

In a recent New York Times article, academics appealed to the Chief Justice's political side. These academics asked him to intervene in the current Supreme Court vacancy, suggesting that it could be a so-called John Marshall moment for Chief Justice Roberts. That is a political temptation that the Chief Justice should resist.

I can't think of anything any current Justice could do to further damage respect for the Court at this moment than to interject themselves into what Chairman BIDEN called the political "cauldron" of an election year Supreme Court vacancy.

In a recent speech, the Chief Justice said: "We're interpreting the law, not imposing our views."

He further stated: "If people don't like the explanation, or don't think it holds together, you know, then they're justified, I think, in viewing us as having transgressed the limits of our role."

Again, with all due respect to the Chief Justice, tens of millions of Americans believe, correctly, that the Supreme Court has transgressed the limits of its role. Tens of millions of Americans believe, correctly, that too many of the Justices are imposing their views and not interpreting the law.

That is the major reason why we should have a debate about the proper role of a Supreme Court Justice. We need to debate whether our current Justices are adhering to their constitutional role.

As the Chief Justice remarked, although many of the Supreme Court's decisions are unanimous or nearly so, the Justices tend to disagree on what the Chief Justice called, in his words, the "hot button issues." We all know what kinds of cases he has in mind when he talks about "hot button issues"—freedom of religion, abortion, affirmative action, gun control, free speech, and the death penalty. One can probably name a lot of others. The Chief Justice was very revealing when he acknowledged that the lesser known cases are often unanimous, and the hot button cases are frequently 5 to 4.

But why is that?

The law is no more or less likely to be clear in a hot button case than another case. For those Justices committed to the rule of law, it shouldn't be any harder to keep personal preferences out of a politically charged case than any other case.

In some cases, the Justices are all willing to follow the law, but in others where they are deeply invested in the policy implications of the ruling, those cases tend to turn out 5 to 4. The explanation of these 5-to-4 rulings must be that in hot button cases some of the Justices are deciding based on their political preferences and not—as they should be—on the law. But if hot button cases are being decided by politicians in robes, then the Supreme Court has no more of a right than the voters to be the final word.

The Chief Justice regrets that the American people believe the Court is no different from the political branches of government. But again, and with respect, I think he is concerned with the wrong problem. He would be well-served to address the reality—not the perception—that too often there is little difference between the actions of the Court and the actions of the political branches. So, Physician, heal thyself. In case after 5-to-4 case, the Justices who the Democrats appointed vote for liberal policy results.

This can't be a coincidence. Democratic Presidents know what they want when they nominate Justices—Justices who will reach politically liberal results regardless of what the law requires. This, of course, is what our current President means when he says that he wants Justices to look to their "heart" to decide the really hard cases. That is an unambiguous invitation for Justices to decide the hot button cases based on personal policy preferences. That, of course, isn't the law, and it is not the appropriate role for the Court. It is no wonder, then, that the public believes the Court is political.

What Democratic Presidents want in this regard is what they get—even before Justice Scalia's death. Leading scholars found this Supreme Court to be the most liberal since the 1960s. Justices appointed by Republicans are generally committed to following the law. There are Justices who frequently vote in a conservative way. But some of the Justices appointed even by Republicans often don't vote in a way that advances conservative policy.

Contrary to what the Chief Justice suggested, a major reason the confirmation process has become more divisive is that some of the Justices are voting too often based on politics and not on law. If they are going to be political actors after they are confirmed, then the confirmation process necessarily is going to reflect that dynamic.

For instance, just last week, after one of my Democratic colleagues met with Judge Garland, the Senator said after discussing issues like reproductive rights: "I actually feel quite confident that he is deserving of my support."

Obviously, I don't know what they discussed during that meeting or what Judge Garland said about reproductive rights, and, to be clear, I am not suggesting anything inappropriate was discussed. My point is this: If Justices stuck to the constitutional text and didn't base decisions on their own policy preferences or what the President asked, based on what is in their heart or on empathy for a particular litigant, then Senators wouldn't deem it necessary to understand whether the nominee supports reproductive rights or not. With this in mind, is it any wonder that the public believes the Court is political?

If we want the confirmation process to be less divisive, if we want the pub-

lic to have more confidence that the Justices haven't exceeded their constitutional role, then the Justices themselves need to demonstrate that in politically sensitive cases their decisions are based on the Constitution and the law and not on political preferences or what comes from the heart or because of some empathy.

So here is where we are about the public perception of the Court being political. When the Justices return to their appropriate role of deciding cases based on the facts and the law, public perception of the Court will take care of itself.

I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. AYOTTE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

Mr. MCCONNELL. Madam President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

#### ARMS SALES NOTIFICATION

Mr. CORKER. Madam President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee's intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

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

DEFENSE SECURITY  
COOPERATION AGENCY,  
Arlington, VA.

Hon. BOB CORKER,  
Chairman, Committee on Foreign Relations,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-23, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Australia for

defense articles and services estimated to cost \$386 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

JENNIFER ZAKRISKI,  
(for J.W. Rixey, Vice Admiral,  
USN, Director).

Enclosures.

TRANSMITTAL NO. 16-23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Government of Australia.

(ii) Total Estimated Value:

Major Defense Equipment \* \$172 million.

Other \$214 million.

Total \$386 million.

(iii) Description and Quality or Quantities of Articles or Services under Consideration for Purchase:

Major Defense Equipment (MDE):

Up to 2,950 GBU-39/B Small Diameter Bomb I (SDB I).

Up to 50 Guided Test Vehicles (GTV) with GBU-39 (T-1)/B (Inert Fuze).

Non-MDE: This request also includes the following Non-MDE: containers, weapons system support equipment, support and test equipment, site survey, transportation, repair and return warranties, spare and repair parts, publications and technical data, maintenance, personnel training, and training equipment, U.S. Government and contractor representative engineering, logistics, and technical support services, and other related elements of logistics support.

(iv) Military Department: Air Force (YAF).

(v) Prior Related Cases, if any: None.

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: April 4, 2016.

\* As defined in Section 47(6) of the Arms Export Control Act.

#### POLICY JUSTIFICATION

Australia—GBU-39 (Small Diameter Bomb Increment I)

The Government of Australia has requested a possible sale of:

Major Defense Equipment (MDE):

Up to 2,950 GBU-39/B Small Diameter Bomb I (SDB I).

Up to 50 Guided Test Vehicles (GTV) with GBU-39 (T-1)/B (Inert Fuze).

This request also includes the following Non-MDE: containers, weapons system support equipment, support and test equipment, site survey, transportation, repair and return warranties, spare and repair parts, publications and technical data, maintenance, personnel training, and training equipment, U.S. Government and contractor representative engineering, logistics, and technical support services, and other related elements of logistics support.

The total estimated value of MDE is \$172 million. The total overall estimated value is \$386 million.

Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major contributor to political stability, security, and economic development in the Pacific region and globally.

The sale of SDB I supports and complements the on-going sale of the F-35 to the

Royal Australian Air Force (RAAF). This capability will strengthen combined operations and increase interoperability between the U.S. Air Force and the RAAF. Australia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment will not alter the basic military balance in the region.

The principal contractor for production is Boeing in St. Louis, Missouri. The principal contractor for integration is unknown and will be determined during contract negotiations. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

TRANSMITTAL NO. 16-23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. Sensitive and/or classified (up to SECRET) elements of the proposed acquisition include hardware, accessories, components, and associated software: GBU-39/B Small Diameter Bomb Increment I (SDB I). Additional sensitive areas include operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to the support operations and repair. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters, and other similar critical information.

2. The GBU-39/B Small Diameter Bomb Increment I (SDB I) is a 250-pound class weapon designed as a small, all-weather, autonomous, conventional, air-to-ground, precision glide weapon able to strike fixed and stationary re-locatable targets from standoff range. The SDB I weapon system consists of the weapons, the BRU-61/A (4-place pneumatic carriage system), shipping and handling containers for a single weapon and the BRU-61/A either empty or loaded, and a weapon planning module. It has integrated diamond-back type wings that deploy after releases, which increases the glide time and therefore maximum range. The SDB I Anti-Jam Global Positioning System aided Inertial Navigation System (AJGPS/INS) provides guidance to the coordinates of a stationary target. The payload/warhead is a very effective multipurpose penetrating and blast fragmentation warhead coupled with a cockpit selectable electronic fuze. Its size and accuracy allow for an effective munition with less collateral damage. A proximity sensor provides height of burst capability.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology associated with this system as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Australia.

DEFENSE SECURITY  
COOPERATION AGENCY,  
Arlington, VA.

Hon. BOB CORKER,  
Chairman, Committee on Foreign Relations,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(5)(A) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 0J-16. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 15-62 of 19 November 2015.

Sincerely,

JENNIFER ZAKRISKI,  
(for J.W. Rixey, Vice Admiral, USN,  
Director).

Enclosures.

TRANSMITTAL NO. 0J-16

Report of Enhancement or Upgrade of Sensitivity of Technology or Capability (Sec. 36(b)(5)(A), AECA)

i. Purchaser: Government of Japan.

ii. Sec. 36(b)(1), AECA Transmittal No.: 15-62; Date: 19 November 2015; Military Department: Air Force.

iii. Description: On 19 November 2015, Congress was notified by Congressional certification transmittal number 15-62, of the possible sale under Section 36(b)(1) of the Arms Export Control Act of three (3) RQ-4 Block 30 (I) Global Hawk Remotely Piloted Aircraft (RPA), each with Enhanced Integrated Sensor Suite (EISS), eight (8) Kearfott Inertial Navigation System/Global Positioning System (INS/GPS) units (2 per aircraft with 2 spares), and eight (8) LN-251 INS/GPS units (2 per aircraft with 2 spares). Also included with this request are operational-level sensor and aircraft test equipment, ground support equipment, operational flight test support, communications equipment, spare and repair parts, personnel training, publications and technical data, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The total value of this sale is \$1.2 billion. Major Defense Equipment (MDE) constitutes \$689 million of this sale.

This transmittal reports the inclusion of two Ground Control Elements (GCE). The GCEs were not enumerated as MDE in the original notification of the Global Hawk RPA system. Inclusion of this equipment as MDE will increase the MDE cost by \$31 million, resulting in a revised MDE cost of \$720 million. The total case value will remain \$1.2 billion.

iv. Significance: This notification is being provided as the GCEs were not enumerated as MDE in the original notification. Their inclusion does not necessarily represent an increase in capability over what was notified, but properly identifies the equipment required for Global Hawk operations. This equipment provides the Japan Air Self-Defense Force (JASDF) a ground control station from which to fly and execute Global Hawk surveillance missions. Overall, these systems meet the requirements of providing the JASDF with the ability to conduct high-altitude surveillance and reconnaissance without exposing JASDF personnel to the dangers inherent to high-altitude ISR operations.

v. Justification: This proposed sale will contribute to the foreign policy goals and national security objectives of the United States by meeting the security and defense needs of an ally and partner nation. Japan continues to be an important force for peace, political stability, and economic progress in East Asia and the Western Pacific. The proposed sale of the RQ-4 will significantly enhance Japan's intelligence, surveillance, and

reconnaissance (ISR) capabilities and help ensure that Japan is able to continue to monitor and deter regional threats. The JASDF will have no difficulty absorbing these systems into its armed forces.

vi. Date Report Delivered to Congress: April 4, 2016.

#### JUNIOR RESERVE OFFICER TRAINING CORPS

Mr. GARDNER. Madam President, I rise today to honor the 100th anniversary of the Junior Reserve Officer Training Corps, JROTC. On June 3, 1916, Congress passed the National Defense Act, establishing the JROTC. This program teaches students the values of our Armed Forces through training and classroom instruction with military personnel.

This influential program encourages leadership, fortitude, and personal responsibility. The JROTC has experienced a long history of success, and millions of high school students have completed the program since its inception. Not only do these students learn military history and customs, but participants gain a deeper understanding of civic engagement, community service, and the importance of character building.

Out of the many high school students who participate in JROTC each year, 30 to 50 percent go on to serve in the U.S. military later in life. The program also connects high school students with universities that offer the Reserve Officer Training Corps program and helps many students who may have not otherwise earned a college degree.

I would also like to recognize the 35 schools in Colorado that offer the JROTC program. In Colorado, there are 2 Marine Corps JROTC units, 8 Air Force JROTC units, 4 Navy units, and 21 Army units. I am proud of the accomplishments of the JROTC students, and I know they have a bright future ahead of them.

Please join me in honoring Adams City High School, Northridge High School, Aurora Central High School, Westminster High School, Harrison High School, William Mitchell High School, Air Academy High School, Skyview Academy, Glenwood Springs High School, Doherty High School, Montrose High School, Mesa Ridge High School, Widefield High School, Pueblo County High School, Pueblo East High School, North High School, Abraham Lincoln High School, Denver South High School, Manual High School, Loveland High School, Thomas Jefferson High School, Pueblo West High School, Centennial High School, Central High School, Pueblo South High School, Delta High School, Central High School—Pueblo, Montebello Senior High School, West High School, George Washington High School, John F. Kennedy High School, Fountain Fort Carson High School, East High School, and Canon City High School.

#### REMEMBERING GARY M. ORLANDO, SR.

Mr. TOOMEY. Madam President, today I wish to honor the life of Mr. Gary M. Orlando, Sr. Mr. Gary Orlando passed away on Sunday, October 25, at the Erie VA Medical Center. A tireless and longtime advocate for veterans, Gary sat on the board of directors for the Paralyzed Veterans of America, PVA. He was also a member of the Disabled American Veterans, DAV.

Gary was an Erie, PA, native, born on November 8, 1951. He served with the U.S. Army during the Vietnam war as a door gunner on a helicopter. While serving in Vietnam, he survived being shot down and was awarded the Army Commendation Medal, two Good Conduct Medals, and the National Defense Service Medal.

Following his service with the Army, Gary worked for the U.S. Postal Service in Erie. In his free time, he enjoyed hunting, volunteering, and participating in the Wheelchair Games. He was also an avid fan of the Erie Otters Hockey Club. Gary was a relentless advocate for our veterans, a friendly face, and a supporter for countless veterans in the Erie area.

Gary is survived by two sons, two grandchildren, one great-granddaughter, one brother, one brother-in-law, and several nieces and nephews. He was laid to rest in Arlington National Cemetery, an honor he richly deserved.

On behalf of the U.S. Senate, I wish to express my thanks for Mr. Orlando's steadfast service to our Nation and his commitment to our veterans.

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO WALTER EVANS

• Mr. DAINES. Madam President, today I wish to recognize Walter Evans, a 14-year-old native Montanan and member of the Boy Scouts of America, troop 214, for his service to his community. Walter's Court of Honor is scheduled for April 12, 2016, where he will earn the Eagle Scout Award. His Eagle Scout project was a trail building project for the Prickly Pear Land Trust in the South Hills of Helena. Walter's project alone involved 230 volunteer hours and provided for the creation of a beautiful new trail used by mountain bikers, hikers, and dog walkers.

Walter is an excellent leader and always keeps a great attitude. Doug Wheeler, scoutmaster to Troop 214 stated, "Walter is a great example of a Boy Scout in his character attributes. Of particular note are his compassion, enthusiasm to serve others, and polite manner. These attributes, as well as his other traits, will help him do great things in his life."

Walter, thank you for your service to Montana at such an early age. We look forward to seeing your future successes.●

#### REMEMBERING GILBERT HORN, SR.

• Mr. DAINES. Madam President, today I wish to honor Gilbert Horn, Sr., an Assiniboiné Tribal member and Montanan who exemplified leadership throughout his life. He passed away on March 27, at the age of 92.

Gilbert Horn was born May 23, 1923, on the Fort Belknap Indian reservation in Montana. He was an Assiniboiné chief, decorated war hero, WWII combat veteran, and code talker. In 1940 he entered the U.S. Army at the young age of 17. He was a member of the 163rd Infantry Battalion. Chief Horn received training in communication and encryption. He then volunteered to be a code talker using his native Assiniboiné Tribe language to disguise U.S. military communications against the Japanese.

He volunteered for the Merrill's Marauders, a deep penetration unit commanded by MG Frank Merrill. They spent 5 months of field operations in Burma and western China and completed an 800-mile journey across the Himalaya Mountains in order to cut Japanese communications and supply lines. Chief Horn survived the journey with chest, back, and jaw wounds. He was honorably discharged, having received the Purple Heart and the Bronze Star.

After returning to the Fort Belknap Indian reservation he served as chairman and council member of the Fort Belknap Community Council. He was awarded an honorary doctorate in humanitarian services from MSU Northern in 2013. Then in 2014 he had the honor of being named the honorary chief of the Fort Belknap Assiniboiné Tribe, a title that had not been awarded since the 1890s.

I extend my condolences to his family and to the entire Fort Belknap Indian community. We have lost a true American and a great Montanan.●

#### RECOGNIZING ARKANSAS POST NATIONAL MEMORIAL AND PARK

• Mr. COTTON. Madam President, in honor of the National Parks Service's 100th birthday year, I want to recognize Arkansas Post National Memorial and Park. Arkansas Post was established as a trading post by Henri De Tonti in 1686 and was the first permanent European settlement in the lower Mississippi River valley. While the exact location moved several times, the area remained a vital trade center for much of the 17th and 18th centuries. The land was eventually ceded to Spain, who controlled the post for over 40 years. While under Spanish control, Arkansas Post was home to the Battle of Arkansas Post, a Revolutionary War battle between Spanish and British forces fought on April 17, 1783. Also known as the Colbert Raid, this battle was the only Revolutionary War battle to take place in what is today the State of Arkansas. Arkansas Post was