possible while the prosecutions continue, and that funding could run out in March. But the legislation provides for the certification to be waived by the State Department on grounds of national security. That course must be ruled out.

The campaign against the International Republican Institute, National Democratic Institute and Freedom House, along with a half-dozen Egyptian and European groups, is being led by Minister of International Cooperation Faiza Aboul Naga, a civilian holdover from the Mubarak regime. Ms. Aboul Naga, an ambitious demagogue, is pursuing a well-worn path in Egyptian politics—whipping up nationalist sentiment against the United States as a way of attacking liberal opponents at home. The regime's calculation has always been that it can get away with such outrages because U.S. policymakers will conclude they can't afford a rupture in relations with Egypt. But if such a break is to be avoided, the generals must be disabused of the notion that U.S. military aid is inviolate.

#### PAYING A FAIR SHARE ACT OF 2012

Mr. SCHUMER. Madam President, I rise today in support of the Paying a Fair Share Act, also known as the Buffett rule. This legislation, introduced yesterday by my good friend from Rhode Island, highlights an important conversation about fairness and tax policy in this country.

Now, some of my friends across the aisle have some interesting ways of discussing the principle that millionaires