

longer we wait to act, the harder it is going to be.

If we don't put a Senate budget plan together, if we don't lay out our priorities and create a long-term economic plan to reform our spending habits, we are going to face a debt-induced catastrophe that will make the economic downturn we experienced a few years ago look like child's play. The fact is our failure to seriously grapple with our runaway deficit spending is already having huge detrimental effects on our economy, and I just mentioned one of those. Sooner or later this body needs to stand and get this done and it starts with a budget.

The President has made it clear over the past few years that when he proposed his budgets, he is not serious about leading the discussions on the fiscal challenges facing us. He didn't mention it in his inauguration address, and he has publicly stated we don't have a spending problem. How he comes to that conclusion defies credulity.

Interestingly enough, by law, the administration is forced to produce a budget which has been brought before this body. It is interesting that the lack of seriousness of this is indicated by the fact that not even one Member of his own party voted for the President's budget.

I am just about ready to finish. I ask unanimous consent for 3 more minutes to finish.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. COATS. Madam President, thank you. Not one Democratic Senator voted for the President's budget in the last few years. His own party didn't support his budget. It is hard for us to take the President's budget seriously, and that is why the Senate—under the leadership of Democrats—needs to put forward a serious budget, one we can debate, amend, talk about, share with the American people, get their opinion as to whether this is an important priority program or one we can use as the basis to make tough choices and explain why we made those choices. After all, that is why we are here.

So why am I here? I am urging my colleagues in the majority to act. Let's do our jobs. Let's perform our legal responsibility and duty. One of the most basic duties in Congress is to create a budget so we can begin to get our fiscal books in order. It is our generation's duty also to repair our Nation's financing and ensure we are not leaving behind this dangerous debt burden on future generations. This is the time to act. This serious debt threatens our national security and the future of our country, and this is the challenge both sides of the aisle need to face.

Strengthening our country and putting us back on a sustainable path will not be easy. It will require some sacrifices, but these are the responsibilities we have to address. We need to be honest with the American people. We

must take the first step and it starts with a budget.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### EVENHANDED LAW ENFORCEMENT

Mr. ALEXANDER. Madam President, I am expecting the Senator from Louisiana, whom I had planned to follow, but since he is not here yet I will go ahead with my remarks unless he walks in the door just now, and then he can follow me.

We are both speaking today about selective enforcement of the law as it relates to the Department of Justice enforcing the law against certain types of energy producers but not other types of energy producers. Senator VITTER from Louisiana will talk about a letter he and I will be sending to the Attorney General of the United States asking why he does it.

I see Senator VITTER coming in just now, so now that I have given him a preamble and a warm-up of about 2 minutes, I think I will sit down and listen to what he has to say, and then I will add my comments to his when he finishes.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

Mr. VITTER. Thank you, Madam President.

Through the Chair, I also wish to thank my distinguished colleague from Tennessee for joining me. Together, as he mentioned, we are writing the Attorney General today about a matter of real concern, and that is why we come to the floor. We are both very troubled by recent reports that the Department of Justice is targeting whom to prosecute for the incidental killing of migratory birds under the Migratory Bird Treaty Act. They are not targeting whom to prosecute by looking at birds killed; they are targeting whom to prosecute based on the type of business these various people are in—legal business—and, in particular, the type of legal energy these companies produce.

What am I talking about? Well, on the one hand, oil and gas producers—traditional energy producers—are clearly being targeted. They are being targeted for prosecution, as I say, under the Migratory Bird Treaty Act. They are being charged with the incidental killing—in a particular case that a court has dealt with—with the killing of four mallards, one northern pintail, one redneck duck, and one Say's phoebe.

Now, in that case, the Federal judge involved correctly recognized that this prosecution was off-base because it

wasn't about trying to kill these birds—it wasn't about any willful act. It was about a completely incidental killing of these birds because they were doing things in the normal course of business. Nobody wants any of these birds to be killed, but that is not what criminal sanctions under the Migratory Bird Treaty Act are about.

As the judge said, "then many everyday activities [would] become unlawful—and subject to sanctions—" with "fines" under these sorts of prosecutions.

The judge pointed out that "ordinary activities such as driving a vehicle, owning a building with windows, or owning a cat" could be subject to criminal prosecutions if this precedent were set.

So that is on the one hand: the Department of Justice, I think, clearly targeting these companies who are oil and gas producers. On the other hand, they have a very different approach to other types of energy producers, such as wind producers. To our knowledge, there is not a single Department of Justice prosecution regarding the killing of birds because of windmills. That clearly happens. In fact, it happens a lot. I am not saying these wind producers want that to happen. I am not saying they are trying to kill birds, but it happens and it happens a lot. And to our knowledge, the Department of Justice has never launched a similar prosecution against a wind farm.

The U.S. Fish and Wildlife Service's fiscal year 2013 budget justification actually estimated the annual bird mortality from wind energy production. Do my colleagues know what the estimate was? It was 440,000. I just mentioned this criminal prosecution on the oil and gas side for seven birds. On that side, total, we have this estimate of 440,000.

But wait; it gets even more ridiculous. It appears the administration is also choosing to sanction this in the case of wind production because they are actually considering granting permits to wind energy producers who state in their permits they will kill bald eagles. So in southeastern Minnesota the administration is considering a permit for a wind farm that states in its permit it has the potential to kill between 8 and 15 bald eagles each and every year.

So on the one hand we have an oil and gas producer who is gone after with a criminal prosecution because they didn't intend but incidentally killed seven birds—of course, none of them the status of a bald eagle, none of them in danger. On the other hand, the administration is considering granting a permit where the wind producer says it is going to probably kill 8 to 15 bald eagles a year, the symbol of our Nation's greatness.

It is pretty clear to us that what this is about is not evenhanded enforcement of the law. What this is about is targeting one type of energy producer and favoring a different type of energy producer.

Here is a picture of a bald eagle. The wind farm has stated it will kill perhaps 8 to 12 of those a year. We also have photographs of birds that were unfortunately killed at a wind farm. This is one victim. We have another photograph of an eagle that was killed at a wind farm. This is not a bald eagle; this is a golden eagle, an absolutely beautiful bird.

All of these bird deaths are bad, but all of them are unintended. The point is that the Migratory Bird Treaty Act did not intend criminal prosecutions for this unintended incidental effect. The judge ruled that. We think the judge is right. But the broader concern is that the Justice Department seems to be targeting the companies it goes after not based on what they do with regard to migratory birds but based on what they do as a legal business and what sort of energy they produce.

Is this really a policy that reflects an "all of the above" energy strategy? We think not. We think it is pretty darn obvious it is not an "all of the above" approach. That is something very different than an "all of the above" energy strategy. It is strategy that says this sort of legal business, this sort of legal production of energy is evil and is to be gone after and combated in any way possible, and that sort of legal business, that sort of production of a different form of energy is to be favored in any way possible. That is our broader concern, and it is a pretty darn important one.

This is important in and of itself. It is an important part of the law. It is important that prosecutions be appropriate and evenhanded, but the broader issue with regard to a true "all of the above" energy strategy is even more important.

As I turn to my colleague from Tennessee, let me simply ask unanimous consent to have printed in the RECORD of the Senate this letter which we are both sending today to Attorney General Eric Holder.

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

JANUARY 30, 2012.

Attorney General ERIC HOLDER,  
U.S. Department of Justice, Pennsylvania Avenue, NW., Washington, DC.

DEAR ATTORNEY GENERAL HOLDER: We write today seeking clarification of the Department of Justice's policy for prosecuting alleged violations of the Migratory Bird Treaty Act (MBTA). As you know, the MBTA is a criminal statute that makes it unlawful to "kill" or "take" a migratory bird, nest, or egg, except as permitted under the statute. We are concerned by what seems to be a trend of the Department pursuing MBTA enforcement actions against oil and gas companies for conduct that is otherwise overlooked when it is undertaken by renewable energy companies. Fair and consistent application of federal enforcement authority is fundamental to equal justice under the law as well as to the President's and Congress' call for an "all of the above" energy policy that pursues all forms of energy production.

On one hand, the Department of Justice chose to prosecute three oil and gas production companies for the incidental killing of

migratory birds in North Dakota. In those cases, the companies were charged with the incidental killing of four mallards, one northern pintail, one red-necked duck, and a say's phoebe. By determining that the MBTA "only covers conduct directed against wildlife," a Court rejected your Department's claim that these producers had violated the MBTA.

The Court noted, and we agree, that "it is highly unlikely that Congress ever intended to impose criminal liability on acts or omissions of persons involved in lawful commercial activity, which may indirectly cause the death of birds protected by the Migratory Bird Treaty Act." Furthermore, the Judge reasoned that, if the Department's interpretation of the MBTA was adopted, "then many everyday activities [would] become unlawful—and subject to criminal sanctions—when they cause the death of pigeons, starlings, and other common birds. For example, ordinary land uses which may cause bird deaths include cutting brush and trees, and planting and harvesting crops. In addition, many ordinary activities such as driving a vehicle, owning a building with windows, or owning a cat, inevitably cause bird deaths."

On the other hand, you have not prosecuted a single wind producer for migratory bird deaths that occur as a result of wind energy production. The U.S. Fish and Wildlife Service's fiscal year 2013 budget justification estimated annual bird mortality from wind energy production at approximately 440,000. This number suggests that a significant number of birds, some of which have additional protections under the Endangered Species Act, are harmed by wind turbines on wind farms.

We were recently made aware that Federal officials have decided to allow a wind energy farm in southeastern Minnesota to apply for a permit to allow for the death of bald eagles, who are obviously the symbol of the United States. If allowed to proceed, the project has the potential to kill between eight and fifteen bald eagles each year. We find it absurd that the Department of Justice, in conjunction with the Fish and Wildlife Service, could reasonably conclude that three oil and gas operators should face prosecution for the incidental killing of seven birds at the same time it considers permits to kill between eight and fifteen bald eagles. This does not pass the common-sense test, and suggests the Administration is hostile towards traditional energy production.

We do not condone the indiscriminate killing of birds from any sort of energy production. Nor do we believe the Department should target businesses because of the type of energy being produced. To that end, we seek to understand why your Department has chosen to selectively prosecute oil and gas producers at the same time the Administration considers granting permits that will result in the killing of bald eagles. In order to help us better understand and analyze your policy, please provide us with answers to the following questions:

1. In the past four years, how many criminal prosecutions has the Department undertaken against oil and gas producers who have allegedly violated the MBTA? Of those prosecutions, how many prosecutions involved a felony for a knowing MBTA violation and how many prosecutions have involved a misdemeanor prosecution?

2. In the past four years, how many criminal prosecutions has the Department undertaken against wind energy producers who have allegedly violated the MBTA? Of those prosecutions, how many prosecutions involved a felony for a knowing MBTA violation and how many prosecutions have involved a misdemeanor prosecution?

3. Last year, Stacey Mitchell, Chief of the Environmental Crimes Section, stated at a public conference that the Department brings prosecutions based on the willingness of a company to cooperate as opposed to the number of birds that are killed. Please provide us with any guidelines the Department considers when making the determination to prosecute an energy producer under the MBTA. Do your guidelines or any policy directives distinguish between oil and gas producers and wind energy producers?

4. Please explain the apparent targeting of oil and gas producers for violations under the MBTA. Do you believe it is inconsistent to prosecute energy producers for the deaths of seven animals among three producers at the same time the Administration condones an energy project that plans to kill between eight and fifteen bald eagles each year?

We hope that you will provide us a prompt response so that we can understand the Department's decision-making processes on this important issue. Should you have any questions, please feel free to contact us.

Sincerely,

DAVID VITTER,  
Ranking Member, U.S.  
Senate EPW Committee.

LAMAR ALEXANDER,  
United States Senate.

Mr. VITTER. Thank you, Madam President. With that I close and thank, again, my colleague from Tennessee.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I am here to join with and congratulate the Senator from Louisiana for his leadership on this issue. These are important matters for a couple of reasons. One is, as the Senator from Louisiana said, the rule of law is one of the fundamental principles of the American character. We expect laws to be enforced evenly, whether it is a little law or whether it is a big law. Obviously, here, the Department of Justice is enforcing a law against oil and gas companies but not against wind companies. It is the same law; it should be applied in the same way.

The second is the matter of birds. Someone might say: Why would Senators take the time to talk about birds?

I am reading one of President Teddy Roosevelt's books. This is about his African game hunt after he was President of the United States. He wrote a lot of books, and he was a great President. All of us concede that. We remember him for many things, but if we read carefully Teddy Roosevelt's biography, his entry into political life was because of his concern for birds. He was a bird man. He protected birds. He captured them and brought them to various museums of America to serve as exhibits. He helped enact the laws that protect birds.

In one of the biographies of Teddy Roosevelt I read, the author pointed out that the single largest spectator sport in the United States is not football, it is not NASCAR, it is bird watching. I am not much of a bird watcher, but these laws are important for that reason as well.

The Senator has spoken very specifically and clearly about what is going

on here. We have the Migratory Bird Treaty Act, almost 100 years old. A person can go to jail if they violate the Migratory Bird Treaty Act. Then there is the Bald and Golden Eagle Act. That protects one of our national symbols. A person can go to jail for that too, and be fined \$100,000 and imprisonment of 1 year for killing bald eagles and golden eagles.

The letter Senator VITTER and I sent today to the Attorney General asks: If you are enforcing that law against one kind of energy company, why aren't you enforcing it against another kind of energy company? Or if you think you are not going to enforce the law—and sometimes this administration just decides that it will not enforce the law—then at least enforce the law in an evenhanded way.

The Senator from Louisiana mentioned the energy farm in southeastern Minnesota that has applied for a permit that will allow the wind farm to kill the protected bald eagles. Basically, what is happening here is the wind farm is applying for a federal hunting license to kill eagles, and the U.S. Government is considering granting a hunting license to a wind farm to kill these protected bald eagles. How does that fit with an evenhanded system of justice, equal treatment of the law?

ExxonMobil, in 2009, pled guilty to killing 85 birds that had come into contact with crude oil. Exxon paid \$600,000 in fines and fees. PacifiCorp in Oregon paid \$1.4 million in fines for killing over 200 eagles in Wyoming. Yet a wind farm in Minnesota is applying for a hunting license to put up Cuisinarts in the sky to kill protected eagles. That is not evenhanded.

It is no excuse to say, well, cats kill birds, windows kill birds, other things kill birds. That may be, but we have Federal laws against those who set out and set up machines that deliberately kill birds. We need to have a rational policy for treating all energy companies the same.

So that is our discussion today. We believe it is important. The head of the Audubon Society in Los Angeles says the threat to golden eagles by wind farms has the potential to wipe this large, long-lived species out of the sky.

I think all of us know these are not our grandmothers' windmills. These are giant turbines that are three times as tall as the sky boxes at one of the most recognizable features in Tennessee, which is the University of Tennessee football stadium. These are huge monstrosities, and they have many detriments to the environment. They destroy viewscapes, they are noisy, and we can see their flashing lights for miles. We don't want to see them on the scenic mountains of east Tennessee where people come to see the Great Smoky Mountains—not to see these big white towers.

In their enthusiasm for wind power as a solution to our electricity needs in the United States, I am afraid the ad-

ministration is destroying the environment in the name of saving the environment and producing at the same time a type of electricity that is intermittent, that only operates when the wind blows, is expensive, and has huge subsidies from the Federal taxpayer that would make any tax subsidy for oil companies look small by comparison.

Let's put all the questions about wind power to one side except this one: Why is the U.S. Department of Justice enforcing the migratory bird laws against one set of energy producers—oil and gas—and not against another—wind farms? That is what Senator VITTER and I would like to know. That is why we are sending the letter today.

I ask unanimous consent to have printed in the RECORD two articles: one from the Wall Street Journal and one other article from the Los Angeles Times about the effect of wind farms on protected birds.

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

[From the Los Angeles Times, Aug. 3, 2011]

FEDERAL OFFICIALS INVESTIGATE EAGLE DEATHS AT DWP WIND FARM  
(By Louis Sahagun)

Pine Tree facility in the Tehachapi Mountains faces scrutiny over the deaths of at least six golden eagles, which are protected under federal law. Prosecution would be a major blow to the booming industry.

Federal authorities are investigating the deaths of at least six golden eagles at the Los Angeles Department of Water and Power's Pine Tree Wind Project in the Tehachapi Mountains, the U.S. Fish and Wildlife Service said Tuesday.

So far, no wind-energy company has been prosecuted by federal wildlife authorities in connection with the death of birds protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. A prosecution in the Pine Tree case could cause some rethinking and redesigning of this booming alternative energy source. Facilities elsewhere also have been under scrutiny, according to a federal official familiar with the investigations.

"Wind farms have been killing birds for decades and law enforcement has done nothing about it, so this investigation is long overdue," said Shawn Smallwood, an expert on raptor ecology and wind farms. "It's going to ruffle wind industry feathers across the country."

Wildlife Service spokeswoman Lois Grunwald declined to comment on what she described as "an ongoing law enforcement investigation regarding Pine Tree."

Joe Ramallo, a DWP spokesman, said, "We are very concerned about golden eagle mortalities that have occurred at Pine Tree. We have been working cooperatively and collaboratively with the U.S. Fish and Wildlife Service and the California Department of Fish and Game to investigate these incidents."

"We have also actively and promptly self-reported raptor mortalities to both authorities," he said. "Moving forward, we will be ramping up further our extensive field monitoring and will work with the agencies to develop an eagle conservation plan as part of more proactive efforts to monitor avian activities in the Pine Tree area."

An internal DWP bird and bat mortality report for the year ending June 2010 indi-

cated that compared to 45 other wind facilities nationwide, bird fatality rates were "relatively high" at Pine Tree, which has 90 towers generating 120 megawatts on 8,000 acres.

Golden eagles weigh about 14 pounds and stand up to 40 inches tall. Their flight behavior and size make it difficult for them to maneuver through forests of wind turbine blades spinning as fast as 200 mph—especially when they are distracted by the sight of prey such as squirrels and rabbits.

DWP officials acknowledged that at least six golden eagles have been struck dead by wind turbine blades at the two-year-old Kern County facility, about 100 miles north of Los Angeles, which was designed to contribute to the city's renewable energy goal of 35% by 2020.

Although the total deaths at Pine Tree pale in comparison with the 67 golden eagles that die each year in Northern California's Altamont Pass Wind Resource Area, the annual death rate per turbine is three times higher at the DWP facility. The Altamont Pass facility has 5,000 wind turbines—55 times as many as Pine Tree.

Nationwide, about 440,000 birds are killed at wind farms each year, according to the Wildlife Service. The American Wind Energy Assn., an industry lobbying group, points out that far more birds are killed by collisions with radio towers, tall buildings, airplanes and vehicles, and encounters with household cats.

Attorney Allan Marks, who specializes in renewable energy projects, called the Pine Tree deaths "an isolated case. If their golden eagle mortality rate is above average, it means the industry as a whole is in compliance."

About 1,595 birds, mostly migratory songbirds and medium-sized species such as California quail and western meadowlark, die each year at Pine Tree, according to the bird mortality report prepared for the DWP last year by Ojai-based BioResource Consultants.

BioResource spokesman Peter Cantle suggested that those bird deaths may be unrelated to Pine Tree's wind turbines.

"It's hard to tease out those numbers," he said. "Basically, we walked around the site to find bird mortalities, which could have been attributable to a number of things including natural mortality and predators."

The death count worries environmentalists because the \$425-million Pine Tree facility is in a region viewed as a burgeoning hot spot for wind energy production.

"We believe this problem must be dealt with immediately because Pine Tree is only one of several industrial energy developments proposed for that area over the next five to 10 years," said Los Angeles Audubon President Travis Longcore. "Combined, they have the potential to wipe this large, long-lived species out of the sky."

[From the Wall Street Journal, Sept. 7, 2009]

WINDMILLS ARE KILLING OUR BIRDS

ONE STANDARD FOR OIL COMPANIES, ANOTHER FOR GREEN ENERGY SOURCES

(By Robert Bryce)

On Aug. 13, ExxonMobil pleaded guilty in federal court to killing 85 birds that had come into contact with crude oil or other pollutants in uncovered tanks or wastewater facilities on its properties. The birds were protected by the Migratory Bird Treaty Act, which dates back to 1918. The company agreed to pay \$600,000 in fines and fees.

ExxonMobil is hardly alone in running afoul of this law. Over the past two decades, federal officials have brought hundreds of similar cases against energy companies. In July, for example, the Oregon-based electric utility PacifiCorp paid \$1.4 million in fines and restitution for killing 232 eagles in Wyoming over the past two years. The birds were electrocuted by poorly-designed power lines.

Yet there is one group of energy producers that are not being prosecuted for killing birds: wind-power companies. And wind-powered turbines are killing a vast number of birds every year.

A July 2008 study of the wind farm at Altamont Pass, Calif., estimated that its turbines kill an average of 80 golden eagles per year. The study, funded by the Alameda County Community Development Agency, also estimated that about 10,000 birds—nearly all protected by the migratory bird act—are being whacked every year at Altamont.

Altamont's turbines, located about 30 miles east of Oakland, Calif., kill more than 100 times as many birds as Exxon's tanks, and they do so every year. But the Altamont Pass wind farm does not face the same threat of prosecution, even though the bird kills at Altamont have been repeatedly documented by biologists since the mid-1990s.

The number of birds killed by wind turbines is highly variable. And biologists believe Altamont, which uses older turbine technology, may be the worst example. But that said, the carnage there likely represents only a fraction of the number of birds killed by windmills. Michael Fry of the American Bird Conservancy estimates that U.S. wind turbines kill between 75,000 and 275,000 birds per year. Yet the Justice Department is not bringing cases against wind companies.

"Somebody has given the wind industry a get-out-of-jail-free card," Mr. Fry told me. "If there were even one prosecution," he added, the wind industry would be forced to take the issue seriously.

According to the American Wind Energy Association, the industry's trade association, each megawatt of installed wind-power results in the killing of between one and six birds per year. At the end of 2008, the U.S. had about 25,000 megawatts of wind turbines.

By 2030, environmental and lobby groups are pushing for the U.S. to be producing 20% of its electricity from wind. Meeting that goal, according to the Department of Energy, will require the U.S. to have about 300,000 megawatts of wind capacity, a 12-fold increase over 2008 levels. If that target is achieved, we can expect some 300,000 birds, at the least, to be killed by wind turbines each year.

On its Web site, the Wind Energy Association says that bird kills by wind turbines are a "very small fraction of those caused by other commonly accepted human activities and structures—house cats kill an estimated one billion birds annually." That may be true, but it is not much of a defense. When cats kill birds, federal law doesn't require marching them to our courthouses to hold them responsible.

During the late 1980s and early '90s, Rob Lee was one of the Fish and Wildlife Service's lead law-enforcement investigators on the problem of bird kills in Western oil fields. Now retired and living in Lubbock, Texas, Mr. Lee tells me that solving the problem in the oil fields "was easy and cheap." The oil companies only had to put netting over their tanks and waste facilities.

Why aren't wind companies prosecuted for killing eagles and other birds? "The fix here is not easy or cheap," Mr. Lee told me. He added that he doesn't expect to see any prosecutions of the politically correct wind industry.

This is a double standard that more people—and not just bird lovers—should be paying attention to. In protecting America's wildlife, federal law-enforcement officials are turning a blind eye to the harm done by "green" energy.

#### RECESS APPOINTMENTS

Mr. ALEXANDER. Madam President, last Friday, a three-judge panel of the

U.S. Court of Appeals for the District of Columbia issued a decision that basically said the era of recess appointments is over. The three-judge court unanimously ruled that President Obama, on January 4, 2012, made three recess appointments which were unconstitutional, and, therefore, said the court, these three individuals—one who is already gone from the NLRB—so two NLRB individuals who were in the case that was before this court hold their seats unconstitutionally.

The Chairman of the National Labor Relations Board nevertheless said, in effect, that the NLRB is open for business. I respectfully suggest that a different sign should go up—"help wanted; nominations needed"—and that the two NLRB members whose recess appointments were unconstitutional should leave the NLRB because the decisions in which they participated—and there were 219 of them—cannot be valid if they are challenged, just as this decision was vacated, because since they were unconstitutionally there, the NLRB did not have a quorum, and therefore, when those decisions are challenged, under the ruling of this court, those decisions cannot stand. They are important decisions. As the Senator from Wyoming undoubtedly will mention more about, they involved some controversial issues.

Several observers have said the court's decision is broad. In fact, it is a breathtaking decision. It is a bold decision. But by all standards, it seems to be the correct decision. This is why I say that if you take an American history book in one hand and the U.S. Constitution in the other and you read them both at the same time, you see that the Constitution, which was ratified a long time ago—before 1800—has in it article II, section 2, which says that the President may make nominations of a number of people, such as soon-to-be Secretary of State KERRY, who was confirmed yesterday—a number of people—but that those nominations require the advice and consent of the Senate.

We have done some work here in the Senate over the last 2 years, and we have improved the nomination process. We have eliminated a number of the nominations that are subject to advice and consent. We have made it easier for people to move through, and we have expedited a large number of those. For example, 273 of the 1,100 nominations that require advice and consent can be sent right to the desk by the President, and if a single Senator does not want it to go through the entire process, after the relevant committee gets all the relevant information, the majority leader can just move, after 10 days, to confirm that person. But if it is a Secretary of State or if it is a Secretary of Defense or if it is a member of the National Labor Relations Board, the Senate has a constitutional responsibility to consider those nominees.

I would suspect that the advice and consent role of the Senate is probably

our best known power. It is the title of a book that Allen Drury wrote that came out, I think, in the late 1950s. Most Americans know about the advice and consent role of the Senate, and they know why we have it. We have it because our Founders put their necks on the line in a revolution against a King, and they did not want an imperial Presidency. So they put into place a system of checks and balances, which is being exercised this very moment because of the courts saying that the President's use of the—I ask unanimous consent for another 3 minutes, please.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. ALEXANDER. Madam President, I believe we have 30 minutes for this discussion; is that right?

The ACTING PRESIDENT pro tempore. Twenty-three minutes remains.

Mr. ALEXANDER. Yes. I thank the Chair.

So as we look back over the history of checks and balances and the imperial Presidency and the importance of making certain we do not have an imperial Presidency, we are reminded the reason we did that was a single word: liberty—the revulsion by the Founders who created this system and who then made sure our President was a President, not a King. And George Washington, who exercised great modesty and restraint, impressed into the American character his own modesty and restraint when he asked that he be called "Mr. President," not something more grand, when he retired to Mount Vernon after two terms, when he could have been President of the United States for life.

So that is what the Constitution talked about. It said that for these important positions, the President may nominate, but if the Senate does not confirm them, they cannot serve.

There is also a provision toward the end of article II, section 2 about recess appointments. Here is what the court said when it got out its American history book and began to compare that with the Constitution: This was written for a time when it took Senator Houston of Texas—I ask, Madam President, that I have time to speak in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALEXANDER. So this was written at a time when Senator Sam Houston of Texas had to ride a horse, get on a steamboat, get in a stagecoach, and make his way to Washington over a period of 5 or 6 or 7 weeks, and the same to go home; and when President Polk had a vacancy in 1846 in the Attorney General's Office and wrote a letter to someone in New Hampshire and invited him to take the position and that took 2 or 3 weeks to get the letter, and then in 2 or 3 weeks back came the answer: No.

Communication was a little different back then, so it was necessary, for the