who vote no are choosing not to use that power.

We cannot wait for more servicemembers to die before we act, the bill for taxpayers to grow more expensive, or the price of gas and fertilizer to keep shooting up. We cannot wait for this President to commit war crimes or kill more civilians. The time is now. It is time for Congress to assert our authority and to end this war. I encourage my colleagues to vote yes on this resolution.

I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. SCHUMER. Mr. President, first let me thank Senator BALDWIN for her outstanding leadership, not only on this resolution but on so many other issues related to Iran as well.

Now, let me say this: Every day this disastrous war continues, Donald Trump digs himself deeper and deeper into a hole. The longer Trump waits to extricate the United States from this war, the deeper the hole gets and the harder it will be for him to get out.

Republican Senators should do Donald Trump a favor and pull him out of the hole he has dug by voting for a War Powers Resolution today. If not, they will sink even further into that same hole themselves.

So I urge Senate Republicans to vote for Senator BALDWIN's War Powers Resolution—their fifth opportunity to vote for a War Powers Resolution, and I was proud to be actively involved to sponsor so many of them.

Iran's leadership has become even more militant than before the war. Iran's hold over Hormuz has gotten even stronger. Iran maintains its economic stranglehold on the world, firing on more merchant ships in the Strait of Hormuz earlier today.

Meanwhile, gas has been over $4 a gallon for weeks, and that is the highest it has been in years. Americans are going to pay $740 more this year to fill up their tanks, on average, because of Trump's war.

Every day we hear new promises from the Trump administration that victory has been achieved; that peace is at hand; that the costs are starting to come down; and every day, we see the opposite. Trump can talk all he wants, but nothing will change until he realizes this war needs to end.

And if Donald Trump won't dig us out of this hole, Congress must step into the breach and exercise its constitutional authority over matters of war and peace. Democrats will continue to force votes on our resolutions every week until Senate Republicans see reason.

Again, I thank Senator BALDWIN for her work. I urge colleagues on both sides of the aisle to vote yes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

DIRECTING THE REMOVAL OF UNITED STATES ARMED FORCES FROM HOSTILITIES WITHIN OR AGAINST THE ISLAMIC REPUBLIC OF IRAN THAT HAVE NOT BEEN AUTHORIZED BY CONGRESS—Motion to Discharge

Ms. BALDWIN. Pursuant to section 601(b) of the International Security Assistance and Arms Export Control Act, I move to discharge the Committee on Foreign Relations from further consideration of S.J. Res. 114 to direct removal of U.S. Armed Forces from hostilities within or against the Islamic Republic of Iran that have not been authorized by Congress.

The PRESIDING OFFICER. The clerk will report.

The senior assistant legislative clerk read as follows:

Motion to discharge, S.J. Res. 114, to direct the removal of United States Armed Forces from hostilities within or against the Islamic Republic of Iran that have not been authorized by Congress.

The PRESIDING OFFICER. The Senator from Wisconsin.

Ms. BALDWIN. I know of no further debate.

The PRESIDING OFFICER. Is there further debate?

VOTE ON MOTION TO DISCHARGE

The question is on agreeing to the motion to discharge.

Ms. BALDWIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. BARRASSO. The following Senators are necessarily absent: the Senator from Iowa (Mr. GRASSLEY), and the Senator from Pennsylvania (Mr. MCCORMICK).

Mr. DURBIN. I announce that the Senator from Virginia (Mr. WARNER) is necessarily absent.

The result was announced—yeas 46, nays 51, as follows:

[Rollcall Vote No. 88 Leg.]

YEAS—46

Alsobrooks	Hirono	Rosen
Baldwin	Kaine	Sanders
Bennet	Kelly	Schatz
Blumenthal	Kim	Schiff
Blunt Rochester	King	Schumer
Booker	Klobuchar	Shaheen
Cantwell	Luján	Slotkin
Coons	Markey	Smith
Cortez Masto	Merkley	Van Hollen
Duckworth	Murphy	Warnock
Durbin	Murray	Warren
Gallego	Ossoff	Welch
Gillibrand	Padilla	Whitehouse
Hassan	Paul	Wyden
Heinrich	Peters	
Hickenlooper	Reed	

NAYS—51

Armstrong	Cassidy	Daines
Banks	Collins	Ernst
Barrasso	Cornyn	Fetterman
Blackburn	Cotton	Fischer
Boozman	Cramer	Graham
Britt	Crapo	Hagerty
Budd	Cruz	Hawley
Capito	Curtis	Hoeven
Husted	McConnell	Scott (FL)
Hyde-Smith	Moody	Scott (SC)
Johnson	Moran	Sheehy
Justice	Moreno	Sullivan
Kennedy	Murkowski	Thune
Lankford	Ricketts	Tillis
Lee	Risch	Tuberville
Lummis	Rounds	Wicker
Marshall	Schmitt	Young

NOT VOTING—3

Grassley	McCormick	Warner

The motion was rejected.

The PRESIDING OFFICER (Mr. MORENO). The Senator from Louisiana.

TRIBUTE TO TONY HANAGAN

Mr. KENNEDY. Mr. President, I am going to give you a name: Tony Hanagan.

As we all know—not necessarily everybody outside this Chamber—Tony is a senior floor assistant. I will come back to what that means in a second.

Tony is leaving us for the private sector. Under the ethics rules, he can't tell us where he is going. I think it is a startup, but I am not sure. I think part of his job responsibilities—not exclusive because I don't know because he can't talk about it—will be ''congressional relations.'' I have strongly encouraged him to ask the startup to define very carefully what they mean by ''congressional relations'' in light of what has been going on around here.

Though we kid him a lot—I will come back to that too—Tony is very smart. He is a graduate of William & Mary. I am sure there are some dummies at William & Mary, but I have never met one coming out of there. It is a great school. He has also spent time at the Wharton School, studying their model budget project.

He has worked his way up as a member—as basically a Senate advisor. And let me explain a little bit of what Tony and his colleagues do.

You see these two doors back here, this one and this one. This one leads to what we call the Democratic cloakroom. This door leads to what we call the Republican cloakroom. Now, that is where Senators go to cuss and to tell each other lies, but it is not the only purpose of those. Supposedly, we can go back there and relax and when someone isn't around—and sometimes when they are around—and make fun of people.

But there are members of our staff who have desks back there, and not every member of our staff has a desk back there. Some are close by.

What do they do? They make this place run. For one thing, they understand the rules or claim to. No living human being, at least not in the U.S. Senate with a beating heart, understands the Senate rules. I am not saying no one understands them. I am just saying nobody in the Senate does. They say they do. They lie like fish swim because to understand—you don't only have to understand the rules; you have got to understand all the precedents.

The first 6 months I got here, I said: You know, I am going to learn the rules. I read about Lyndon Johnson who supposedly sat here and learned all

the rules and outsmarted all his colleagues. I don't believe that. But anyway, he probably knew more than I did. God rest his soul.

But after 6 months, here is my conclusion: I don't know if I can learn the rules and all the precedents, and by the time I do, they will have changed. And someday, I am going to die, and I don't want on my tombstone ''Kennedy understood the Senate rules.'' So I gave up. I quit. No mas. And so now, when I want to understand the rules, I talk to a member of our staff, like Tony, or some of my colleagues, and so do most of my Senate colleagues on the Democratic side and on the Republican side. Now, our staff could be lying to us because we don't know any better. They could make this stuff up, but I don't think they do. I have never seen Tony make it up. A couple of times, I thought I had caught him, but he turned out to be right, and that is important.

But it is more than just an understanding of the rules. It is more than Tony's job and my colleagues' job who are our advisers—it is more than just learning the rules because the rules look like they were designed by a heroin addict with a socket wrench.

We don't know how to get things done, so we go to our advisers and say: Tell me how to do this.

And they are really good at that. Tony is really good at that. I know sometimes the questions are so esoteric and so bizarre, I can tell from their eyes that they want to look at you and say: You are not the stupidest person I have ever met, but you had better hope the stupidest person I have ever met doesn't die.

But they never do that. They always say: OK. You know, you can try it that way, but here is the downside of it, and with all due respect, there is a better way of doing it, and you might consider this.

Frankly, I mean, our Parliamentarian—I see her here. She does understand the rules, and she is pretty good at helping you too. She has got lines she can't cross because she doesn't work for Senate Republicans or Democrats.

But this is what Tony does and the other staff members, and they make this place run. They are not responsible for the fact that the Senate only works when everybody isn't crazy at the same time, and they are not responsible for the fact that sometimes it takes us weeks, months, even years, to get nothing done. Doing nothing—it can be frustrating. Doing nothing is very hard because you never know when you are finished. But they make this place run, and we are going to miss Tony.

Now, we make fun of Tony. It is all in good fun. There is a big mirror back in the cloakroom. I think it is an antique mirror. That is what they tell us. Sometimes we will—I have done it, but others, I think, have too. Sometimes we will write little notes to the majority leader—we used to do it with MITCH, and now we do it sometimes with THUNE—and sign it ''Tony,'' and, of course, they all have a heart attack.

Tony keeps a couple of pairs of shoes under his desk, and probably about once a week, some of us take at least one of the shoes and hide it, and he is ready to go home at whatever—11 o'clock, 12 midnight—and he can't find his shoe. Max, who works with him back there—his job is to eventually, after he spends an inordinate amount of time and he gets really close to the point that he has no more firetrucks to give and is going to start telling everybody what he thinks—Max will tell him where the shoe is.

I have got some other stories about Tony, but I just can't tell them because there are probably some children listening.

But anyway, you will read about Tony someday in the Wall Street Journal, and it won't be because he went ''Eric Swalwell''; it will be because of his financial success. And we are going to miss him, but I can't blame him. He is already picking out the color of his new Mercedes.

The Presiding Officer knows the Mercedes-Benz. If you have any advice for him, like the best one that deflects heat, you might want to talk to him. He may want to just buy two, OK?

But anyway, we are going to miss Tony, and I wanted to say that, and I am sorry I can't tell you all of the ''Tony'' stories. They are legendary.

But, Tony, you have just been awesome, you and all of your colleagues, and we never talk about them enough. I just want to say thank you.

And my final words: Peace out.

(Applause.)

The PRESIDING OFFICER. The Senator from Connecticut.

MAJOR RICHARD STAR ACT

Mr. BLUMENTHAL. Mr. President, we are at a critical moment. It is a crossroads for the American people.

The President is waging a war of choice. It is really a war of impulse, a war of whim and illusion without the support of the American people and without approval from the U.S. Congress, representing the American people. Meanwhile, the costs of food and fuel—gasoline at the pump and produce at the grocery store—all have soared. Healthcare is unaffordable. Gas prices are going to continue to skyrocket.

The Secretary of Energy told us just last weekend that prices will not come down appreciably before the end of the year. Of course, since then, he has contradicted himself. His chain was yanked by the President. But the reality is—and we need to stay in touch with reality—that the costs of living for the everyday American are skyrocketing out of sight.

Instead of doing something to lower those costs, Senate Republicans just introduced a budget resolution to give $140 billion to ICE and the CBP without any reform and without any changes in practices or policies that will make them legal and humane. In fact, Senate Republicans are willing to work overtime to deliver huge tax breaks to billionaires and siphon hundreds of millions—in fact, billions—to ICE with no strings attached.

When it comes to lowering costs for Americans, helping working families, or making good on our promises to veterans, Republicans say: We can't afford it. In fact, Senate Republican leadership has continuously refused to advance bipartisan legislation to deliver for combat-injured veterans that I have advocated for repeatedly and twice asked for unanimous consent on the floor of this body to pass. Why? They claim we can't afford those benefits.

Let's be very clear. The Major Richard Star Act will cost $1 billion a year for the next 10 years. We are spending $2 billion a day on the Iran war, and that figure probably is lowballed. The benefits equate to 1/14th of the money Republicans want to send to ICE. The same Republicans who say we can't afford the time or the $13 billion to ensure our combat-injured veterans receive their full earned benefits will keep us here all night to spend $140 billion on ICE and CBP.

My legislation, the Major Richard Star Act, would finally deliver to some 50,000 combat-injured veterans their full military benefits. Currently, they are receiving a dollar-for-dollar reduction of their VA retirement pay for every dollar of compensation for disability. That is just plain wrong. They have earned both retirement pay and disability benefits. One should not be docked dollar for dollar for the other. In fact, it shouldn't be reduced at all. Most of this body—79 of my Democratic and Republican colleagues—agree. They joined the legislation. But the bill is still blocked from a simple floor vote by Senate Republican leadership—the same leadership that is willing to bend over backward to pass another partisan law to fund ICE.

Meanwhile, the President continues to send more servicemembers into harm's way. Thousands more are heading to the Middle East right now. But it falls on deaf ears for Republicans that claim veterans initiatives like the Major Richard Star Act are too expensive while they push hundreds of billions into Trump's rogue Agency or a war of choice.

It seems to me Republicans can always find more money for tax cuts. They can always find more money for benefits that go to the billionaires, but not so much when we are talking about working families or veterans.

The simple fact is—and remember this point if you remember nothing else of what I say here—the cost of our taking care of veterans is the cost of war. It is one that always must be paid. When we send a servicemember into war, we are incurring an obligation. We have made a promise. Those injuries result in disability benefits that should not be reduced, nor should retirement pay, just because they are injured. In

fact, they should not be punished for being injured. The President may think veterans are suckers, but that is not what the American people think.

As Memorial Day approaches, prove to veterans and Americans that you really do appreciate their service. And remember that words, without actions, are meaningless—totally meaningless.

And that is why I have introduced an amendment to strike the reconciliation instruction and focus on providing for our combat-injured veterans who were forced to retire because of their injuries. Give them the benefits they earned, the benefits they deserve, the benefits they were promised.

Today, we have an opportunity to act and to do something meaningful for the thousands of combat-injured veterans who have sacrificed on our behalf. I urge my colleagues to make the right decision and support this amendment to advance the Major Richard Star Act.

It isn't lost on me that while I am speaking here, urging for the passage of an amendment that would help our veterans, the Trump administration is actively harming them. Over the past year, the Trump administration has begun deporting procedures for 34 former members of the military and 248 relatives of former military members. This number doesn't include the countless former military members that have been swept up into detention by roving patrols and lawless arrests.

These individuals are real people. They are veterans who chose to wear the uniform. They are not abstract entities. They are not numbers or statistics. They are people who raised their right hand, willing to give their lives for our country, veterans who served and sacrificed so that we could celebrate Memorial Day, so that we could stand here and speak as we wish and worship as we would like in the days ahead.

Take William Vermie, for example. He is an Army veteran, a Purple Heart recipient, who served as a combat solder in Iraq. On January 13, 2026, he was on a public sidewalk, observing ICE arrest two young men in his neighborhood. He was tackled. He was arrested. He was driven to detention. He was held in a cell for 8 hours.

Or George Retes, a disabled Iraq War veteran who was detained for 3 days and 3 nights after being arrested on his way to work—on his way to work. He has a job. He is a citizen. He is a veteran. He was arrested and detained.

Family members of U.S. servicemembers and veterans have fared no better. U.S. SSG Matthew Blank recently married his wife Annie and brought her to his base, Fort Polk, LA, to begin their lives together. Within hours, ICE entered his base and detained Annie, who was brought to the United States as a toddler and has applied for DACA status. Annie was released only after public outcry shamed the administration.

Last June, Narcisco Barranco, the father of three marines, was clearing his weeds when immigration agents attacked him from behind and placed him in deportation proceedings. Mr. Barranco has no criminal record. He has been in the United States for 3 decades.

And just this week, Sergeant First Class Serrano's wife, Deisy Rivera Ortega, was arrested by ICE during her appointment at an immigration office in Texas.

None of these people sought to hide or conceal themselves or run. They were there. And she was at an appointment at an immigration office in Texas. She had been in the United States for over a decade and has legal protection that prohibits her deportation to El Salvador and allows her to legally work. She was at the immigration office, interviewing, as part of an application for parole in place, a program specifically designated to offer protections to military spouses and their parents.

This stuff is just unbelievably cruel. It is illegal. It is inhumane. But it is also savagely mean and wrong. To encourage the men and women of our armed services to apply for protection for their spouses or their parents, only to have those applications entrap their loved ones, spirit them away to detention, and wreak havoc in their lives—is that the America that we want?

It is not the America I recognize as my country, nor would most Americans.

These servicemembers, veterans, and their family members were not convicted of any crime. They were not committing any crime. They were doing the right thing—in the offices of the U.S. Government, some of them—when they were tackled, arrested, and detained by the same government that gave them so much to serve.

Marine Corps cadets could not even enjoy their graduation this year without fear after the Marine Corps issued a warning that ICE agents would be conducting ''enhanced screening and lawful immigration status inquiries'' outside the Parris Island base, prior to graduation events.

What did that mean? Marine Corps privates, graduating from Parris Island—and I have been there—had to fear that their relatives coming to watch their graduation on that drill field could be arrested and detained.

Some cadets were forced to forgo celebrating because they feared for their loved ones. That is not how we honor courage and sacrifice. That is not how we plan to commend the individuals who choose to serve. Such efforts will not help us to recruit the next generation of brave and bright men and women for our military. It only demonstrates how little the Trump administration values people who put their lives on the line.

As Republicans propose sending another $140 billion to ICE and CBP, let's ask them whether they share the same disregard for our troops and veterans. I hope they will join me in saying: Enough is enough.

The absence of reform, in connection with this huge amount of funding—$140 billion—is absolutely reprehensible and unacceptable. It is unconscionable to shovel more money—$140 billion—without fundamental changes that will stop the abuses and many others of the kind I have just described.

I ask my colleagues on the other side of the aisle to join me in saying: America is still the land of the free and the home of the brave because of the brave who protect the free. And let us cherish those freedoms and make them real, not just in rhetoric but in the reforms we demand of the U.S. Government when it is engaged in lawless and reckless conduct.

I yield the floor.

I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

The Senator from Rhode Island.

CLIMATE CHANGE

Mr. WHITEHOUSE. Mr. President, people following the Senate floor will know that hundreds of times I have come to the floor with my trusty, increasingly beat up ''Time to Wake Up'' poster to describe the various manners in which the fossil fuel industry has corruptly obstructed our ability to solve the problem of climate change that is caused by fossil fuel emissions.

They might also remember that I have come to the floor dozens of times to give my ''Scheme'' series of speeches about the corrupt manner in which the Supreme Court has been captured and put into the service of a gang of right-wing billionaires who tend to be fossil fuel billionaires.

In this speech, the ''Time to Wake Up'' series and the ''Scheme'' series converge. I don't know quite how to describe it, but maybe it is ''Time to Scheme Up'' because, for sure, that is what has been done in this country by the fossil fuel industry to blockade our efforts to solve the pollution hazard that they have created for our people—a pollution hazard that is now real and immediate in our economy.

Look no further than the State of Florida, where climate risk has thrashed the home insurance markets to the point where the home insurance market collapse has cascaded into mortgage markets, which has, in turn, cascaded into real estate values—property values.

Last year, Florida led the country in lost property values. This year, there was an article in Newsweek just a few days ago about how 6 to 8 percent losses are predicted in Florida real estate values because of that cascade. Property is very hard to sell if you can't get a mortgage on it, and it is impossible to get a mortgage on it if you can't get insurance on it. And even if

you can get insurance, if the insurance costs $14- or $15- or $20- or $30,000 a year, you add all that up, and it comes off the value of the home, which is why you are seeing people unsuccessfully trying to sell homes in Florida for hundreds of thousands of dollars or more less than they paid for it.

So this is on its way. It is coming right now. I am just going to continue to dig into how it is that we got here because how we got here involves a lot of mischief, a lot of real problems. One of those problems came to light just recently in the form of a number of memos from within the Supreme Court from the Justices to each other that were released or leaked—somehow came to the New York Times—that describe how it was that the captured Court put an end to the Clean Power Plan of the Obama administration before it even came to life.

Before even a court decision had been made about the merits of the rule, five Republican-appointed Supreme Court Justices stepped in and killed that rule in the crib before it could have any real effect.

Charles Pierce has written a pretty good summary of that New York Times article. He said:

The New York Times published a trove of personal memos from the members of the Supreme Court outlining the court's promiscuous use of the so-called shadow docket. It has become the carefully constructed conservative majority's favorite work-around to kill policies it doesn't like and support causes that it and its corporate patrons do.

What appears to have happened here is that the shadow docket was born in the crib-killing of the Clean Power Plan.

This is quoting the New York Times story:

By a 5 to 4 vote along partisan lines, the order halted President Barack Obama's Clean Power Plan, his signature environmental policy. They acted before any other court had addressed the plan's lawfulness.

Not a Court of final impression, a Court of first impression—the first one to look at it. That is not the way it ordinarily works.

The decision consisted of only legal boilerplate, without a word of reasoning.

That is similar to the way the shadow docket has been working—before briefing, before argument—a decision without legal reasoning provided.

It continues about the Chief Justice:

Chief Justice John G. Roberts, Jr., has cultivated a reputation for care and caution. [These] papers reveal a different side of him. At a critical moment for the country and the court, the papers show, he acted as a bulldozer in pushing to stop Mr. Obama's plan to address the global climate crisis.

I will get into this a little bit further as I continue through my remarks, but the basic summary is that the Court concluded that without stopping the EPA's rule before it went into effect, before any court had actually considered it, that would cause irreparable harm to the fossil fuel industry—specifically, mentioning that private industry will suffer irreparable harm—this, at a stage in the proceedings, where the question of whether that harm even existed had still not been properly litigated.

So I go back a ways on this. In 2015, in one of my ''Time to Wake Up'' speeches, I said:

The Supreme Court has handed the polluters a heavy cudgel with its misguided Citizens United decision, allowing big corporations to spend—or more important, threaten to spend—unlimited amounts of undisclosed money in our elections. More than anyone, polluters use that leverage to demand obedience to their denial script.

Another one, 2017:

The Supreme Court's Republican appointees got in the habit of doing what they were told by the forces that appointed them (which include the fossil fuel industry, which asked for the Citizens United decision), and in a fateful combination of obedience and political ignorance, they wrecked our politics.

A year later, I described how:

Republican strategists are expanding their grip to the Supreme Court, building there a reliable Republican majority.

I warned that we mustn't try to replicate that apparatus. We must expose it. And when we expose one part of the apparatus, we expose all because it is the same crew behind packing the courts and denying climate change and running the dark money machine.

In January of 2010, I said:

The five Republicans on the Supreme Court gave the fossil fuel industry the Citizens United decision.

I said:

In January 2010, the five Republicans on the Supreme Court gave the fossil fuel industry the Citizens United decision; the industry instantly turned its new political weaponry on the Republican Party; and bipartisanship on climate change was stamped out by fossil-fuel threats.

This integration between the fossil fuel industry and the Supreme Court and the dark money power that the fossil fuel industry has used to crush climate action in Congress is something that has been apparent for some time.

In 2020, I added:

Citizens United unleashed toxic doses of money, and unprecedented doses of virulent dark money, into our political atmosphere. [Once] democracy is poisoned, stunned by secret fossil fuel money and threats, [it fails] to listen to plain warnings.

In 2022, I called this ''the Court that dark money built.''

In 2022, I said:

[I]t is probably more accurate to say that we now have the Court that dark fossil fuel money built.

So it comes as little surprise that these memos from within the Court should reveal that linkage between the Republican-appointed Justices and the fossil fuel industry. And, of course, it should come as no surprise that the roots of this shadow docket that has been used so politically by the Republican majority on the Court—the roots are found in an act of service to the fossil fuel industry billionaires who captured the Court.

If you look at the scheme to maintain the fossil fuel industry's free-to-pollute business model where they get away with polluting as much as they like with no cost or consequence, you have to look at the Supreme Court facilitating this.

Citizens United, of course, signaled the end of climate legislation because the unlimited dark money that the fossil fuel industry could use to shut down climate action in this body was successful. Unlimited fossil fuel dark money was brought to bear on Congress, and our ability to solve this problem collapsed.

Look before the Citizens United decision. Look back to 2007, 2008, 2009. My first years here, there was robust negotiation on major climate legislation—four different strategies here in the Senate; three major bills, bipartisan bills; and a Presidential candidate in John McCain who ran on a perfectly legitimate climate platform. All of that dead—dead—the day the Citizens United decision came down and the fossil fuel industry pounced with its new dark money power.

But it is not enough to stop legislation. If you want to protect your free-to-pollute business model, you also have to stop regulation, and that is where this Clean Power Plan decision came in. That is where the subsequent major questions doctrine came in. That work by the Supreme Court signaled the end of climate regulation as the Supreme Court intruded into a decades-long regulatory process and rebooted it to protect against regulation that would limit the free-to-pollute business model of the fossil fuel industry.

As I have said in other speeches, that major questions doctrine did not pop from the heads of the Supreme Court Justices in that decision. It was cooked up in fossil fuel-funded doctrine factories, massaged, maneuvered into conferences, propagated by the Federalist Society, called up at conferences. It was groomed and grown so that the Supreme Court could pick it up in a decision, which, of course, they did.

So if you shut down climate legislation and you shut down climate regulation, what is left is climate litigation—that people harmed by all this damage, by all this pollution, usually have a right to bring a lawsuit. And sure enough, lawsuits are emerging. So the next project of the Court is to attack climate litigation, and sure enough, the fossil fuel industry is all over that Court, asking for it to shut down the prospect of climate litigation.

And guess what. That little rascal Leonard Leo, who was the fixer, the implementer of the Court capture scheme, who worked with Trump's counsel, McGahn, to get the three Supreme Court Justices Trump supposedly appointed—separate argument: I think they were actually selected by the Koch brothers' political operation, and Trump was the chump at the end of the deal who signed off on it.

But Leonard Leo and his billionaires were the ones who put that whole

scheme together. They put the whole concept of a Federalist Society list together and the completely untrustworthy President Trump being obliged to say publicly that he would pick off that Koch brothers' list. They called it the Federalist Society list because calling it a fossil fuel billionaires list wouldn't sell so well. And then they ended up with these Justices. The guy in the middle of all of that was this little fixer, Leonard Leo.

Guess what Leonard Leo is doing now. He has an array of maybe 25 front groups that he orchestrates. Some of them are actual corporate entities. Some of them are what are called fictitious names for his corporate entities. So you have a front group, which has a fictitious name, that you operate through. Why you need to do that is a little hard to say, but if you are up to no good, I suppose you want as much camouflage as possible.

What Leonard Leo and his front groups are all over right now is trying to shut down climate litigation, to make it a clean trifecta so that one industry is free to pollute as much as it wants with no legislation, no regulation, and no litigation that can stop it.

Again, it goes without saying that pollution is not something that should be allowed. It is certainly not something that should be allowed for free. But money will buy you a lot, and the fossil fuel-funded phony flotillas of front group amici who come into the Court to tell it what to do—and have, I would say, a 100-percent winning record before the Court—are starting to gather around shutting down climate litigation as well as regulation and legislation. In other words, a captured Court is delivering the goods for the billionaires who captured it.

So let's go through these different memoranda as they came out. The first is from Chief Justice John Roberts dated February 5, 2016. He is responding to emergency applications seeking to have the EPA's Clean Power Plan stayed.

On the very first page, he communicates to the other Justices:

> Absent a stay, the Clean Power Plan will cause (and is causing) substantial and irreversible reordering of the domestic power sector.

That is a factfinding. It is a factfinding made without any court having found that fact. It is a factfinding by a Court that is not supposed to engage in factfinding in the first place. It is a disputed fact in the case before the case is even litigated. Yet here is the Chief Justice of the United States going with the factual argument of one of the parties even before arguments related to an emergency stay.

He has to admit to his colleagues that ''the rule does not require emissions reductions until 2022.'' It is dated 2016. Six years later, it might require emissions reductions. But then, February 5, 2016, he says that ''its impact is being felt now.''

He is taking the side of one party on a contested fact and saying that the impact of that contested fact, as he sees it, is actually being felt now, 6 years ahead of when anything has to happen.

He says that ''the applicants indicate''—again, an assertion by a party—the applicants untested, unchallenged—''applicants indicate that they are currently in the process of committing time and resources to compliance.''

That is the reason to shut down the Clean Power Plan?

He says that ''the impact of the rule will reduce coal production for power sector use by 2.0 percent.''

Over a 2-percent reduction, he jumps completely out of his lane, makes factfinding, and shuts down the regulation before it has even been considered by the lower courts.

Then he says that the ''harm . . . is irreversible.''

Mr. President, I ask unanimous consent to have the Chief Justice memorandum printed in the RECORD at the end of my remarks.

That memorandum was responded to rather quickly by Justice Breyer, who noted:

> First, it is unusual for this Court to issue a stay of an agency's order during the time that the Court of Appeals is considering its lawfulness.

It is a live legal dispute in the court of appeals, and the Supreme Court is jumping in to stay it? That was not just unusual; it was unprecedented. As Justice Breyer points out, ''it is difficult at this point to say that the absence of a stay will cause irreparable harm.''

Even among the Justices, that is a contested fact, and yet the Chief Justice is willing to rely on his view of that contested fact even though it is supposedly not a factfinding body in the first instance.

As I mentioned a moment ago and as Justice Breyer points out, ''the order does not require any company to take action for six years.'' So it was hardly an emergency.

Finally, he pointed out that ''all of the applicants'' were ''free to renew their applications for a stay'' once the DC court of appeals had done its work and come right back to the Court and get the stay then rather than to jump ahead of the circuit court of appeals. And it notes that the circuit court of appeals has agreed to proceed on an expedited basis.

Well, it didn't take long for the Chief to respond to that. He wrote right back saying that ''private industry will suffer irreparable harm from a rule that is—in my view—highly unlikely to survive.''

So now he is not only making factfindings that are contested even within his Court and that he shouldn't be making in the first place, but he is also predicting the legal conclusion of how this is going to end up in his Court.

He says that the ''Court will not issue a decision until 2018 at the earliest''—still 4 years before that date—''long after the real-world impacts of the rule would have been felt in the absence of a stay.''

Again, more and more factfinding.

He says there will be ''on-going, cumulative, and irreversible harms that private parties are incurring each day.''

Again, that is a contested fact, but he is willing to say that as if it were an actuality and not a point in contention.

Justice Kagan comes back to him to say:

> As far as I can tell, it would be unprecedented for us to second-guess the D.C. Circuit's decision that a stay is not warranted, without the benefit of full briefing or a prior judicial decision.

She calls this a ''drastic and unusual remedy'' and points out that this fact that Chief Justice Roberts has so readily lurched to—the applicants' assertion—''is both entirely speculative and highly doubtful.''

So now you have another Justice challenging the fact that the Chief Justice offers as Gospel.

She says:

> It is implausible that such a minor emissions reduction—

Two-percent reduction in coal—

> to be achieved six years hence will require substantial and irrevocable commitments of resources in the coming months.

Then in comes Justice Sotomayor.

> I agree with Steve's [Breyer] proposal and Elena's [Kagan] supplement to that proposal. As Elena notes, it would be unprecedented for us to grant a stay before any court has reviewed this complicated and complex case.

She says:

> [N]o applicant has identified a single real plant—

An actual, real facility—

> as opposed to a hypothetical ''model plant''—that is in immediate danger of closure absent a stay.

She challenges the costs that have been discussed by the Chief Justice, and she points out that ''an emergency stay on limited briefing before the D.C. Circuit will hear argument on this regulation in just four months.''

Just wait 4 months and get the proper order—circuit court of appeals, then Supreme Court.

Faced with that, in chimes Justice Alito, brought onto the Court with Leonard Leo at the White House helping make the selections. He concludes saying:

> A failure to stay this rule threatens to render our ability to provide meaningful judicial review—and by extension, our institutional legitimacy—a nullity.
>
> Instead of robust judicial review, our opinion will be a mere postscript.

Remember, this is a rule that won't have effect for 6 years, where there will be a proper appellate court decision below in 4 months, and all of that is intolerable to Justice Alito, a product of the ''billionaires/Leonard Leo'' court-packing operation.

And the closer is Justice Anthony Kennedy, who writes an unusually brief

decision, compared to all the others, or a memorandum, compared to the others, simply concluding: ''[F]airness to the parties counsels that we should grant [the stay] now,'' and ''I agree with the recommendation of the Chief.''

That gave the Chief the votes. They granted the stay, and the Clean Power Plan died.

Mr. President, I ask unanimous consent that the remaining memoranda that I referred to be printed in the RECORD at the end of my remarks in the sequence in which I described them.

Mr. President, what is the backdrop to all of this? The backdrop to all of this is the massive amount of harm that is caused by fossil fuel emissions. The pollution is really astounding.

The International Monetary Fund most recently assessed the cost of fossil fuel pollution and of its free-to-pollute business model in the United States of America at $770 billion in 1 year—$770 billion in benefit to the fossil fuel industry, a form of subsidy, from being allowed to pollute for free and not being obliged to clean up its mess. They are allowed to cause $770 billion worth of harm to Americans for zero dollars.

When you are allowed to cause $770 billion worth of harm to ordinary Americans for zero dollars, you have a massive motive to corrupt. You have a massive motive to apply political influence. You have a massive motive to take advantage of the dark money that you pressed the Supreme Court to allow and authorize, and bring that to bear on Congress to make sure that your $770 billion annual pollute-for-free subsidy is protected.

What did you note about my discussion about the Court's conversation on harm? What you should have noted is that 100 percent of the Court's conversation on harm was on harm to the polluters. It was the only harm that the Chief Justice mentioned or considered.

The entire argument about staying the Clean Power Plan hinged on analysis of harm that only looked at the harm to the polluter. There was no mention of climate change. There was no mention of the harm of emissions. There was no discussion of the health damage from climate change and what it is doing now and could be projected back then to do to insurance markets; what it was causing in sea level rise; what the ancillary pollution of fossil fuel that isn't climate change pollution but is lead, mercury, SO_X, NO_X, particulate matters, is doing.

They literally turned a blind eye to fossil fuel pollution measured at $770 billion worth of harm, most recently—total blind eye to it—and focused only on the harm that would be done to the fossil fuel industry from having to comply with clean power rules.

Other studies have shown that the amount of money spent on the operation to capture the Court—a short word on Court capture, it goes back to the well-acknowledged notions of Agency capture or regulatory capture in the bad old days. Mining interests would make sure that all their friends were appointed to the mining safety commission so they could know the mining safety commission would always give them the answer that they wanted.

That is Agency capture.

In the bad old days, railroad barons would make sure that all their friends and lackeys were appointed to the railroad rates commission so they could be sure that all the railroad rates that were set were advantageous to them and that they could make sure that they got the rates that they wanted. That was called Agency capture.

It is a renowned phenomenon. It is written about constantly in administrative law. There is a whole field of economics that studies it.

What happened here is that Agency capture or regulatory capture was brought to bear on the Supreme Court, and it has now turned into, in essence, a captive body that does this bidding.

The number that I am referring to is the amount that was spent on that Court-capture operation. People who do really good research have dug into this, and at this point—more research will make the number bigger certainly. But at this point, it looks like about $600 million—million with an ''m''—was spent on the Court-capture operation.

Now, that is a lot of money. But it is not a lot of money if you are defending a $770 billion annual subsidy that lets you pollute for free when you shouldn't be allowed to do that and nobody else is allowed to do that.

Protecting that $700 billion for $600 million is probably the most lucrative investment the fossil fuel industry has ever made.

And if you pile up the years since the Clean Power Plan was stopped—that was in 2016. Now, it is 2026—so 10 years. That subsidy number has grown over the years as the International Monetary Fund has done a more and more detailed and better job of figuring out all the added harms, as harms are piling up.

So if you look at 10 years, it is not $7.7 trillion. It is probably a number closer to $6 trillion. But think about that. What the Supreme Court did in this one decision, by breaking all of its own rules and looking only at the fossil fuel industry's harm, is to set loose $6 trillion worth of harm over the next 10 years that all of us have had to pay for in health, in harm, in lost property values, in increased insurance, in a myriad of different ways—$6 trillion, call it, over those 10 years.

That makes $600 million to capture the Court that made that decision an amazing payback, but a really, really dangerous payback for the American public.

I will conclude by saying that whether you look at this as an aspect of the scheme to capture the Court or whether you look at it as an aspect of the endless fossil fuel pollution that is causing us to need to wake up before it is too late—either way you look at it—the rot runs deep around fossil fuel, and it seems to have infected the Court right over there.

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

SUPREME COURT OF THE UNITED STATES, CHAMBERS OF THE CHIEF JUSTICE,

Washington, DC, February 6, 2016.

Re 15A773—West Virginia, et al. v. EPA, et al,; 15A776—Basin Elec. Power Cooperative, et al. v. EPA, et al.; 15A787—Chamber of Commerce, et al. v. EPA, et al.; 15A778—Murray Energy Corp., et al. v. EPA, et al.; 15A793—North Dakota v. EPA, et al.

MEMORANDUM TO THE CONFERENCE

I continue to believe that an immediate stay, as opposed to the proposed order, remains the appropriate course of action. Without a stay of the EPA's rule, both the states and private industry will suffer irreparable harm from a rule that is—in my view—highly unlikely to survive. The proposed order simply recites that the applicants hay renew their applications in light of changed circumstances, which is always the case.

At the outset, I note that there are no ''aspects of this rule that are not challenged here.'' The applicants challenge the EPA's authority to promulgate the rule, period.

Regarding the specific points raised in support of the proposed order:

As to the first point, I recognize that the posture of this stay request is not typical, but review is sought of what has been described as the most expensive regulation ever imposed on the power sector—net costs have been estimated to run as high as ~$480 billion from 2017–2031 (in present value). And we have the very recent experience of the Mercury Air Toxics Standards (MATS) rule, which confirms how EPA overreaching in the absence of a stay in these unusual circumstances effectively evades judicial review.

As to the second point, all stays—whenever issued—suggest a view on the merits of the case. Indeed, a view on the merits is one of the explicitly enumerated stay factors. See *Conkright* v. *Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsberg, J., in chambers). There is nothing unique in that regard about issuing a stay here. True, we do not have the Court of Appeals' view on the matter. But while a reasoned decision from a Court of Appeals is generally helpful in evaluating the merits of a stay application, in this well-lawyered set of applications the merits of the legal positions taken by both sides seem clear. In my view, it is highly doubtful that this Court will bless the EPA's expansive definition of the phrase ''system of emission reduction.'' While the Solicitor General argues that the word '' 'system' is expansive, encompassing a 'set of connected things or parts forming a complex whole' or a 'set of principles or procedures according to which something is done,' '' SG Response at 35 (quoting Oxford Dictionaries), that definition provides no limiting principle at all. In any event, the applicable standard for a stay is simply a ''fair prospect'' of success on the merits. *Conkright*, 556 U.S., at 1402 (Ginsburg, J., in chambers).

As to the third point, the proposed order is insufficient to avoid irreparable harm. While the D.C. Circuit has expedited briefing in this case, the court has *not* ''agreed to issue

its decision on an expedited basis.'' It remains highly likely that this Court will not issue a decision until 2018 at the earliest, long after the real-world impacts of the rule would have been felt in the absence of a stay.

The proposed order forces each state to engage its regulatory apparatus and expend resources well before that date, and does nothing to limit the on-going, cumulative, and irreversible harms that private parties are incurring each day under the rule. For example, the EPA's models show that the rule will cause shifts in the nation's power generation now—a fact supported by the applicants' declarations. See, *e.g.*, No. 15A778, at 172A.

It does not assuage my concerns to note that if the applicants lose in the Court of Appeals they ''remain free to renew their application for a stay'' at that point. I have little doubt that if the applicants renew their stay request following the panel's decision, the opposing parties will ask that we refrain from acting until the conclusion of any en banc proceedings. And then again while we consider a petition for certiorari, and then again while we decide the merits of the case. While each of those discrete periods may only be ''several months,'' each passing day sees the rule further entrenched—*de facto* if not *de jure*.

The comments of the EPA Administrator herself indicate that without immediate action from this Court, this rule will become functionally irreversible—like the ill-fated MATS rule—before this Court can test its legality. When a BBC interviewer asked Administrator McCarthy whether the Administration's climate change policies would persist if a new President adopted a different view, she responded:

''[O]n issues like the Clean Power Plan, we are, we are baking that into the system. This is not a policy debate, this is now a rule that's finalized, and it's [going] be solid no matter what Congress wants to send. But more importantly, every state is actively submitting, going to be submitting their plans. They're working on them now.'' Interview of EPA Administrator Gina McCarthy by BBC World News America (Dec. 7, 2015).

I am of the mind that a rule designed to transform a substantial swath of the nation's economy should be tested by this Court before it is presented as a fait accompli. But it seems that the EPA is sufficiently confident of this rule's immediate implications that not even the combined efforts of Congress and the President could reverse its effects. The agency, it would seem, has made a compelling case for the applicants' claims of irreparable harm.

Sincerely,

JOHN ROBERTS,
Chief Justice.

SUPREME COURT OF THE UNITED STATES, CHAMBERS OF JUSTICE STEPHEN BREYER,
Washington, DC, February 5, 2016.

Re 15A773—West Virginia, et al. v. EPA, et al.; 15A776—Basin Elec. Power Cooperative, et al. v. EPA, et al.; 15A787—Chamber of Commerce, et al. v. EPA, et al.; 15A778—Murray Energy Corp., et al. v. EPA, et al.; 15A793—North Dakota v. EPA, et al.

MEMORANDUM TO THE CONFERENCE

I would issue an order in these applications along the following lines:

Applications for stays having been submitted to The Chief Justice and by him referred to the Court, the Court denies the applications with the following qualification: Any State that, after submitting a request for an extension consistent with that described on page 59 of the Solicitor General's Memorandum, does not receive such an extension may renew its application for a stay with this Court. Any party may renew its application for stay after the Court of Appeals for the D.C. Circuit has issued its decision.

I prefer this temporizing order to a grant of these stays for several reasons.

First, it is unusual for this Court to issue a stay of an agency's order during the time that the Court of Appeals is considering its lawfulness.

Second, issuance of the order now may prematurely suggest a view on the merits of questions that now seem difficult. We do not yet have the Court of Appeals' view of the matter.

Third, it is difficult at this point to say that the absence of a stay will cause irreparable harm. With respect to the private applicants, the order does not require any company to take action for six years (until 2022). If they lose in the Court of Appeals, they may ask us for a stay then. While I concede that advance planning may be necessary, I do not see how a few extra months will make a significant difference. With respect to the States, the Solicitor General points out that, to receive from the EPA a two-year extension of the current September 2016 deadline (until September 2018), a State need only identify the approaches (if any) under consideration, describe opportunities (if any) for public input, and explain why the State requires additional time. Allowing the EPA to entertain such requests in the first instance has the virtue of allowing the agency to proceed with those aspects of the rule that are not challenged here, as well as giving the EPA the opportunity to respond to requests for an extended deadline in the first instance. If the EPA grants the requests, we will have more than enough time to hear and decide the matter. If the EPA denies the applicants' requests, they can quickly return to us.

Moreover, all of the applicants remain free to renew their applications for a stay when the D.C. Circuit issues its decision, which it has agreed to do on an expedited basis.

Yours sincerely,

STEPHEN BREYER.

SUPREME COURT OF THE UNITED STATES, CHAMBER OF THE CHIEF JUSTICE,
Washington, DC, February 5, 2016.

Re 15A773—West Virginia, et al. v. EPA, et al.; 15A776—Basin Elec. Power Cooperative, et al. v. EPA, et al.; 15A787—Chamber of Commerce, et al. v. EPA, et al.; 15A778—Murray Energy Corp., et al. v. EPA, et al.; 15A793—North Dakota v. EPA, et al.

MEMORANDUM TO THE CONFERENCE

I have received five emergency applications seeking a stay of the EPA's Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015), also known as the ''Clean Power Plan.'' Nationwide, by 2030, the rule ''will achieve CO_2 emission reductions from the utility power sector of approximately 32 percent from CO_2 emission levels in 2005.'' *Id.*, at 64,665.

Within two weeks of the rule's publication, 27 states and several labor unions, businesses and trade associations filed petitions for review and applications for an immediate stay from the D.C. Circuit. The D.C. Circuit denied the stay on January 21, 2016, and the above-captioned applications renew the request in this Court. On January 27, I requested a response to No. 15A773, an application filed by 26 states. We received a response from the Solicitor General yesterday. I refer the applications to the Conference with my vote to grant the stay, in order to preserve the status quo pending judicial review. Absent a stay, the Clean Power Plan will cause (and is causing) substantial and irreversible reordering of the domestic power sector before this Court has an opportunity to review its legality.

A stay is appropriate if there is (1) a ''reasonable probability'' that four Justices will grant certiorari, (2) a ''fair prospect'' that a majority of the Court will reverse, and (3) a likelihood of irreparable harm. *Conkright* v. *Frommert*, 556 U.S. 1401, 1402 (2009) ((Ginsburg, J., in chambers). In a close case, it may be appropriate to ''balance the equities.'' *Id.* See also *Nken* v. *Holder*, 556 U.S. 418, 429–430, and n. 1 (2009) (relief hom administrative action evaluated under stay factors).

I have little doubt that whatever the outcome of the proceedings in the D.C. Circuit, there will be a petition for cert. I find it very likely that four members of this Court will vote to grant the petition, again regardless of the outcome below.

I also believe that there is a fair prospect for reversal. The EPA promulgated the rule under Section 111(d) of the Clean Air Act, which requires ''standards of performance'' for existing utility plants. See 42 U.S.C. §7411(d)(1)–(2). The statute defines a ''standard of performance'' as ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction.'' §7411(a)(1). The EPA argues that the ''application of the best system of emission reduction'' to a coal-fired utility includes having that utility retire its coal-fired plants and open (or invest in) natural gas or renewable energy production.

That interpretation of §7411 represents a new approach to the statute. Past rules under §7411(d) have contemplated that utilities could comply with the articulated ''best system of emission reduction'' solely through installation of control technologies (*e.g.*, scrubbers)—which seem to fit more comfortably within the statutory phrase. As we noted two terms ago, agencies will face high hurdles when they seek to use novel interpretations of a ''long-extant statute'' to ''bring about an enormous and transformative expansion in [their] regulatory authority without clear congressional authorization.'' *Utility Air Regulatory Group* v. *EPA*, 134 S. Ct. 2427, 2444 (2014). The applicants also raise a strong argument that regulation of power plants under §7412 precludes the EPA's promulgation of this rule under §7411(d).

The applicants also meet the third criterion for a stay, irreparable harm. The D.C. Circuit will hold oral argument on June 2, 2016, so a cert petition is not likely to be considered by this Court until this winter. Depending on the timing of the D.C. Circuit's decision—and taking into account the potential for en banc review—it is possible that this Court will not rule on the merits until OT2017. Though the rule does not require emissions reductions until 2022, its impact is being felt now.

First, under the rule, states have the option to develop their own suite of state regulations (subject to EPA approval) to meet the rule's targets. If a state does not submit a plan or seek a two-year extension by September, 2016, the EPA will impose a federal plan on the state's power sector. The EPA represents that ''[t]he submission required by September 2016 to obtain the extension is not burdensome,'' SG Response at 59, and that extensions are ''readily obtained,'' *id.*, at 54 but the applicants indicate that they are currently in the process of committing time and resources to compliance as the first deadline rapidly approaches, see No. 15A773, at 41–42.

Second, and more disruptively, the EPA's own models show that the rule will cause immediate shifts in power generation, as the

industry must make changes to business plans today to meet the 2022 requirements. The agency's models show that the impact of the rule will reduce coal production for power sector use by 2.0 percent in 2016 and 2017, and by 4.3 percent in 2018. See No. 15A776, at 764A–765A.

That harm, once incurred, is irreversible. Given the long lead times and high capital expenditures required for the construction of new plants, once a utility takes steps to comply with the rule its actions are not likely to be undone. As the EPA Administrator has stated, the Clean Power Plan is being ''bak[ed] . . . into the system'' right now. Interview of EPA Admin. Gina McCarthy by BBC World News America (Dec. 7, 2015). Solar plants are not built in a day.

Past experience makes the case for irreparable harm: On June 29, 2015, we ruled that the EPA's Mercury and Air Toxics Standards violated the Clean Air Act. See *Michigan* v. *EPA*, 135 S. Ct. 2699. One day later, the EPA announced that it was ''confident [it was] still on track to reduce'' the targeted pollutants in part because ''the majority of power plants are already in compliance or well on their way to compliance.'' Janet McCabe, Acting Asst Admin. for Office of Air and Radiation, In Perspective: the Supreme Court's Mercury and Air Toxics Rule Decision. In other words, the absence of a stay allowed the agency to effectively implement an important program we held to be contrary to law.

I recommend granting the stay.

Sincerely,

JOHN ROBERTS,
Chief Justice.

SUPREME COURT OF THE UNITED STATES,
CHAMBERS OF JUSTICE ELENA KAGAN,
Washington, DC, February 7, 2016.

Re 15A773—West Virginia, et al. v. EPA, et al.; 15A776—Basin Elec. Power Cooperative, et al. v. EPA, et al.; 15A787—Chamber of Commerce, et al. v. EPA, et al.; 15A778—Murray Energy Corp., et al. v. EPA, et al.; 15A793—North Dakota v. EPA, et al.

MEMORANDUM TO THE CONFERENCE

I agree with Steve that we should direct the States to seek an extension from the EPA before asking this Court to intervene. We could also include, at the end of such an order, language along the lines of the following, to encourage the D.C. Circuit to act expeditiously in its resolution of this matter: ''In light of that court's agreement to consider this case on an expedited schedule, we are confident that it will [or even: we urge it to] render a decision with appropriate dispatch.'' See *Doe*. v. *Gonzales*, 546 U.S. 1301, 1308 (2005) (Ginsburg, J., in chambers); *Kemp* v. *Smith*, 463 U.S. 1344, 1345 (1983) (Powell, J., in chambers); *Holtzman* v. *Schlesinger*, 414 U.S. 1304, 1305, n. 2 (1973) (Marshall, J., in chambers).

The unique nature of the relief sought in these applications gives me real pause. The applicants ask us to enjoin a regulation pending initial review in the court of appeals. As we often say, ''we are a court of review, not of first view.'' See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n. 7 (2005); cf. *Doe*, 546 U.S., at 1308 (''Respect for the assessment of the Court of Appeals is especially warranted when that court is proceeding to adjudication on the merits with due expedition.''). As far as I can tell, it would be unprecedented for us to second-guess the D.C. Circuit's decision that a stay is not warranted, without the benefit of full briefing or a prior judicial decision.

On the merits, this is a difficult case involving a complex statutory and regulatory regime. Although the parties' abbreviated discussion of the issues at stake here makes it difficult for me to determine with any confidence which side is likely to ultimately prevail, it seems to me that at this stage the government has the better of the arguments. The Chief's memo focuses on the applicants' argument that the ''best system of emission reduction'' refers ''solely [to] installation of control technologies (*e.g.,* scrubbers).'' 2/5 Memo, at 2. The ordinary meaning of ''system'' is in fact quite broad, appearing to encompass what EPA has done here. Of course, we would want to consider this term in the larger context of the Clean Air Act's regulation of stationary source emissions, and we might well decide to place some limiting principle on that term. But I think the government raises strong arguments that the regulation here falls within a proper construction. Applicants' other statutory challenge, not discussed in the Chiefs memos, requires us to reconcile what appear to be two simultaneous and contradictory amendments to the game statutory provision of a bill. Applicants' limited submissions at this stage suggest that the answer to that question will turn on a careful study of the bill's history and Congress's procedures for codifying session laws. See No. 15A778, at 13–23. Although those questions are not easily resolved at this stage, I do note that the applicants' reading produces a real anomaly: Power plants producing only nonhazardous emissions would be regulated under Section 111(d), but if a class of plants produced any hazardous emissions regulated under Section 112, that class's emissions of unhazardous emissions would be wholly unregulable. I find it hard to believe that Congress intended that outcome.

Further, I agree with Steve that the applicants have failed to demonstrate the requisite likelihood of irreparable harm.

The State applicants' claim of irreparable harm is based on their assertion that, absent relief, they will be required to design and enact regulations to meet the Plan's emissions targets. As Steve observes, though, a State can obviate those harms by asking the EPA for a two-year extension of the September 2016 deadline to submit its plan. I think it wise to direct the applicants to first seek relief through that more ordinary route before granting the drastic and unusual remedy the States seek.

The two-year extension for the States is also likely to obviate the industry applicants' claims of irreparable harm. The rule itself imposes no obligations on any regulated entity—rather, it is the regulations promulgated by the States that do so. If the States secure extensions until September 2018, then no State regulations are likely to be promulgated before that date and, accordingly, no action will be legally required of the industry applicants.

Moreover, the applicants' assertion that, absent relief, they will have to begin preparing for those regulations by taking coal plants out of service or beginning construction on new, renewable energy plants in the limited time between now and the issuance of the D.C. Circuit's opinion is both entirely speculative and highly doubtful. The rule imposes no requirement that any plant, or class of plant, be shut down. Nor does it require that any particular type of plant be constructed. Rather, it requires only that States meet an overall emissions target—a goal it gives the States significant discretion to pursue by adopting whatever means they think best, including the adoption of more effective scrubber technology, carbon sequestration techniques, or a cap-and-trade system. I cannot imagine that a regulated entity would take such extremes measures as shutting down a coal plant in anticipation of State regulations that, when promulgated, may not require anything of the sort.

That is especially true because the rule phases in its requirements over an eight-year period. 80 Fed. Reg. 64786–64786. While applicants' claims of harm seem to assume that total compliance is required by 2022, the rule in fact contemplates only a one percent emissions reduction in that year. App. to U.S. Memorandum in Opposition 11a. It is implausible that such a minor emissions reduction to be achieved six years hence will require substantial and irrevocable commitments of resources in the coming months. In any event, under even the most generous reading of the applications, the applicants' claims of irreparable harm involve disputed issues of fact ill-suited for resolution by this Court at this stage.

Sincerely,

ELENA KAGAN.

FEBRUARY 6, 2016.

Re 15A773—West Virginia, et al. v. EPA, et al.; 15A776—Basin Elec. Power Cooperative, et al. v. EPA, et al.; 15A787—Chambers of Commerce, et al. v. EPA, et al.; 15A778—Murray Energy Corp., et al. v. EPA, et al.; 15A793—North Dakota v. EPA, et al.

MEMORANDUM TO THE CONFERENCE

I agree with Steve's proposal and Elena's supplement to that proposal. As Elena notes, it would be unprecedented for us to grant a stay before any court has reviewed this complicated and complex case. The statutory questions turn on the interplay of several provisions of the Clean Air Act. I agree with Elena that at first glance the government appears to have the better argument. I do not think that the Applicants' likelihood of success on the merits is so high as to justify granting this extraordinary relief. More importantly, I think our resolution of these issues will be greatly enhanced by the views of the D.C. Circuit, full briefing, and our considered, unhurried attention.

Moreover, the factual basis for the Applicants' claim of irreparable harm seems hotly contested by the Government and in tension with at least my cursory review of the record. For example, the Chief's memos note that ''the EPA's own models show that the rule will cause immediate shifts in power generation, as the industry must make changes to business plans today to meet 2022 requirements. The agency's models show that the impact of the rule will reduce coal production for power sector use by 2.0 percent in 2016 and 2017, and by 4.3 percent in 2018.'' 2/5 Memo, at 3.

The Government, however, has cautioned that the EPA model is not intended to predict any immediate changes in power generation, and that drawing any short-term inferences from its highly stylized model is fraught with danger. According to the Government, ''The simplifications and constraints built into the Model mean that it is not designed to reliably forecast the Rule's impacts on specific power plants, *particularly in the near-term period at issue here* (i.e., during the pendency of this litigation).'' SG Br., at 66 (emphasis added). In a declaration an EPA official further cautions, ''[b]ecause of the inclusion of simplified modeling assumptions that do not capture all the implementation flexibilities available to states, near term impacts on the power sector in the policy case *will be overstated*.'' SG App. 49a (emphasis added). Indeed, during the notice and comment period, industry commenters criticized the model for making predictions about closures in 2016 and 2017 that were overstated and empirically false. SG Br., at 67–68. To the contrary, as the SG notes, no applicant has identified a single real plant—as opposed to a hypothetical ''model plant''—that is in immediate danger of closure absent a stay. *Id*., at 65.

The Government takes the position that, in the short-term, any plant closures are likely driven by long-term economic trends towards gas-fired and renewable generation. *Id.*, at 64. Similarly, the EPA noted in the preamble to the final rule that its expected impact of the rule ''is fully consistent with the recent changes and current trends in electricity generation, and as a result it would by no means entail fundamental redirection of the energy sector.'' 80 Fed. Reg. at 64,785

Similarly, the Chief's memo notes that the rule ''has been described as the most expensive regulation ever imposed on the power sector—net costs have been estimated to run as high as ~$480 billion from 2017–2031.'' 2/6 Memo, at 1. That is one view—a likely biased view, as the Chief's memo recognizes.

The EPA's analysis of the economic costs, however, is significantly lower. According to the EPA's Regulatory Impact Analysis, which is specifically ''designed to assess the overall impacts of the Rule on the energy sector and the economy,'' the rule is estimated to reach an annual cost of between $1–3 billion in 2025, and $5.1–8.4 billion in 2030. SG App. 35a–37a. The cost ranges will firm up depending on which plans states use—which, of course, underscores the uncertainty of the impact of the rule on any particular entity. Notably, the EPA takes the position that ''these costs are in line with, and in some cases *less than*, the costs of other CAA rules for power plants.'' App. 36a–37a (emphasis added) (comparing with various programs).

Given these—and many other—unresolved factual disputes and uncertainties, I fail to see how the Applicants have shown an immediate risk of irreparable harm that justifies an emergency stay on limited briefing before the D.C. Circuit will hear argument on this regulation in just four months. I think our review will be greatly aided by the views of that court. As Steve notes, if states do not receive the two-year extensions the Government represents they can easily obtain, this Court would still be in a position to grant any appropriate relief six years before any legal requirement will be imposed on a regulated entity. I vote to deny the applications for a stay.

Sincerely,

SONIA SOTOMAYOR.

SUPREME COURT OF THE UNITED STATES, CHAMBERS OF JUSTICE SAMUEL A. ALITO, JR.,
Washington, DC, February 7, 2016.

Re 15A773—West Virginia, et al. v. EPA, et al.; 15A776—Basin Elec. Power Cooperative, et al. v. EPA, et al.; 15A787—Chamber of Commerce, et al. v. EPA, et al.; 15A778—Murray Energy Corp., et al. v. EPA, et al.; 15A793—North Dakota v. EPA, et al.

MEMORANDUM TO THE CONFERENCE

I agree entirely with the Chief's most recent memorandum and continue to believe strongly that a stay is warranted. In my view, the applicants are very likely to succeed on the merits of their claim.

I also agree with the Chief that the irreparable harm the applicants face is immediate and significant. Any suggestion to the contrary is inconsistent with the EPA's own Integrated Planning Model (the economic model underlying the EPA's Regulatory Impact Analysis of the rule), which explicitly anticipates the rule will begin to reorder the domestic power industry in 2016 (not 2022). The IPM model projects that the country's composition of power generation will change in 2016, including through the closure of coal-fired plants. For example, the EPA predicts that, in 2016 alone, the CPP will cause the power sector to lose 5.1% of its coal-fired generation capacity. See No. 15A776, at 765a (projecting, in 2016, 203 gigawatts of coal-fired capacity with the CPP, compared with 214 gigawatts absent the CPP).

Sonia and the SG note that the EPA's model includes simplifying assumptions. Certainly that's true of this model, as it is of all models. Perhaps the model overstates (as the SG contends is a possibility) or understates (as the industry applicants contend) the current impacts of the rule. But it is indisputable that the Agency's own model tells us to expect a substantial shift in power generation right now because of the rule. We should hold the EPA to its own best analysis of when the ''generation shifting'' its rule requires will begin. Surely the EPA may not rely on this model to justify the cost-benefit analysis of its regulation, but then disavow it as too ''uncertain'' on the question of harm.

And this harm, once incurred, is by nature irreparable. Coal plants are not shuttered—nor solar plants purchased—at the drop of a hat. Of course, the Administrator knows this, which is why she effectively implied that, if the rule is allowed to continue in force, judicial review will be beside the point. That leads me to what is, in my view, the most pressing reason to grant a stay. A failure to stay this rule threatens to render our ability to provide meaningful judicial review—and by extension, our institutional legitimacy—a nullity. Whether the Clean Air Act gives the EPA the transformative authority it claims here is an important question. If we fail to stay the rule and maintain the status quo, our resolution of the merits will not matter because the regulated parties will have complied. Instead of robust judicial review, our opinion will be a mere postscript.

Sincerely,

SAMUEL A. ALITO, Jr.

SUPREME COURT OF THE UNITED STATES, CHAMBERS OF JUSTICE ANTHONY M. KENNEDY,
Washington, DC, February 9, 2016.

Re 15A773—West Virginia, et al. v. EPA, et al.; 15A776—Basin Elec. Power Cooperative, et al. v. EPA, et al.; 15A787—Chamber of Commerce, et al. v. EPA, et al.; 15A778—Murray Energy Corp., et al. v. EPA, et al.; 15A793—North Dakota v. EPA, et al.

MEMORANDUM TO THE CONFERENCE

The memoranda from the Conference have been very helpful. In my view, a stay would be granted in four to six months in any event, and fairness to the parties counsels that we should grant it now. Therefore, I agree with the recommendation of the Chief that the stay applications be granted.

Sincerely,

ANTHONY M. KENNEDY.

Mr. WHITEHOUSE. I yield the floor.

The PRESIDING OFFICER. The Senator from California.

S. CON. RES. 33

Mr. SCHIFF. Mr. President, it has been 13 months to the day since the House first passed Donald Trump's ''One Big Ugly Bill,'' 290 days since it was signed into law—the largest cut to healthcare in American history; $1 trillion slashed for families, children, seniors, our most vulnerable; billions taken away from hungry families; millions of Americans pushed closer to poverty, closer to financial ruin; rising costs.

And for what? To pay for tax cuts for the richest Americans, to give big corporations another leg up, and to give ICE and CBP a budget so astronomical it rivals the military budget of many industrialized nations.

For the average American, it has been 290 days of lost opportunities and less affordable healthcare; of harder conversations at the kitchen table; of more sleepless nights worrying about how to get by; more skipped meals; more doctor visits postponed; week upon week of American families hoping against hope that this President and this Congress might recognize the difficulty that they are facing, the struggle they are enduring, the central promise that this President is breaking.

Day one of Donald Trump's final term is long past, but the prices—much to the contrary of what he has promised—have not dropped. His first 100 days are now 15 months ago, and still, inflation persists. Indeed, it is worse.

Two hundred and ninety days into the lifespan of the President's supposed signature legislative achievement, this ''Big Ugly Bill,'' and life for so many Americans is not bigger, and it is not more beautiful. At gas stations across America, the reality of Donald Trump's America is clear. At grocery stores in California to the Capitol, that reality is hitting people in their pocketbooks.

And we are not on the right track either—an illegal war in Iran that has neither a clear goal nor an endgame, that has pushed prices higher, that has rocked markets on a daily basis and made the summer road trip that so many families were looking forward to the latest victim of Trump's economy; a misguided tariff agenda that has been struck down by the highest Court. But now this administration will only take steps to return the billions in illegal duties it levied to the corporations that charged them, not the Americans who paid them.

This body recognizes the immense strain that our constituents are under. I know it does because people are making their discontent loudly known at the ballot box and at public fora all over the country in the red States and the blue States alike.

I can assure each and every one of you watching that Members of Congress understand the American dream is slipping out of reach. We know that you are worried about making ends meet. We understand that you are agonizing over whether you can keep your business afloat or what opportunities will be there for your kids.

We have heard your stories. We understand the dread you feel as you near the first of the month, the fear that is all too real when you open the mailbox, unsure of what surprise bill will arrive and tip your family into bankruptcy, the terrible math that you must use to decide which dose of medicine or which meal you can afford to skip just to keep the lights on. This is the reality for so many Americans, and we understand that.

It might be—I don't know—worse, if you could just accuse the Congress of

being in the dark, if we were somehow blind, rather than a majority of this body willfully turning a blind eye to the struggles of regular people.

But as I stand here recounting to you the myriad ways in which the past year of Trump's America has gotten harder—a reality that you live every day—Republicans are getting ready to act on their next big budget resolution, not to help drive down costs, not to address the healthcare crisis, not to do something to help. No, their grand plan to address our Nation's challenges is asking the American taxpayer to give even more money out of their pocket, out of their bank account, to ICE and Border Patrol agents.

An out-of-control police force that has killed Americans and terrorized our streets, and they want more money for CBP and ICE without even a modicum of reform. Now, how is that supposed to help your life? And the short answer is: It isn't. There is nothing in this bill to make your healthcare, your energy, or your housing more affordable. Nothing.

So if there is no money, no billions in this bill to improve the quality of your life, just what are my colleagues proposing to spend these billions on? And it is this: on Agencies that have shot and killed American citizens in our streets, in broad daylight, on video, for exercising their constitutionally protected right to free speech; the agents that have broken into homes, refused to show their faces or their badges, and taken children from their parents; this run-amok force that has defied court orders, detained citizens and people with lawful status, denied them basic medical treatment, which has resulted in an unprecedented number of deaths in immigration custody and denied their constitutional rights.

ICE and CBP get $140 billion in this bill after getting close to $170 billion less than a year ago, for a whopping total of $340 billion. I am sorry, but that is an insane amount of money. That is more than we give to the Marine Corps and the FBI and the DEA and all the other Federal law enforcement Agencies combined.

So if you take the money from the Marine Corps, one of our incredible military services, and you add it to the money for law enforcement Agencies like the FBI and the DEA and the ATF, and you add it all together, it isn't a fraction of what we are giving to just these two pieces of immigration enforcement. That is what they get.

That is what these Agencies get: $340 billion. And you? You get nothing. You get not a dime. After putting more than $3 trillion on the Nation's credit card to give tax breaks to the rich and to give these Agencies the funding to arm themselves to the teeth, after taking your healthcare dollars and plowing them into heavily armed and ill-trained ICE agents, they want to put even more money into what is becoming Trump's private army.

A Gallup poll released last month found that about 1 in 3 adults, U.S. adults, the equivalent of about 82 million people, reported having made at least 1 daily life trade-off in the past year to pay for healthcare expenses. That is 39 million Americans stretching a prescription longer than the doctor recommended; it is 38 million Americans going into debt to pay a medical bill; it is 28 million Americans skipping a meal. One in nearly every 10 Americans reporting the cutback on utilities or on the amount they are driving. And that was even before gas prices spiked thanks to Trump's Iran war with no solution in sight.

And we see these impacts playing out across the country in realtime, month after month, week after week, hospitals are shutting down, clinics are closing, workers are laid off, services are canceled, and families are paying more out of pocket and going without the care they need.

Earlier this year, a hospital in Oakland, CA, announced plans to lay off 300 medical staff because it is projected to lose more than a hundred million a year thanks to the ''Big Ugly Bill.'' Another hospital in Santa Rosa, CA, had to shutter its pediatric unit; Corona, CA, lost its labor and delivery unit; clinics in Madera and Fresno had to lay off staff. There are so many of these stories, and thanks to the trillion-dollar Medicaid cut forced by Republicans in their last budget.

And where layoffs or service cuts were not enough to balance the budget, a worse fate awaited these healthcare providers. Clinics in Compton, Gilroy, Santa Cruz, San Mateo, and South San Francisco all closed their doors thanks to Donald Trump.

Thousands of Californians, all now without a place to go for medical care; that is if they can afford care at all.

Our insurance Marketplace in California saw a 30 percent decline in enrollment as premiums spiked to sometimes double what they were paying for their healthcare before the ''Big Ugly Bill.''

But healthcare—let's face it—it is not the Republican priority. This is something they are not willing to fund. This is not something in this bill.

Instead, we are asked to fund immigration Agencies that have already seen their budgets explode and their accountability erased by this administration.

For months, Democrats have sought on behalf of the families and communities terrorized by ICE to enact basic guardrails, reforms, and oversight of their conduct; to mandate they wear body cameras and clear identification, just like any other law enforcement agency; to stop the use of excessive and deadly force, and to guarantee that when they do there is accountability in the form of truly independent investigations; to mandate the use of judicial warrants so that when they are going to someone's home, as the Constitution requires, they have a judicial warrant; to stop racial profiling and the targeting of schools and churches.

All of this for a reason: So we don't have more tragic victims like Alex Pretti or Renee Good or the people that have died in detention centers like Luis Beltran Yanez-Cruz or Gabriel Garcia-Aviles, a list that is already far too long.

Now, bear in mind, these reforms that I have mentioned are all wildly popular with the American people, and we have worked in good faith to try to secure these very basic guardrails, saying clearly until these commonsense measures can be implemented, we would vote not for one more dime for these Agencies that have taken lawless instructions from the likes of Stephen Miller and Greg Bovino.

But the administration and my Republican colleagues don't want to solve the problem of excessive use of force from ICE and CBP; they don't want the accountability; they don't want the reform. And so they will use this budget and reconciliation process to bypass the need for changes to how ICE and CBP operate, to jam more money through without Democratic support, and to advance a budget that contains literally not a single dime for healthcare, hospitals, food and groceries, energy bills, nothing but more money for ICE and CBP.

And the terrible tragedy is that we in this Chamber, we here could meet this challenging moment in our Nation when people cannot afford the cost of living.

We could meet that need with a budget that would help people in need. John F. Kennedy on his first day of office stood on the west steps of the Capitol and said:

> If a free society cannot help the many who are poor, it cannot save the few who are rich.

For every day of Donald Trump's second term, he has sought only to save the rich, to help those that already have so much, to line pockets that are already so deep; and in doing so, he has revealed his campaign rhetoric to be just that, just words.

My Republican colleagues may see this as a convenient way to avoid our demands for accountability, but the American people will see this as a failed opportunity for the GOP as it squanders perhaps the last chance in the 119th Congress to act meaningfully on making America affordable again.

The attempt to sell the ''Big Ugly Bill'' has failed. The American people were not fooled, neither will they be fooled now, because the billions wasted and the millions hurt will not go unnoticed. There will be an accounting, if not now, then in November.

And the American people's rejection of this President's agenda will be big, and in its own way, it will be beautiful. It will certainly be necessary.

If we are ever to make this economy work for people again, we must reject more money for lawless agents in favor of more money for healthcare for the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mr. PADILLA. Mr. President, if you look anywhere across the country right now, what you will see more than anything else is working families, countless Americans struggling just to get by; struggling with skyrocketing prices at the pump; struggling with rising costs of healthcare premiums; struggling to afford groceries, their prescriptions, to pay their rent or their mortgage. Many struggling just to keep the lights on at home.

You would think that the Republican majority would recognize that and dedicate time on this floor of the Senate to prioritize a discussion and proposals to bring down costs for working families; but, no, instead we are focusing once again on immigration and, specifically, whether or not to give even more money to ICE and CBP.

So I think it is important for us to lay out to the American people why we are in this position. Republicans created this mess last year when they passed their ''One Big Anything But Beautiful'' bill.

But rather than fix that mess through commonsense reforms, as we have suggested, their solution is to throw even more money at these Agencies that have been acting for a year now with little regard to the rule of law, to dump $140 billion in the same out-of-control immigration Agencies that have created chaos in American communities for the past year, the very same ICE and CBP that Republicans already gave $140 billion to last year.

That is over seven times ICE's typical annual funding and more than four times the typical annual appropriations for CBP. That was last year.

And what did they do with that money? Before we entertain should we give them even more, let's see what they did. They went on a so-called Defend the Homeland hiring spree. They brought on unqualified recruits who were deployed into communities across the country with clearly insufficient training. Let me lay it out. Let me break it down for us.

In just 6 months, ICE doubled its number of agents from 10,000 to over 22,000—more than doubled. And the only way to reach those numbers is to cut a bunch of corners and to lower standards. And so that is what they did.

They dropped the minimum age for ICE officers to just 18 years old, and they reduced the required training to 47 days—47 days. Let me put that figure into context.

To be a DC Metropolitan Police officer here in the streets of our Nation's Capital, it takes 28 weeks of training. Basic training at the Federal Law Enforcement Training Center is 12 weeks. The Los Angeles Police Department, where I am from, that takes 6 months of training before you are on the job. But to be an ICE officer, just 47 days, and then you are given a gun and a badge and deployed into the field.

We have seen the records that DHS has rushed applicants through a very sloppy vetting process. It has led to the hiring of numerous officers with questionable backgrounds, clearly unfit to do these jobs.

We have also seen reports that about a third of the recruits at the ICE training academy failed what is considered a relatively easy physical test. And a number of others were sent home because they failed a written exam which, by the way, a written exam on which they could use textbooks and notes, but they still failed.

Here is a quote from an article by the Associated Press that really shines a light on what is happening with this hiring spree:

> Two bankruptcies and six law enforcement jobs in three years.

This is a description of one officer.

Here is another:

> An allegation of lying in a police report to justify a felony charge against an innocent woman—an incident that led to a $75,000 settlement and criticism of his integrity.

How is that for a description of an ICE officer?

> A third job candidate once failed to graduate from a police academy, then lasted only three weeks in his only job as a police officer.
>
> Their common bond: All were hired recently by U.S. Immigration and Customs Enforcement during an unprecedented hiring spree . . . after the agency received a $75 billion windfall from Congress.

Don't take my word for it, colleagues—actual reporting.

So let's, again, assess where we are. Republicans gave ICE and CBP $140 billion. And the Trump administration used it to hire people with questionable qualifications, questionable histories, questionable temperaments, and questionable ability to do the job.

And you are going to tell me you are surprised by the chaos and the violence that we have witnessed unfolding in the streets across America this last year? If you are hiring all these unqualified people, encouraging them to act with impunity, you throw out the rule books and the training manual and ensure that there is little or no oversight and accountability, it is entirely predictable that chaos will ensue and especially when they are led from the top by people who regularly dehumanize others, whose goal is to inflict pain and cruelty on immigrants and refugees as deterrents. It is exactly what we are seeing.

We are seeing agents knocking down doors to homes without a judicial warrant in violation of the law. We are seeing cars being driven off the road, their windows smashed in, their occupants literally dragged out through broken windows, and some, like Marimar Martinez, shot multiple times.

We are seeing indiscriminate raids sweeping up hard-working people who are just trying to provide a better life for their family, including legal immigrants with work authorizations.

We are seeing American citizens hurt simply for exercising their First Amendment rights, like 21-year-old Kaden Rummler, who permanently lost his vision in one eye after being shot by agents at close range.

And, of course, we saw—we all saw, the whole country saw, the whole world saw—two U.S. citizens, Renee Nicole Good and Alex Pretti—killed by Federal agents on camera in broad daylight.

So, yes, Democrats are demanding commonsense reforms to address this outrageous behavior. You should be too. And the commonsense reforms we are talking about are nothing other than policies that State and local law enforcement officers across the country already have to abide by.

Instead, Republicans continue to refuse, and that is why we are here today, because as Democrats, we refuse to give a single dollar more to an out-of-control, unaccountable Agency.

We are demanding oversight. We are demanding these commonsense reforms, not just to protect people's rights but to protect people's lives.

Instead, what do our Republican colleagues want to do? They want to hand over another—another—$140 billion of taxpayer money, even though, by the way, for the fiscally responsible ones of you, the Congressional Budget Office says that ICE and CBP still have $103 billion in unspent funds from last year's bill. That is right. ICE is sitting on $63.2 billion of its funding from last year's bill. That is 84 percent of the funding from last year. And CBP is still sitting on $40 billion—62 percent of its funding—from last year's bill.

So what are we even doing here? They have a ton of money left over from last year's bill they haven't even spent—they can't spend it fast enough—and you want to give them more. You would rather give them more when they don't need it than negotiate necessary changes to these Agencies.

That is outrageous, and it comes at a time when President Trump says: Oh, we don't have enough money to help people with daycare. We don't have enough money for Medicare and Medicaid. We have to cut those programs.

But, clearly, he and you all believe we have enough money to give another $140 billion to these ICE Agencies. By the way, that is on top of the $1 billion a day that we are spending in this unauthorized war in Iran.

If we are going to use this budget reconciliation process for anything right now, we would rather be using it to help working families afford the basics. Let's use it to help bring down healthcare costs. Let's help bring down gas prices. Let's bring down the cost of food and housing and utilities. That would be worthy of our time, not this sham—not this sham.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

S. CON. RES. 33

Mr. GRAHAM. Mr. President, we are going to start reconciliation. I think we all know what that means; that is Latin for ''a long night.''

But why are we here? We are here to make sure that the Department of Homeland Security, the ICE division and Border Patrol, are funded.

Now, why are we here? Our Democratic colleagues have refused to provide funding for the Border Patrol and ICE at a time of great threat to our country.

So what are we doing? We are trying to use the reconciliation process to get money to secure the border and not shut down enforcement of our immigration laws.

Our friends on the other side sat on the sideline and watched the Joe Biden administration allow 11 to 15 million illegal immigrants to come into this country in a 4-year period. We have been dealing with that mess ever since we have been in charge.

ICE—count me in for reforming ICE. We tried to have some reforms, but you refused. You refused to give a dollar, guys, because, in your view, ICE is the problem. I think the illegal immigration invasion that was allowed by Joe Biden and condoned by you is the problem. It is not the ICE agents that are the problem; it is the millions of people who came here illegally, and only God knows who they are and exactly where they are.

So we are not going to stop trying to enforce immigration laws. We have to. We are trying to clean up a mess, a national security threat.

Let me be really clear. In 2022, 2023, and 2024, we had a tremendous spike of people that came into the country under Biden on the Terrorist Watchlist. We don't know where all these people are. It went from, like, nothing to a bunch. Everybody in the world was told: If you can get to the American border, you are home free. Good guy, bad guy; good gal, bad gal—they came. They came by the millions.

One reason they came is because there was a policy called sanctuary cities. It is really sanctuary States. There are about 15 States that refuse to enforce Federal immigration law. There are cities that will not turn over an illegal immigrant to the Federal Government for deportation when they are eligible to be deported. It is creating chaos.

There are 10,000 criminals who were released by sanctuary policies who went on to be arrested for additional crimes and $9 billion in fraud stolen by Somali immigrants in Minnesota alone. Fifty-nine percent of illegal immigrant households are on government welfare programs, costing taxpayers $42 billion a year.

These sanctuary cities create a magnet. People all over the world believe that if you can get to one of these cities or States, you will never get deported. Why? Because the people running those cities and those States refuse to turn illegal immigrants over to the Federal Government—laws that were established long before Donald Trump became President of the United States. Some of these people they refuse to turn over are dangerous—very dangerous.

Abdul Jalloh comes in illegally in 2012; 30 arrests, including rape, malicious wounding, and assault. ICE submits a formal detainer to deport Jalloh. The request is blocked by the Virginia attorney for Fairfax County, a Soros-backed prosecutor and defender of sanctuary cities who ignored the detainer. In May of 2025, he is arrested one more time for stabbing an individual in the leg, but he is released again. In February 2026, Jalloh brutally murders Stephanie Nicole Minter.

Look at this. If that doesn't disgust you, something is wrong. This is disgusting. This is what happens when you have sanctuary policies. This is what happens when people fail to enforce Federal law.

The Virginia attorney for Fairfax County refused to work with the Federal Government. This guy stayed out. In May, he commits a crime, stabs a guy in the leg. In February 2026, he brutally murders Stephanie Minter.

That happens all the time, way too much.

Last week in Spartanburg, SC, two boys were killed by an illegal immigrant in a drunk-driving car crash. He was a ''got-away.'' He came across the border, and he literally got away. He was able to take advantage of lawless open borders to enter the United States undetected.

The victims were 12-year-old Dereon James Robinson and 9-year-old Mikhail'Lee Smith—killed by somebody who shouldn't have been here to begin with, an illegal drunk driver.

In April 2025, a University of South Carolina student was killed in a hit-and-run crash by an illegal alien. Fernandez-Cruz, a native of El Salvador, illegally crossed the U.S.-Mexican border on an unknown date but was arrested by the Border Patrol in Hidalgo, TX, on December 24, 2016. He was released the next day, which I guess was Christmas, and issued a notice to appear as DHS initiated removal proceedings. The victim was 21-year-old Nathaniel Baker. They had him and let him go.

In March 2025, a mother of two was murdered in Rock Hill by a group of six illegal immigrants. This heinous crime was committed by a gang of six illegal aliens in a random robbery attempt that ended deadly. The victim was Larisha Sharell Thompson, 40 years old, a mother of two.

On and on and on—I can read you too many of these things.

Laken Riley was a young lady killed in Georgia. The man was detained at the border—her killer, Jose Ibarra—and was released because they had no bedspace in 2022. He went to New York, found his way back to Georgia, and killed this young lady. He was loose because of the lack of detention space.

All I can tell you is that—what are we trying to do to make sure this never happens again? It happens over and over and over. So we are here tonight to do something Democrats won't let us do that must be done.

Seventy billion dollars will be allocated to fully fund the Border Patrol and fully fund ICE through the entire term of President Trump's second term, for 3½ years—one and done. I wish we could do more, but we are going to do for 3½ years. We are going to give DHS—the Border Patrol and ICE—the money to pay their people and to conduct operations to make sure what I described never happens again.

Why are we here? We passed everything in the appropriations bill in a bipartisan manner except this. Our Democratic friends wanted to pick a fight about this. No money for the Border Patrol. No money for ICE. No reforms of ICE; just no money.

We are not going to let that stand. We are going to fix that. So Republicans, starting today and hopefully by the 1st of June, will create a process so that we can get the money that ICE and the Border Patrol need to keep your families safe, to enforce illegal immigration violations—ICE—to have money and people on the border at a time when terrorism is through the roof.

We are having to do this through reconciliation because the appropriations process failed only here. These are the two accounts we couldn't get money for. It says a lot about the state of play where our Democratic colleagues are. In their world, not paying the Border Patrol seems to be an acceptable outcome. Really? With terrorism rampant all over the world, a war with the largest state sponsor of terrorism, Iran, heated up and fully running? Really?

ICE. We tried to have—we had reforms, but you said no to the reforms. You said no money at all. Putting these people out of business really is dangerous when you have millions of people still in this country illegally.

So, tonight, we are going to start the process to pass a budget resolution that will instruct two committees—Homeland Security and Judiciary—to report back to us a reconciliation bill that will be $70 billion in spending. That will allow the Border Patrol and ICE to be fully funded through the rest of President Trump's term so we can be safe.

I am sad we are having to do this, but you gave us no choice. The day that you said no to funding the Border Patrol and the day you wanted to put ICE out of business is the day that, as the Budget chairman, I and my colleagues acted. We are not going to let this happen. We can fix this with Republican votes, and we will.

Every Democrat has opposed money for the Border Patrol and ICE in a time of great peril and we are going to fix that and it starts tonight. And in the coming weeks, we are going to get it done.

We are going to make sure that the Federal Government honors its obligation to protect the American people.

And there is no bigger responsibility of the Federal Government than to secure our own border, to enforce our laws that have been on the books for decades. This is the primary job of the Federal Government. We will be talking about everything but this over the coming days, tonight, and into the future.

This needs to be done. And I am not saying other things don't need to be done. But this has to be done. It will be done. We are going to get this right. We are going to fully fund for 3½ years the Border Patrol so they have money they need to pay their people to protect us, and we are going to continue to enforce immigration law by fully funding ICE. We are going to do that, and we are not going to fail. We cannot fail. The world is too dangerous to fail.

So to my Democratic colleagues, you have taken a path that blows my mind in this regard. Don't you see the same world we do? Reform makes sense. We had reforms. You threw them out because, I guess, the hardest of the hard on your side insists not one dime for the Border Patrol, not one dime for ICE.

The American people are not where you are at, and I hope the American people will understand tonight that we, the Republicans, fixed this problem, and we couldn't find a partner on the other side. Sad but true.

We are going to succeed. We are going to fix this problem. Working with the Trump administration, we are going to secure that border. It is the most secure I have ever seen it in my life. What President Trump has done is amazing.

We are not going backward. What the Democrats want us to do is not fund ICE, not fund the Border Patrol, to go back to the policies that reigned during the Biden years. We are not going back to the Biden years. We are going forward.

I yield the floor.

The PRESIDING OFFICER (Mr. SCHMITT). The Senator from Idaho.

MEASURE READ THE FIRST TIME—S. 4378

Mr. CRAPO. Mr. President, I understand that there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title for the first time.

The bill clerk read as follows:

A bill (S. 4378) to combat fraud in Federal programs, and for other purposes.

Mr. CRAPO. Mr. President, I now ask for a second reading and, in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. The objection has been heard. The bill will receive its second reading on the next legislative day.

NATIONAL ASSISTIVE TECHNOLOGY AWARENESS DAY

Mr. CRAPO. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 685 submitted earlier today.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 685) designating April 22, 2026, as ''National Assistive Technology Awareness Day''.

There being no objection, the Senate proceeded to consider the bill.

Mr. CRAPO. I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; and that the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 685) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

RECOGNIZING THE SIGNIFICANCE OF COMMUNITY COLLEGE MONTH IN APRIL

Mr. CRAPO. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 686, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 686) recognizing the significance of Community College Month in April as a celebration of more than 1,000 institutions throughout the United States supporting access to higher education, workforce training, and more broadly sustaining and advancing the economic prosperity of the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. CRAPO. Mr. President, I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; and that the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 686) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER. The Senator from Oregon.

S. CON. RES. 33

Mr. MERKLEY. Mr. President, we are here tonight because our Republican colleagues have introduced a budget resolution. It is a budget resolution that unlocks the reconciliation process.

But before we examine this next reconciliation bill, let's recognize that it has been just 10 months since we passed the last one. That was the one that was known as H.R. 1, or in Trump lingo: One Big Beautiful Bill. Of course, most of the Nation called it ''One Big Ugly Betrayal'' because that was a more accurate describer of what it did to families across our Nation.

It slashed a trillion dollars from healthcare programs—a trillion dollars from healthcare programs—for families. It kicked 15 million Americans off health insurance. That certainly doesn't help American families.

It took food off the plates of more than 3 million families with kids. You know, kids can't really do well in school if they are hungry; making them deliberately hungry—what were you thinking?

What were you thinking in destroying healthcare by a trillion dollars for 15 million Americans, taking food off the plates of 3 million families with kids, and to do it to fund tax breaks for billionaires? Wow. That is all about government by and for the powerful.

But you know why I love this country? Because it is all about government by and for the people. That is the vision our Nation was founded on. That is the beauty of a democratic republic.

But what did we get last year? We got the opposite. We got the opposite—the type of policy that comes out of a strongman state, the type of policy that comes out when the powerful exercise tyranny over the people—the type of tyranny our Founders revolted against when they created our Nation. That is what we saw 10 months ago: families lose and billionaires won.

And that is not all that bill did. It also gave 65 billion to Customs and Border Protection and 75 billion to Immigration and Customs Enforcement or ICE. And that amount of money was about seven times a normal annual appropriation.

We can see here in this chart 2017, 2018, 2019, 2020, all less than 10 billion; 2025, and there we are. So much more. The annual appropriation, plus this extra for ICE of an additional $75 billion.

And anyone looking at the chart goes: Wow. They already prefunded, for multiple years, ICE. They did exactly the same thing for Customs and Border Protection—CBP.

So we heard a few moments ago from my colleague at the head of the Budget Committee that ICE is out of money. Oh, really? Not true. That CBP is out of money. Not true.

In fact, the President's Office of Management and Budget puts out a monthly report, so go look it up yourself. They are sitting on $103 billion of unobligated funds.

So they already have funds for this year and next year and the year after. So the entire premise of this bill is completely false—completely false. They don't need more money. What they do need are reforms about their conduct across America because they have been terrorizing our communities across our country because this administration said: No longer will you use