

Again, it occurs to me that this is just something that ought to be withdrawn. I hope the Senator in his efforts and those of us who are supporting that effort will succeed. This is a perfect example of a big-government solution to a problem that doesn't exist.

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

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

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### RECESS APPOINTMENTS

Mr. LEE. Mr. President, on January 4, 2012, President Obama bypassed the Senate's constitutional right to advise and consent to nominees and, instead, unilaterally made appointments to the Consumer Financial Protection Bureau and to the National Labor Relations Board. He purported to do so under the Constitution's recess appointments clause, even though at the time of the appointments the Senate was holding pro forma sessions roughly every 72 hours.

If allowed to stand, President Obama's unprecedented and unconstitutional recess appointments could result in Presidents of both parties routinely circumventing the Senate's advice-and-consent function and thus depriving the people and the people's representatives of an essential check on the executive branch.

President Obama's actions also violate the Constitution's fundamental system of separation of powers. He has asserted the unilateral power to override Congress's own determination of when it is in session and when it is in recess. At an absolute minimum, the Senate's institutional prerogatives demand that we be allowed to make our own rules. Yet President Obama's actions would deprive our body of even that basic right.

In the past, I have given pretty broad deference to the President's judicial nominees. Both in the Judiciary Committee and on the floor of the Senate, I have voted in favor of the vast majority of President Obama's nominees, including many with whom I have fundamental disagreements on various points.

But I can do so no more. The Founders expected that each branch of the Federal Government would exercise the necessary constitutional means to resist any encroachments by the other branches. Among those constitutional means is the Senate's advice-and-consent function, which I exercised today by voting against a nominee who otherwise might have received my support. Thirty-three other Senators did exactly the same.

The President cannot expect the Senate's full cooperation at the same time

he does violence to this body's constitutional prerogatives. The threshold for confirming President Obama's nominees must change accordingly. Simply put, there is a new standard for confirmations as a result of the President's own actions. I find this unfortunate but ultimately necessary.

Both today and in the coming days, I will join with other Senators to act as a check and a balance on the President's unconstitutional conduct by voting against some nominees. I expect that many of my Republican colleagues, and in time some of our Democratic counterparts, will rise in defense of the Constitution and vote against President Obama's nominees until such time as he takes actions to restore the Senate's full constitutional right to advise and consent to his nominations.

#### THE STIMULUS PACKAGE

Mr. LEE. Mr. President, I now choose to turn to another topic—a topic that is important to many Americans, a topic that relates to an important anniversary we are recognizing.

Today, we are highlighting the third anniversary of President Obama's failed stimulus package.

The President promised 3 years ago that the stimulus would create what he characterized as millions of jobs. But today, unfortunately, devastatingly, there are nearly 13 million people in America who are still unemployed and many millions more have even given up on looking for jobs.

Three years ago, the White House said that because of the stimulus package, unemployment would not exceed 8 percent. That has not happened. In fact, the unemployment rate has topped 8 percent for 36 straight months now—the longest stretch of high unemployment since the Great Depression. The Congressional Budget Office predicts it is going to go even longer. We will not see sub-8 percent unemployment, according to the CBO, until 2014.

The President sold his stimulus package to the American people by claiming he would make immediate investments in what he characterized as “shovel-ready” jobs. But last June, the President acknowledged that “shovel-ready was not as shovel-ready as we expected.” Nevertheless, a lot of money has been spent, as we have been waiting for these jobs to materialize—jobs that never quite came about.

In fact, some of it was spent in ways that have nothing to do with stimulating the economy. For example, consider some of the ways in which this stimulus money has been spent. Mr. President, \$760,000 was spent on interactive dance software; \$1.2 million was spent on a train museum; \$2 million was spent to study ant behavior; \$762,000 was spent to study improvised music—I am not sure what that is, but I am sure it is lovely, not necessarily deserving of scarce Federal resources—\$300,000 to track weather on other planets—great if one lives on another plan-

et, not so great if one lives on Earth in a country that has accumulated an unprecedented debt exceeding \$15 trillion—\$153,000 for an indoor water park; and \$712,000 to develop a “machine-generated humor” system—in other words, a joke machine.

This big joke is on the American taxpayer. Unfortunately, it is no laughing matter.

In the last 3 years, we have added more than \$4 trillion to the national debt, we have recorded the three largest annual deficits in our Nation's history, and we are on pace for a fourth straight deficit exceeding \$1 trillion.

This week, the President submitted a budget that calls for adding \$11 trillion in new debt over the next decade. His own Treasury Secretary calls the level of spending unsustainable, and it is.

Despite the overwhelming evidence that his stimulus package has failed, the President has called for additional increases in spending.

I know the President is a good man. I also know he faced a difficult economy when he took office. But the President is unwilling to tell the truth to the American people about what lies ahead, about some of the challenges we face. I think he needs to do so, and he needs to acknowledge the fact that this stimulus package has failed so we can avoid making similar mistakes in the future.

Today we cannot celebrate the anniversary of the President's stimulus. Rather, we must lament a tremendous lost opportunity by this administration to put this country back on the right track over these last 3 years.

For the sake of future generations, I hope it is not too late to change course.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I ask unanimous consent that I be permitted to finish my speech regardless of the time.

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

#### RELIGIOUS LIBERTY

Mr. HATCH. Mr. President, earlier today, we were treated to some very partisan remarks from one of my colleagues on the preventive services mandate. That is the legal term. Here is what the mandate is in practice.

It is a mandate that will require religious individuals and institutions to purchase abortion-inducing drugs for their employees. It will require that they purchase insurance coverage that provides for sterilizations and the morning-after pill. In doing so, it will require that they violate their most

deeply held religious beliefs, in stark contrast to the first amendment's guarantee of religious liberty.

You would not know that from hearing some on the other side talk. You would think that opposition to this mandate was grounded in bigotry and a lack of concern for our fellow citizens.

This is a serious charge—one deserving of a response. My colleague from California suggested earlier today that the reason Republicans are opposed to this mandate—and the reason tens of millions of Americans are opposed to this mandate—is because they are antiwoman.

With due respect, one would be hard pressed to concoct a more insidious and misleading explanation of the opposition to this mandate.

People are opposed to this mandate for one simple reason—because they are in favor of religious liberty. They are opposed to it because it is an affront to our constitutional government, to the first right listed in our first amendment—the right to free exercise of religion.

We would not know that from my colleague's remarks. She did not even mention the Constitution—not once.

As Members of the Senate, we take an oath to support and defend the Constitution. But to hear members of the administration and some Members of Congress talk, it is clear to me that providing abortion-inducing drugs, sterilizations, and the morning-after pill to women is more important than the first amendment we are sworn to defend the Nation and our constituents to defend.

I do not shock easily, but the cavalier attitude of the President, his administration, and many in Congress to this frontal assault on religious liberty is truly shocking.

There was a time when both parties, liberals and conservatives, could come together on the matter of religious liberty—but not any longer, apparently.

I think it is because for many liberals, religion and the right to practice it freely are not the foundation of our Nation's liberties; rather, they are viewed as a threat to our Nation's liberties. They do not understand religious people. I guess we should have seen this coming when the President ran for the White House in 2008, and he referred pejoratively to these American who cling to their Bibles.

But the fact is, it was people who clung to their Bibles who were at the forefront of some of our Nation's greatest civil rights struggles and have been most committed to advancing the cause of personal liberty. They are at the forefront today serving as a solemn witness of the importance of religious liberty, threatening civil disobedience against the President's unconstitutional abortion mandate that would force them to violate their most cherished moral beliefs.

Instead of treating these powerful witnesses to our founding ideals with the respect they deserve, they are

looked at with contempt. This morning, one of my colleagues referred to a panel testifying about this assault on religious liberty as full of “dudes.”

Her suggestion was that the all-male composition of this panel somehow serves as proof that the objection to this abortion mandate is due to hostility to women. Give me a break. Let me tell you who these so called “dudes” were: the Roman Catholic Bishop of Bridgeport, CT; the president of the Lutheran Church, Missouri Synod; the Graves Professor of Moral Philosophy at Union University; the director of the Straus Center for Torah and Western Thought at Yeshiva University, and the chair of the Ethics Department at Southwestern Baptist Theological Seminary.

These men, whom my colleague refers to as “dudes,” came to Congress to testify about the grave impact this Obamacare rule poses to religious freedom. My colleague from California does not mention these other names because they are inconvenient. She does not mention Margaret Brining, Mary Keys, and Nicole Garnett of the University of Notre Dame. She does not mention Harvard's Mary Ann Glendon or the University of Chicago's Jean Bethke Elshtain or Maria Garlock of Princeton University.

She does not mention Helen Alvare of George Mason University or Maria Aguirre of the Catholic University of America. She does not mention the Mother Superior of the Sisters for Life.

All of these women signed a letter, along with hundreds of other scholars and clergy, stating the obvious truth—that the President's so-called compromise is unacceptable.

Are they all antiwomen too?

These thoughtful citizens, scholars, and religious people deserve our attention not our ridicule. Here is the bottom line: Obamacare is an unconstitutional abomination. It is unconstitutional to its core. The individual mandate is obviously unconstitutional, and the Supreme Court will rule on that soon enough.

But what this episode shows is that Obamacare is unconstitutional in its very DNA. It transfers power over one-sixth of the American economy to the Federal Government, and the government has proven with this episode that individual liberty is threatened by that transfer of power.

If the administration cannot be relied on to protect even religious liberty, the right of persons and churches and synagogues to practice their faith without interference from the State, then nobody is safe. If they are willing to trammel on the first amendment, they are willing to trammel on anything. That is the story.

The story is that earlier this week, Secretary Sebelius acknowledged to me and to the Finance Committee that she never consulted the Roman Catholic bishops before announcing the politically driven compromise that they would be forced to comply with.

The story is that Secretary Sebelius admitted that she never requested any first amendment analysis of this rule from the Department of Justice. The administration has clearly decided this is a political loser for them, so they are trying to change the subject. They send out their surrogates with talking points designed to scare the public into thinking this fight is about contraception. It is not, and the American people will not be fooled. They will not be tricked into thinking that those who oppose this mandate are antiwoman.

Do those who are promoting this spin think we do not have mothers, wives, and daughters? Do they think the women in the Senate and the House representing millions of more women are antiwomen? This is beyond absurd, and the American people will not be duped.

They know this rule exists because the administration is beholden to the pro-abortion lobby. And I can tell you, there is one group that the modern Democratic Party will never cross, never. They will never cross the abortion lobby. So it is no surprise that the Nation's largest abortion provider, Planned Parenthood, came out in support of the so-called compromise.

The Catholic Church and millions of Americans, however, responded that this is unacceptable. I agree with their assessment. The so-called compromise is nothing of the sort. But as bad as this mandate is, keep in mind it is only the beginning. It is only the first step in a fresh assault on the constitutional liberties of the American people. Believe me, the tragedy of Obamacare is only beginning.

The other day, former Speaker PELOSI suggested that even the Roman Catholic Church itself should have to provide abortion-inducing drugs to their employees. Catholic bishops would be forced, in her regime, to subsidize practices that the Church finds morally abhorrent. That is where this is going. The administration might feel cowed into providing a weak exception to their rule for religious institutions right now, but in the long run we know where they want to go. And the resulting loss of liberty would be bad for men and women alike.

Our Constitution protects all of us. By undermining religious liberty, this administration goes down a very dangerous path. In so doing, the officers responsible for this decision, if they knew of the serious constitutional issues and still went ahead with this action for political reasons, violated their oath to uphold the Constitution.

The Congress and the American people are going to hold them accountable. The President and his reelection campaign would prefer that this just go away. Hence, the admonition from the mainstream media that we stop talking about this issue.

Well, I, for one, am not going to stop talking about it, and I am not going away. I am just getting warmed up. We have seen major countries slip down

the road toward totalitarianism because they did not stand up for religious liberty. This is not a question about contraception. This is a question about religious liberty and where we are going to stand.

The fact is, once we start down the road of denying the individual rights of personal conscience and religious freedom, and begin to tell churches and synagogues what they must believe, we are on the way to losing the freedoms all of us hold dear.

Religious freedom is the first freedom mentioned in the Bill of Rights. This is important stuff. I am not Catholic. But I would fight to my death for the Catholic people to be able to live their faith. My own faith feels the same way about many of these issues. No church or person should be forced to make abortion-inducing drugs accessible, as the President's mandate will require them to do.

I do not think any compromise has been suggested so far that would meet the high bar set by our Constitution. There is only one option for the President on this issue. He needs to rescind this unlawful regulation. There is no middle ground. When it comes to the first amendment right to religious liberty, there can be no compromise.

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. 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.

#### EXECUTIVE CALENDAR UNANIMOUS CONSENT REQUESTS

Mr. REID. Mr. President, we have about 90 nominations on the Executive Calendar. That is a lot of names—people who have set their lives aside, after having been asked by the President of the United States to do good things for our country. The vast majority are not controversial. There is nothing so about their character, their education, their background. They have, with rare exception, been reported from the committees unanimously. They are being held up out of spite. Nominations on the Executive Calendar have been pending an average of 3 months waiting for the Senate to act. But the Senate can act on these, as we have done in years past, just like that.

Top Department Secretaries pending before the Senate—two to be specific—are very important for their leadership roles at our Federal agencies. For example, Rebecca Blank will fill the No. 2 position at the Department of Commerce. She has a Ph.D. in economics from MIT, one of the finest educational institutes in the world. She served as Acting Commerce Secretary when Secretary Locke left to become Ambassador to China. The Commerce Committee approved her, of course, by

voice vote. That means unanimously. Her confirmation is urgently needed because the Commerce Department hasn't had a confirmed deputy since July of 2010 because of the obstructionism of the Republicans here in the Senate.

Maurice Jones has been nominated to be Deputy Secretary at Housing and Urban Affairs. He worked for then-Governor MARK WARNER and at the Treasury Department in the Clinton administration. His nomination was voted out of the Banking Committee last December by voice vote.

Wendy Spencer, President's nominee to lead the Corporation for National and Community Service, has bipartisan support from a number of Republican Senators, including MARCO RUBIO.

There are also Corporation for National and Community Servicemembers on the calendar that have been waiting for a vote since July of last year. We also have law enforcement positions awaiting confirmation, including Deputy Attorney General for Tax at the Department of Justice and the agency's inspector general. Other important officials at the State Department, Treasury Department, and Homeland Security are ready for the Senate to act on their nominations.

Regrettably, Senate Republicans continue to either block, stall, or obstruct these and other well-qualified nominees. Since this past fall, a Republican Senator has blocked two nominations at the Federal Communications Commission, and today they will block nominees to the Federal Trade Commission.

This week, Senator BINGAMAN asked consent to confirm the various Department of Energy nominees and the Republicans objected. This obstruction is not about the nominees themselves. They are qualified and noncontroversial. Many came out of committee, as I have indicated, by a voice vote or unanimously.

Senate Republicans are blocking nominees for political reasons—and very weak political reasons. Not everything we do here in the Senate should be a fight. Virtually every one of these nominees could be approved today if the Senate Republicans would cooperate.

As I indicated when I started this conversation, these people, with these jobs, have put their lives aside to wait on their confirmation. I have made no secret of the fact that I think the President did the minimal with his recess appointments—the minimal. I think he has waited far too long. If something doesn't break here, I am going to recommend to the President he recess-appoint all these people—every one of them.

That is not unique. The power of the recess appointment is in our Constitution. Theodore Roosevelt, a Republican, felt he was being treated improperly by the Senate. He had 160 nominations that were being held for political reasons, and he did it in a minute—re-

cess-appointed 160 different people. So it is not as if there isn't some way to respond to this.

We are going to have a week here that we will be in recess. And I repeat, if we don't have some significant action during the next work period, I am going to ask the President to appoint them all. I can ask, if I want to. He doesn't have to respond affirmatively. We will do the judges. We will have the fight on the judges ourselves because they are recommendations we make to the President. But these are the President's nominations and he should have the right to have these people working in his administration.

Mr. President, I am going to ask unanimous consent on a large number of nominations. I have been told that on every one of these, the Republicans will object. I was asked whether it was necessary that I have a Republican come here and do it in person. That is not necessary. I take the word of my friend, the Republican leader, that that in fact is the case. So on every one of these I am going to object on behalf of the Republicans. How do you like that?

Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 86, 258, 259, 261, 262, 263, 264, 338, 339, 340, 344, 345, 346, 403, 422, 450, 456, 493, 494, 495, 496, 499, 500, 501, 502, 504, 505, 506, 507, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 541, 542, 543, 544, 546, 547, 548, 549, 550, 551, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 571 and 572.

I am told those nominations that are before the Senate now dealing with the Air Force, Army, Foreign Service, the Marine Corps, and the Navy will be agreed to. I hope that in fact is the case. It is not part of this request.

On the numbers I have read off, I ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be considered made and laid upon the table, with no intervening action or debate; that no further motions be in order to any of the nominations; that any related statements be printed in the RECORD, that President Obama be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. On behalf of the Republicans, I object.

The PRESIDING OFFICER. Objection is heard.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. REID. I ask unanimous consent that we now proceed to executive session to consider the following nominations: Calendar Nos. 573 to 606—those are the ones I referred to, the military only—and all nominations placed on the Secretary's desk in the Air Force,