

NOT VOTING—4

Chambliss Kirk
Corker McCain

The motion was rejected.

MORNING BUSINESS

Mr. BAUCUS. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business until 5 p.m., with Senators permitted to speak for up to 10 minutes each; further, that the time from 1 p.m. to 2 p.m. in morning business be reserved for the majority.

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

Mr. BAUCUS. Madam President, 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. UDALL of New Mexico. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ULTRALIGHT AIRCRAFT SMUGGLING PREVENTION ACT OF 2012

Mr. UDALL of New Mexico. Madam President, I rise today to discuss H.R. 3801, the Ultralight Aircraft Smuggling Prevention Act of 2012, and I urge the Senate to pass this legislation today. Passing this bill will not only help to secure our southwest border, but it also affords us the opportunity to honor an incredible colleague.

I had the privilege of serving with Congresswoman Gabby Giffords in the House of Representatives, and she is the force behind this legislation. She originally introduced it in 2010, before the senseless act of violence that took place, and she won its passage. But the Senate failed to take it up.

Over this past year, we have been working with Gabby's staff, and I was honored to introduce her bill in the Senate with Senators HELLER, BINGAMAN, and FEINSTEIN. It passed by unanimous consent in December but was held up in the House because of a procedural issue. This allowed Gabby to reintroduce it in the House this week with Congressman JEFF FLAKE. Yesterday, as we all bid Gabby an emotional farewell, the House overwhelmingly passed it by a vote of 408-0.

I commend the House leadership for working to make sure this important legislation passed as Gabby's final legislative act before resigning. I want to especially say how honored I am to have worked on this legislation with her.

Like all Americans, I have watched in awe at Gabby's courage and her remarkable grace. She inspires us all. She represents the best of our Nation. Dr. Martin Luther King once said that darkness cannot drive out darkness; only light can do that. Gabby is truly a shining light to all who know her.

The Ultralight Aircraft Smuggling Prevention Act is a testament to Gabby's commitment to securing our borders from illegal activity. A new trend in drug smuggling is to fly a one-person ultralight aircraft over the border to drop drugs. Hundreds are flown across the southwest border each year. Each one can carry hundreds of pounds of narcotics.

Because ultralights are not categorized under existing law as aircraft by the Federal Aviation Administration, they do not fall under the provisions of the Tariff Act of 1930. This means a drug smuggler piloting an ultralight is subject to weaker criminal penalties than one who uses a small plane.

Ultralight presents a unique challenge for Border Patrol and prosecutors. Our legislation will close any unintended loopholes. It will give our law enforcement and prosecutors the additional tools they need to combat drug smuggling. It will also add an attempt and conspiracy provision to the aviation smuggling law. This enables prosecutors to charge people other than the pilot who are involved in aviation smuggling. It gives prosecutors a new tool to go after the ground crews who aid pilots as well as those who pick up drugs that are being dropped off in the United States.

This bill will also direct the Department of Defense and the Department of Homeland Security to establish and collaborate in identifying the equipment and technology for border protection to detect ultralights. The ultimate purpose of this legislation is to make our communities safer, and it is fitting that Gabby, from the very beginning, has been so instrumental in making it happen. I also want to acknowledge the hard work of her staff who worked on this bill tirelessly every day. Peter Ambler is one of her staff members who has been key. I know Gabby's staff is very dedicated to her, and I know Gabby's perseverance to advance her legislative priorities during her recovery demonstrate what a good public servant she is.

Gabby, we know you will be back. But until then, we wish you and Mark all the very best, and we thank you for your extraordinary service to our Nation.

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

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

The legislative clerk proceeded to call the roll.

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

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

RECESS APPOINTMENTS

Mr. GRASSLEY. Mr. President, I addressed the Senate recently on President Obama's recess appointments, and he did this when the Senate was not in

fact in recess. I described at length why this was an outrageous and unconstitutional power grab. However, President Obama's decision to bypass the constitutional advice and consent of the Senate is not an isolated incident by the President. It is merely the latest escalation in a pattern of contempt for elected representatives of the American people and the constitutional separation of powers. This pattern has become more apparent since the last election when public opinion turned against the direction that President Obama was trying to take the country.

When the President's party in 2009 and 2010 had an overwhelming control of both Houses of Congress, he was able to pursue his agenda with only the slightest of lip service to the objections from congressional Republicans because we were very much in the minority, and, of course, we believe we were representing millions of Americans whose views were in opposition to President Obama's views. In 2009 and 2010, President Obama could in fact govern more like a Prime Minister in a European parliament, where the leader of the party in power dictates the policy to be rubberstamped by that parliament.

Since the 2010 election, that is no longer the case. There was a tremendous voter backlash against both the style and substance of the President's agenda. A groundswell of Americans became convinced their government was out of touch, and they demanded to be heard. The President's party in the Senate is now well below the supermajority necessary to pass legislation without consulting the minority party, and that is the way it was intended for the Senate to work. Moreover, there is now a new majority in the House of Representatives trying to chart a new course based on the concerns that so many voters expressed in the last election.

Rather than accept the message of the 2010 election and the fact he is faced with a Congress that is no longer a rubberstamp, the President has decided that he does not need Congress at all. Imagine that. In fact, he has even said so.

In October, upset that Congress would not pass his latest stimulus bill exactly as he had proposed, the President launched a media campaign around the tag line, "We can't wait for Congress." Under this banner he has announced executive actions for everything from mortgage and student loans, summer jobs for youth, and new fuel economy standards.

A President being frustrated with Congress is nothing new. We all know that from history. What is more remarkable is the notion that the President, however, can act independently of Congress. "Where they won't act, I will," the President has said.

Article I, section 1 of the Constitution of the United States says:

All legislative Powers herein granted shall be vested in a Congress of the United States,

which shall consist of a Senate and House of Representatives.

Having had their rights violated by King George, our Founding Fathers intentionally put the power to make laws in the branch of government that is most directly related and accountable to the citizenry of this country. Under our Constitution, the President's role is not to make policy unilaterally but, to quote the Constitution, "take care that the laws are faithfully executed."

Some might say the whole "we can't wait" campaign is just harmless political rhetoric. It would be bad enough if the President were just kidding when he implies that he is usurping legislative power, the legislative power vested in the duly elected representatives of the citizens of the 50 States. However, after his latest power grab, there can be no doubt that President Obama is dead serious. It is not just political rhetoric.

This disregard for the constitutional role of Congress did not start with President Obama's "we can't wait for Congress" campaign. An earlier indicator of actions to come was his controversial appointment of several new so-called czars. The President is well within his rights to choose advisers. We all agree to that. That is in the past just what these positions now termed "czars" are supposed to be, just advisers. However, it became clear that many of President Obama's new high-level czars—such as the climate czar, for instance—were involved in crafting regulations and other roles normally reserved for Senate-confirmed officials. Why? Because then they could be called to the Senate committees to respond and have us operate a proper oversight function.

Another example of President Obama's disregard for Congress is his administration's unilateral pursuit of climate change regulations. The House and Senate have considered various proposals to regulate greenhouse gas emissions, but these have proved very controversial and very harmful to the economy. When the climate legislation backed by President Obama could not achieve sufficient support to pass Congress, the administration announced that it would go ahead anyway. While a Supreme Court ruling opened the door to that possibility, the fact that Congress specifically did not authorize such regulations should have given the President pause.

In a similar move, when the DREAM Act as currently written was unable to secure sufficient support in Congress to pass, an Immigration and Customs memorandum appeared calling for immigration laws to be enforced so as to bring about the same ends as the legislation that could not pass Congress. Congress also rejected the card check bill supported by President Obama to eliminate secret ballot elections for union members. Sure enough, the National Labor Relations Board proposed a rule providing for snap elections, which would achieve the same goals,

thus giving union leaders an upper hand in union elections.

The President's "Race to the Top" education program is another significant overreach. Congress bears responsibility for writing a \$5 billion check to the Secretary of Education in the first stimulus bill with minimal guidelines attached. However, the administration blew past even those broad guidelines to implement an unprecedented Federal intervention into State education policy. The resulting program offered the possibility of big grants to cash-strapped States provided they first changed State laws to implement specific policies favored by the Secretary of Education. Most States, such as Iowa, implemented the Secretary's preferred policies and applied for the funds yet never saw a dime in return for changing out State laws.

In a similar move, the President announced he would grant waivers to States for relief from the requirements of the No Child Left Behind Act. The catch is that States will have to adopt key components of his education reform agenda in order to get such a waiver. This is despite the fact that Congress is currently considering legislation to update the Federal education policy and may not adopt all aspects of the President's proposal. Moreover, current law allows for waiving existing requirements on a case-by-case basis but does not authorize the administration to add new requirements in return.

So far during my remarks I have mostly focused on areas where the President has acted without authority from Congress. On the other hand, when Congress has passed legislation the President has not entirely agreed with, he has announced while signing them into law that he will not implement the parts he does not like.

During the 2008 campaign, candidate Obama said that he was "not going to use signing statements as a way of doing an end run around Congress."

However, he has done just that on numerous occasions.

Moreover, he has made clear his intention to not enforce certain laws that are already on the books, such as federal anti-drug laws.

The President's Attorney General also decided not to defend a legal challenge to the Defense of Marriage Act.

Again, the Constitution makes clear that it is the President's responsibility to "take Care that the Laws be faithfully executed" whether the current occupant of the White House agrees with those laws or not.

I can think of plenty more examples of executive overreach.

It would be much harder to think of examples where Congress has successfully fought off an executive power grab.

In fact, the more President Obama has gotten away with these little power grabs, the bolder he has become.

Congress has not been effective in fighting this executive encroachment because Congress is not of one mind.

Members of the President's party are understandably reluctant to oppose him publicly.

However, with this latest escalation, the time has come for Congress, on a bipartisan basis, to say "Enough is enough."

I would ask my colleagues on the other side of the aisle to think hard about the precedent being set for the next Republican President.

Once the genie is out of the bottle, you are not likely to be able to get it back in.

For those who are tempted to sympathize with the President when he justifies bypassing Congress because of "obstructionism", I would return to the fact that our system of checks and balances between the different branches of government did not come about by accident.

The philosophy underpinning the American Revolution, as expressed in the Declaration of Independence, is based on "unalienable Rights" and the principle "That to secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

As a result, our government was intentionally structured to provide maximum protection to individual rights.

In our Constitution, that principle takes precedent over getting things done.

In my previous remarks, I quoted the Father of the Constitution, James Madison, in *Federalist* 51, "separate and distinct exercise of the different powers of government" is "essential to the preservation of liberty."

Madison was concerned about a temporary majority faction assuming full control of the government and acting tyrannically toward those Americans in the minority.

By contrast, the French Revolution was inspired by the philosophy of Jean-Jacques Rousseau, who wrote that claims of natural rights must be abandoned in favor of submission to the authority of the "general will" of the people as a whole.

The application of this philosophy tends to result in power centralized in a ruling elite that claims a unique ability to interpret the "general will".

This centralization of power allows for a more active government.

That may be attractive to those whose main concern is making the trains run on time. But Amtrak doesn't run on time.

On the other hand, the single-minded pursuit of a common purpose at the expense of individual rights has led to some of history's worst tyrannies.

Our system of separation of powers, federalism, and checks and balances, designed to protect individual rights, results in a more deliberative form of government.

This can be frustrating.

It means that the President cannot expect Congress to just pass his proposals without reading them. But Speaker PELOSI said about Health Care

Reform we have to first pass it to find out what is in it.

Still, these features of our Constitution perform an important role in preventing one faction of Americans from dominating another.

President Obama is not the first to become frustrated with the checks and balances built into our constitutional system.

In fact, at the dawn of the 20th century, an entire philosophical movement developed around the idea that our Constitution had become outmoded, that its focus on individual rights was no longer applicable to the modern age.

I mentioned in my previous remarks about the President's unconstitutional appointments that it was Theodore Roosevelt who started to change the way Presidents viewed power.

It is worth noting that President Obama recently gave a speech in Osawatimie, KS, the site of Teddy Roosevelt's famous "New Nationalism" speech.

That speech marked the beginning of Roosevelt's break with the incumbent Republican president, William Howard Taft.

Roosevelt then went on to challenge Taft in the 1912 election on the Progressive Party ticket.

In that speech, which President Obama commemorated, Roosevelt described his New Nationalism as "... impatient of the impotence which springs from overdivision of governmental powers." Throw the Constitution out the window.

He went on to say that, "This New Nationalism regards the executive power as the steward of the public welfare."

An even more explicit description of the progressive view of the Constitution was written by the ultimate winner of the 1912 presidential election, Woodrow Wilson.

In his Constitutional Government, Wilson wrote,

The makers of the Constitution constructed the federal government upon a theory of checks and balances which was meant to limit the operation of each part and allow to no single part of organ of it a dominating force; but no government, can be successfully conducted upon so mechanical a theory.

Leadership and control must be lodged somewhere . . .

It seems strange we have made it for 225 years under our Constitution.

He then goes on to describe at length why he feels the President is where this "leadership and control" should ultimately be lodged.

This philosophy advocates a concentration of power in order to more effectively act on behalf of "the people," at the expense of representing the diverse views of Americans.

It is contrary to the founding principles of our Nation and foreign to the realities of American civic life.

We are a large nation with tremendous variety in both geography and people.

No one man can claim to speak on behalf of all Americans, which is why we have a Congress in the first place.

The voices of all Americans deserve to be heard through their elected representatives and the rights of each American must be respected.

As the State motto of Iowa goes, "Our liberties we prize, and our rights we will maintain."

We must not let short term partisan interests trump those enduring constitutional principles.

The Senate, and the whole Congress, has a solemn duty to defend its constitutional role.

The PRESIDING OFFICER. The Senator from Michigan.

MICHIGAN'S 175TH ANNIVERSARY

Ms. STABENOW. Mr. President, I rise today to congratulate my State of Michigan on its 175th anniversary of statehood. On Thursday, January 26, 1837, President Andrew Jackson signed into law the bill granting Michigan statehood. The bill was surprisingly controversial. At the time, Michigan and Ohio had been embroiled in an argument called the Toledo war. Before Michigan was granted statehood it had to surrender its claim over Toledo. But in exchange we got the Upper Peninsula of Michigan, one of the most beautiful places in the entire country—I would say in the entire world. So I think we won that trade.

Twenty-four years later President Lincoln would exclaim, "Thank God for Michigan," when Michigan troops arrived to defend Washington, DC, during the Civil War. Around the turn of the century, the auto industry took off in Michigan. Henry Ford paid the workers \$5 a day to build the Model Ts so they could afford to buy the cars they made. That was viewed as revolutionary at the time. Those workers not only created the middle class in this country—and we are very proud it started in Michigan with our workers—but they made America an international superpower.

During World War I, Michigan factories built boats and vehicles that helped turn the tide in Europe. During World War II, Michigan's role became even more important. Auto plants were rapidly converted to military use, building tanks and jeeps and bombers. The Nation's first freeways were built in Michigan to connect our factories in Detroit with those in other parts of the State. The iconic image of Rosie the Riveter saying, "We can do it" was based on a real woman named Rose Monroe who worked at the Willow Run factory in Michigan.

After the war, Michigan experienced incredible growth, becoming the home of our American middle class. Only California and Florida saw greater population growth than Michigan in the postwar years. Manufacturing took off across the State and eventually across the country. Farms saw greater increases in production with the inven-

tion of new machinery and the adoption of increased specialization. We built the Mackinac Bridge connecting our two beautiful peninsulas, an engineering marvel that remains one of the largest suspension bridges in the world. Of course, Motown Records and all the wonderful musicians who have come since then gave the world some of the most wonderful music and the best musicians who have ever lived.

The last few years have been tough on all of us in Michigan, but we have been through tough times before, and every time we have come back stronger than ever. We may be 175 years old, but one would not know it. Our economy is growing stronger and more nimble than ever. Great sacrifices have gotten us to this point as we have moved through great recessions and changes in a global economy. I am very proud of everyone in Michigan who is working hard and bringing things back.

Our auto companies have made an incredible comeback. G.M. is, once again, the world's largest automaker. Ford is investing billions of dollars in Michigan plants, and Chrysler is reminding the country that the very best cars and trucks are imported from Detroit. I am so grateful for all the sacrifice and hard work of our workers who have helped get our companies to this point.

It was great to hear President Obama talk so much about the future of Michigan's economy in his State of the Union speech. We are diversifying to support new technologies and new businesses. The President invited a Michigan worker, Bryan Ritterby, who lost his job in the furniture business at age 55 and was able to get retrained and have a new job at a wind turbine factory on the west side of the State. He said, "I am proud to be working in the industry of the future." That came about because of the concerted effort of all of us working together not only to help General Motors and Chrysler but to focus on a manufacturing strategy of the future to make things in America.

The President talked about our leadership with clean energy manufacturing and advanced battery technology. In fact, Michigan is now No. 1 in new clean energy patents. We are doing so much in innovation. In fact, the U.S. Patent and Trademark Office is opening a new office in Detroit in July, which is the first satellite office in the country. I am proud to have offered the provision to name it the Elijah McCoy Patent Office, after an African-American inventor whose high-quality products and innovations gave rise to the expression, "the real McCoy."

On Michigan's 175th anniversary, there are so many reasons I am proud to represent our beautiful Great Lakes State, from our incredible waters to our tradition of manufacturing, to our great diversity in agriculture. We make and grow products in Michigan. We don't have a middle class in this country, we don't have an economy unless we do that, and Michigan is, once