

Arctic. We need to maintain spill response capabilities, enhance communications, track the increasing vessel traffic using polar routes, strengthen communications and the base scientists who are researching the changing Arctic ecosystem.

In addition, we need the legal framework to support our Arctic presence, and that means ratification of the Law of the Sea Treaty. We need a robust scientific program to track changes in the Arctic which in the past has operated like a global air-conditioner.

But scientists say, and the residents of the region confirm, that the Arctic is warming. As its ice pack diminishes, it is changing our weather. The National Oceanic and Atmospheric Administration, NOAA, says there were a record 12 weather disasters in the United States costing more than \$1 billion each in 2011. The hurricane force storm that blocked the fuel delivery to Nome isn't the only unusually severe weather facing my State. South central Alaska has had—and I will repeat this when I say it—24 feet of snow—24 feet of snow so far this winter. The cities of Cordova and Valdez know a thing or two about heavy winter snowfalls, but this is an unusual one for them.

In Cordova, buildings collapsed and avalanches cut the town off from its airport. That is a true concern since, like 80 percent of the rest of Alaska, Cordova is not connected by roads to the rest of the State.

The Army and Air National Guard sent soldiers and airmen to the scene, and the State of Alaska sent over 100 State responders and heavy equipment to the town by the State ferry system. The whole town, along with the Guardsmen and the State workers, pitched in and worked around the clock to clear the snow off the streets and roofs as another snow and rain system was about to hit. The only problem: Alaskans can be rather enthusiastic and kept breaking every single one of those snow shovels. Eventually they ran out and had to have more snow shovels shipped in from out of State.

Other parts of the State are affected as well. Boats capsized in the fishing port of Kodiak due to the heavy snow. Yesterday, once again, the Coast Guard came and performed their duty—not only one but two rescues of the crews of fishing vessels that sank near Kodiak Island.

NOAA is closely watching the heaviest sea ice in decades in the Bering Sea, which threatens to close the important crab fisheries and destroy millions of dollars in fishing gear.

Some politicians downgrade public service and say government can't do anything right. I am grateful for the government's response. I am grateful to the Coast Guardsmen on the Healy who gave up their holiday with their families to ensure Nome got its fuel, and I am grateful to the Alaska National Guard and State and local governments working to help dig out Cordova and Valdez.

I know my time has expired, but I wish to say there is no question in my mind that the work the Coast Guard did, the National Guard, and many others, set us on a course to again recognize the incredible people who are doing incredible things in our State and around the country. As we continue to look at the vast resources of the Arctic, more of these resources will be necessary, and I know one thing about Americans, about Alaskans, and that is we will be ready to take on the challenges of the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

#### RECESS APPOINTMENTS

Mr. LEE. Madam President, in defense of the Constitution, I stand against an action taken recently by our Chief Executive. President Obama's January 4, 2012, appointments to the Consumer Financial Protection Bureau and to the National Labor Relations Board are different in kind than previous recess appointments made by Presidents of the United States made by both political parties. These four appointments are unconstitutional because they did not, as required by article II, section 2, receive the "advice and consent" of the Senate, even though such advice and consent was necessary under the circumstances.

President Obama has asserted that the appointments are constitutional under the recess appointments clause. That clause provides that the President may "fill up all Vacancies that may happen during the Recess of the Senate." That clause does not apply here, however, because the Senate was not in recess when President Obama made the appointments in question.

In making these appointments, the President did not state that he believes an intrasession adjournment of less than 3 days constitutes a recess, and there can be little dispute that such a brief adjournment as occurred between January 3, 2012, when the second session of the 112th Congress officially began, and January 6, 2012, when the next pro forma session of the Senate occurred, does not, in fact, constitute a recess for purposes of the recess appointments clause.

The Department of Justice has consistently maintained that an intrasession adjournment must be longer than 3 days to constitute such a recess. The text of the Constitution evidences that the Framers did not consider an adjournment of less than 3 days to be constitutionally significant. Indeed, in article I, section 5, we read that "neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days."

Now, at the time these appointments—the appointments in question—were made, the Senate had not received consent from the House of Representatives to adjourn for a period of time of

more than 3 days. If an intrasession adjournment of less than 3 days were to be considered constitutionally sufficient for the President to exercise his recess appointment power, it is unclear what, if anything, might prevent the President from routinely bypassing the Constitution's advice-and-consent requirement and appointing nominees during even weekend adjournments.

The Department of Justice's Office of Legal Counsel asserts that the President may unilaterally conclude that the Senate's brief pro forma sessions do not constitute sessions of the Senate for purposes of the recess appointments clause. But this assertion is deeply flawed. It is for the Senate and not for the President of the United States to determine when the Senate is in session. The Constitution expressly grants the Senate the power to determine the rules of its own proceedings.

Granting the President unilateral power to override the Senate's determination of when it is in session would undermine the constitutional prerogative and violate the Constitution's fundamental principles of separation of powers.

The OLC memorandum on which the President relies asserts that the "touchstone" for determining when the Senate is in session is "its practical effect: viz. whether or not the Senate is capable of exercising its constitutional function of advising and consenting to executive nominations." This analysis contradicts the text and the original understanding of the recess appointments clause.

The purpose of that clause, we read in Federalist No. 67 which was authored by Alexander Hamilton, was to avoid obliging the Senate "to be continually in session for the appointment of officers." Nothing in either the Constitution's text or in the debate surrounding the recess appointment clause suggests in any way that the President should have the unilateral power to appoint officers and judges at times when the Senate is regularly meeting, even if that body is not conducting substantial business.

In addition, the OLC memorandum's functionalist argument fails on its own terms. During the Senate's pro forma sessions, including its session on January 6, 2012, the Senate was manifestly capable of exercising its constitutional function of advice and consent. Notably, at one such pro forma session on December 23, 2011, the Senate passed a significant piece of legislation demonstrating that it is, in fact, capable of conducting business—meaningful business—at such sessions.

But regardless of how much business the Senate conducts during pro forma sessions or how much business it indicates in statements that it intends to conduct in advance of such sessions, the Senate has been and continues to be capable of conducting business at such sessions—including advising and consenting as to nominations for the President should it decide to do so.

OLC's argument boils down to an untenable assertion that because the Senate has chosen not to act on the President's nominations during its sessions, it was incapable of doing so.

Finally, OLC's assertion that pro forma sessions are not cognizable for purposes of the recess appointments clause violates established constitutional practice and tradition. The Constitution provides that "[n]either House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days," and that "unless [Congress] shall by law appoint a different day," Congress shall begin each annual session by meeting "at noon on the 3d day of January."

The Senate has commonly and without objection used pro forma sessions to fulfill both constitutional requirements, evidencing a past consensus that such sessions are of constitutional significance. President Obama's novel assertion that such sessions no longer count for purposes of the recess appointments clause thus upsets precedent and creates an internal contradiction in the treatment of Senate sessions for purposes of the Constitution.

President Obama's January 4, 2012, appointments to the CFPB and the NLRB are unconstitutional. As duly sworn Senators, we each have an institutional and a constitutional duty to preserve and defend the prerogatives of the Senate, particularly from the encroachments of the Executive. The President's unconstitutional appointments simply cannot stand.

Throughout my time as a member of the Judiciary Committee, I have made it a point to work collaboratively with Members from across the aisle, and I have also gone out of my way to cooperate with the current administration to ensure that the overwhelming majority of the President's nominees to judicial and other positions are considered and receive a vote. Both in the Judiciary Committee and on the floor I voted for dozens of nominees with whom I fundamentally disagreed on various issues simply because they were nominated by a President who was duly elected by the people. But I will do so no more.

My concerns, to be clear, are non-partisan, and I will be equally critical of any Republican President who might attempt to make recess appointments under the same deeply flawed legal theory. Given this President's blatant and egregious disregard for proper constitutional procedures and for the Senate's unquestioned role in such appointments, I find myself duty-bound to resist the consideration and approval of additional nominations until the President takes steps to remedy the situation.

Regardless of what precise course I choose to pursue, the President certainly will not continue to enjoy my nearly complete cooperation unless and until he rescinds his unconstitutional recess appointments.

Thank you, Madam Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. SANDERS. I thank the Chair.

(The remarks of Senator SANDERS pertaining to the introduction of S. 2037 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Utah.

#### HONORING THE MEMORY OF SPECIAL AGENT JARED FRANCOM

Mr. HATCH. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 355, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 355) honoring the memory of Special Agent Jared Francom of the Ogden, Utah Police Department.

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

Mr. HATCH. Madam President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

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

The resolution (S. Res. 355) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 355

Whereas, on January 4, 2012, Special Agent Jared Francom of the Ogden, Utah Police Department, serving on the Weber-Morgan Narcotics Strike Force, was fatally wounded in a shooting while serving a search warrant on a residence in Ogden;

Whereas Officers Michael Rounkles, Kasey Burrell, and Shawn Grogan of the Ogden Police Department were also wounded in the shooting;

Whereas Sergeant Nate Hutchinson of the Weber County Sheriff's Office was also wounded in the shooting;

Whereas Officer Jason Vanderwarf of the Roy Police Department was also wounded in the shooting;

Whereas the officers on the Weber-Morgan Narcotics Task Force acted quickly and bravely to subdue the shooting suspect, preventing further injury and loss of life;

Whereas Officer Kasey Burrell remains in the hospital recovering from serious injuries sustained in the shooting;

Whereas Special Agent Francom served with the Ogden Police Department for 8 years;

Whereas Special Agent Francom served the Ogden community with honor and distinction;

Whereas the people of Utah have come together to mourn and honor Special Agent Francom, with an estimated 4,000 people attending the funeral of Special Agent Francom on January 11, 2012, in Ogden; and

Whereas the injury or loss of any police officer is a reminder of the risks taken by all the men and women of law enforcement on behalf of their communities: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes and honors the sacrifice of Special Agent Jared Francom;

(2) extends the deepest condolences of the Senate to the family and friends of Special Agent Francom;

(3) expresses the wishes of the Senate for a full and speedy recovery of all the officers wounded in the shooting in Ogden, Utah; and

(4) recognizes the remarkable courage and honor that the men and women in law enforcement display and the risks those men and women take to keep their communities safe.

Mr. HATCH. Madam President, on January 4, 2012, Special Agent Francom of the Ogden, Utah Police Department, serving on the Weber-Morgan Narcotics Strike Force, was fatally wounded while defending his fellow officers as they attempted to serve a search warrant on an Ogden resident.

I wish to express my deepest sympathies and condolences to Special Agent Francom's family—especially his wife and his two daughters—and the many friends he had throughout the whole community.

Serving as a police officer was a lifelong dream for Special Agent Francom, one that was realized in 2004 when he joined the Ogden City Police Department. He served with honor and distinction and was trusted and beloved by his fellow officers.

He was a fine man, a good father, a good husband and a model citizen and public servant.

On January 11, a crowd of 4,000 people—about half of them uniformed officers from all over Utah and elsewhere—attended his funeral.

Five of Special Agent Francom's fellow officers on the strike force—five of them—including Officers Michael Rounkles, Kasey Burrell, and Shawn Grogan of the Ogden Police Department; Sergeant Nate Hutchinson of the Weber County Sheriff's Office; and Officer Jason Vanderwarf of the Roy Police Department, were also wounded in the shooting.

Officer Burrell remains hospitalized as he recovers from the serious injuries he sustained in the shooting.

Along with everyone in Utah, I am deeply saddened by this turn of events.

At the same time, we are humbled, as this tragedy reminds us all of the bravery and dedication of the women and men of law enforcement who risk their lives every day to keep our communities and their communities safe.

As I have served the people of Utah over the years, I have had a chance to meet and get to know many members of our law enforcement community. Without question, they are among the most honorable and courageous people any of us could ever hope to meet. I am honored every time I have an opportunity just to be in their presence.

Today, I was joined by Senator LEE in submitting this resolution recognizing the sacrifice of Special Agent Francom, extending the Senate's condolences to his family and friends, expressing our good wishes to his fellow officers, and hoping they will all have a full and speedy recovery, and, of