

Their job is to come back to us and tell us, later this year, some ways they think we could actually reduce the deficits further, through entitlement spending and looking at revenues and the way we collect money.

There are still some other things we need to do. I want to mention a few of those. One of those deals is what I call the tax gap. The IRS reported that in the last decade some \$300 billion of taxes that have been owed are going uncollected, and in many cases we know who owes the money. We have some idea how much they owe. Despite efforts in the past to close that tax gap, it is still too large, and we need to further continue to concentrate on that. My hope is, in part, this deficit reduction commission can help us with that. In the meanwhile, I know the Finance Committee and others in the House are endeavoring to reduce the tax gap.

A second thing we want to do is to change the way we manage and dispose of surplus property. The Federal Government is a huge owner of surplus properties. We do not use them all. A lot of them are vacant. We pay security costs to secure them. We pay utility costs. We pay maintenance costs in many cases. But we, for the most part, and too often, do not sell them. We do not dispose of them.

There is legislation that has been introduced again in this Congress, working with OMB, working with some of the homeless groups, to try to make sure their concerns are addressed, but that at the end of the day we should not be continuing to own and maintain and secure and provide utilities for thousands of pieces of property, buildings we do not need and we do not use.

Another area deals with weapons systems. It was reported back in 2001 that we spent \$45 billion in cost overruns for major weapons systems. Think about that: \$45 billion in 2001 on cost overruns for major weapons systems. We got an update on that about a year or two ago, and it was no longer \$45 billion. That is the good news. The bad news is, it is about \$295 billion.

We had a big debate here last fall, some will recall, on whether we ought to continue to buy F-22 aircraft that cost roughly \$300 million a copy at about a 55-percent mission capable rate, which means on any given day only about 55 percent of them can fly. It costs about \$45,000 a flight hour. They have never flown a single mission in Iraq, a single mission in Afghanistan. The question is, are we going to continue to buy them? That is the kind of thing we do not need to do.

We had a hearing yesterday in our Homeland Security and Governmental Affairs Committee on whether we ought to continue buying C-17 aircraft. It is a cargo aircraft, a great aircraft. We have about 200, almost 230 of them. The Pentagon says we do not need them, we do not need any more. They say they only need about 190 or 200, no mas, no more. They cost about a quarter billion dollars apiece, plus we have to operate them and provide hangars

for them and maintenance, and so forth, and crew them. They said there is a more cost effective way to meet our airlift needs, suggesting what that might be, in part to modernize some older C-5As and Bs, and help make them more efficient and more dependable. We are already starting to do that, and it is actually very encouraging.

What else can we do? We can do little things. I read in the news, maybe 2 weeks ago, we decided to go almost entirely to direct deposits and to move away from paper check. It does not save a huge amount of money, maybe \$5 million a year, \$50 million over 10 years, but it is the kind of thing we ought to do.

Another idea that has been kicked around for years is whether we ought to give the President something like statutory line-item veto power. Most Governors have line-item veto power, mostly through their State's constitution. Is that a good idea? We tried to do it in the House in 1992, to give like a 2-year test drive, to enhance the President's rescission power. That died in the Senate.

Senators FEINGOLD, MCCAIN, and I have come up, working with the administration, on a 4-year test drive that we think will meet constitutional muster, and to not give forever the President strength in rescission powers, but to make his powers real and to require us to vote on them. It requires us to vote on the President's proposed rescissions.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. CARPER. Mr. President, in closing, I want to come back later today and talk about the Improper Payments Act, which is going to be passed by the House today and I hope signed by the President, to speak about why that is another important step to get our fiscal house in order. I appreciate the opportunity to begin that discussion this morning.

I thank you chair.

The ACTING PRESIDENT pro tempore. The Senator from Maryland is recognized.

#### NOMINATION OF ELENA KAGAN

Mr. CARDIN. Mr. President, next week, the Senate Judiciary Committee will be voting on the nomination of Elena Kagan to be the next Associate Justice of the Supreme Court of the United States. This vote in the Judiciary Committee follows 4 days of hearings on her nomination. As the Acting President pro tempore knows, she is currently the Solicitor General of the United States. We not only had 4 days of hearings, every member of the Judiciary Committee had ample opportunity to ask questions and get responses from Ms. Kagan. We heard from outside witnesses, some who were directly affected by decisions of the Supreme Court of the United States. We reviewed tens of thousands of pages of documents.

I pointed out during these hearings why Americans should be so concerned

about who the next Associate Justice of the Supreme Court will be because the decisions of the Supreme Court affect your life. If you work, if you are a woman, if you vote, if you care about the air you breathe or the water you drink, if you are a consumer, you need to be concerned about the Supreme Court of the United States.

The Constitution protects us from the abuses of power, whether those powers are generated by government or powerful special interests. The Supreme Court was designed to be the protector of our constitutional rights.

We the people of the United States—

“We the people”—

in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The authors of the Constitution understood the timeless idea that justice was paramount. After questioning Solicitor General Kagan and listening to her testimony for a week, I am convinced she has a clear understanding of how profound an impact her future decisions may have on the lives of everyday Americans.

Based on the hearing and the conversations I have had with her, I am confident she will put the interests of the American people and justice for the American people first, above popular opinion or politics.

As Solicitor General Kagan said in her opening statement to the committee, equal justice under law “means that everyone who comes before the Court—regardless of wealth or power or station—receives the same process and protections. . . . What it promises is nothing less than a fair shake for every American.”

During the confirmation hearings, I asked Solicitor General Kagan about civil rights, campaign financing, and our environment. I used those three areas to demonstrate how important the decisions of the Supreme Court can be in the lives of everyday Americans. My concerns about recent Supreme Court decisions were an activist court that, by the narrowest margins—usually 5-to-4 decisions—reversed precedent, legislated from the bench, and ruled on the side of businesses over individual rights.

In civil rights, I think the importance of the Supreme Court was underscored by the decision of *Brown v. Board of Education* which opened educational opportunity for the people of this Nation. I pointed out during the hearings before the Judiciary Committee that it was Thurgood Marshall, a young attorney from Baltimore, who argued that case before the Supreme Court and then became, as the Presiding Officer knows, the first African-American Justice on the Supreme Court of the United States, and one of his law clerks was Elena Kagan.

Recent decisions of the Supreme Court underscore my concern as to

whether the Supreme Court is following legal precedent to protect the civil rights of the people of our Nation. The Ledbetter decision dealt with gender equity. Here the Supreme Court, by a 5-to-4 decision, reversed precedent and the clear intent of Congress to deny women the opportunity to effectively enforce their rights for equal pay by saying to Ms. Ledbetter that she had to bring her case on pay discrimination within 180 days of the discrimination, although it was impossible for her to discover she was being discriminated against during that period of time. Now we have taken action in the Senate to reverse that, and President Obama signed legislation to reverse it, but the Supreme Court never should have ruled against American workers and women in the Ledbetter decision.

I also mentioned the Gross decision which deals with age discrimination where the Supreme Court reversed its own precedent and clear congressional intent to deny an effective remedy on age discrimination, changing the standards in order for a person to be able to bring a case.

I talked about campaign finance and the Citizens United case where the Supreme Court, again by a 5-to-4 decision, reversed precedent, reversed congressional action, and allowed more corporate money into our election system. Corporations don't have enough power already? The Supreme Court gave corporations even more influence in our Federal election process.

I was impressed, and I think the members of the Judiciary Committee were impressed, that the first case Solicitor General Kagan decided to argue before the Supreme Court was to try to uphold our action in Congress regarding campaign finance reform. I think Justice Stevens got it right when he said:

Essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law . . . there were principled, narrower paths that a Court that was serious about judicial restraint could have taken.

Then, in the environmental arena, I mentioned the Rapanos case where the Supreme Court, once again by a 5-to-4 decision, reversed the clear intent of Congress and legal precedent to restrict the Environmental Protection Agency's ability to protect the clean waters of our Nation under the Clean Water Act. Then, once again, in *Exxon v. Baker*, the Supreme Court just very recently restricted the amount of claims that can be brought in regards to polluters in the *Exxon Valdez* issue. That is of particular concern to all of us who are trying to make sure those who have been victimized by the BP oil spill have an effective remedy and that taxpayers don't have to provide bailout for the damages caused by BP Oil.

Solicitor General Kagan stated, in answer to questions before us:

Congress certainly has broad authority under the Constitution to enact legislation involving the protection of our environment. When Congress enacts such legislation, the job of the courts is to construe it consistent with Congressional intent.

Well, that is the type of person I would like to see, and I hope all of us would like to see, on the Supreme Court of the United States, giving due deference to Congress as the legislative body under the Constitution. She said: The job of the courts is to construe the laws consistent with congressional intent.

I am puzzled by those who have defended these Supreme Court decisions that have taken away our citizens' rights for civil liberties and civil rights and who say that corporations don't have enough power in this country so they need more power; who have jeopardized our environment and have supported those decisions, even though it reverses previous precedent and even though it is legislating from the courts, reversing congressional action. Those who profess to be against judicial activism have supported those decisions by the Supreme Court of the United States.

I am confident Elena Kagan will follow legal precedent. She will respect the rights of the Congress of the United States to legislate. She will protect our rights against the abuses of power, whether it is from the government or from powerful corporate special interests. She will respect the rights of the people of this Nation that the Constitution was so well designed to deal with.

Lastly, let me say she is well qualified to serve on the Supreme Court of the United States. She was the dean at Harvard Law School, Solicitor General of the United States, commonly referred to as the 10th justice because of how closely she has worked with the Supreme Court. She has received bipartisan support from those who know her best. Former Solicitors General of the United States, appointed by both Democrats and Republicans, support her nomination to be the next Associate Justice of the Supreme Court of the United States. When we confirm her appointment, she will be one of three women to serve on the Supreme Court of the United States, the first time in the history of America and a proud moment for this body to confirm her nomination.

Next Tuesday, I will vote to confirm Elena Kagan to be the next Associate Justice of the Supreme Court of the United States. I look forward to when each Member of the Senate will have an opportunity to vote on her confirmation, and I hope it will be an overwhelming confirmation for her to serve the American people on the Supreme Court of the United States.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

## HONORING OUR ARMED FORCES

SPECIALIST EDWIN C.L. WOOD

Mr. JOHANNIS. Mr. President, I rise today to remember and to pay tribute to a fallen hero, U.S. Army SPC Edwin C.L. Wood of Omaha, NE.

Edwin was a proud member of B Troop, 1st Squadron, 71st Armored Regiment of the 10th Mountain Division operating in Kandahar. As many have heard, this area is a Taliban stronghold and one of the most dangerous areas in Afghanistan.

On July 5, only a few weeks after arriving there, Specialist Wood was killed when an improvised explosive device detonated near his vehicle. His death is a great loss to our Nation and to Nebraska, his home State. People in his home community of Omaha recall Eddie's big heart, his willingness to jump right in to help out, and his longstanding love for the military. He was a leader of the North High School Junior ROTC Program. He served as a counselor and a mentor at the YMCA Camp in Crescent, IA, and from an early age participated in military reenactments with his father. Also from an early age he loved wearing uniforms. His nickname was "Freckles," which also fit his cheerful, helpful personality.

After graduating from North High School in 2009, it did not take long to decide that the U.S. Army was the place for him. Specialist Wood's Army career was short yet very intense. After entering the Army in October 2009, he breezed through basic and advanced training before arriving at Fort Drum. Fort Drum is the home of the elite 10th Mountain Division which specializes in fighting under harsh terrain and weather conditions.

Specialist Wood wanted to serve with the best, and his wish came true. Within a month, he deployed to the Kandahar region of Afghanistan. Shortly thereafter he first encountered the enemy that attacked with an improvised explosive device. Despite lingering effects from his injuries, he chose to stay in the fight with his B Troop buddies.

The decorations and badges earned during a far too brief Army career speak to his dedication and they speak to his bravery: the Army Service Medal, the Army Good Conduct Medal, the National Defense Service Medal, the Afghanistan Campaign Medal with Bronze Service Star, the Global War on Terrorism Service Medal, the Overseas Service Ribbon, NATO Medal, Bronze Star Medal, and the Purple Heart.

He proudly wore the Combat Action Badge, the Expert Marksmanship Badge with Rifle Bar, and the Overseas Service Bar.

Today, I join Specialist Wood's mother and father, siblings and friends in mourning the death of their beloved son, their brother, their friend.

Specialist Wood made the ultimate sacrifice in defense of our great Nation, and we owe him and his family an immeasurable debt of gratitude. May God