

the Texas two-step. So, step 1, create a shell company and transfer your legal liabilities; step 2, have the new company immediately declare bankruptcy.

So far, four major corporations have used the Texas two-step and bankruptcy to try to avoid legal accountability for their own wrongdoing.

The case that the subcommittee examined last week involved the healthcare and pharmaceutical giant Johnson & Johnson, the maker of Johnson's baby powder. As I mentioned earlier, how many of us fathers, mothers, and kids changing diapers did it in a cloud of Johnson & Johnson's baby powder?

For years, Johnson & Johnson denied the story that its products contained asbestos. We know that substance can cause cancer and mesothelioma. Then it claimed that any amount of asbestos in its baby powder was just too small to cause any harm. But internal company documents at Johnson & Johnson obtained through discovery told a different story. They showed that Johnson & Johnson knew of tests going back decades which found the presence of asbestos in their products. While they were actively advertising the use of this product by adults for use on our babies, they knew there was asbestos in their product.

In 2018, a jury in Missouri ruled in favor of 22 women who attributed their ovarian cancer to Johnson & Johnson talc products. The women won an award of \$2 billion. Remember that number: 22 women in Missouri, an award of \$2 billion.

Today, there are an estimated 38,000 people with ovarian cancer or mesothelioma who have sued Johnson & Johnson, alleging that the company's talc products caused their illness, but Johnson & Johnson's use of this Texas two-step divisive bankruptcy means that these 38,000 cancer victims are no longer able to bring their claims against the company. They have lost their right to have their case heard in court because Johnson & Johnson, this giant company, has created a bankruptcy in a shell corporation that has absorbed all of the legal liabilities of the original Johnson & Johnson. So anybody who wants to sue them now has to get in line in bankruptcy court with all the creditors and alleged victims and wait and hope there will be a day when some fraction of the trust fund that Johnson & Johnson gave to its shell company when it spun it off and loaded it down with legal liabilities may provide some relief. The chances: next to none.

Stick with me and do the math. We ended up with two companies. Once, it was just Johnson & Johnson, and then two companies emerged out of the bankruptcy court in Texas. The one company with the liabilities—the one you can actually sue if you can get into court—they created a trust fund for that company of \$2 billion. They have 38,000 outstanding claims. Twenty-women women in Missouri recovered

\$2 billion from them already, so you know that 38,000 people are not going to go very far with \$2 billion total. What is left in the other fat corporation—profitable corporation, big corporation—in that bankruptcy division? More than \$430 billion. Johnson & Johnson stuck all of its assets into more than the healthy corporation that can't be sued and left \$2 billion for all of these victims of its dangerous product. What a cynical move for a company to make.

Kimberly Naranjo, a mother of seven, is one of those 38,000 Americans who will lose her right to sue Johnson & Johnson and be forced to wait in line in bankruptcy court for some sliver of justice.

She testified at last week's hearing. Her story is not an unusual one. Ms. Naranjo grew up surrounded by addiction and abuse. She moved from one foster family to another. She had her first baby when she was 19 years old. She used Johnson's baby powder on all seven of her children. It was, she said, "that white plastic bottle that I associated with motherly love."

That was the same message Johnson & Johnson used in its baby ads. They used to say their product "feels like love."

Ms. Naranjo started her dream job. But a week later, she felt a pain in her side. She went to the doctor and, sadly, learned she has mesothelioma. She was told she had 12 to 16 months to live. She knows she can't beat mesothelioma. Nobody does. All she wants is a chance to make her case in court before she dies so she can leave something to her kids.

So she came to Washington to testify before us in that Judiciary subcommittee last week, her voice representing thousands of cancer victims who went through exactly what she did, exposing themselves to Johnson & Johnson's dangerous product. I commend her and thank her for her courage. She is fighting for her kids and all the other victims, incidentally, whose voices would be silenced by this Texas two-step bankruptcy. As she said in her testimony, "I don't have much time left, but I will not quit."

Over the past few months, I decided to write to Johnson & Johnson. This is a company that used to take such pride in their products. I remember all through my life the advertising associated with their products: wholesome, safe help for families. I wrote to the former CEO and the current CEO, and I urged them to change course, back way from this Texas two-step, abandon this cynical scheme, and hold yourself accountable to the people who trusted your product. I urged Johnson & Johnson to live up to its reputation of being a company that family and consumers can trust. Sadly, they ignored me.

This week, a bankruptcy court is considering a motion by talc claimants to dismiss the bankruptcy of the shell company that Johnson & Johnson spun off to unload its legal liabilities. It is a

key test of this Texas two-step and whether wealthy corporations continue to abuse chapter 11 bankruptcy to dodge their legal obligations to victims like Ms. Naranjo.

It is not just lawmakers like me who believe that the Texas two-step can deprive victims like her of their day in court; listen to what the author of the Texas divisive merger statute, Steven Wolens, said earlier this week about the law that brought the Texas two-step to life: "Had we known in 1989 that [the] provisions could be dubiously interpreted for entities to avoid known liabilities such as those causing severe and permanent injuries and deaths, [the law] would never have passed with the 'Texas two-step' provision. Never, never, never."

Mr. Wolens also said: "Shame on [Johnson & Johnson] for trying to evade its liabilities for products it sold with its golden stamp of approval for safety."

When a legislator like Mr. Wolens publicly states that the company is intentionally misusing the law he wrote, I don't think there is any room for uncertainty or equivocation; this is a shameful, indefensible strategy on the part of Johnson & Johnson.

I hope the courts reject Johnson & Johnson's abuse of bankruptcy laws, but I also believe Congress needs to do something. We need to close this loophole for good.

In July last year, I joined two of my colleagues, ELIZABETH WARREN and RICHARD BLUMENTHAL, in cosponsoring legislation which would rein in various bankruptcy loopholes like the Texas two-step. I am committed to working toward this goal. I hope Democrats and I hope Republicans can work together on a bipartisan basis to stop this bankruptcy abuse. Bankruptcy is supposed to be a good-faith way to accept responsibility, pay one's debts as best you can, and then receive a second chance—not a Texas two-step, get-out-of-jail-free card for some of the wealthiest corporations on Earth, like Johnson & Johnson.

I yield the floor.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

INFLATION

Mr. THUNE. Mr. President, the AP headline from last Thursday said it all: "U.S. inflation highest in 40 years, with no letup in sight"—with no letup in sight. That is life in the Democrats' America. In January, U.S. inflation hit 7½ percent—the highest inflation since February of 1982. Inflation has now been above 5 percent for the last 8 months.

There are people raising families today who have never experienced this

kind of inflation in their entire lifetimes. American families are hurting—hurting badly. The average American household spent an estimated \$3,500 more last year as a result of inflation—\$3,500. That is a lot of money for an ordinary family—a lot. Everywhere they turn, families are facing higher prices. Whether it is ground beef for the chili, bunk beds for the kids' room, or a new car to accommodate a new addition to the family, higher prices are the order of the day.

The price of chicken is up 10 percent. Pork is up 14 percent. Beef roasts are up 19 percent. Eggs are up 13 percent. Citrus fruits are up 10 percent. Whole milk is up 8 percent. The list goes on. Furniture and bedding were up 17 percent. Major appliances are up almost 10 percent. Tires are up 14 percent. Used cars and trucks are up 40 percent.

And then there are energy prices. Fuel oil is up 46 percent. Gas prices are up 40 percent. Natural gas is up nearly 24 percent—and on and on and on.

Predictably, inflation is having its biggest impact on those least able to afford it. A recent Penn Wharton Budget Model study found that lower-income houses, on average, faced an even greater spending increase in 2021 when compared to higher-income households, as a result of inflation.

It is no wonder 69 percent of Americans disapprove of the President's handling of inflation. Democrats have talked about wage growth. Here is the story on wages. Despite wage growth, Americans received a de facto pay cut in 2021, thanks to inflation. Between January 2021 and January 2022, real average hourly earnings declined by 1.7 percent—a pay cut.

How did we get here? Obviously, the reopening of economies and supply chain issues have created inflationary pressures for the United States and countries around the world. But a big part of the reason things are so bad in the United States today is because Democrats decided to pass a massive so-called COVID relief bill last March that far exceeded anything the economy needed. That is right. When Democrats took office last January, inflation was 1.4 percent, well within the Fed's targeted inflation rate of 2 percent.

It might have stayed there had Democrats not decided that they needed to pass a massive and partisan \$1.9-trillion spending spree under the guise of COVID relief mere weeks after Congress had already passed a major COVID bill—one of five COVID bills, I might add—that passed in 2020, all bipartisan.

The definition of inflation is too many dollars chasing too few goods and services. That is exactly the situation Democrats helped create with their so-called American Rescue Plan. They sent too many dollars into the economy, and the economy overheated as a result. You don't have to take my word for it. Let me just quote a recent New York Times article:

"The United States has had much more inflation than almost any other advanced economy in the world," said Jason Furman, an economist at Harvard University and former Obama administration economic adviser, who used comparable methodologies to look across areas and concluded that U.S. price increases have been consistently faster. The difference, he said—

This is Jason Furman, former Obama administration economic adviser.

The difference, he said, comes because "the United States' stimulus is in a category of its own."

Despite all of this, despite the fact that it was Democrats' massive March spending spree that helped plunge our economy into this inflation crisis—there are still Democrats out there who want to double down—double down—on the strategy that helped get us into this mess in the first place and pass yet another massive spending spree that would undoubtedly make this inflation disaster even worse.

"U.S. inflation highest in 40 years with no letup in sight."

"No letup in sight."

That was the headline. That is where Democrat policies have gotten us.

I was actually pleased to hear this morning the Democratic leader come down here and talk about inflation. It seems to be at least—maybe because of polling or whatever—starting to be realized by my colleagues on the other side of the aisle that this is an issue that is having a massive and very adverse impact on the pocketbooks of the American people, particularly low-income Americans, because, you see, inflation is a tax that hits every American, but it affects and impacts lower-income and middle-income Americans the most.

The Democratic leader said that Republicans should quit complaining about inflation and start doing something about it. Well, we obviously don't have the majority. The Democrat's solution to this, as I pointed out, is another \$5-trillion spending bill. Oh, yeah, that will solve the problem. Let's flood the zone with another \$5 trillion on top of the \$2 trillion already out there, have even more dollars chasing fewer goods, driving inflation even higher.

One thing we can do, what Republicans have advocated, is let's end wasteful spending. Let's don't do crazy stuff. Let's don't massively expand the size of government and flood the economy with more dollars at a time when inflation is already raging. That is a really simple solution.

Another solution is not to raise taxes, which is, again, something Democrats have proposed: raising taxes by \$1.5 to \$2 trillion to partially—and I say partially because the cost of \$5 trillion doesn't get compensated for by \$1.5-trillion tax increase but tax increases, nonetheless; all of which, of course, get passed on to consumers, raising inflationary pressures even more. They want to raise taxes massively and grow the government and spend money and add about \$3 trillion

to the debt, which is already \$30 trillion. Those are the solutions of our colleagues on the other side.

I would say, end—stop in its tracks cold—the wasteful spending. Two, don't raise taxes. Provide some certainty. Maybe even make permanent a lot of the tax relief that was put in place in the 2017 tax law. Three—how about this? How about this idea? How about we become energy independent in America, which is where we were?

We were actually exporting energy in the previous administration for the first time in American history—at least in my lifetime—where we actually had energy policies that were producing American energy on a level that was keeping energy costs low for Americans and enabling us to actually export energy to other places around the world.

That came to an abrupt end when President Biden came to office. Democrats got control of both Houses of Congress, and what happened? First thing, day one—day one in office, first day, first thing he did—President Biden canceled the Keystone XL Pipeline, which would have allowed us to get energy fuel oil from where? Our friend, our neighbor, Canada, the Canadians, and move it through a pipeline to places across the United States, helping fill the demand with additional supply that Americans need to power their everyday lives—first thing in office, first day in office. It hasn't stopped there.

The administration decided that energy, evidently, is evil, at least if it comes from the ground, and decided to cancel a bunch of projects. There are all kinds of areas now that are off-limits to energy exploration, energy production in this country. There are lots of regulations and permitting things that are slowing down energy projects, making it more difficult, more expensive to produce American energy, leading us, leading Americans, to a place we didn't want to be, a place where we were a few years ago; but we are going hat in hand to Saudi Arabia, to OPEC countries, saying: Please, please produce more energy. We need more energy in this country.

What has happened is predictable, and what has happened is this: The demand for energy in this country is great. We are coming out of a pandemic. People are going back to work. They need, during the winter months, to heat their homes. They need fuel to get where they need to go—transportation—to work, to travel. So the demand for energy is up, the supply is going down; so what is happening?

Boom. Simple. It is really pretty simple. It is economics. The price is going up. So the price of oil in this country is now pushing \$100 a barrel. Gasoline prices, as I mentioned, are up 40 percent—40 percent—over a year ago. It is simple math. It is simple economics. And there are some Democratic Senators now who are suggesting: Let's just waive the gas tax temporarily—

the gas tax which pays for all the infrastructure that we travel on in this country and which would leave a huge hole, obviously, in the highway trust fund, which is critically important to every State in the Union that depends upon the Federal Government and the highway trust fund and the fuel tax—to fund the infrastructure that enables our economy to move and keeps us competitive in the global marketplace. That is their solution.

Now, it is short-term—short-term, obviously to benefit—to try to gain some political advantage at a time when people, all of a sudden now on the other side, are starting to worry. Efforts are being led by four Democrats who are up for reelection this year. No surprise there because they have understood now what we know, and that is the American people are fed up and frustrated—fed up and frustrated with policies that are driving up the cost of everything that they have to buy, from the groceries in the store, to the rent that they pay, to the gas they put in their automobiles. Everything is going up.

Energy factors into almost everything we do. A pound of hamburger that you buy at the grocery store probably had to get there from somewhere, unless you live in the middle of the country where some of us do. But if you live on one of the coasts, you probably had to have transportation to get it to the destination, so it is factored in—it is baked in the cost of everything. When fuel prices go up, natural gas prices go up, when the cost of energy generally goes up, everything else goes up with it. It is economics.

The solution isn't a short-term political ruse to try and provide political cover to people who are running for reelection. It is to put policies in place that encourage American energy independence, that invest in American energy. That can be done in ways now with technologies we have that are environmentally friendly.

But we have to be energy independent. We can't depend upon other countries around the world that are unreliable to fuel and fund and run our economy. That investment should be here in the United States of America. And if we solve more of that, we would see less inflation, lower fuel prices.

If we end the crazy spending ideas and tax ideas coming out of the other side, we could restore some sanity to this country when it comes to these out-of-control prices, which is a tax, literally, on every American and hits particularly hard those who are struggling to make ends meet.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

NOMINATION OF ROBERT MCKINNON CALIFF

Mr. MARKEY. Mr. President, I rise today to speak in opposition to the nomination of Dr. Robert Califf to lead the Food and Drug Administration.

For more than two decades now, the United States has suffered a dev-

astating epidemic of opioid use disorder, overdoses, and deaths. Since 1999, almost 1 million Americans have died of drug overdoses, with the vast majority of those deaths attributable to opioids.

As our country continues to deal with the COVID-19 pandemic, we must remember and prioritize this other deadly public health emergency.

In 2020, overall drug overdose deaths reached an alltime high for the year, with approximately 93,000 Americans losing their lives. More than 60 percent of those deaths were from synthetic opioids like fentanyl. That is a staggering 69,000 Americans dead from an opioid-related overdose—more than gun violence, more than car accidents, more overdose deaths than ever before in our history.

We cannot let the tragedy of COVID-19 overwhelm the daily suffering of the opioid epidemic. Sadly, for the scourge of opioid misuse and overdose in our country, there is no vaccine.

My home State has been hit especially hard. In Massachusetts, more than 2,100 residents died from an opioid overdose in 2020—a 5-percent increase from the previous year—and many more struggled with opioid use disorder. Early data from 2021 shows this unfortunate trend continued through the first 9 months of last year, where 1,613 people died in Massachusetts from opioid overdoses.

We cite these numbers with outrage and disbelief, but for impacted families and loved ones, it is an ever-present mourning for lost opportunities, futures gone too soon, and unanswered questions; all the while, for each and every community, there is the growing challenge still to be addressed.

In Congress, my colleagues and I have worked to respond to this crisis, passing several bipartisan packages—the Comprehensive Addiction and Recovery Act, CARA, and the SUPPORT Act to help bring relief to our communities.

I am proud several pieces of legislation I authored to fund and expand opioid use disorder prevention and treatment programs became law in those packages. Those investments are important, and we must continue to build on them, but we cannot forget how we reached this epidemic in the first place or we are doomed to repeat it for those families.

Those failures started at Big Pharma and were aided and abetted by the Food and Drug Administration. The FDA is supposed to be our Nation's pharmaceutical gatekeeper, but over many years, it repeatedly rubberstamped new prescription painkillers that increased the risk of misuse and dependence.

As evidence of the deadly harm those opioids caused became clear, the FDA did almost nothing. It acted too slowly to remove them from the market, to limit access to those supercharged opioids.

What started as an OxyContin prescription for back pain became full-

blown dependence on heroin for countless Americans. Even well into the crisis, the FDA continued to approve powerful new opioids, either over the express objections of its own advisory committees or without convening an advisory committee at all. The FDA became the country's biggest pill pusher, and Big Pharma made billions in profits.

The Nation's pharmaceutical watchdog became the Nation's pharmaceutical lapdog, and the country became the "United States of Oxy." I consistently raised concerns about the FDA's egregious mishandling of opioid approvals when Dr. Califf was first nominated to be Commissioner in 2015.

At that time, I opposed Dr. Califf's nomination until the Agency took steps to rescind approval for pediatric OxyContin—yes, OxyContin for kids. I demanded the FDA commit to impanel advisory committees for all opioid regulatory decisions and consider public health factors in opioid regulatory decisions, in particular the impact of new opioids on opioid misuse and dependence.

When the FDA did attempt to address its failures in regulating opioids after strong criticism from me and many of my colleagues, Dr. Califf and Dr. Janet Woodcock requested a National Academy of Sciences study of FDA's policies for evaluating opioids—not a major step but at least an effort to recognize its participation in the epidemic.

That study emphasized many of the efforts which I urged Dr. Califf and the FDA to undertake back in 2015; in particular, the need to include public health factors at every level of FDA regulation of opioid drugs. But to date, the FDA still has not implemented many of those recommendations. And where it has taken steps to do so, it has not gone far enough to address its past failures.

There was no real commitment to reforming the FDA or to learning from the mistakes that enabled this public health crisis.

At this point, the opioid epidemic has evolved from being driven by prescription drugs to being fueled by the illicit synthetic opioids, like fentanyl. But that does not dismiss the FDA from accountability or the need for reform.

When I met with Dr. Califf last year, I asked him to commit, if confirmed as FDA Commissioner, to finally change FDA's processes to ensure it does not make the opioid overdose epidemic worse than it already has. During our meeting, Dr. Califf did not commit to the decisive and comprehensive action which we need.

After years of Agency failures and in the midst of a worsening opioid epidemic, we need FDA leadership that is fully committed to using all of the Agency's oversight authority to protect public health.

I cannot support Dr. Califf's nomination in light of that critical mandate which we need. We need a leader at the