

more than a single memo. It drives home how incredibly important vigorous congressional oversight is, which is, of course, the mission of the intelligence committee, and it is the mission of all of us.

In his classic work on democratic government, Woodrow Wilson wrote that conducting oversight was one of the most important functions of Congress. He suggested it might be more important than passing legislation. Woodrow Wilson wrote:

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees.

He added that Congress must examine “the acts and disposition” of the executive branch and “scrutinize and sift them by every form of discussion.” Woodrow Wilson said if the Congress failed in this duty, then the American people would remain ignorant “of the very affairs which it is most important that [they] understand and direct.”

Woodrow Wilson might not have been able to anticipate the size and scale of the modern national security apparatus, but I believe his words are as true today as they were a century ago.

As the elected representative of nearly 4 million Americans, I have spent years now working from the theory that all of us in the Senate have an obligation to understand how the executive branch is interpreting the President's authority to use military force against Americans who have taken up arms against our Nation. I have long believed it is my obligation to make sure that those I am honored to represent in Redmond, Troutdale, and Dallas, and all across Oregon, understand that as well. I believe every American has the right to know when their government believes it is allowed to kill them.

In the case in question, as I have said before, I believe the President's decision to authorize a military strike in those particular circumstances was legitimate and lawful. I have detailed my views on this case in a letter to the Attorney General that is posted on my Web site.

I agree with the conclusion Mr. Barron reached in what has now certainly become a famous memo. To be clear, while I agree with the conclusion, this is not a memo I would have written. It contains, in effect, some analytical leaps I would not endorse. It jumps to several conclusions, and it certainly leaves a number of important questions unanswered.

I am hopeful that making this memo public will help generate the public pressure that is needed to get those additional questions answered. I am talking here about fundamental questions, such as: How much evidence does the President need to determine that a particular American is a legitimate target for military action? Can the President strike an American anywhere in the world? What does it mean to say that capture must be “infeasible”? And ex-

actly what other limits and boundaries apply to this authority?

Mr. Barron was not asked to answer these questions, but it is my view it is vitally important that the American people get answers to those questions. In my view, those questions are essential to understanding how Americans' constitutional rights will be protected in the age of 21st century warfare, and I am going to stay at it until the American people get answers to those questions.

In addition to getting detailed public answers to these matters, another important step will be for the Congress to review the other Justice Department memos regarding the President's authority to use military force outside of an active war zone. Clearly, the most important memos on this topic are the ones the Congress has now seen regarding the use of lethal force against Americans, but it is also going to be important for the Senate to review the memos on other aspects of this authority as well.

The past few years have shown when the public is allowed to see and debate how our government interprets the law, it has led to meaningful changes in terms of ensuring that there are additional protections for privacy and civil liberties without sacrificing our country's security at a dangerous time.

It is unfortunate that it took Mr. Barron's nomination for the Justice Department to make these memos public. I will say it has been frustrating over the past few years to see the Justice Department's resistance to providing Congress with memos that outline the executive branch's official understanding of the law. When Mr. Barron was the head of the Justice Department's Office of Legal Counsel, I believe congressional requests to see particular classified memos and legal opinions were appropriately granted. However, in the years since Mr. Barron moved on from that position, congressional requests to see memos and opinions have frequently been stonewalled—and I use those words specifically—frequently stonewalled.

The executive branch often makes the argument that these memos constitute confidential, predecisional legal advice to the President. Here is the problem with that argument: The President has to be able to get confidential legal advice before he makes a decision, but once a decision has been made and the legal memo from the Justice Department has been sent to the agencies that will carry out the President's decision, that memo is no longer predecisional advice; it is the government's official legal basis for actual acts of war, and as such, in my view, it is entirely unacceptable to withhold it from the Congress.

Congress has the power to declare war, and Congress votes on whether to continue funding wars, so it is vital for the Congress to understand what the executive branch believes the President's war powers actually are. In that

classic work I have discussed from Woodrow Wilson, he said:

It is even more important to know how the house is being built than to know how the plans of the architect were conceived.

As a former basketball player, I often say that sections of the playbook for combating terrorism will often need to be secret, but the rule book the United States follows should always be available to the American people—all of the American people. Our military intelligence agencies often need to conduct secret operations, but they should never be placed in the position of relying on secret law.

I am very pleased this morning that we know the executive branch is going to provide this memo to the American people, and I believe this constructive step must lead to additional steps that are equally important. This episode is an object lesson in how the U.S. Congress can use the levers it has to fulfill one of the most important functions of government. As my colleagues and I engage in our personal discussions about how to make Congress more functional, I hope this is an experience we will remember.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

#### HEALTH CARE

Mr. BLUNT. Madam President, I want to talk a little bit about the continuing concerns we see in our office and hear from Missourians about what is happening with the implementation of the health care plan. The more people know about the path we are on with health care, the more concerned they appear to become.

I know the White House has suggested that somehow the numbers would reflect that people have responded to this program in a positive way. When you take away the health insurance people have and there is only one place they can go to get the insurance they think they need, obviously they are going to go there, but that doesn't mean they like it.

In fact, there is a new political poll that suggests nearly half of the American voters say they are for outright repeal of this law, and nearly 90 percent say it will be important to them in determining how they will vote this year.

Another point in terms of why we want to start over again is everybody knows what the consequences are when you make a bad decision about people's health care in a way that I think most Americans would not have anticipated in 2009 and 2010. When you fundamentally get involved in issues that impact people and their families, such as health care, and do things that fundamentally impact the way their money is going to be spent, and that decision is made by the Federal Government instead of by that family whose only decision might be to pay a penalty or not have insurance at all or

pay a whole lot more than they were paying, the government has involved itself in an area where the government should have looked for better choices, more options, more ways to seek coverage, and better ways to be sure you can have coverage if you had a pre-existing condition. All of those, by the way, were proposed. These are not ideas that weren't out there a few years ago, but they would be taken much more seriously today if we did what nearly half of the American voters say we should be doing, and let's just see what would happen if we start all over.

Several States have announced that their Web sites will not work. This includes Oregon and Massachusetts. There is a report that four of the failed State exchanges cost \$474 million of taxpayer money, spent in Nevada, Massachusetts, Maryland, Oregon—just those four—for systems that then wouldn't work.

Many of these systems around the country that now are being abandoned were put in place partially, if not totally, with grants from the Federal Government. If a State gets a grant from the Federal Government to do something and then it doesn't do it, every other grantee has to give the money back. A State can't say it is going to take millions of dollars from Federal taxpayers to put together an exchange and then announce it didn't work out very well and then have no obligation to give that money back. There was a time when there appeared to be great concern in Washington that States weren't putting an exchange in place. Now we find out that States with this particular plan, ill-conceived as it was, can't put a system in place apparently that works. The State of Oregon, one of the earliest advocates of adopting this system, my belief is and I have read, wasn't able to sign up one single person from October 1 until they abandoned their Web site just a few days ago—not one person.

Subsidies appear to be incorrect. The Washington Post reported last weekend that 1 million Americans who have enrolled in the plan may be getting incorrect health care subsidies because the Web site was defective and didn't appropriately calculate what the subsidy would be. If people get too much of a subsidy, they have to pay it back. If they get too little of a subsidy, they may decide they are not going to take the health insurance available because they are not getting the assistance they had hoped for. Potentially hundreds of thousands of Americans are, according to that article, receiving bigger subsidies than they deserve and will be required to return the excess next year.

Under Federal rules, consumers are notified if there is a problem with their application and asked to send in or upload pay stubs or other proof of their income. Apparently, only a fraction have done what they are supposed to do. Whose fault is that? If the govern-

ment allocates the subsidy and if a person hasn't complied with the law, is that the person's fault or the government's fault? It is the government's job to comply with the law and to insist that people comply if they are going to be part of a Federal program. It is not a person's absolute obligation to say, I need to send that final piece of paper in, if the government is saying we are going to give you this subsidy. Don't worry about sending this in, we are going to do this anyway. But there will be a reconciliation moment where people find out their subsidy was more than they deserved and suddenly they have to pay it back.

The processing centers. KMOV, a television station in St. Louis, recently broke a story regarding the claims of workers at a Wentzville, MO, facility that was one of a handful of facilities the Federal Government financed around the country to handle paper applications. Not only, on one side, did the applications not appear to work coming in on the Web site—the easiest thing one would have thought possible—the easier thing, I guess, suddenly we find out, would have been to fill out the paper application and send it to one of these locations that was set up.

Contract costs of over \$1 billion, 600 people working at the Wentzville site, and the allegations from people working there are that there is just nothing to do. They are told to refresh their computers once every 10 minutes—hit the refresh button—so it appears they are doing something, so 600 people don't process more than one or two applications a month and that way everybody has a chance to process one application. My belief is these are the kinds of applications people would have assumed every individual would have easily processed dozens a day. Yet they are told not to process more than one or two a month because there just aren't that many people making applications at these centers.

The television station KMOV did a Freedom of Information Act request to CMS on April 8. They are 2 weeks past the 20 days the government is supposed to have to comply. I wonder what would happen if a taxpayer had an EPA penalty and the taxpayer was a couple of weeks late in complying with whatever that penalty is.

Last week I joined Senator ALEXANDER, who is the ranking member of the Senate Committee on Health, Education, Labor & Pensions, in a letter to the CMS Administrator expressing my concerns and his concerns and requesting answers to a number of questions no later than the end of this month. Hopefully, they will do better complying with us than they did with the Freedom of Information Act and the St. Louis reporter.

The full 5-year contract has a balance of up to \$1.25 billion. The Wentzville facility reportedly employs about 600 people. We are now hearing from a couple of the other facilities

that they have exactly the same problem. They are going to work, they have a library with books stacked on the table so people can read a book during the day so they can wait for what I guess they think eventually will be this onslaught of applications coming in, but so far it hasn't happened. We have passed October 1, November 1, December 1, January 1, February 1, March 1, April 1, May 1, and soon June 1. One would think these would be coming in because we are paying these people to do this.

Frankly, people need jobs, so it is hard to fault them for showing up every day until somebody says: The truth is there is no work here for maybe 590 of the 600 employees; maybe we need to eliminate these particular jobs which were supposedly to help implement this system. Facilities in Missouri, Kentucky, Arkansas, Oklahoma—there are lots of indications that everybody is having the same experience.

The American part of this company, Serco, is based in Reston, VA, but this is a British company. They were already in trouble with the British Government, I have read, for not providing the services they guaranteed to provide. It is amazing to me that to do the work to implement this program, we get a Canadian company to design the Web site, which is already in trouble with the Canadian Government for failure to do what they said they would do, but we hired that company anyway. One would think there would be American companies that aren't in trouble with anybody's government that could design the Web site. Then we got a British company that is in trouble with the British Government to operate these centers for the written applications. No wonder taxpayers are wondering, Who is minding the store? Who is managing the government? Who is doing this work that would make common sense anywhere else?

I continue to hear from Missouri families every week about the problems they have. We talk to them and we verify these problems. We then try to find a solution, including going through the Affordable Care Act, trying to find assistance so they can afford to pay for a policy that costs more than they ever thought they would pay, but we are not finding those solutions.

I have a few letters, one from a retired substitute teacher who is no longer able to work the substitute hours they were able to work because of the unintended consequences of the Affordable Care Act. Thirty hours, the law says, is when employers have to provide full-time benefits. Different companies had different rules in the past. If we go back to the 40-hour workweek, a lot of people would be working 35, 36, and 38 hours. Now they are working 25 and 26 and 28 hours.

Another letter is from a student, Stephanie, in Jackson, MO. The school teacher was in Kansas City. Stephanie

in Jackson is trying to go to school and trying to do everything she can to pay her own way through school, but her hours have been cut at work. She was working in the past more than 30 hours to try to do what kids used to do. What is one of the solutions to not having a lot of debt when you get out of college? Work your way through school. What is one of the things the Affordable Care Act has made it harder to do? Work your way through school. So Stephanie, the student, says she is looking for a second part-time job now that would give her the hours she used to have in her other part-time job because of the consequences of the Affordable Care Act.

Just a couple more examples. Rich from Portageville, MO, his rates have increased from \$412 a month to \$732 a month. Rick says he is 49 years old. His policy covers him and his son who is 22 years old. They are both healthy, but their insurance went up \$320 a month.

Roy from Oak Ridge, MO, says his deductible has gone from \$250 to \$650, and if his wife wasn't a veteran and couldn't get her medications through the Veterans' Administration, they would have real health care problems.

Just one last example. Rodney from New Franklin, MO, says his rates have jumped. He says: My health insurance for my wife and myself has jumped from \$320 per month to over \$700 per month, and now there is a \$5,000 deductible, despite the fact that we are both in great health. It doesn't include eye or dental coverage. I am self-employed, Rodney says. So it makes a very big difference to him whether he can continue to pay well over two times what he was paying before, with a higher deductible.

Problems with implementing the system appear to not be dealt with in the right way, and then what happens when people do get coverage. It turns out for them not to be coverage they can afford. Of course, whether they had a policy they liked, almost nobody has been able to keep the policy they had, particularly if they had it as an individual. I think we are going to see fewer and fewer people having the policies they have had at work.

I will go back to the almost 50 percent of Americans who say: Why don't we start over and do this the common-sense way and solve these problems in a way that benefits families and their health care rather than benefiting more government employees and more government regulations?

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

#### BARRON NOMINATION

Mr. CRUZ. Madam President, I rise to discuss the nomination of David Barron to be a Federal court of appeals judge. I commend my friend Senator RAND PAUL for his excellent remarks earlier today and his leadership against Mr. Barron's nomination.

I have known Mr. Barron for a long time. He and I were classmates in law school. He is a smart man. He is a talented man. He is a professor at Harvard Law School and he is a well-respected professor. However, Mr. Barron is an unabashed judicial activist. He is an unapologetic and vocal advocate for judges applying liberal policy from the bench and disregarding the terms of the Constitution and the laws of the land. If the Members of this body vote to confirm him, we will bear responsibility for undermining liberty and undermining the rule of law in this country.

It is well known that Mr. Barron, as a senior official in the Obama Justice Department, authored memos allowing the U.S. Government to use drones to kill American citizens abroad who were known and suspected to be terrorists, without any trial, without any due process. To date, we still don't have the details of all of those memos. A number of us, including myself, have called for releasing the memos that would allow the U.S. Government to use lethal force against U.S. citizens. I am pleased to say the administration has, in part, complied, but we don't have all of those memos. Yet this body is being asked to proceed with giving Mr. Barron a lifetime appointment without knowing the full context of the advice he gave.

I would note that Mr. Barron previously, in 2006, joined a group of legal scholars calling for more transparency in the OLC opinions that he subsequently wrote and that the administration is now keeping secret.

But beyond that, beyond Mr. Barron providing the legal basis for the targeted killings of American citizens abroad without judicial process, Mr. Barron, both in law school and in his writings as a law professor, has been an enthusiastic advocate of judicial activism. It has become de rigueur for judicial nominees to forswear activism, to say—even if their record is to the contrary—no, no, no, Senator, I will comply with the law. To Mr. Barron's credit, his writings have a degree of candor that are unusual.

So, for example, he has argued that courts should override elected State legislatures and enforce leftwing policies. Mr. Barron, in one particular law review, wrote:

State supreme Courts, not state legislatures, have also led the revolution in school financing equality, though judicial actions have catalyzed political responses.

He went on to say that liberals should not object to conservative court decisions because "progressive constitutionalists enamored of the Anti-Court rhetoric rarely take account of its potential downstream effects on state-court interpretation and legitimacy."

In other words, he is worried that people on the left might be arguing that courts should follow the law because that would constrain the ability of courts to instead impose a far-left political policy agenda.

Likewise, in a different article, he argues:

It is precisely because the Anti-Court strain singles out conservative judicial activism as the problem that it threatens to work progressive constitutional theory into a corner: it needlessly rejects the progressive potential of a significant wielder of power—the courts. . . .

Let me underscore that. Every Member of this body who votes to confirm Mr. Barron is voting for a candidate who has stated he intends to use the courts as a "significant wielder of power." Indeed, what is the agenda that he would embrace? He has elsewhere written:

We contend that the constitutional argument favoring preclusive executive power necessarily rests on a strong form of living constitutionalism.

There are Members of this body—Democratic Members of this body—who are campaigning right now in their home State saying they do not support judicial activism, they do not support a so-called living constitution, judges imposing far-left policies and disregarding the law. Well, let me say, any Democratic Member of this body who votes for Mr. Barron is on record in support of judicial activism and living constitutionalism.

Beyond that, Mr. Barron has explicitly written his opposition to federalism. Indeed, he says, "There is precious little in the Constitution's text or the history of its adoption that compels the particular conservative allocation of national local powers favored by the Rehnquist Court."

He has made clear his agenda to overturn or ignore Supreme Court precedents. When he says there is "little in the . . . text or the history," it seems somehow that he has not read or focused on the Tenth Amendment or the Federalist Papers or the debates on ratification.

Beyond that, he is an emphatic advocate of the takings clause, of government power taking private property, such as the Kelo decision—big money interests going to government and using government power to condemn your private land. He is an emphatic advocate of that and of courts facilitating and expanding that.

He has written that the executive branch should be able to waive laws with which it disagrees—a lawlessness that, sadly, has run rampant in this administration.

Anyone who cares about property rights should be dismayed by this nomination and should vote against it if you do not want to see overly aggressive takings jurisprudence that allows the government to take your private property.

Anyone concerned about free speech should be concerned about this nomination if you do not want to see expansive government power taking away the rights of citizenry to free speech.

Anyone who cares about local control and federalism and the ability of local school boards and legislatures to make policy decisions should be concerned.