

and refuses to release the most basic information about his taxes and income?

Hillary Clinton has posted all of her tax records for the last four decades for the world to see. Donald Trump shows us nothing. He is afraid to.

Mr. Trump, prove to every American that you are the wealthy, successful man you claim to be.

Mr. Trump, prove to every American that you have paid your fair share of taxes.

Mr. Trump, prove to every American that you are not mooching off the American taxpayer.

Mr. Trump, release your tax returns. Prove me wrong. Prove Mitt Romney wrong.

I dare you to come clean and show us your tax records.

But he won't.

Mr. President, I see my good friend, the Senator from Illinois, the assistant Democratic leader, on the floor.

I now ask the Chair to announce the business of the day.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

#### LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2017—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to H.R. 5325, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 516, H.R. 5325, a bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 2017, and for other purposes.

The PRESIDING OFFICER. The Senator from Illinois.

#### WELLS FARGO

Mr. DURBIN. Mr. President, every morning paper and most of the newscasts this morning focused in on a hearing of the Senate Banking Committee yesterday. It was a hearing where the President of the Wells Fargo bank was called on to testify. At issue was a recent disclosure that over a period of many years, Wells Fargo bank was enrolling its customers, without their knowledge, in the ownership of bank accounts and credit cards. Many times they faced penalties and charges which they did not understand because they had not asked to be enrolled in these programs. The employees at Wells Fargo bank did it in an effort to win favor within their corporate ranks and even to receive bonuses.

This defrauding of thousands of Wells Fargo customers was finally unearthed by the media and by the Consumer Financial Protection Bureau. As a result, a substantial fine of millions of dollars was paid by Wells Fargo bank, and the President, Mr. Stumpf, was called be-

fore the committee yesterday to explain the situation. He faulted the over 5,000 employees of Wells Fargo bank, who he said were not honest in their dealings with their customers, and they were dismissed. There were questions asked of Mr. Stumpf about the responsibility of the management of Wells Fargo bank for this terrible miscarriage of justice and apparently very few, if any, managers were held accountable.

One particular woman who was in a management capacity had been allowed to leave the bank under extremely positive circumstances. She was given a golden parachute of over \$100 million when leaving the bank. So while 5,300 people, making around \$12 an hour, were being dismissed because of their lack of ethics, this managing woman was, in fact, rewarded with a golden parachute of over \$100 million as she left.

Questions were raised by many of my colleagues, including Senator BROWN, and even Republican colleagues were skeptical of this Wells Fargo presentation. Senator ELIZABETH WARREN was particularly poignant in her remarks that so many of the lower echelon employees were found morally culpable and paid a heavy price, while those at the highest ranks, including Mr. Stumpf himself, were compensated grandly for their leadership during this terrible time. It is an indication of what it takes to bring real justice to a free market system.

I am a person who believes America is lucky to have the economy it has, but I also know that throughout history, there have been excesses where people have had to step in—sometimes the media with disclosure and many times the government with oversight and regulation—to right the wrongs which occur in runaway, rampant capitalism. We saw it, of course, in the recession that hit our country in 2008. Many of the largest banks in this country took advantage of individuals and families and businesses. At the end of it, many people lost their savings, their homes, and their jobs because of the greed of Wall Street, but what we are talking about in the area of justice doesn't just apply to financial institutions, it applies to health insurance as well.

#### AFFORDABLE CARE ACT

Mr. President, on a regular basis now, the leadership on the Republican side of the aisle has come forward to condemn the Affordable Care Act. It apparently is a big issue which they want to take into the election in November. I hope the American people listen carefully to what we have just heard from Senator MCCONNELL, the Republican leader in the Senate.

Day after day, week after week, month after month, and year after year, for the last 5 years, Republicans have come to the floor and said: Let's abolish ObamaCare. Let's end the Affordable Care Act. I am still waiting for the first Republican to come to the

floor and say: And here is what we will replace it with.

There is a saying in downstate Illinois—I will clean it up a little bit—that any mule can kick down a barn door, but it takes a carpenter to build one. In this situation, the Republicans can't wait to kick down the Affordable Care Act, but they don't have any plans to build a replacement.

So here is what they want to do. They want to go back to what they consider the good old days of health insurance in America.

Six years ago, let me tell me colleagues, health insurance in America was no picnic for most American families. Not only was there a steady increase in premiums year after year, but health insurance companies were very picky about the people they would insure. If you happened to be the parents of a child who had weathered the storm and survived cancer treatment, your child had a preexisting condition. If you could get health insurance, you paid a lot for it. The same thing was true if your wife had survived a heart attack, for example, and was now on the mend and doing well. She had a preexisting condition.

So preexisting conditions became the basis for discriminating against American consumers. Who among us comes from such a perfect family without any health record that we can say there are no preexisting conditions in my family. If you don't have one today, you might have one tomorrow.

One of the things about the Affordable Care Act is, we said health insurance companies cannot discriminate against people because of preexisting conditions. In the bad old days, which the Republicans would return to, they could. Under the Affordable Care Act, they cannot.

We also said that lifetime limits on health insurance policies were unacceptable. So \$100,000 may sound like a lot of money until you are diagnosed with cancer, and then you realize the course of treatment is going to blow through that \$100,000 before you are ultimately going to get what the doctor has ordered. So we eliminated the lifetime caps on these policies that were, in fact, creating poverty among many Americans families because of medical diagnoses.

We also eliminated discrimination based on gender. Why was it that a man applying for a health insurance policy was paying less than a woman applying for a health insurance policy? That discrimination was allowed under the bad old days of health insurance that the Republicans want to return to.

We went further and said: If you are parents and have a young son or daughter, they can stay under your family health insurance plan until they reach the age of 26. Why is this important? Because kids out of college are still looking for work. They may not get a full-time job, they may not get health care benefits, but families want the peace of mind to know they are covered

until age 26, until they can have a chance to develop their own health insurance coverage. Under the bad old days, that coverage was not there. The Republicans would like to go back to that. That is a mistake as far as I am concerned.

We also basically said as well that if you are a senior citizen in America, you are not going to be burdened by what was known as the doughnut hole. People in Medicare are given a benefit for prescription drugs, but as the law was originally written, there was a gap in coverage in that benefit called the doughnut hole. You would be covered for the first few months of the year on expensive drugs; then you would be on your own to either pay out of your savings or not take the drugs for several months before coverage started again. We are closing the doughnut hole as part of the Affordable Care Act. The Republicans would take us back to the days of the doughnut hole, where individual retired Americans would face expenses of \$2,000 or more for drugs each year. We are in the process of closing that doughnut hole. The Republicans would take us back to the bad old days when we didn't have that closure.

They would eliminate the coverage of health insurance brought on by the Affordable Care Act for over 20 million Americans—20 million Americans. Senator MCCONNELL would say: Sorry, we are going back to the bad old days. You and your family don't get health care coverage.

There is something we discovered. Even families without health insurance get sick, and when they do get sick and, in the worst of circumstances, turn up at the doctor or the hospital, they are treated, and many times can't pay for it. Who pays for that care? Everyone else. Everyone else who is paying health insurance will pay for it.

We think it is better under the Affordable Care Act. We achieved this: More and more Americans have their own health insurance, both for care when they are sick as well as for preventive care. We provide preventive care under the Affordable Care Act, particularly for senior citizens so they will avoid serious illnesses that get very expensive down the line.

So what has been the net result of this? Not only are there 20 million more people who have health insurance in America because of the Affordable Care Act, but also the fact is, the rate of increase in costs in health care has slowed down—slower than at any time in recent records or modern memory. It has extended the life of Medicare for another 12 or 13 years because the cost of health care is not rising as quickly as we thought it might.

The Republicans would take us back to the bad old days when the cost of health care was going up even more rapidly. I don't think most Americans would sign up for that.

We also understand that when it comes to the Affordable Care Act,

there are ways to improve it. I signed on to one of the provisions that Senator MCCONNELL took exception to this morning. It is a provision for us to consider a public option when it comes to health insurance. I am all for private health insurance companies competing, doing their best, trying to win the support and the enrollment of American families, but what is wrong with creating a Medicare-like proposal that is a not-for-profit entity providing health insurance along the style of Medicare?

Senator MCCONNELL was pretty critical of that this morning. He hadn't asked most Americans what they think about Medicare. He should. Many of them thank God we have it. For many of them, it meant health insurance when they had no place to turn. The creation of Medicare over 50 years ago was liberating to many seniors. Now they finally have affordable, quality health care after they retire. So putting that on as a public option to be considered by those who are signing up for health insurance would let them shop and let them compete. That to me is consistent with what we want to achieve when it comes to health care in this country.

So we listen time and again to these attacks and critiques of the Affordable Care Act. We have yet to see the Republican alternative. The only alternative they suggest is going back to the bad old days when health insurance cost too much, when health insurance discriminated against people with pre-existing conditions, and when health insurance was a gamble as to whether you would have it from this year to the next.

There are ways to improve the Affordable Care Act. I won't come to argue and will be the last to say that it is perfect as written, but in order to improve it, we need bipartisan cooperation, which we don't have. On the Republican side of the aisle, there have been 60 or 70 votes to abolish it, but not 1 vote to step up and try to improve it, which I would be happy to join in on a bipartisan basis. That is what the American people expect of us.

The last point I would like to make on the issue of health care is to state for the RECORD of the U.S. Senate that we had a meeting yesterday on medical research. This is a good news story, and there aren't a lot of them on Capitol Hill. But we moved forward on a bipartisan basis to make substantial increases in the medical research budgets of the National Institutes of Health. This is the premier medical research facility for the world, and we are lucky to have it right here in the Washington area.

Dr. Francis Collins heads it up. He told me years ago that if he could get 5-percent real growth in medical research for a number of years, we could make dramatic advances when it comes to medical research and cures for diseases. I took him up on that, and I enlisted a joint effort—first with PATTY MURRAY, my colleague from the

State of Washington, who is in a key position on the Appropriations Committee and the authorizing committee in the area of medical research and is totally committed to the effort, and on the Republican side Senator BLUNT of Missouri and Senator ALEXANDER of Tennessee. Then Senator LINDSEY GRAHAM of South Carolina joined me to co-chair the NIH Caucus.

Here are some things you may not know about medical research and how important it is. There was a briefing yesterday on diabetes. I didn't realize until I walked into that briefing that one-third of the annual expenditure for Medicare is for the treatment of diabetes. In addition to that, 20 percent of the annual expenditure for Medicare is for Alzheimer's. So for two diseases, diabetes and Alzheimer's, more than 50 percent of our Medicare budget is being spent each year. If we could develop new drugs, new treatments, new approaches that deal with diabetes and Alzheimer's, it would not only spare the people from the suffering they are going through and from the need for medical care, but it would greatly help our Medicare Program to be more solvent for years to come.

Is medical research a good investment? I think it is the best investment. We have seen it pay off over and over and over again. Do you remember not too long ago when we were talking about people who were making their last trek down to Plains, GA, in the hopes that they would see former President Jimmy Carter for the last time because of his cancer diagnosis? Then, do you remember when President Jimmy Carter held a press conference and said: I am cancer-free. It was because of the development of drugs and medical treatments through medical research. That has given him back his life. For many Americans, it is the same story every day.

We may do a lot of things wrong in Washington, but let's not get medical research wrong. Let's get it right. Let's make it bipartisan, and let's invest in it. I can't think of a better investment for future generations in this country.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. (Mr. COTTON). 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.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 17 minutes as in morning business.

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

#### CLIMATE CHANGE

Mr. WHITEHOUSE. Mr. President, I am here for the 147th time in my series of speeches urging the Senate to wake up to the consequences of climate change and also to the motives of the outside forces that lull the Senate into persistent somnambulism.

Outside this Chamber, every major scientific society, every one that I know of, of my colleagues' home State universities, all of America's National Labs, our military and security professionals, and NOAA and NASA all agree on the basic science of climate change and broadly support responsible climate action. There may be uncertainty about exactly what year sea level rise will hit what floodmark, for instance, but on the basic idea that climate change is causing seas to rise and floods to come, it is game over.

NASA reported that August 2016 was the warmest August in 136 years of recordkeeping. August tied July as the hottest month the world has seen in the 136 years we have been measuring. More notable, August marked the 11th record-setting month in a row in NASA's data set. Why, in the face of all of that, does this Chamber slumber? Thank the dark influence of the fossil fuel industry.

For years, Big Oil and its allies funded outright denial of manmade climate change. The Union of Concerned Scientists issued this report last year: "The Climate Deception Dossiers: Internal Fossil Fuel Industry Memos Reveal Decades of Corporate Disinformation." The report documents how the big polluters contributed to front organizations and paid scientists to put out junk science contradicting what real, peer-reviewed science and even the industry's own experts knew about how burning fossil fuels affects the environment.

Take ExxonMobil, for example. According to the company's own documents, as recently as 2015, ExxonMobil was still funding organizations that promote climate science disinformation, including the American Legislative Exchange Council, which peddled legislation to State legislatures that included a finding that human-induced global warming "may lead to . . . possibly beneficial climatic changes."

At the Hoover Institution, a senior fellow, not a climate scientist, argued that climate data since 1880 supports a conclusion that it would take as long as 500 years to reach a 4-degree centigrade of global warming.

At the Manhattan Institute of Policy Research, a senior fellow writing about climate change said: "The science is not settled, not by a long shot."

The CEO of the so-called National Black Chamber of Commerce claimed that "there has been no global warming detected for the last 18 years." Tell that to NASA.

Let's not forget the Pacific Legal Foundation, where a senior attorney attacked EPA's authority to even regulate CO<sub>2</sub>, in part because it is a "ubiquitous natural substance essential to life on Earth."

All of those pronouncements by Exxon-backed organizations, as reports in both InsideClimate News and the Los Angeles Times have confirmed, run counter to what real scientists know.

Yet, according to the public affairs guy at ExxonMobil, the company has supported mainstream climate science for decades. Their PR guy said: "Frankly, we made the call that we needed to back away from supporting the groups that were undercutting the actual risk" of climate change. Well, that doesn't actually seem to be true.

ExxonMobil's campaign of falsehoods has the attention of several attorneys general, and in today's newspaper, it is revealed that it also has the attention of the Securities and Exchange Commission. Their questions are not unreasonable: Is ExxonMobil actively advancing the notion that its products have little or no effect on the Earth's environment, while at the same time suppressing its own internal research on the effects of carbon pollution, deceiving consumers into buying ExxonMobil products based on false claims? Is the company misleading its investors about its developable oil reserves and long-term prospects in a climate-changed world? It breaks the law to knowingly mislead consumers and shareholders about something material, and climate change is certainly material to ExxonMobil.

As Senator WARREN and I recently wrote in the Washington Post, investigations by States attorneys general are making ExxonMobil nervous, and their Republican friends in Congress are riding to the rescue. House Science, Space, and Technology Committee chairman LAMAR SMITH and his fellow committee Republicans have issued subpoenas demanding that the attorneys general fork over all materials relating to their investigations.

I asked the Congressional Research Service, and as far as they could find, no committee has ever subpoenaed documents in an ongoing State AG investigation.

Setting aside the federalism problem of Congress going after States in a sovereign State function, if they tried this stuff with our Federal Attorney General, they would be rebuffed.

The committee subpoenas also targeted eight organizations, including the Union of Concerned Scientists, the Rockefeller Family Fund, and Greenpeace, ordering them to turn over their internal communications related to what Chairman SMITH describes as "coordinated efforts to deprive ExxonMobil of its First Amendment rights."

Take a moment to absorb that. States attorneys general are investigating whether a fraud has been committed—something State AGs do every day. As Rhode Island's AG, that is what I did. Sometimes we would uncover fraud and sometimes not. Ultimately, if the evidence warranted it and if the attorney general pursued the case to trial, the question of fraud would be resolved in open court.

Instead of praising the State AGs for doing their jobs within our system of checks and balances, congressional Republicans have leapt in to obstruct the

investigation before any evidence becomes public. So far, both the subpoenaed attorneys general and the eight organizations have refused to comply with those subpoenas. I say, good for them. If the committee moves to enforce its subpoenas, the matter will then come before a judge. If that happens, I hope those attorneys general will question whether the committee subpoenas reflect a legitimate governmental effort or are issued on behalf of a private party—indeed, the very private party which is the subject of those attorney general investigations. The law is clear that a legislative committee may pursue even an unworthy legislative purpose, but it is not clear that a legislative committee can lend itself to a private party. Let the court determine whether the House committee is acting as the de facto agent of ExxonMobil.

What might that court consider? Well, first, this is a committee whose chairman has received nearly \$685,000 in campaign contributions since 1989 from the oil and gas industry. The remaining committee majority have received over \$2.9 million in campaign contributions. I expect that is admissible evidence.

What else might the court consider? The committee asserts ExxonMobil has a First Amendment right that it needs to step in to protect. Interestingly, the shoe has been on the other foot when an attorney general of Virginia was tormenting a climate scientist—indeed, tormenting him so badly that the University of Virginia took that attorney general all the way to the Virginia Supreme Court to make him stop. The committee took no interest in that. Theirs is a First Amendment concern that only surfaces when the fossil fuel industry is the subject of investigation.

What else might the court consider? How about that the entire First Amendment argument the committee makes is a crock. Ken Kimmell, president of the Union of Concerned Scientists, noted that the committee "makes no allegation that UCS violated any laws or regulations, and [the] claim, that providing information to attorneys general infringes on ExxonMobil's rights, is nonsense." Mr. Kimmell is right. It is well-established law that there is a clear line between fraud and First Amendment-protected speech. The dean of the Yale Law School has published an article explaining this. Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

[From The Washington Post, June 24, 2016]

EXXON-MOBIL IS ABUSING THE FIRST AMENDMENT

(By Robert Post)

Global warming is perhaps the single most significant threat facing the future of humanity on this planet. It is likely to wreak havoc on the economy, including, most especially, on the stocks of companies that sell

hydrocarbon energy products. If large oil companies have deliberately misinformed investors about their knowledge of global warming, they may have committed serious commercial fraud.

A potentially analogous instance of fraud occurred when tobacco companies were found to have deliberately misled their customers about the dangers of smoking. The safety of nicotine was at the time fiercely debated, just as the threat of global warming is now vigorously contested. Because tobacco companies were found to have known about the risks of smoking, even as they sought to convince their customers otherwise, they were held liable for fraud. Despite the efforts of tobacco companies to invoke First Amendment protections for their contributions to public debate, the U.S. Court of Appeals for the D.C. Circuit found: "Of course it is well settled that the First Amendment does not protect fraud."

The point is a simple one. If large corporations were free to mislead deliberately the consuming public, we would live in a jungle rather than in an orderly and stable market.

ExxonMobil and its supporters are now eliding the essential difference between fraud and public debate. Raising the revered flag of the First Amendment, they loudly object to investigations recently announced by attorneys general of several states into whether ExxonMobil has publicly misrepresented what it knew about global warming.

The National Review has accused the attorneys general of "trampling the First Amendment." Post columnist George F. Will has written that the investigations illustrate the "authoritarianism" implicit in progressivism, which seeks "to criminalize debate about science." And Hans A. von Spakovsky, speaking for the Heritage Foundation, compared the attorneys general to the Spanish Inquisition.

Despite their vitriol, these denunciations are wide of the mark. If your pharmacist sells you patent medicine on the basis of his "scientific theory" that it will cure your cancer, the government does not act like the Spanish Inquisition when it holds the pharmacist accountable for fraud.

The obvious point, which remarkably bears repeating, is that there are circumstances when scientific theories must remain open and subject to challenge, and there are circumstances when the government must act to protect the integrity of the market, even if it requires determining the truth or falsity of those theories. Public debate must be protected, but fraud must also be suppressed. Fraud is especially egregious because it is committed when a seller does not himself believe the hokum he foists on an unwitting public.

One would think conservative intellectuals would be the first to recognize the necessity of prohibiting fraud so as to ensure the integrity of otherwise free markets. Prohibitions on fraud go back to Roman times; no sane market could exist without them.

It may be that after investigation the attorneys general do not find evidence that ExxonMobil has committed fraud. I do not prejudice the question. The investigation is now entering its discovery phase, which means it is gathering evidence to determine whether fraud has actually been committed.

Nevertheless, ExxonMobil and its defenders are already objecting to the subpoena by the attorneys general, on the grounds that it "amounts to an impermissible content-based restriction on speech" because its effect is to "deter ExxonMobil from participating in the public debate over climate change now and in the future." It is hard to exaggerate the brazen audacity of this argument.

If ExxonMobil has committed fraud, its speech would not merit First Amendment

protection. But the company nevertheless invokes the First Amendment to suppress a subpoena designed to produce the information necessary to determine whether ExxonMobil has committed fraud. It thus seeks to foreclose the very process by which our legal system acquires the evidence necessary to determine whether fraud has been committed. In effect, the company seeks to use the First Amendment to prevent any informed lawsuit for fraud.

But if the First Amendment does not prevent lawsuits for fraud, it does not prevent subpoenas designed to provide evidence necessary to establish fraud. That is why when a libel plaintiff sought to inquire into the editorial processes of CBS News and CBS raised First Amendment objections analogous to those of ExxonMobil, the Supreme Court in the 1979 case *Herbert v. Lando* unequivocally held that the Constitution does not preclude ordinary discovery of information relevant to a lawsuit, even with respect to a defendant news organization.

The attorneys general are not private plaintiffs. They represent governments, and the Supreme Court has always and rightfully been extremely reluctant to question the good faith of prosecutors when they seek to acquire information necessary to pursue their official obligations. If every prosecutorial request for information could be transformed into a constitutional attack on a defendant's point of view, law enforcement in this country would grind to a halt. Imagine the consequences in prosecutions against terrorists, who explicitly seek to advance a political ideology.

It is grossly irresponsible to invoke the First Amendment in such contexts. But we are witnessing an increasing tendency to use the First Amendment to unravel ordinary business regulations. This is heartbreaking at a time when we need a strong First Amendment for more important democratic purposes than using a constitutional noose to strangle basic economic regulation.

Mr. WHITEHOUSE. As the attorney general of New York correctly states, "Fraud is not protected by the First Amendment."

A number of high-profile legal scholars sent a letter last week to Chairman SMITH, condemning the subpoenas as "misguided." The letter argues that the subpoenas are "invalid and constitutionally impermissible." It turns out, according to these scholars, that the First Amendment actually works the other way:

The Subpoenas, and the threat of future sanctions, themselves threaten the First Amendment—directly inhibiting the rights of their recipients to speak, to associate and to petition state officials without interference from Congress.

A copy of the legal scholars' letter to Chairman SMITH can be accessed at the Yale Law School website at <http://tinyurl.com/yaleletter>.

Rhode Island attorney general Peter Kilmartin and his colleagues have also urged Chairman SMITH to withdraw the subpoenas. "Your interference in our colleagues' work ignores a 'vital consideration' under our constitutional system of dual sovereignty; the preservation of comity between the federal government and the states."

Mr. President, I ask unanimous consent that a copy of the Attorney General's letter to Chairman SMITH be printed in the RECORD.

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

STATE OF MARYLAND,  
OFFICE OF THE ATTORNEY GENERAL,  
Baltimore, MD, August 11, 2016.

Hon. LAMAR SMITH,  
Chairman, Committee on Science, Space and  
Technology, Washington, DC.

DEAR CHAIRMAN SMITH: We write to express our profound concern with the subpoenas issued on July 13, 2016 to our colleagues, the attorneys general of Massachusetts and New York. Through these subpoenas, which we understand you issued without a vote of the Committee, you seek the production of materials developed by the attorneys general in the course of their ongoing respective investigations of potential violations by the ExxonMobil Corporation of state securities and consumer protection laws. You have framed this intervention as "vigorous oversight" of state attorneys general and their investigative work. Such oversight would exceed Congress' constitutional authority, and the July 13 subpoenas should therefore be withdrawn.

Your interference in our colleagues' work ignores a "vital consideration" under our constitutional system of dual sovereignty: the preservation of comity between the federal government and the states. See *Younger v. Harris*, 401 U.S. 37, 44-45 (1971). "Comity," Justice Black wrote for the Supreme Court in *Younger*, means "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Id.* Any claim of a congressional right to "oversee" the work of state constitutional law enforcement officers in fulfilling their core responsibilities under state law disrupts this comity and tears at the essential fabric of our national Constitution.

As attorneys general, we each hold offices established in our states' constitutions or statutes. Our offices are critical to the functioning of our states' governments, and they have deep historical roots. Some of us, like the attorneys general of Massachusetts and New York, hold offices whose origins precede the founding of our country. The state attorney general has been described by the Florida courts, for example, as "the attorney and legal guardian of the people. . . . His duties pertain to the Executive Department of the State, and it is his duty to use means most effectual to the enforcement of the laws, and the protection of the people, whenever directed by the proper authority, or when occasion arises." *State of Florida v. Exxon Corp.*, 526 F.2d 266, 270 (5th Cir. 1976) (quoting *Attorney General v. Gleason*, 12 Fla. 190, 212 (Fla. 1868)) (holding that Attorney General of Florida had legal authority to pursue federal antitrust action against Exxon and other oil companies without authorization of government agencies allegedly injured by conduct at issue). Several state supreme courts, recognizing the broad discretion conferred on state attorneys general by state constitutions, have aptly described the office of attorney general as a "public trust." See, e.g., *Gleason*, 12 Fla. at 214; *Attorney General v. Morita*, 41 Haw. 1, 15 (Haw. Terr. 1955); *Commonwealth v. Burrell*, 7 Pa. 34, 39 (1847).

In fulfilling this public trust, we are each accountable in multiple ways to the people of our states. Most of us were elected directly to our offices by the people we serve. State legislatures write and enact most of the laws that our offices enforce, including securities and consumer protection laws like

the ones that give rise to the investigations in New York and Massachusetts that you have proposed to “oversee.” Moreover, we are accountable to the courts of our states, which, on innumerable occasions over the course of our states’ histories, have ruled both for and against us and our predecessors on issues of federal and state constitutional law, on issues of statutory interpretation, and on other issues.

“[O]ur Constitution establishes a system of dual sovereignty between the States and the Federal Government.” *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). Under that system, the federal government is one of limited powers, and, under the Tenth Amendment, “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” It is fundamental to our system of dual sovereignty that, as the Supreme Court has said, “States are not mere political subdivisions of the United States.” *New York v. United States*, 505 U.S. 144, 188 (1992). Indeed, “State governments are neither regional offices nor administrative agencies of the Federal Government. The positions occupied by state officials appear nowhere on the Federal Government’s most detailed organizational chart. The Constitution instead ‘leaves to the several States a residuary and inviolable sovereignty.’” *Id.* (quoting *The Federalist* No. 39).

In light of our nation’s commitment to the preservation of a system of dual sovereignty, it is not surprising that, despite centuries of investigative and prosecutorial activity by state attorneys general in which constitutional objections have been raised, you have not identified a single valid precedent, from any period of our country’s history, for the “vigorous oversight” of state attorneys general that you are now proposing to undertake. Difficult enough are cases where Congress proposes to regulate subject matters arguably reserved to the states, and where there may be some analytical difficulty entailed in drawing “distinction[s] between what is truly national, and what is truly local.” *United States v. Morrison*, 529 U.S. 598, 617 (2000). Your investigation, though, would go further. The stated purpose of your investigation is to oversee state constitutional officers themselves and the manner in which they fulfill their responsibilities under state law. Who oversees state officials is a matter “of the most fundamental sort for a sovereign entity,” because it is “through the structure of its government” that “a State defines itself as sovereign.” *Gregory v. Ashcroft*, 501 U.S. at 460 (holding that Congress could not, through laws prohibiting age discrimination, regulate the retirement age for state judges). Our national Constitution and our respective states’ constitutions neither anticipate nor tolerate a structure under which Congress arrogates to itself the authority to oversee investigations conducted by state attorneys general.

Your proposed “vigorous oversight” does not merely interfere with our work and the work of our colleagues. You also purport to supplant the role of state legislatures and state courts. We cannot understand on what basis you seem to assume, for example, that state courts in Massachusetts will be unable to resolve the constitutional objections that ExxonMobil, through skilled counsel, has already lodged there. State courts, not Congress, are the appropriate arbiters of any state law claims brought by the attorneys general of Massachusetts and New York against ExxonMobil and of any constitutional objections that ExxonMobil might assert.

The Constitution establishes “a system in which there is sensitivity to the legitimate

interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.” *Younger*, 401 U.S. at 44. Your proposed oversight of state constitutional officers cannot be squared with these essential principles of federalism, nor can your attempt to oversee the resolution of alleged constitutional issues arising from the ongoing investigative activities of state attorneys general undertaken under state law. We therefore urge you to withdraw your subpoenas, refrain from attempting to exercise further oversight, and allow state attorneys general and state courts to perform their constitutionally prescribed roles.

Sincerely,

Brian E. Frosh, Maryland Attorney General; George Jepsen, Connecticut Attorney General; Douglas Chin, Hawaii Attorney General; Jim Hood, Mississippi Attorney General; Peter F. Kilmartin, Rhode Island Attorney General; Kamala D. Harris, California Attorney General; Karl A. Racine, District of Columbia Attorney General; Janet T. Mills, Maine Attorney General; Ellen F. Rosenblum, Oregon Attorney General; William H. Sorrell, Vermont Attorney General; Mark R. Herring, Virginia Attorney General; Bob Ferguson, Washington Attorney General.

Mr. WHITEHOUSE. Congressional investigations and hearings have a unique ability to focus a nation’s attention and bring facts of public importance to light. These subpoenas, however, appear intended to impede lawful State investigations. They do not advance the First Amendment, they trample on it.

Senator WARREN and I offered a suggestion to the House committee in our Washington Post piece:

If this House Committee is so concerned about the First Amendment rights of ExxonMobil, call a hearing, invite ExxonMobil executives to testify, and give them the opportunity to speak. What better way to protect a person’s right to speak freely than to give that person a forum to speak, right here in Congress?

They can come in, say whatever they want to say, and answer questions. I know I would love to hear what they have to say.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

TRIBUTE TO DAVID DOSS AND NICOLE HEBERT

Mr. VITTER. Mr. President, I rise to honor two of my longest serving staff members who have been tremendous team leaders in our office: David Doss, my State director, and Nicole Hebert, my deputy State director. They are both, sadly, departing the Senate later this month to start exciting new careers.

Nicole Hebert started with our team when I was first running for the U.S. Senate in 2004. Nicole is a Lafayette native and a native of the Acadiana region—or, Cajun country, as it is known—which was a key battleground in our election in 2004, in part because we were running against a local Cajun candidate in our jungle primary who

was supported by my predecessor who was also from Acadiana. With Nicole’s help, we shocked the entire State that year, winning with over 50 percent of the vote in the primary, forgoing the need for any runoff and winning Acadiana against a Cajun candidate—and Nicole was a big, important part of that victory.

Nicole and her husband Tommy and Nicole’s parents Lynne and Joey Durel were all incredibly helpful then and ever since then in helping me navigate the region and have always made—as a guy from southeast Louisiana—feel right at home in that important part of the State.

Nicole, Tommy, and Lynne have all been on my staff at one point or another, and all of them were just great at helping me loosen up, take off my tie, and relax. They were also great at helping explain the Boudreaux and Thibodaux jokes that everyone was laughing so hard at and I could barely even understand them.

In Acadiana politics, you are nobody unless you are invited to a supper hosted by somebody named Trey, T-boy—or something like that, and I can’t even count how many of those informal suppers I have been to and enjoyed with Nicole and her family. I will tell you, I have experienced some of the best food in the world at those great events—boudin, crawfish pie, etouffe, and alligator sauce piquante—and, of course, all the festivals in Acadiana. I have been on so many pickup trucks and firetrucks—including an infamous one that broke down in the mud—for all of those Acadiana festivals: the Rice Festival, the Sugar Festival, the Frog Festival, the Crawfish Festival, and the Shrimp and Petroleum Festival. The fun list goes on and on.

Even though it is technically work, I certainly enjoyed all that time with Nicole and the Hebert family, and often found myself with a stomach cramp when I left the region, not because I ate or drank too much—although that happened too—but because I was always laughing so hard in their company.

Nicole and Tommy, their parents, and their two girls Hannah and Meredith, whom I have really enjoyed watching grow up, have all been a huge part of our Vitter family life. Wendy and I count them as dear friends, and we certainly will keep up with them through the rest of our lives.

David Doss, our State director, was one of my earliest hires when I was first elected to the U.S. House. He is my State director and before that served as my district director in the U.S. House. I know all of our colleagues here can attest to the fact that having a great State director on top of things, really managing the State offices properly, is a key element of success in any Senate office.

State directors are on the frontlines of everything. They always have to know what is on constituents’ minds

and what is happening around the State, and David has proven one of the great State directors in the country.

We have dealt with more than our share of disasters in Louisiana, and there is no one else I would have guiding our office through all that than David. Following Katrina, he organized a mobile office so our State staff could get around to impacted areas. That continued following other disasters. After the BP oilspill, David organized an incredibly effective and efficient casework operation to help assist people with those important claims.

David does it all. He has never been above any task, from seeing casework all the way through to the best possible outcome, to answering phones, to sorting through the mail when necessary, even to helping drive and getting me around the State.

David manages our seven State offices—which, by the way, is more than any other Senator from our State has ever had. We have an office in the seven biggest metropolitan locations around the State. So that is no easy task for him to manage. He has to coordinate our staff's driving schedule from New Orleans to Lake Charles, to Shreveport, to Monroe—all that in the same day sometimes—to get me to every parish, every Congress, for town-hall meetings, a pledge I made when I first ran for the Senate in 2004.

Others have chosen to fly on private jets to get around the State, but David always organized for us to drive each leg of each journey to save taxpayer dollars and so we can see what is really happening on the ground in every parish of our great State. Sometimes David would be doing that driving himself.

There was one time, of course, when we had to take away David's driving privileges for a while after he backed into a street sign with me in the car, but don't worry, no injuries—except possibly to David's pride for a while. Other than that minor accident, I would describe David's leadership of our State staff as really steady—a great leading, guiding influence, always a steady hand, always has an open line of communication, always listens well, always leads with that reassuring, steady hand.

There are very few community meetings, ribbon cuttings, or luncheons, or events all around our State where we don't have our State staff in attendance, and David has really helped build and run that well-oiled State staff machine and that well-oiled constituent service machine.

I have often said, the most fulfilling parts of my career are the relationships and friendships Wendy and I have built, including with our great staff. Wendy and I often consider staff an extension of our family. That is absolutely true for David and his wife Anne Mary and their daughters Julie and Jennifer.

We wish them all the best as they start an exciting part of their lives. I

thank Nicole and David for their wonderful service to Louisiana and for their friendship. We wish them all the best again as they start new parts of their careers. They are great individuals, they are great team leaders, and they are also great representatives of a wonderful State staff.

I mentioned before we have seven offices around Louisiana. Each office has a strong presence in their regions and their communities. I think our State staff, in that presence, has created the gold standard for constituent service, in part because of David and Nicole's leadership, but we have also built a great team, without exception, in all seven of those offices. To me, success in Congress is not measured by how many bills or amendments you introduce or pass but how many people you help and impact in a positive way. And our staff has countless success stories through their important casework—really important casework wins—which sometimes actually changes people's lives in a major way for the better. It is because of this gold standard that our great State staff has developed that we decided to memorialize what we have collected as best practices in terms of constituent service. We are putting that into a guidebook related to constituent service, and I will be sending that guidebook to all of the major candidates who are running to fill this Senate seat. In the guidebook, we will go through those best practices on constituent casework, on helping people and organizations in the State navigate the Federal process applying for grants and the like. As to the important need of being open and accessible, how a Senate office can do that effectively, and maintaining constant lines of communication with our fellow Louisiana citizens, all of those best practices and good ideas will be going into this guidebook that will be available to my successor.

Again, I want to thank David and Nicole and our entire State staff team for their years of dedicated service and success serving, really going above and beyond in serving the people of Louisiana.

I yield the floor.

THE PRESIDING OFFICER (Mr. SULLIVAN). The Senator from Nebraska.

#### THE ECONOMY

Mrs. FISCHER. Mr. President, I rise today to call attention to a very troubling issue, and we hear about it often. Sadly, there is a lack of leadership from the executive branch with regard to it. I am talking about the state of the American economy. Many families across Nebraska and across our Nation are worried. Whether they are hard-working parents trying to make ends meet or grandparents who are concerned about their grandchildren's future, there is no shortage of anxiety.

As many of my colleagues have pointed out, the economy is not recovering quickly enough. In fact, we are slogging through the slowest economic recovery since the 1960s. By way of ref-

erence, in 1961 Kennedy was President, a gallon of gas cost 31 cents, and Roy Orbison was in Billboard's top five.

In every economic recovery since that time, the American economy grew an average of 3.7 percent per year. Since 2009, however, this growth has averaged a mere 2.1 percent per year. This year, it slowed to just 1 percent. Last quarter, the economy grew by a pitiful 1.2 percent. Again, things are not getting better quickly enough.

There are some real obstacles before us. The share of Americans in the workforce has fallen below 63 percent. That is nearly three percentage points below where we were when the recovery began. Another concern is the growing number of expensive and burdensome regulations. Rulemaking under the Obama administration has skyrocketed. Federal regulations cost an estimated \$1.9 trillion per year. That is more than \$15,000 for each American household. These figures are worrisome.

Here is one that should truly be frightening for us. At the same time, we have seen our national debt reach a staggering \$19.5 trillion. Just last year, the United States spent \$223 billion, or 6 percent of the Federal budget, to pay interest on that national debt. This year, the nonpartisan Congressional Budget Office estimates that our deficit will be \$590 billion. This means that we are going to be spending almost \$600 billion more than we take in.

If we don't change course, the CBO estimates that these deficits are going to skyrocket over the next decade, reaching \$1 trillion in 2024, and they will only continue to grow from there. These numbers paint us a very dark picture, but I do have some good news. There is still time for us to change course. In fact, this body has taken several good steps.

Since taking office, I have worked with my colleagues to reduce some wasteful spending and some burdensome regulations. In 2015, I introduced the Grants Oversight and New Efficiency Act, or the GONE Act. This bill, which was signed into law in January, will save millions of dollars by closing expired grant accounts and increasing oversight over Federal grant programs.

I have also introduced and pushed for votes on several waste-cutting amendments during the appropriations process, including one to wind down an outdated and ineffective stimulus-era program. These are good steps, and here are a few others. We passed a highway bill, which will provide much needed certainty for States, businesses, families, and the traveling public. By prioritizing our infrastructure, we are investing in our economy's ability to grow.

In the same vein, last week, we passed the Water Resources Development Act. This is another key infrastructure bill that will enable our economy to grow by modernizing our ports and our waterways. So we do have tools available for us to meet these fiscal challenges.

We have to exercise restraint, and we have to exercise that restraint among ourselves. The appropriations process is a critical way for us to do this. It is the only way that our citizens can truly hold their elected representatives accountable for this spending. It allows the American people to see the true priorities of their elected representatives.

There is one last point before I close. Reducing the national debt does not mean that we stop investing. It simply forces us to make smarter choices. Some things we need to prioritize, and we know what those are. We need to keep our families and our communities safe. We must invest in infrastructure to promote commerce and grow this economy. We must reduce wasteful spending and prioritize prudent spending. We must reduce the national debt. We must get government out of the way so opportunities can be created for our families and for our young people, but we have to be responsible stewards of taxpayer money. We must make those responsible choices.

I believe that our very best days as a nation are before us, and that is because of my unwavering faith in the fundamental goodness, tenacity, and the creativity of the American people. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MOTION TO DISCHARGE—S.J. RES.  
39

Mr. MURPHY. Mr. President, on behalf of Senator PAUL and pursuant to the Arms Export Control Act of 1976, I move to discharge the Foreign Relations Committee from further consideration of S.J. Res. 39, relating to the disapproval of the proposed foreign military sale to the Government of Saudi Arabia.

The PRESIDING OFFICER. The motion is now pending.

Under the previous order, there will be 3 hours of debate on the motion, divided between the proponents and opponents, with the Senator from Kentucky controlling 30 minutes of proponent time and the Senator from Connecticut controlling 15 minutes of proponent time.

The Senator from Connecticut.

Mr. MURPHY. Mr. President, I ask unanimous consent that the time during quorum calls on the motion be equally divided between the proponents and the opponents.

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

Mr. MURPHY. Mr. President, I am going to speak briefly in support of the resolution. Senator LEE, a cosponsor of this resolution, is on the floor, and he will speak after I do.

Let me say at the outset that I believe in a strong U.S. global presence. I

believe the United States is at its best when it is a global leader. We can and we should be a force for good and for peace in the world.

I also believe, quite frankly, that peace comes through strength. I don't apologize for the size of our military budget, nor do I think it would be wise for this Congress to give up this country's massive military edge over every global adversary and friend. Having the world's biggest, baddest military keeps us safe, and, frankly, it keeps a lot of our friends safe as well.

My last stipulation before I talk about the resolution would be this: I also believe there are times when we should use that military power. There are times when war or military action is just. If you want to provide safe harbor for terrorists who plan a massive attack against this country, such as the Taliban in Afghanistan, then they can expect a visit from the U.S. Army.

But increasingly we all have to reconcile with the fact that there are more and more limitations on the effectiveness of U.S. military power. Today, our adversaries and our enemies practice something we call asymmetric warfare, which means they concede our conventional military advantage and use other means and methods to exert power and project strength. China does it through economic aid, Russia does it through bribery and the extension of its natural resources to its neighbors, and ISIL does it through terror and through the perversion of religion. Yet this country and this Congress continue to believe that most conflicts around the globe can be solved with just a little bit more American military hardware.

That is what brings us here today to talk about this arms sale to Saudi Arabia, particularly in the context of the ongoing conflict inside Yemen—a civil war inside Yemen in which the United States has become a participant.

This is a picture from war-ravaged Yemen—an ongoing humanitarian disaster. We don't have the full extent of the numbers, but there have already been thousands of civilians killed. If we talk to Yemenis, they will tell us that this is perceived inside Yemen as not a Saudi-led bombing campaign, which it is broadly advertised as in the newspapers, but as a U.S. bombing campaign or, at best, a U.S.-Saudi bombing campaign.

There is a U.S. imprint on every civilian death inside Yemen which is radicalizing the people of this country against the United States. Why is this? Well, it is because, while the conflict inside Yemen started as a civil war—the Houthis overrunning the government inside Sana'a—the Saudis and a coalition of other Gulf States have entered the conflict, largely through air operations, to try to push the Houthis back, and they have asked for our assistance, which we have given, and we have given it in substantial means and methods. We provide the bombs, we provide the refueling planes, and we provide the intelligence. There really is no way this bombing campaign could happen without U.S. participation.

The United States is at war in Yemen today. The United States is at war in Yemen today, and this Congress has not debated that engagement. This Congress has not debated that war. It is yet another unauthorized U.S. military engagement overseas.

But the scope of this disaster for the purposes of U.S. security interests is not just the radicalization of the Yemen people against the United States or the thousands of people who have been killed but also the fact that this war has given ground—an opportunity for Al Qaeda and ISIS to grow—grow by leaps and bounds.

Let's be honest. Our first responsibility here is to protect this country from attack, and the most likely arm of Al Qaeda that would have the means or the inclination to attack the United States is the branch that exists inside Yemen. Their recruitment has grown by multiples over the course of this conflict. For a period of time, AQAP was able to use this conflict to grab control of a major port city inside Yemen, which radically changed the ability of AQAP to recruit and to grow their capacity to do harm outside of Yemen, because they had control of resources and taxation inside this city.

One would think that if the United States was providing all of these resources to the Saudi-led coalition, that some of them would be used to try to push back on ISIS's growth or AQAP's growth inside Yemen, but the exact opposite has happened. None of the Saudi bombs are dropping on AQAP; they are all dropping on Houthi targets and civilian targets. So we are arming the Saudis to fight an enemy—the Houthis—whom we have not declared war against, and the Saudis are not using those weapons to fight our sworn enemy whom we have declared war against: Al Qaeda. So the civilian casualties mount, ISIS and Al Qaeda grow, yet this is the first time we have had the opportunity to discuss the wisdom of this engagement.

We begged the Saudis to change their conduct. We have asked them to target Al Qaeda. To the extent that Al Qaeda is shrinking a bit, it is not because the Saudis have targeted them, it is because other players in the region—the Emirates—have targeted them. We begged the Saudis to stop bombing civilians. Yet in a 72-hour period earlier this summer, the Saudi-led coalition bombed another Doctors Without Borders facility, a school, and the principal's house next door. We give them targets that they should stay away from because they are key parts of routes to bring humanitarian relief in a country that is ravaged by famine, and they still hit those targets even after we told them to stay away. We begged the Saudis to change their behavior inside this war, and they haven't listened.