United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 113th CONGRESS, FIRST SESSION

Vol. 159 WASHINGTON, WEDNESDAY, MARCH 6, 2013 No. 32

# Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable WILLIAM M. COWAN, a Senator from the Commonwealth of Massachusetts.

## PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, today, as the snow gently caresses the Earth, we are reminded of Your sovereignty over the seasons of our sojourn. You are our provider and protector. You are king of our lives. Lord, we are grateful that each day when we pray to You, You listen to our prayers. A thousand years means nothing to You. They are merely a day gone by or a few hours in the night.

Inspire our Senators this day to use wisely the fragile time they have. As You help them to do Your will, may they celebrate the movements of Your powerful providence. Show them Your mighty power in these challenging times.

We pray in Your strong Name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable WILLIAM M. COWAN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. LEAHY).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, March 6, 2013.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WILLIAM M. COWAN, a Senator from the Commonwealth of Massachusetts, to perform the duties of the Chair.

PATRICK J. LEAHY,
*President pro tempore.*

Mr. COWAN thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

## SCHEDULE

Mr. REID. Mr. President, following leader remarks the Senate will resume consideration of the nomination of Caitlin Halligan to be U.S. circuit judge for the DC Circuit. At 10:30 there will be a vote on that nomination. We all know the weather is inclement. It is getting worse, as I saw coming in.

I have talked to Senator MCCONNELL today. We are going to vote on the judge at 10:30. We have the Brennan nomination that we are going to finish this week. I have explained to the Republican leader that if they are going to filibuster that—and I understand that is what they are going to do—we could set up a 60-vote threshold filibuster, and then we can go ahead and have a vote on that today, allowing people to make proper travel arrangements. It is strictly up to the minority. We are ready to make that arrangement, if they so agree, because of the weather.

## SYRIA

Mr. REID. Mr. President, each day the world watches in horror at what is going on in Syria. Seventy thousand people have been killed as President Bashar al-Assad carries out a campaign of wanton violence against his own people.

These atrocities have gone on for far too long—seventy thousand dead Syrians. It is time for this awful dictator-tyrant to step down and allow his people to pursue a peaceful transition to the democracy which they crave. Assad grows increasingly desperate as rebels continue to gain ground despite the full force of Assad's military arsenal of planes, bombs, and rockets. President Assad should understand the world is watching his every action and will not tolerate his unforgivable slaughter of innocent citizens, including the potential future use of chemical weapons.

President Obama has made clear—and I support him 100 percent—the use of such chemical weapons would constitute a red line for the United States and for the national community. Rather than continue to kill his own people, Assad should end the bloodshed and relinquish power to Syria's citizens.

## BRENNAN NOMINATION

Mr. REID. Mr. President, as America closely observes the unfolding of events in Syria and deals with varying threats around the world, it is crucial that President Obama has a seasoned national security team in place.

It is often said there is no substitute for experience, so it is natural that a 25-year CIA veteran, John Brennan, was reported out of the Senate Intelligence Committee by a wide margin on a bipartisan vote.

Mr. Brennan is a highly qualified nominee and should be confirmed immediately. As Deputy National Security Adviser since 2009, John Brennan has been President Obama's chief homeland security and counterterrorism adviser. He has been at the forefront of every major national security decision made during the Obama administration. He is responsible for the White House response to pandemics, cyber threats, natural disasters, and terrorism attacks. He has played an instrumental role in finding Osama bin Laden, killing bin Laden, and, in effect, decimating al-Qaida.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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His distinguished intelligence career began more than 30 years ago when he joined the CIA as a career trainee straight out of graduate school. Mr. Brennan worked his way up through the agency to serve in senior management roles in the CIA, including as Deputy Executive Director under George Tenant. Years spent working on covert and analytical missions and as chief of station in Saudi Arabia give him a comprehensive understanding of the CIA's capabilities and inner workings. His knowledge of the Middle East will be essential as we continue to work to defeat al-Qaida and other terrorist threats.

Mr. Brennan has distinguished himself outside of government as well. He spent 4 years in the private sector as president and CEO of the Analysis Corporation. His extensive intelligence background and executive experience uniquely qualify him to lead the Central Intelligence Agency.

Just as CIA faces the challenges abroad, it also faces significant decisions about its future. John Brennan must guide the CIA through a series of considerations dealing with the Agency's relationship with our military, how the Agency should respond to the conclusions of a recent Senate Intelligence Committee report on interrogation techniques and practices, and, finally, the Agency's response to demands for transparency. These considerations must not be made lightly, and John Brennan will give them the attention they deserve in his role as Director.

The Senate must also approach its duty to advise and consent with the solemnity it deserves. Unfortunately, the confirmation process has focused too much this year and the last two Congresses on partisan political considerations and not enough on the quality of the nominees.

I am very disappointed that I am forced to file cloture on John Brennan's nomination. What does that accomplish? If someone doesn't like him, come here and give a big speech, wave your arms, scream and shout, and vote against him. But why hold up the entire Senate over a meaningless vote?

My Republican colleagues have already obstructed several critical nominations this year. I hope that pattern of obstructionist behavior will not persist. I do hope for the sake of the country the obstruction of the last two Congresses will vanish. I feel very certain that in Mr. Brennan's case concerns for national security will outweigh the desire to grandstand for the weakened tea party.

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, the issue before us is Caitlin Halligan's nomination for the DC Circuit Court. I spoke yesterday in support of her nomination. It is unfortunate she is going to be forced to face a filibuster; in other words, that the Republicans are going to insist on a 60-vote margin for her approval. That is unfortunate because we have tried in the beginning of this Senate session to avoid this kind of filibuster confrontation.

In the last several years, we have had over 400 filibusters, a recordbreaking number of filibusters in the Senate. What that means is the ordinary business of the Senate has been stopped 400 times, when those who were trying to bring up a nomination or bill or amendment faced a filibuster which required literally stretching the vote out over days and sometimes even over 1 week. That is unnecessary. It is frustrating as well.

There are a lot of things we need to do and a lot of issues we need to face. I am not afraid of taking on controversial votes on the floor. I think that was part of the job assignment coming here. I quoted many times my late friend, my colleague in the House, Mike Synar of Oklahoma, who used to get right in the face of his colleagues at the Democratic caucus when they complained about controversial votes on the floor and he said: If you don't want to fight fires, don't be a firefighter. If you don't want to vote on controversial issues, don't run for Congress. That is what this job is about.

I agree with that. As painful as some of these votes have been for me and others, we should never use that as an excuse for not tackling the important issues of our time. But this has become routine now—routine filibusters, trying to stop the Senate time and time again. What is particularly insidious about this strategy on this nominee is she is an extraordinarily well-qualified person. ''Unanimously well qualified,'' that is the rating she received from the American Bar Association. When we look at her resume and the things she has done, she stands out as not only an excellent candidate for DC Circuit but one of the best we have had for any judicial position. She is being stopped by the Republicans.

What is their argument? She was the solicitor general for the State of New York. The solicitor general is the hired attorney for a client known as the State of New York. So many times she was sent into court to argue a position that had been taken by the State or by the Governor, and she did her job as their counsel, to argue their position as convincingly as possible. That is what lawyers do every day in courtrooms all across America.

Back in the day when I practiced law, I didn't measure every client who came through the door to ask: Do I agree with every position my client has taken? Of course not. The belief is in our system of justice both sides deserve a voice in the courtroom and both sides, doing their best, give justice an opportunity. That is what Caitlin Halligan did as the solicitor general for the State of New York.

Listen to this. One of the arguments being made against her was that while she was solicitor general she served on a bar committee that issued a report that favored using article III courts for the prosecution of terrorists. Article III courts are the ordinary criminal courts of the land under our Constitution. The report argued that position. Many Republicans take an opposite position, that anyone accused of terrorism should be tried in a military tribunal, not an ordinary criminal court. They have held that position. They argue that position. They get red in the face saying that is the only way to take care of terrorists and they ignore reality.

The reality is, since 9/11, President Bush, as well as President Obama, had a choice between prosecuting terrorists in article III courts, the criminal courts or in military tribunals. In over 400 cases, they successfully, both Presidents, chose to prosecute accused terrorists in the article III courts—successfully. In only five cases—I believe it is five—have they used military tribunals. The overwhelming evidence is that the article III criminal courts have worked well. Prosecutions have been successful. This argument: Oh, if you have to read Miranda rights to an accused terrorist, we will never be able to prosecute them, they will lawyer up in a hurry. It doesn't quite work that way. In fact, we found the opposite to be true. When many of these folks with connections through terrorism are taken through the ordinary criminal process, they end up being more cooperative than through a military tribunal. That is a fact. A President and the Attorney General have to make that decision. So here is Caitlin Halligan, solicitor general for the State of New York, whose name is on a bar committee report favoring the use of article III courts, which overwhelmingly President Bush and President Obama decided to do, and now the Republicans say that disqualifies her, that disqualifies her from serving on the DC Circuit Court.

It also is ridiculous position to argue that because an attorney argues a point of view in a case, that is her own point of view. I refer my colleagues to the testimony of Justice Roberts when he was up before the Senate Judiciary Committee, when he was asked point blank: You have represented some pretty unsavory clients, some people we might disagree with, does this reflect your point of view? He reminded us what jurisprudence and justice are about in this country, that you will have attorneys arguing their clients' point of view, doing their best for their client, whether they happen to agree with that client's philosophy or not.

Every attorney is bound to stand by the truth when it comes to testimony. You can never ever allow a client to misstate the truth knowingly in a courtroom. That is hard and fast. But when it comes to a point of view, for goodness' sake, good attorneys argue the best case they can for the people they represent, as Caitlin Halligan did. As Justice Roberts reminded us, it is central to the issue of American justice. One of our most famous Presidents, John Adams, you would think ruined his political career because when the Boston Massacre occurred, John Adams, the attorney in Boston, stood and said I will defend the British soldiers. He was defending the British soldiers who had killed American soldiers. He did it. That was his responsibility as an attorney. He went on to be elected President.

This argument against Caitlin Halligan, from this point of view, is as empty as any argument I have heard on the floor of the Senate and the Republicans insist on filibustering again her nomination over such a week reed of an argument. It is embarrassing. It is troubling. It calls into question whether the agreement earlier this year on rules changes in the Senate, a bipartisan effort to try to get this Chamber back on track to solving problems on a bipartisan basis, did the job.

We had the first filibuster in history of a Secretary of Defense—the first. Chuck Hagel was held up for 10 days because of a Republican filibuster, the first time that has ever occurred. Now we follow it with this filibuster of this DC Circuit nominee? I don't think we have achieved much in our rules reform. I don't think our spirit of bipartisanship has shown much in terms of results.

I hate to suggest this, but if this is an indication of where we are headed, we need to revisit the rules again. We need to go back to them again. I am sorry to say it because I was hopeful a bipartisan approach to dealing with these issues would work. It is the best thing for this Chamber—for the people serving and for the history of this institution. But if this Caitlin Halligan nomination is an indication of things to come, we have to revisit the rules. If we are now going to filibuster based on such weak arguments, then I think we need to revisit the rules.

They said in politics when I was growing up—one of the great politicians I worked for, a man named Cecil Partee, used to say for every political position you take there is a good reason—and a real reason. So the good reason, at least in their eyes, on the Republican side, is that Caitlin Halligan argued in court for positions they do not agree with. As I said earlier, I think that is an empty accusation. What is the real reason? There is a real reason why they are opposing Caitlin Halligan time and again. It is because the DC Circuit Court is one of the most important courts in America, some argue as important as the U.S. Supreme Court, because the DC Circuit Court, time and again, considers the rules and regulations and laws which are promulgated in Washington. It is the first court of review and if that bench on the DC Circuit is tipped one way or the other, too conservative or too liberal, it shows.

Right now it has been tipped toward the conservative side. Republicans engineered a deal when we were, years ago, embroiled in controversy over this issue of filibustering judicial nominees. They engineered and brokered a deal to make several appointments to the DC Circuit that tipped the balance toward the conservative side.

Now, out of the 11 positions in the DC Circuit, only 7 are filled. We are trying to fill the 8th, and they are worried that if Caitlin Halligan comes in—and she is not as conservative as they wish—it may be closer to balance. Isn't that what we want, a more balanced court? It is what we should want. It is the real reason the Republicans oppose her nomination.

I am sorry for her that she has to be a victim of this political strategy. It doesn't have much to do with her personally, and I hope a few Republicans who are necessary will step up and give us a chance to vote on her nomination; otherwise, we are back into the doldrums again in terms of the Senate embroiled in controversy, stuck on filibusters.

Since no one else is seeking the floor at this moment, I ask unanimous consent that the time consumed during quorum calls be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Mr. President, today the Senate will vote on cloture on the nomination of Caitlin Halligan to the U.S. Court of Appeals for the DC Circuit. I will again oppose invoking cloture on the nomination, and I will explain why.

In short, Ms. Halligan's record of advocacy and her activist view of the judiciary lead me to conclude she would bring that activism right to the court. As I have said many times before, the role of a judge in our system is to determine what the law says, not what they or anybody else wants it to be. That is not Ms. Halligan's view of the courts. She views them as a means to ''enable enviable social progress and mobility''—to ''enable enviable social progress and mobility'' with the judges, not the American people, using their office to determine what ''progress'' is ''enviable.'' That is the view of Ms. Halligan.

When she was in a position of authority, she put that activist view into practice time and time again. On the subject of second amendment rights, Ms. Halligan, as solicitor general of New York, advanced the dubious legal theory that those who make firearms should be liable for the criminal acts of third parties who misuse them.

Imposing potentially massive tort liability against the makers of a lawful product because of the criminal acts of someone else did not seem much like ''enviable social progress'' to Randall Casseday, who is with Kahr Arms, which sells firearms to the New York City Police Department. Here is what he said:

> I can't see how Kahr Arms can be responsible for misuse of its product. I don't see how you can do that. One lawsuit would put us out of business.

Fortunately, the State court in New York followed the law and rejected Ms. Halligan's entreaty that it make up new law in order to achieve the so-called social progress she envisioned. The court observed that it had never recognized the novel claim pursued by Ms. Halligan, nor had other courts, for that matter. Moreover, the State court called what she wanted it to do to manufacturers of a legal product ''legally inappropriate'' and said the power she wanted the courts to assert was the responsibility of ''the Legislative and the Executive branches.''

So out of bounds were the types of frivolous lawsuits pursued by Ms. Halligan that Congress did something rare: It actually passed tort reform to stop them, and it passed by a wide bipartisan majority. In her zeal for these frivolous lawsuits, Ms. Halligan then chose to criticize the Congress for having the temerity to exercise its policymaking responsibility to protect a lawful industry. However, she didn't just criticize the Congress for trying to stop the frivolous lawsuits she was pursuing, she chose to exaggerate the scope of the bill by claiming that it would stop State legislatures by ''cutting off at the pass any attempt to find solutions that might reduce gun crime.'' This assertion was false. It strains credulity that nearly half the Senate Democratic Conference who supported the legislation would vote not only for tort reform but would vote for Federal legislation that would block States from passing anything at all related to gun crime. Her mischaracterization of the legislation underscores her zeal for the frivolous lawsuits she was pursuing.

True to the adage ''frequently wrong but never in doubt,'' Ms. Halligan was undeterred. Having had both her State court and the Congress repudiate her novel legal theories, Ms. Halligan then filed an amicus brief in the Second Circuit Court of Appeals in another frivolous case against firearms manufacturers. This time she claimed the new law Congress passed was unconstitutional. Not surprisingly, she lost that case too.

Ms. Halligan's stubborn pursuit of frivolous claims against gun manufacturers is a textbook example of judicial activism—using the courts to achieve a political agenda no matter what the law says.

Her pursuit of losing legal theories in the service of her own personal views

doesn't stop there. On enemy combatants, Ms. Halligan signed a report as a bar association member that asserted that the authorization for use of military force did not authorize long-term detention of enemy combatants. In 2005 the U.S. Supreme Court ruled in Hamdi v. Rumsfeld that the President did, in fact, have this authority. Yet despite this precedent, Ms. Halligan chose to file an amicus brief years later arguing that the President did not possess this legal authority that the Supreme Court had already upheld.

On immigration, Ms. Halligan filed an amicus brief in the Supreme Court arguing that the National Labor Relations Board should have the legal authority to grant back pay to illegal aliens. However, Federal law prohibits illegal aliens from working in the United States in the first place. Fortunately, the Court sided with the law and disagreed with Ms. Halligan on that novel legal theory as well.

The point here is that even in cases where the law is clear or the courts have already spoken—including the Supreme Court—Ms. Halligan chose to get involved anyway by using arguments that had already been rejected either by the courts, the legislature, or, in the case of frivolous claims against the gun manufacturers, by both.

In other words, Ms. Halligan has time and again sought to push her views over and above those of the courts or those of the people as reflected in the law. Ms. Halligan's record strongly suggests she would not view a seat on the U.S. appeals court as an opportunity to adjudicate, evenhandedly, disputes between parties based on the law but instead as an opportunity to put her thumb on the scale in favor of whatever individual or group or cause she happened to believe in.

I have nothing against this nominee personally. I just believe, as I think most other Americans do, that we should be putting people on the bench who are committed to an evenhanded interpretation of the law so that everyone who walks into the courtroom knows he or she will have a fair shake. In my view, Ms. Halligan is not such a nominee.

I will be voting against cloture on this nomination, and I urge my colleagues to do the same.

Our decision to do so is not unprecedented—far from it. Many of our Democratic colleagues who are expressing shock and utter amazement that we denied cloture on Ms. Halligan's nomination for a second time felt no compunction about denying cloture on Miguel Estrada's nomination to the very same court. They denied nomination for him seven times, in fact, even though—unlike Ms. Halligan's record—Mr. Estrada's background did not evidence a penchant for judicial activism.

We have begun this Congress by making progress on filling judicial vacancies. I am happy to resume working with the majority on doing so, but because of her record of activism, giving Ms. Halligan a lifetime appointment to the DC Circuit is a bridge too far.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, I rise in full support of Caitlin Halligan and must strongly disagree with my friend from Kentucky, the Republican leader. The bottom line is very simple: She is a well-qualified nominee, and we know that.

The Republican leader acts as if Ms. Halligan were acting on her own. Whether the Senator from Kentucky agrees or disagrees, the Republican leader cannot cite a single instance where Ms. Halligan was not acting as an attorney representing the views of someone else. The same was true with what John Roberts did, and the same was true for what Sam Alito did. When those issues were brought up, our colleagues on the other side justifiably said we cannot attribute those views to them when they are representing somebody as an attorney. We all know that the obligation of an attorney is to represent his or her client, whether we agree or disagree with those views.

When one works as solicitor general, they represent the State of New York. The State of New York's views on guns were clear, and Ms. Halligan ably represented those views. But nothing she has said about guns that was cited by my good friend the Republican leader was her own view. Similarly on the terrorism cases, she was representing an office that was prosecuting, not her views, so the comparison to Miguel Estrada is like night and day. Miguel Estrada had his own very, very clear views on the law, and he stated them in speeches, in articles, and in other ways. That is not so with Ms. Halligan. In fact, I challenge the other side to give me one instance where they disagree with something Ms. Halligan stated as her own views as opposed to representing someone as a lawyer should.

What is really going on here? What is going on is that our colleagues want to keep the second most important court in the land, the DC Circuit, vacant because right now there are four vacancies and the majority of those on the court have been appointees of Republican Presidents and, in fact, are very conservative. That is what is going on. Let's call it what it is. This has nothing to do with Ms. Halligan. This has to do with keeping a court they care about from having someone who doesn't have those same very conservative views. Ms. Halligan is a moderate, and that bothers people on the other side. It bothers the hard right who use the DC Circuit in their court cases to try to constrict government.

I say this to my good colleagues: We have come to an agreement on district court judges and on other nominees. We have come to a general agreement that there ought to be more comity. The Republican leader, my friend from Tennessee, and so many others have said we should do that. The filibustering of Caitlin Halligan is not, I will admit, against the letter of our agreement because it simply applies to district court judges, but it sure is against the spirit.

All those on our side who said we should change the rules because issues such as the filibuster of Ms. Halligan would occur are being vindicated even though my colleagues on the other side of the aisle would not want that type of option to be on the table.

I say this to my colleagues because I believe and I think most of us believe that this is nothing about Ms. Halligan, but it is about keeping the DC Circuit vacant and not allowing our President to rightfully fill those vacancies. We are going to bring nominee after nominee after nominee up to fill that DC Circuit. Are they going to continue to filibuster every nominee and find some trivial excuse to filibuster him or her? Because that is what is going to happen.

The obstructionist views that some on the other side have held and implemented—which served them so poorly in the election of 2012, in the polls, and in what the American people want, which is for us to come together—will be exposed.

I would urge my colleagues to forgo this charade. Don't vote for Halligan if you don't like her, but don't filibuster her, because we are going to come back time after time after time with nominees to this circuit who are qualified, who are moderate, and who have fine personal ethics. Are they going to ObamaCare each one of them? Because that is the challenge they will face.

I urge and plead with my colleagues, based on the new comity we are desperately seeking in this Chamber, to avoid this filibuster, allow Caitlin Halligan to have an up-or-down vote. She is extremely worthy of the position for which she was nominated. It is only ideology, only a view that this important circuit should not be filled with nominees whom our Democratic President nominates that is motivating, in my judgment, this action.

I think my time has expired, and I note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Vermont.

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. GRASSLEY. Yes.

Mr. LEAHY. Mr. President, I realize we have not gone in the regular order with the manager of the nomination speaking first. We are having a hearing right now with the Attorney General. So I ask unanimous consent, when the distinguished Senator finishes his

speech, whatever length it is, and all time will have then been used up so there would not be any time reserved for the manager of this nomination, to speak for 2 minutes at the conclusion of Senator GRASSLEY's remarks.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask to speak for 15 minutes on this nomination that is before the Senate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I rise in opposition to the nomination of Caitlin Halligan, the President's nominee for the United States Circuit Court for the District of Columbia. I wish to take a few minutes to explain to my colleagues why we should not change our prior position regarding this nomination. It was previously rejected and should be rejected again.

Before I talk about Ms. Halligan's record, I want to comment on the process. While I recognize the majority leader's right to bring up this nomination, I question why we are spending time on a politically charged and divisive nomination. I wish the Senate instead would focus on the critical fiscal, national security, and domestic issues we face.

The Senate determined more than a year ago that this nomination should not be confirmed. Rather than accepting the Senate's decision, the President has renominated Ms. Halligan. It is time for the President and Senate Democrats to accept the fact that this nomination is not going to be confirmed by the Senate. We need to move on.

It is well understood and accepted that nominations to the DC Circuit deserve special scrutiny. The Court of Appeals for the DC Circuit hears cases affecting all Americans. It is frequently the last stop for cases involving Federal statutes and regulations. Many view this court as second in importance only to the Supreme Court. And as we all know, judges who sit on the DC Circuit are frequently considered for the Supreme Court. So there is a lot at stake with nominations to this court. This is a court where we can least afford to confirm an activist judge.

I have a number of concerns regarding Ms. Halligan's views that indicate she will be an activist judge. There are concerns regarding her judicial philosophy and her approach to interpreting the Constitution. Her stated view that courts seek ''to solve problems and not just to adjudicate them'' indicates a willingness to abuse the role of a judge should she be confirmed. She has advocated for an ''evolving standard'' of the Constitution, indicating a judicial philosophy that embraces the notion of a living Constitution. In adopting the ''living Constitution'' theory of interpretation, judges routinely substitute their own personal views in place of what the Constitution demands.

I wish to share with my colleagues why I have concluded that Ms. Halligan would approach judging with an activist bent. Let me give just a couple examples, beginning with her record on the second amendment.

In 2003, Congress was debating the Protection of Lawful Commerce in Arms Act or, as most of us called it, the Gun Liability bill. At the time, gun manufacturers were facing lawsuits based on meritless legal theories. This frivolous litigation was specifically designed to drive gun manufacturers out of business.

As it turns out, while many of us—both Republicans and Democrats—were fighting here in Congress to stop these lawsuits, Ms. Halligan was pursuing this precise type of litigation in the State of New York.

In New York v. Sturm & Ruger, Ms. Halligan advanced the novel legal theory that gun manufacturers, wholesalers, and retailers contributed to a ''public nuisance'' of illegal handguns in the State. Therefore, she argued, gun manufacturers should be liable for the criminal conduct of third parties.

Some of my colleagues have argued that we should not consider this aspect of Ms. Halligan's record because at the time she was working as the solicitor general of New York. But no one forced Ms. Halligan to approve and sign this brief. No one compelled her to advance a completely frivolous legal theory.

I believe a close examination of Ms. Halligan's record indicates she was more than just an advocate. She was using the full weight of her office to advance and promote a political agenda masked by a legal doctrine that is well outside of the legal mainstream.

In the case I just mentioned, which was the first of two cases Ms. Halligan was involved in regarding gun manufacturers, the New York State appellate court found her argument to be completely meritless and explicitly rejected her theory.

The court went so far as to say that it had ''never recognized [the] common-law public nuisance cause of action'' that Ms. Halligan advanced, and that it would be ''legally inappropriate'' to permit the lawsuit to proceed. Moreover, far from accepting Ms. Halligan's invitation to legislate from the bench, the court properly concluded that ''the Legislative and Executive branches are better suited to address the societal problems concerning the already heavily regulated commercial activity at issue.''

I will remind my colleagues that Ms. Halligan was pursuing this legal theory at the same time we were debating the gun liability bill here in Congress. There is no question that the dubious legal theories she was advancing in court reflected her own personal views, not just a position she was advocating on behalf of a client.

In a speech Ms. Halligan delivered on the subject in May of 2003, she said she opposed the legislation being considered by Congress because, ''[i]f enacted, this legislation would nullify lawsuits brought by nearly 30 cities and counties—including one filed by my office—as well as scores of lawsuits brought by individual victims or groups harmed by gun violence. . . . Such an action would likely cut off at the pass any attempt by States to find solutions—through the legal system or their own legislatures—that might reduce gun crime or promote greater responsibility among gun dealers.''

Later in that same speech, Ms. Halligan expressed her view of the law and legal system. She said, ''Courts are the special friend of liberty. Time and time again we have seen how the dynamics of our rule of law enables enviable social progress and mobility.''

I find this statement troubling, especially as it relates to the nuisance lawsuits against gun manufacturers. Those lawsuits are a prime example of how activists on the far left try to use the courts to affect social policy changes that they are unable to achieve through the ballot box. That is why I believe those lawsuits represented not only bad policy but, more broadly, an activist approach to the law.

Now, as I said, the State appellate court rejected her legal theory, and Congress subsequently passed legislation—by a wide bipartisan margin—to stop those lawsuits. But Ms. Halligan still forged ahead. In 2006, notwithstanding the fact the Congress had passed tort reform in this area, she attempted once again to revive the ability of States to pursue gun manufacturers. Only this time, she advanced her claims in Federal court, arguing the legislation Congress passed was unconstitutional. Fortunately, the Federal appellate court rejected her legal theory as well.

Ms. Halligan's record of taking far left and legally untenable positions is not limited to her legal briefs in gun cases. Another example of how she crossed the line from advocate to activist is Scheidler v. National Organization for Women. In that case she argued for an expansive definition of extortion under the Hobbs Act. Her support of NOW's claim that pro-life groups had engaged in extortion was rejected by eight Justices of the Supreme Court, including Justice Ginsburg—one of the most liberal justices on the Court.

There are a number of other aspects of her record that I find problematic. For instance, Ms. Halligan's views on the war on terror and the detention of enemy combatants are especially troublesome because Ms. Halligan is a nominee for the DC Circuit, where many of these issues are heard.

In 2004, Ms. Halligan was a member of a New York City bar association that published a report entitled: ''The Indefinite Detention of 'Enemy Combatants' and National Security in the Context of the War on Terror.''

That report argued there were constitutional concerns with the detention of terrorists in military custody. It

also argued vigorously against trying enemy combatants in military tribunals. Instead, it argued in favor of trying terrorists in civilian, article III courts.

Ms. Halligan is listed as one of the authors of that report. But when it came time to testify at her hearing, Ms. Halligan tried to distance herself from the report. She testified that she did not become aware of the report until 2010. In a followup letter after her hearing, Ms. Halligan did concede that ''it is quite possible that [a draft of the report] was sent to me,'' but that she could not recall reading the report.

I recognize that memories fade over time. But, as I assess her testimony, I think it is noteworthy that at least four other members of that bar association committee abstained from the final report. Ms. Halligan did not.

I would also point out that several years later she co-authored an amicus brief before the Supreme Court in the 2009 case of Al-Marri v. Spagone. Ms. Halligan's brief in that case took a position similar to the 2004 report with respect to military detention of terrorists. In that case, she argued that the Authorization for Use of Military Force did not authorize the seizure and indefinite military detention of a lawful permanent resident alien who conspired with al-Qaida to execute terror attacks on the United States.

The fact that Ms. Halligan coauthored this brief, pro bono, suggests to me that she supported the conclusions reached by the 2004 report. And again, this issue is particularly troublesome for a nominee to the DC Circuit, where many of these questions are heard.

There are additional aspects of Ms. Halligan's record that concern me.

As New York's Solicitor General, Ms. Halligan was responsible for recommending to Attorney General Spitzer that the State intervene in several high-profile Supreme Court cases. She filed amicus briefs that consistently took activist positions on controversial issues such as abortion, affirmative action, immigration, and federalism.

These are just some of my concerns regarding the nominee's judicial philosophy and her approach to interpreting the Constitution. These are neither trivial nor inconsequential grounds on which to oppose her nomination.

Based on her record, I simply do not believe she will be able to put aside her long record of liberal advocacy and be a fair and impartial jurist.

Supporters argue that out of a sense of ''fairness'' we should confirm Ms. Halligan. They note that her nomination has been pending for over 2 years.

Let me remind my colleagues that while this seat has been vacant for over 7 years, it has not been without a nominee for all of that time.

Following the elevation of then-Circuit Judge John Roberts in 2005, President George W. Bush nominated an eminently qualified individual for this seat, Peter Keisler. Mr. Keisler was widely lauded as a consensus, bipartisan nominee. His distinguished record of public service included service as Acting Attorney General. Despite his broad bipartisan support and qualifications, Mr. Keisler waited 918 days for a committee vote that never came. There was no clamor from the other side that we needed to fill the vacancy. There was no demand that Mr. Keisler be afforded an up-or-down vote. So it seems to me that too often, with my Democratic colleagues, ''fairness'' is a one-way street.

When the Democrats refused to consider Mr. Keisler's nomination—or even to give him a committee vote—the other side justified their actions based on the DC Circuit caseload. So I would like to make a few comments about how the current caseload of the DC Circuit stacks up against the caseload that existed when Mr. Keisler's nomination was subjected to a pocket filibuster.

Before doing so, I would again emphasize that given Ms. Halligan's record on a host of controversial issues, the case for rejecting her nomination would remain, regardless of the number of vacancies or the court's workload. However, since some of my colleagues are declaring a ''judicial emergency'' on the DC Circuit Court, let me set the record straight. Contrary to assertions we have recently heard regarding the court's workload, since 2005, the DC caseload has actually continued to decline. The total number of appeals filed is down over 13 percent. The total number of appeals pending is down over 10 percent; filings per panel are down almost 6 percent.

Compared to other courts of appeals, the DC Circuit caseload measured by number of appeals pending per panel is 54 percent less than the national average. Filings per judge are also significantly lower than for the rest of the courts. While the national average of filings per active judge is 361, the DC Circuit is less than half, at 170 filings per active judge. And if you take into consideration the fact that the DC Circuit now has six senior judges, all of whom continue to hear cases and write opinions, there is a 26-percent decrease in case filings per judge on the court since 2005. So by any meaningful measure, the DC Circuit's workload pales in comparison to the other circuit courts.

Given the concerns I have about Ms. Halligan's record on the second amendment, the war on terror, and other issues, my concerns regarding her activist judicial philosophy, and the court's low workload, I oppose this nomination. I urge my colleagues to do the same.

Finally, I would note a number of organizations have expressed their opposition to this nomination. They are the American Conservative Union, 9/11 Families for a Safe & Strong America, the National Rifle Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Committee for Justice, Concerned Women for America, the American Center for Law and Justice, Heritage Action, Liberty Counsel Action, Family Research Council, Eagle Forum, Center for Judicial Accountability, Republican National Lawyers Association, Judicial Action Group, Susan B. Anthony List, Americans United for Life Action, and the Faith and Freedom Coalition.

Mr. WHITEHOUSE. Mr. President, I rise today in support of the nomination of Caitlin Halligan to the U.S. Court of Appeals for the District of Columbia Circuit.

Ms. Halligan is an outstanding nominee with sterling credentials and broad support among the legal community. By the accounts of everyone who has worked with her or observed her work, she is a first-rate legal mind and a tireless worker, with great personal integrity and a thoughtful temperament that is perfectly suited to the Federal bench. Her nomination deserves prompt confirmation.

Ms. Halligan has spent much of her career as a dedicated and distinguished public servant. She has a strong record in law enforcement, including in her current role as general counsel at the Manhattan District Attorney's Office, an office that investigates and prosecutes 100,000 criminal cases annually.

She is highly esteemed by the New York and national law enforcement communities. Her nomination has been endorsed by New York City police commissioner Raymond Kelly, former Manhattan district attorney Robert Morgenthau, the National District Attorneys Association, several Republican district attorneys from New York, the New York Association of Chiefs of Police, and the New York State Sheriff's Association, among many others.

Ms. Halligan is also widely recognized as one of the finest appellate litigators in the country. As solicitor general for the State of New York, she supervised 45 appellate lawyers and represented the State of New York, then-Governor George Pataki, a Republican, and other State officials in both State and Federal courts. She has been counsel of record on nearly 50 cases before the Supreme Court and has argued before that court 5 times. Twenty-one of the top lawyers from across the political spectrum who have worked with Ms. Halligan, including conservatives Miguel Estrada and Carter Phillips, have endorsed her nomination. She was rated unanimously ''well qualified'' by the American Bar Association.

President Obama first nominated Ms. Halligan in 2010. Despite Ms. Halligan's outstanding qualifications and broad support, our Republican colleagues have refused to grant her an up-or-down vote for over 2 years.

Some have argued, because of positions that she took in litigation at the behest of a client, that she does not have adequate respect for the second amendment. Yet both at her hearing and in response to written questions, she stated unequivocally that she

would faithfully follow and apply the Supreme Court's decision in District of Columbia v. Heller, which held that the second amendment protects an individual right to keep and bear arms for self-defense. When asked whether the rights conferred under the second amendment are fundamental, Ms. Halligan answered, ''That is clearly what the Supreme Court held and I would follow that precedent.'' It doesn't get much clearer than that.

In 2011 Republicans filibustering her nomination claimed that the caseload of the DC Circuit did not warrant filling that seat because the other judges serving on the court had too few cases. At that time, Ms. Halligan was nominated to fill the ninth seat out of 11 on the DC Circuit.

Even at the time, that argument was questionable. Senate Republicans confirmed President Bush's nominees for the 9th, 10th, and 11th seats on the DC Circuit without concerns about caseload. That court's caseload has only gone up in since then. Also, the DC Circuit's caseload is uniquely challenging, as the former chief judge of the DC Circuit, Patricia Wald, has explained:

> The D.C. Circuit hears the most complex, time-consuming, labyrinthine disputes over regulations with the greatest impact on ordinary Americans' lives: clean air and water regulations, nuclear plant safety, healthcare reform issues, insider trading and more. These cases can require thousands of hours of preparation by the judges, often consuming days of argument, involving hundreds of parties and interveners, and necessitating dozens of briefs and thousands of pages of record—all of which culminates in lengthy, technically intricate legal opinions.

Even if we accept the argument that the DC Circuit did not need another judge when Ms. Halligan was nominated for the ninth seat, the circumstances have changed. Because an additional vacancy has opened, Ms. Halligan is currently nominated for the eighth seat, meaning there are now four vacant seats on the court. To put it another way, the court is now understaffed by over one-third. At the same time, the Administrative Office of U.S. Courts reports that the caseload per active judge has increased by 50 percent since 2005, when the Senate confirmed President Bush's nominee to fill the 11th seat on the DC Circuit.

Thus, there is no basis for debate now about whether an additional judge is needed on the D.C. Circuit. With an extra vacancy and a growing caseload, the court considered by many to be second only to the Supreme Court in its importance in our Federal judiciary desperately needs help.

Luckily, we have the opportunity to send the court an outstanding legal talent in Caitlin Halligan. I urge my colleagues to support her confirmation.

More broadly, I hope that we can come together and return the Senate to its best traditions of holding up-or-down votes on judicial nominations. We have an opportunity this Congress to move past this obstruction and get back to the proper manner of handling judicial nominations. Doing so will bring much needed assistance to the Federal judiciary, which has been forced to contend with unmanageable judicial vacancy rates. It also will do credit to this institution, which is failing in its duty to confirm Federal judges. We do not deserve the moniker of the ''world's greatest deliberative body'' if we cannot do something as simple as confirming judicial nominations.

There have been some encouraging signs that we are making real progress in this regard. For instance, the rules reforms that we voted on in a bipartisan manner earlier this year included a provision to shorten the postcloture debate window on district court nominees from 30 hours to a more reasonable 2. This change could dramatically streamline the nominations process without limiting the minority's ability to filibuster a nominee they do not like. It will expire at the end of this Congress, however. I hope that we can come together in bipartisan agreement to extend it permanently and perhaps even expand it to include circuit court nominees like Ms. Halligan.

Even with this change, there is still much to be done. The nonpartisan Congressional Research Service recently reported that the confirmation percentage for President Obama's nominees is the lowest of any President in the last 36 years. The effects are obvious. The judicial vacancy crisis in this country is real, and it is growing. As Supreme Court Chief Justice John Roberts has said, ''a persistent problem has developed in the process of filling judicial vacancies. . . . This has created acute difficulties for some judicial districts. Sitting judges in those districts have been burdened with extraordinary caseloads.'' As he explained, there is ''an urgent need for the political branches to find a long-term solution to this recurring problem.''

So let's return to the principle that barring ''extraordinary circumstances'' a nominee should receive a prompt up-or-down vote on the floor, and let's confirm the nomination of the outstanding nominee before us today, Caitlin Halligan.

Mr. MCCAIN. Mr. President, I regret that I must oppose cloture on the nomination of Caitlin Halligan to the U.S. Circuit Court of Appeals for the District of Columbia. During the 109th Congress, I joined 13 of my Senate colleagues to negotiate a compromise as part of an effort to avoid use of the so-called nuclear option to break an organized filibuster on judicial nominations. A tenet of that agreement was the right of ''signatories to exercise their responsibilities under the Advice and Consent Clause of the United States Constitution in good faith.'' Further, the agreement went on to state that ''nominees should be filibustered only under extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.''

In keeping with the 2005 agreement, I have decided to oppose the President's nomination of Caitlin Halligan to the U.S. Circuit Court of Appeals for the District of Columbia. Ms. Halligan's demonstrated record of judicial activism on issues ranging from holding firearm manufacturers liable for the crimes of third parties, to arguments regarding National Labor Relations Board authorities, to her record on the detention of enemy combatants, indicates to me that her activist record would only continue if granted the privilege of sitting on the U.S. Circuit Court of Appeals for the District of Columbia.

It is for these reasons and others that I believe Ms. Halligan meets the ''extraordinary circumstances'' requirement expressed in the agreement. An important constitutional responsibility of the executive branch and the U.S. Senate is to ensure that the Federal bench is able to handle its caseload expeditiously. In my view, we should only oppose cloture in extraordinary circumstances. Unfortunately, I believe this nominee meets that requirement, and my vote to oppose is consistent with the agreement made in 2005.

Mrs. FEINSTEIN. Mr. President, I rise in strong support of the nomination of Caitlin Halligan to the D.C. Circuit Court of Appeals. As a 20-year veteran of the Judiciary Committee and the first woman to serve on that committee it is my great pleasure to support Ms. Halligan's nomination.

Ms. Halligan has excelled at every turn in her career. She graduated cum laude from Princeton University in 1988. She received her law degree, magna cum laude, from Georgetown, where she was managing editor of the Georgetown Law Journal and inducted into the Order of the Coif.

She began her legal career with a clerkship with Judge Patricia Wald on the U.S. Court of Appeals for the D.C. Circuit, the first woman to serve on the D.C. Circuit.

She then spent a year in private practice at the Washington, DC firm Wiley, Rein, and Fielding, after which she clerked for Justice Stephen Breyer on the U.S. Supreme Court. After another year in private practice, Ms. Halligan entered public service. She went to the Attorney General's Office in the State of New York, first as Chief of the Internet Bureau.

She rose to become First Deputy Solicitor General and ultimately Solicitor General of the State of New York, the State's top appellate lawyer. During nearly all of Ms. Halligan's time as Solicitor General, George Pataki—a Republican—was Governor. Her job was to represent the State of New York zealously, and by all accounts she did so with skill and dignity.

Judith Kaye, the former Chief Judge of New York's highest court, writes on behalf of the court's entire bench that ''it was invariably a treat'' to have Ms. Halligan argue before the court.

In fact, the National Association of Attorneys General awarded her the

''Best Brief Award'' on numerous occasions, including consecutive awards in 2001, 2002, 2003, 2004, and 2005.

In 2007, she went into private practice to lead the appellate practice at the prestigious New York firm Weil, Gotshal, and Manges.

She returned to public service in 2010 as the General Counsel of the New York County District Attorney's Office, where she has served for the past 3 years. This office is one of the most distinguished prosecutorial offices in the Nation, and it handles more than 100,000 criminal prosecutions each year.

Because of her strong background in law enforcement in the State of New York, her nomination enjoys the support of major law enforcement groups, including:

The National District Attorney's Association;

The National Center for Women and Policing;

The New York Association of Chiefs of Police;

The New York State Sheriff's Association; and

New York Women in Law Enforcement.

She also enjoys the support of many law enforcement officials from New York, including New York City Police Commissioner Ray Kelly, New York County District Attorney Cyrus Vance, and numerous other County District Attorneys across the State.

Over the course of her distinguished career, she has served as counsel for a party or amicus in the Supreme Court more than 45 times. She has argued in the Supreme Court herself in five cases, most recently in March 2011. She also has argued or participated in dozens of other appeals in State and Federal courts.

In short, Ms. Halligan is an accomplished woman whose sterling qualifications are unassailable. She clearly deserves the ''well qualified'' rating from the American Bar Association she has received—the ABA's highest rating.

Unfortunately, Ms. Halligan's nomination has been pending for a very long time. She was first nominated to the D.C. Circuit in September 2010, 29 months ago. The seat to which she has been nominated has been vacant since 2005, when Chief Justice Roberts was elevated.

Last Congress, my Republican colleagues filibustered her nomination, something that I found to be without cause or rationale. I am very hopeful that, in this Congress, reasonable minds will prevail, and we will invoke cloture and confirm Ms. Halligan.

I understand that the National Rifle Association is opposed to Ms. Halligan's confirmation. Behind the NRA's opposition is the fact that—while Halligan was New York's Solicitor General, acting at the direction of her superiors—the State pursued public nuisance litigation against gun manufacturers.

Think about that: if this standard prevails, any time a person represents a State or local government, or the Federal Government, and represents that government on a controversial issue at the direction of its duly-elected leaders, that may jeopardize a later confirmation vote.

That is not fair. A government lawyer's job is to pursue the government's interest vigorously and to do justice, and that is what Caitlin Halligan has done. She was appointed by the Attorney General to represent the State of New York, while the State had a Republican Governor, George Pataki. Her job was to advance New York's interest, and she did so with vigor at the direction of her superiors. She should not be penalized for it.

Senator SESSIONS made this point when the Senate was considering the nomination of now-Judge Brett Kavanaugh to the D.C. Circuit. Senator SESSIONS said that ''[s]uggesting that service in an elective branch of Government somehow tarnishes a lawyer's reputation would be a terrible message for this body to send to the legal community and to all citizens.''

My colleagues will recall that Judge Kavanaugh had quite an activist record from our side's perspective: he had worked on the Starr Report, which recommended grounds of impeachment of President Clinton; he had worked for George W. Bush during the Florida recount; he then worked in the White House Counsel's office under President George W. Bush.

In short, while Kavanaugh may have been a fine lawyer, he had an undoubted Republican political pedigree. Yet I carefully considered his background, and I voted to invoke cloture on his nomination, as did many of my Democratic colleagues. Now it is time for our Republican colleagues to do the same on this nomination.

Last Congress, some of my Republican colleagues argued that the D.C. Circuit's caseload does not justify confirming another judge to the Court.

The D.C. Circuit has 11 judgeships. Four of them are vacant now—more than a third of the court—and three other judges are currently eligible to go senior, so the D.C. Circuit could soon have only four of its 11 seats filled.

When my colleagues raised caseload-based objections to Halligan's nomination last Congress, I reminded them that, during the George W. Bush Administration, they voted to fill the 10th seat on the D.C. Circuit twice and the 11th seat once. If confirmed, Halligan would only fill the eighth seat.

In addition, the D.C. Circuit's caseload per judge has grown substantially just in the last few years. The total number of cases terminated per active judge has grown to 280 up from 184 in 2010. That's more than a 50 percent increase. Similarly, the number of appeals at the Court pending per active judge has also spiked. It was 157 in 2008. Today, it is 203 so it is up by a third.

This hurts ordinary Americans. Most of the time, the cases heard by the D.C. Circuit are not partisan or ideological. But they are critical to making sure that Federal regulation in almost every area operates predictably and rationally.

As Former Judge Patricia Wald recently wrote in the Washington Post:

The D.C. Circuit hears the most complex, time-consuming, labyrinthine disputes over regulations with the greatest impact on ordinary Americans' lives: clean air and water regulations, nuclear plant safety, health-care reform issues, insider trading and more. These cases can require thousands of hours of preparation by the judges, often consuming days of argument, involving hundreds of parties and interveners, and necessitating dozens of briefs and thousands of pages of record—all of which culminates in lengthy, technically intricate legal opinions.

Moreover, President Obama has been the only President in nearly four decades not to have a confirmed appointment to the D.C. Circuit. President Ford was the last such President, but there were no vacancies during his Administration, and every other President since Warren Harding, over 90 years ago, had an appointment to this court. I fear my Republican colleagues are treating President Obama differently from other Presidents in this regard.

I will conclude by simply saying that Ms. Halligan is a woman with sterling credentials, an exemplary record, and a wealth of experience. She has been nominated to a vital court that badly needs her service. I believe she should be confirmed, and I urge my colleagues to vote for cloture and for confirmation.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator's time has expired.

Mrs. GILLIBRAND. Madam President, I ask unanimous consent for 2 minutes of debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEAHY. Madam President, I understand the Senator from New York will speak following my comments.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, today the Senate has an opportunity to act in a bipartisan manner to end a filibuster against an outstanding nominee to the D.C. Circuit. Caitlin Halligan is an exceptional attorney with the kind of impeccable credentials in both public service and private practice that make her unquestionably qualified to serve on the D.C. Circuit. No one can seriously question her legal ability, her judgment, her character, her integrity, her ethics or her temperament. Those who seek to misrepresent her as a partisan or ideological crusader are wrong and unfair.

Some have mischaracterized her record and distorted her views on executive authority and terrorism. Here is what she said about the 2004 New York

City Bar report that some are using to inflame the debate:

I was, frankly, taken aback by [this Report], for a couple of reasons. First of all, the Supreme Court has clearly said that indefinite detention is authorized by the AUMF statute. And so the notion that the President lacks that authority, I think, is clearly incorrect. I was also a little bit taken aback by the tone of the report. I think that the issues of indefinite detention and any issues in the national security realm are very serious ones, and I think that approaching those issues as respectfully as possible is the most productive way to proceed. But the bottom line is that the report does not represent my work. It does not reflect my views.

I hope Senators who intend to make this a basis for filibustering this outstanding nominee are listening and understand. Again, she testified: ''[T]he bottom line is that the report does not represent my work. It does not reflect my views.'' This is no basis for opposing the nominee, let alone filibustering her consideration. The report does not represent her views; she flat out rejected them as a statement of law.

During her hearing she testified that she only became aware of the 2004 New York Bar report in 2010 while preparing for her confirmation hearing. She even provided minutes from the City Bar Committee's meetings to show that she was not present and not part of the subcommittee that drafted the report. She rejected the views in the report, saying that it was ''clearly incorrect.'' So while she was one of 37 members of a larger Committee, she was not a member of the subcommittee that drafted the report. She did not participate in the drafting. To filibuster her nomination because of a report she did not write, has not endorsed and has, in fact, rejected, would be a great injustice to this outstanding woman.

New York City's Police Commissioner Ray Kelly wrote in strong support of Caitlin Halligan again this week, saying:

I want to reiterate [my] support, and to stress my confidence in her commitment to the vigorous prosecution of our ongoing fight against the threat of terrorism here in New York City.

Any suggestion that Ms. Halligan would thwart efforts to protect our nation, and our city, against terrorist threats is absurd. For over three years, Ms. Halligan has served as Counsel to the New York County District Attorney. During that time, she has worked extensively on key anti-terrorism cases, including most recently the successful prosecution of Ahmed Ferhani, who pled guilty to very serious charges under New York State's anti-terrorism statute for a 2011 plot to blow up Manhattan synagogues and churches.

I ask unanimous consent that the full letter be printed in the RECORD at the conclusion of my statement. This is not someone soft on terrorism. She has helped bring terrorists to justice. Police Commissioner Kelly is not endorsing someone soft on terrorism. Cyrus Vance, Jr., the New York County District Attorney, is not endorsing someone soft on terrorism.

This is a woman and mother who lives in downtown New York. She was literally blocks away from the twin towers on September 11, 2001. She saw and experienced the devastation of the 9/11 terrorist attack on New York.

By any traditional standard, Caitlin Halligan is the kind of superbly qualified nominee who should be considered and confirmed by the Senate. The Republican leadership's filibuster of this nomination threatens to set a new standard that could not be met by anyone. That is wrong, it is unjustified, and it is dangerous.

It takes only a handful of sensible Senate Republicans to do the right thing. This is not a time to victimize Caitlin Halligan for some sort of political payback or to appeal to narrow special interests. I ask those Republican Senators who care about the judiciary and fairness to come forward, end this filibuster, and ratchet down the partisanship that threatens this institution, our courts and the country.

A Republican Senator, who was a member of the ''Gang of 14'' in 2005, described his view of what comprises the ''extraordinary circumstances'' justifying a filibuster. He said: ''Ideological attacks are not an extraordinary circumstance.' To me, it would have to be a character problem, an ethics problem, so allegations about the qualifications of a person, not an ideological bent.'' Caitlin Halligan has no ''character problem,'' no ''ethics problem,'' and there is no justification for this filibuster. I trust that Senator will apply the standard he articulated and vote to end this filibuster.

Another Republican Senator said just last year in voting to end a filibuster against another circuit court nominee:

[W]hen I became a Senator, Democrats were blocking an up-or-down vote on President Bush's judicial nominees. I said then that I would not do that and did not like doing that. I have held to that in almost every case since then. I believe nominees for circuit judges, in all but extraordinary cases, and district judges in every case ought to have an up-or-down vote by the Senate.

If that Senator remains true to his principles, he will vote to end this filibuster.

Republican Senators who signed that 2005 memorandum of understanding continue to serve here in the Senate. If they follow the standard set in that agreement, they will vote to end this filibuster. They demonstrated what they thought that agreement entailed when they proceeded to invoke cloture on a number of controversial nominations of President Bush to the D.C. Circuit. If that agreement and standard had any meaning, they should all be voting to end this filibuster.

I urge all those who have said that filibusters of judicial nominations are unconstitutional to end this filibuster. I urge those who said they would never support a filibuster of a judicial nomination to end this filibuster. I urge those who said that they would only filibuster in ''extraordinary circumstances'' to end this filibuster. I urge all those who care about the judiciary, the administration of justice, the Senate and the American people to come forward and end this filibuster.

I yield the floor.

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

CITY OF NEW YORK,
*New York, NY, March 5, 2013.*

Hon. CHARLES E. SCHUMER,
*Hart Senate Office Building,*
*Washington, DC.*

Hon. KIRSTEN GILLIBRAND,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR SCHUMER AND SENATOR GILLIBRAND: In May 2011, I wrote to the Senate Judiciary Committee in strong support of Caitlin Halligan's nomination to the United States Court of Appeals for the District of Columbia Circuit. I want to reiterate that support, and to stress my confidence in her commitment to the vigorous prosecution of our ongoing fight against the threat of terrorism here in New York City.

Any suggestion that Ms. Halligan would thwart efforts to protect our nation, and our city, against terrorist threats is absurd. For over three years, Ms. Halligan has served as Counsel to the New York County District Attorney. During that time, she has worked extensively on key anti-terrorism cases, including most recently the successful prosecution of Ahmed Ferhani, who pled guilty to very serious charges under New York State's anti-terrorism statute for a 2011 plot to blow up Manhattan synagogues and churches.

As I informed the Senate in 2011, I strongly recommend Ms. Halligan for the position to which she has been nominated.

Sincerely,

RAYMOND W. KELLY,
*Police Commissioner.*

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Madam President, so many good things about Caitlin Halligan have already been said. She is a woman of great intellect, has a history of laudable achievements, a record of outstanding public service, and she deserves the full support of the Senate today.

Caitlin has had an exceptional career as an attorney, and I am confident she will make an excellent judge. She is currently the general counsel at the New York City District Attorney's Office, an office that investigates and prosecutes 100,000 criminal cases annually in Manhattan.

She served as our Solicitor General. She was awarded ''Best United States Supreme Court Brief'' while she served there.

She has overwhelming support from law enforcement, from the New York Association of Chiefs of Police, the New York State Sheriffs Association, the National District Attorneys Association, the New York Women in Law Enforcement, along with the support of community leaders, such as the Women's Bar Association of the District of Columbia, the National Conference of Women's Bar Associations, and the U.S. Women's Chamber of Commerce.

The bottom line is, she is a well-qualified judge who would do great service for the United States. Even New York City police commissioner Ray Kelly said Caitlin has the ''three

qualities important for a judicial nominee: intelligence, a judicial temperament, and personal integrity.'' She has a strong record.

As to the debate we have heard on national security, Caitlin lives in the heart of New York City. She saw the Twin Towers fall. In the years that followed, she worked as pro bono counsel to the board of directors of the Lower Manhattan Development Corporation that oversees the rebuilding of Lower Manhattan—helping our city to grow stronger every single day.

Lastly, today, women make up roughly 30 percent of the Federal bench. For the first time in history, that holds true in trial courts, courts of appeals, and the highest court in the land, the Supreme Court.

It is true we have come a long way, but we still have a long way to go on this journey for full equality. I think she is a superbly qualified nominee, and I urge my colleagues to vote in support of her.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit.

Harry Reid, Patrick J. Leahy, Barbara Boxer, Benjamin L. Cardin, Robert P. Casey, Jr., Bill Nelson, Barbara A. Mikulski, Amy Klobuchar, Al Franken, Jack Reed, Sheldon Whitehouse, Robert Menendez, Kirsten E. Gillibrand, Richard Blumenthal, Max Baucus, Sherrod Brown, Dianne Feinstein.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Colorado (Mr. UDALL) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Idaho (Mr. CRAPO), the Senator from Utah (Mr. HATCH), the Senator from Nebraska (Mr. JOHANNS), and the Senator from Louisiana (Mr. VITTER).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 51, nays 41, as follows:

[Rollcall Vote No. 30 Ex.]

YEAS—51

| | | |
|---|---|---|
| Baldwin | Gillibrand | Murphy |
| Baucus | Hagan | Murray |
| Begich | Harkin | Nelson |
| Bennet | Heinrich | Pryor |
| Blumenthal | Heitkamp | Reed |
| Boxer | Hirono | Rockefeller |
| Brown | Kaine | Sanders |
| Cantwell | King | Schatz |
| Cardin | Klobuchar | Schumer |
| Carper | Landrieu | Shaheen |
| Casey | Leahy | Stabenow |
| Coons | Levin | Tester |
| Cowan | Manchin | Udall (NM) |
| Donnelly | McCaskill | Warner |
| Durbin | Menendez | Warren |
| Feinstein | Merkley | Whitehouse |
| Franken | Murkowski | Wyden |

NAYS—41

| | | |
|---|---|---|
| Alexander | Enzi | Moran |
| Ayotte | Fischer | Paul |
| Barrasso | Flake | Portman |
| Blunt | Graham | Reid |
| Boozman | Grassley | Risch |
| Burr | Heller | Roberts |
| Chambliss | Hoeven | Rubio |
| Coats | Inhofe | Scott |
| Coburn | Isakson | Sessions |
| Cochran | Johnson (WI) | Shelby |
| Collins | Kirk | Thune |
| Corker | Lee | Toomey |
| Cornyn | McCain | Wicker |
| Cruz | McConnell | |

NOT VOTING—8

| | | |
|---|---|---|
| Crapo | Johnson (SD) | Udall (CO) |
| Hatch | Lautenberg | Vitter |
| Johanns | Mikulski | |

The PRESIDING OFFICER. On this vote the ayes are 51 and the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. REID. I enter a motion to reconsider the vote by which cloture was not invoked on the Halligan nomination.

The PRESIDING OFFICER. The motion is entered.

VOTE EXPLANATION

• Mr. VITTER. Madam President, I could not participate in the vote on the motion to invoke cloture on the nomination of Calendar No. 13, Caitlin Joan Halligan, of New York, to be U.S. circuit judge for the District of Columbia Circuit. Had I voted, I would have voted nay.

Ms. Halligan has consistently espoused extremist positions on well-settled areas of the law including second amendment rights, abortion, and terrorist detention. I believe that Ms. Halligan's demonstrated propensity for judicial activism disqualifies her for the Federal bench where a judge must impartially apply the law.•

## ORDER OF BUSINESS

Mr. REID. Madam President, we are now going to move to the Brennan matter. The Republican leader and I are trying to work something out. I have had numerous contacts from everybody about the problems with the weather. We are going to try to reach an agreement to move forward on Brennan and finish it today. I don't know if we can do that, but this is what we are trying to do.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. I ask unanimous consent that the order for the quorum call be rescinded.

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

## MORNING BUSINESS

Mr. BROWN. Madam President, I ask unanimous consent to speak as in morning business for up to 10 minutes, and Senator INHOFE, the senior Senator from Oklahoma, be given 20 minutes after I speak.

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

## DOOLITTLE ''TOKYO RAIDERS''

Mr. BROWN. Madam President, I rise to recognize the lasting contributions of 80 courageous Americans who participated in the Doolittle raid, our Nation's first offensive action on Japan's soil during the Second World War. I am pleased to have Senator BOOZMAN as the lead Republican of an effort to ensure these men have the recognition they deserve. Together, we introduced S. 381, which will award the surviving airmen, known as the Doolittle Raiders, with the Congressional Gold Medal. Senator BOOZMAN's collaboration reiterates that bipartisan support for our veterans endures in this body. Joining us as original cosponsors are Senators MURRAY, TESTER, BAUCUS, NELSON, CANTWELL, and SCHATZ.

As chairman of the Senate Veterans' Affairs Committee during the last session, Senator MURRAY also cosponsored last year's resolution. We are grateful for her leadership. Our colleague Senator LAUTENBERG, the sole World War II veteran serving in the Senate, is also a cosponsor.

Some 16 million Americans served this country during World War II. Today their average age is 92. These survivors have earned the respect of a grateful Nation. Now is the time for us to act to honor them.

On April 18, 1942, 80 American airmen volunteered for an unknown assignment. These sons, fathers, and brothers accepted what they only knew to be ''an extremely hazardous mission.'' They were led by Lt. Col. James ''Jimmy'' Doolittle, a one-time flight instructor at Wright Field in Dayton, OH, in my home State. He also studied at Kelly Field and McCook Field in Ohio.

The Doolittle Raid was the first time the Army Air Corps and the Navy collaborated on a tactical mission. These pilots flew 16 U.S. Army Air Corps B–25 Mitchell bombers from the deck of the USS *Hornet* into combat, a feat that had never been before attempted.

On the morning of the raid, the USS *Hornet* was discovered by Japanese picket ships. Fearing the mission

might be compromised, the Raiders launched 170 miles earlier than planned. The earlier launch meant these men now had to travel over 650 miles to their intended targets, leaving them with the possibility of running out of enough fuel to land beyond the Japanese lines in occupied China.

Accepting this choice meant the Raiders would almost certainly have to crash land or bail out either above Japanese-occupied China or over the home islands of Japan. Any survivor would certainly be subjected to imprisonment, torture or death.

After reaching their targets, 15 of the bombers continued to China, while the 16th—whose plane was dangerously low on fuel—headed to Russia.

The total distance traveled by the Raiders was about 2,250 nautical miles over a period of 13 hours, making it the longest combat mission ever flown in a B–25 during the war.

Of the 80 Raiders who launched that day, 8 were captured—3 of them were executed, 1 died of disease, and 4 of these prisoners survived and returned home after the war. Of the original 80, 4 are still with us today. They are residents of Montana, Texas, Tennessee, and Washington State.

There was a fifth, MAJ Tom Griffin of Cincinnati, OH. On the evening of February 26, just 1 week ago—the date I introduced this legislation—Major Griffin of Cincinnati passed away surrounded by family and friends. His family lost a loved one, our Nation lost a hero.

The remaining four Raiders will be commemorating the 71st anniversary of this raid this coming April in Fort Walton Beach, FL. Now is the time to award these survivors the Congressional Medal. Their valor, their skill, their courage proved invaluable to the morale of our country on that day more than 70 years ago and the eventual defeat of Japan in the Second World War. These men continue to remind us of the quiet determination and that uncommon valor in the face of sheer danger.

I humbly ask my colleagues to join us in this bill in honoring the Doolittle Raiders.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

## OIL AND GAS INDUSTRY

Mr. INHOFE. Madam President, since being elected, President Obama has been talking about the virtues of our Nation's potential to achieve domestic energy independence. In his State of the Union Message just a short time ago he said: ''After years of talking about it, we are finally poised to control our own energy future.''

This is something I have been saying now for years. We already have control over our energy future. The problem is we have an administration that has not allowed us to exploit our own capabilities in terms of developing the natural resources we have. In fact, we are the only country in the world that doesn't develop its own resources.

In fact, in each of the President's budgets he has proposed to kill certain tax provisions specific to the oil and gas industry. Even though he says these are subsidies for the oil and gas industry, that is not the case.

I would like to mention these because no one ever talks about the fact that he has specific provisions in his own budget. I will mention just three of them.

Intangible drilling costs—called IDCs. This is a provision that simply allows producers to deduct from their revenue the cost of drilling. You pay taxes on net revenue. So this is net of the expenses it takes to develop the revenue. Every business is allowed to deduct ordinary and necessary business expenses, and IDCs are exactly that for the oil and gas industry.

In other words, the cost of drilling should be deducted because a lot of times they drill and don't produce anything. So this is something everyone else has and we should be having also in the oil industry. If the President gets rid of these, the tax increase would be $13.9 billion over the 10-year period we have been talking about. This is interesting because that is not a tax that would be paid by them. It would go into the increased cost of energy. But we stopped that. We stopped that provision from becoming a reality, even though it was in the President's budget.

The second is called percentage depletion. Percentage depletion is simply a way the Tax Code has allowed oil and gas producers to account for the reduction in the value of their reserves. Let's say they are fortunate and they produced oil that is going to be income that will go to them. As that is depleted, the value of that has been depleted also.

Percentage depletion has been on the books as long as we have had the industry. If the President were successful in doing away with the percentage depletion, that would mean about an $11.5 billion tax increase on the energy we use in this country.

The last one I will mention—and there are actually two more—is called section 199. Section 199 is the manufacturer's tax deduction. It allows all manufacturers, including farmers, filmmakers, and the rest of them to take a small deduction in their taxes because they create products here in America. The President has always proposed canceling this out but only for the oil and gas industry and not for anybody else. Everybody else would have that same advantage.

Again, if the President were successful in doing this, it would increase the cost of energy by $11.6 billion over that 10-year period. The President's proposal to increase these taxes would prevent the industry from reaching its true potential, despite the fact of what we have out there and what we could do and how we could get it done today real quickly.

A recent CRS—Congressional Research Service—report stated that the United States has the largest combined resources in oil, natural gas, and coal of any country in the world. We have more than Saudi Arabia, China, and Canada combined. Yet we are the only Nation, as I said, in the world that doesn't allow ourselves to exploit our own resources.

Fortunately, oil and gas activities have increased over the past years. As much as the President may want to claim credit for this, he has no standing to do so because, as I mentioned, the tax provisions he has proposed in his budget have been very negative toward oil and gas. Last year we hit a 15-year high in oil production, producing an average of 6.4 million barrels a day, which was 800,000 barrels per day more than in 2011.

This increase is staggering and it is the result of the amazing advancements in oil and gas production technologies—things such as horizontal drilling and hydraulic fracturing. These are things that have helped us get the oil and gas out of tight formations.

Nearly all of this increase has occurred on State and private lands. CRS confirmed 1 year ago that ''about 96 percent of the increase [in oil and gas production] since 2007 took place on non-Federal lands.'' That is critical, because as I have said twice already, we are the only country that doesn't develop its own resources. This means that is beyond the reach of the President's hands. In other words, he can't stop the private land production but he can the public land.

Adding to that—and this was just released yesterday, which is why I wanted to make this point today—the oil production on all Federal lands, including onshore and offshore, declined last year for the second year in a row, falling from 632 million barrels in 2011 to right at 600 million barrels in 2012. So the 800,000 barrels-per-day increase we saw last year took place solely on private lands, none of it on public lands.

During this boom time we are having right now, on that which the President has control over—the Federal lands—we have actually had a reduction. This makes sense, given what we know about oil and gas permitting on Federal lands. It still take 300 days to get a permit to drill.

This is something you can't talk about too much because they would always say: In a certain case, you need to do it faster. In my State of Oklahoma, you can get it done in hours. In North Dakota, you can get permitting done in an average of about 10 days. But no, it is 300 days on Federal lands.

I have a friend named Harold Hamm. He is arguably the most successful independent producer in America today. He is from Enid, OK. He does most of his production in North Dakota right now. I saw just a moment

ago the Senator from North Dakota, and he can be very proud of the fact that in North Dakota Harold Hamm has one huge problem: He can't find people to work. They have full employment up there. This is what the potential is for this entire country.

This chart shows all the potential, and I call to the Chair's attention this Northeastern part of the United States—Pennsylvania and New York. It didn't use to be the case that they had all that potential, but they do now, and it is spread evenly throughout the country with all the great new discoveries that are out there.

Anyway, one of the arguments the President has had when I have said over and over again for the last 4 years that we need to open our public lands for drilling, and if we were able to do that, good things would happen in terms of the market, the price of gas at the pump, is that if we do that—if we allow the drilling for gas and oil on public lands—it would be 10 years before we would feel that at the pump—10 years.

So I called Harold Hamm. He is a guy who I think everyone would agree could be considered the most knowledgeable person in this area, about 6 months ago I called him and said to him: I am going to be on a national TV show—I should tell you what it is, but I will not—and the President has been saying it will take 10 years before that oil will reach the pumps and so I would like to ask you a question. I said: When you answer, I am going to use your name live on national TV tonight, so make sure you are accurate. So I asked him: If you had a rig set up in New Mexico and you were able to lift the restrictions we have on public lands, how long would it take that oil and gas to hit the market? He said, without hesitating, 70 days. I said: Be sure you are right. I am going to use your name, and he proceeded to tell me what would happen each day for the first barrel of oil to actually reach the pumps and have an effect.

Anyway, no one has argued with that yet because it is pretty well documented. So by the time you have one Federal drilling permit completed, Harold Hamm could have four separate wells up and running, providing more jobs and cheaper gasoline for all Americans.

Fortunately, the President does not control the permitting process on State and private lands, and because of this the industry has had the opportunity to unlock tremendous natural gas resources. Not 5 years ago, many believed the United States faced a significant shortage of natural gas. Wellhead prices at that time were trading as high as $11 per thousand cubic feet—$11 per thousand cubic feet—and investors were racing to build liquefied natural gas import facilities. We were going to import liquefied natural gas. As you know, natural gas has to be liquefied to have some bulk before you are able to trade it internationally. Anyway, they were racing to try to get this done so we would be able to import from foreign countries to meet U.S. demand with foreign supplies.

The shale gas revolution changed all this. Our expected natural gas reserves are well over 2 quadrillion cubic feet, which is enough gas to supply our domestic needs in the United States for 90 years. That is right here in this country. Many industry observers believe this estimate is discounted to the Nation's true potential. This dramatic shift in natural gas markets has pushed prices down to below $4 per thousand cubic feet, putting the United States in a unique position to bolster both wealth creation and our foreign policy might by beginning natural gas exports. So we would be going from importing liquefied natural gas to exporting natural gas.

Right now there are currently 15 permits to export LNG pending before Secretary Chu at the Department of Energy. The Natural Gas Act requires the Department to ''issue such [a permit] upon application, unless . . . it will not be consistent with the public interest.''

What could be inconsistent with this for the public interest? This would be cheaper gas for us and give us total independence in a matter of weeks.

Congress, when it wrote the Natural Gas Act, understood that the export of American products is good for the Nation. It supports domestic industry, creates jobs, and transfers wealth from overseas back to the United States. It is all good for us.

A recent report commissioned by DOE to assist it in making its determination agreed with this. They stated:

> . . . across the scenarios [examined by the study], the U.S. economic welfare consistently increases as the volume of natural gas exports increases.

So that is the opportunity that is out there.

Some in this body have raised concerns about allowing liquefied natural gas exports to move forward. They are concerned mainly that production would not be able to keep up with the rising consumption and exports and that the follow-on effects will be harmful to domestic industries. I can appreciate where these Members are coming from, but I want to point out something that many may be overlooking.

The Energy Information Agency, the EIA, releases an annual outlook for U.S. energy markets. In their most recent one, which came out just a few weeks ago, they estimated that between now and 2040, production of natural gas would increase by 40 percent, which will more than offset the expected 20 percent increase in consumption. So our consumption is going to increase. People say: How can we ever become independent. Our production will increase at twice the consumption level.

Today, natural gas is trading near an all-time low, and because of this many producers have completely abandoned new natural gas production projects. In 2008, when natural gas was trading at nearly $11 per thousand cubic feet, there were over 1,600 active drilling rigs. Today, that figure is down to 428. That is a 73-percent reduction. The rigs are still out there. They are still set up. They are just not operating. Overnight, you can have them operating again.

The industry is not moving forward with projects because it does not have the demand and certainty it needs to do so. Without demand certainty, it is impossible to accurately forecast whether the massive investments required to develop a project can be recouped. This stalls both job and wealth creation, keeping our unemployment rates and deficits higher than they should be.

Today the natural gas market is in a demand-limited scenario, and it will remain there for the foreseeable future. Supply is truly so abundant and readily available that as soon as more demand comes online producers are able to tap reserves and meet the market's needs.

The consulting firm Deloitte agrees. In its report, it stated ''producers can develop more reserves in anticipation of demand growth.'' They added that future LNG exports will have limited disruptions to natural gas markets because they ''will likely be backed by long-term supply contracts, as well as long-term contracts with buyers. There will be ample notice and time in advance of the exports to make supplies available.''

This should be of great encouragement to domestic energy consumers. In fact, the NERA Consulting Report concluded that across the board, industries would not be hurt by LNG exports, stating that ''no sector analyzed . . . would experience reductions in employment more rapid than normal turnover.''

The petrochemical industry is one that has been vocal in opposition to LNG exports, but the leftwing think tank, the Brookings Institute, stated in its LNG report that ''exports can be seen as providing a benefit to the petrochemical industry'' because it is primarily a user of natural gas liquids and not the dry liquids used to make LNG.

I can appreciate the fact that many people are worried about the cost of energy going up in this country. I am too. But those who are concerned that exports will be the cause of this have misplaced concerns. Rather, they should be focusing their attention on the cumulative effect of adverse government policies negatively affecting energy sources. Government regulations, largely those coming out of the EPA, are perhaps the greatest threat to this Nation achieving domestic energy independence. We have gone from 1,600 rigs out there that were operating down to 428 rigs.

Further, when considering the potential benefits of LNG exports, we can't dismiss the impact trade has had on

other sectors of our economy. Agriculture is a prime example. The Federal Government works diligently to open and maintain international market access for U.S. agricultural producers. This was highlighted very recently by the announcement that Japan would ease its restrictions on U.S beef imports. Certainly, this is meaningful to my State and the States of others who are in this Chamber right now. This has been a major goal of the current and previous administrations for years, and Japan's decision was hailed by the administration and many Members of Congress on both sides of the aisle. Everyone knows it is a great deal because when you sell products abroad, you both generate wealth at home and expand the size of the market, thereby increasing opportunities for expansion.

The Federal Government should adopt the same perspective with LNG exports. LNG exports will create jobs across the country, bring more wealth to our Nation from abroad, and grow our economy—all at the same time. Meanwhile, we will be providing needed fuel for our allies—Japan, Korea, NATO, and Thailand—who will consequently be able to reduce their reliance on the Middle East.

So it is something that is good for everybody. It is good for our country; it is good for our economy. And all you have to do is, if you want to see that, look up to North Dakota. As I mentioned, a great independent producer, Harold Hamm from Oklahoma, is up there right now, and his biggest problem is they are fully employed.

We have a similar situation in my State of Oklahoma. We have expanded our production to the point where we are not feeling some of the grief you hear in the discussions from the other people on this floor. So I would encourage us to look at this export to keep this market, to get those other 1,600 wells working. This is something that can certainly happen.

## THE STATE OF THE UNION ADDRESS

I notice my time is expiring, but I want to mention something that came out in the State of the Union Message. I hope I will have a chance to do this later on today.

When the President was talking about greenhouse gas, as he has been talking about for a long time, he made several comments. I think this was talked about more in the State of the Union Message than anything else he talked about.

> Yes, it's true that no single event makes a trend. But the fact is that the 12 hottest years on record have all come in the last 15.

That is just flat wrong. Even NASA's James Hansen, who officially has been the leader on the other side of this issue, admits that global temperature standstill is real, and mean global temperatures have been flat for the last decade. Later on I am going to go over one by one the statements he has made. I would only suggest that this is something we need to keep in mind.

In 1895, we went into this hysteria at that time because there was a cold snap: We are all going to freeze to death. Another ice age is coming. We are all going to die.

In 1920, it was the same thing except it was a heat spell. This, obviously, wasn't true at that time, but everyone was getting hysterical. These 20-year cycles keep coming and going. You can set your watch by them. Except in 1945, it was another cold spell that lasted until 1975. The interesting thing about this is that 1945 was the year that had the largest release of $CO_2$ of any time in the history of this country, and that precipitated not a warming trend but another cold trend. The warming trend, of course, came in 1975.

Anyway, these are cycles. God is still up there. We are going to have these cycles take place. Later on today, hopefully, I want to take each statement that the President has made and show that those statements weren't right.

One thing that is true—one thing that no one disagrees with—is that the cost of having some type of a cap-and-trade system that the President wants would be between $300 billion and $400 billion a year. By the admission of the past Director of the EPA, Lisa Jackson—when I asked the question: If we were to incur all these taxes, would something we do in the United States affect the release of $CO_2$ worldwide, She said: No. Because the problem isn't here. The problem is in China. The problem is in India and other places.

So, again, for those who believe that $CO_2$ is causing global warming or other climate disasters, keep in mind, even the EPA Director appointed by President Obama agrees that would not reduce any $CO_2$ worldwide.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Republican whip.

Mr. CORNYN. Madam President, I ask unanimous consent that following my remarks, the Senator from Kentucky, Mr. PAUL, be recognized.

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

## THE SEQUESTER

Mr. CORNYN. Madam President, I am not sure where the Obama administration is getting all of its talking points on the sequester, but the President might want to consider hiring a fact checker.

Even before the sequester took effect, Education Secretary Arne Duncan declared that schoolteachers were getting pink slips. A few days later he had to walk those comments back. He said he was referring to a single school in West Virginia. But when the Washington Post contacted the superintendent of that school, he said not one teacher had gotten a pink slip because of the sequester.

Then President Obama suggested that all of the people who keep the Capitol clean would be suffering a pay cut. But that wasn't true either, according to Capitol Superintendent Carlos Elias.

We have been repeatedly told that the sequester would trigger drastic layoffs of Federal workers. Yet on Monday alone the Federal Government posted literally hundreds of job advertisements.

Finally, just yesterday, when asked to provide evidence for the claim that 70,000 children would be denied access to Head Start because of the sequester, the White House had no details. While the President has been out there playing Chicken Little, Members of Congress have been waiting for the White House to send over its budget.

The law requires the President to transmit a budget by February 4, and we have been now advised his budget will not be forthcoming until March 25. Ironically, that will actually be after the House and the Senate have taken up our own budget, and we will have no input from the President on his proposal.

A few weeks ago I said a second term offers the President a second chance. I still remain hopeful that President Obama will eventually be persuaded to adopt a serious approach for long-term deficit reduction and long-term economic growth.

One of the great tragedies in America today is the fact that our economy is growing so slowly that unemployment rates remain unacceptably high—roughly around 8 percent. That is only after many people have simply given up looking for work. Now more than 20 million people are either out of work or they are working part time when they would prefer to work full time. But that is not going to happen until we get the economy growing again—and that is not going to happen until we get our hands around our long-term deficit and economic growth.

I realize the President and Democrats want to take the House of Representatives back in 2014. The President probably remembers the Halcyon days of 2009 and 2010 when his party controlled the White House, the Senate, and the House. That got us ObamaCare, a $1 trillion stimulus, and a whole lot more debt, and the Dodd-Frank law—which was targeted at Wall Street but which hit Main Street, including a lot of our community bankers.

There is a time for campaigning and there is a time for governing. But the 2012 election occurred 17 weeks ago and the 2014 election will not occur for another 20 months. Now is the time for governing, not for delivering more partisan stump speeches. In order to govern, the Senate needs to pass a budget, something this Chamber has not done for more than 1,400 days. Over that same period our gross national debt has grown by $5.5 trillion and we have experienced the weakest economic recovery since the Great Depression.

Since the official end of the recession in June of 2009, the median household income in America has fallen by more than $2,400. Meanwhile, since the President took office the cost of family health insurance has increased by $2,300. So not only has household income for most Americans—the median household income, that is—dropped by $2,400, they are seeing an additional burden of $2,300 because of ObamaCare.

The bottom line is the American people are tired of the ''Chicken Little'' stories and they are tired of the fear mongering. They look at what is happening in Washington—I know my constituents in Texas do—and they almost want to turn their eyes in another direction to avert their gaze because they understand that Washington is not serving their interests. If President Obama wants real change, it is time for him to get behind real tax reform and real reform of Social Security and Medicare, something his own bipartisan fiscal commission—Simpson-Bowles—recommended.

After all, the American people did not send us here to kick and scream over a 2.4-percent budget cut. They sent us here to make some hard decisions to ensure long-term economic health and economic prosperity and it is time for the President as the leader of our country and the leader of the free world to take that message to heart.

I yield the floor.

The PRESIDING OFFICER (Ms. BALDWIN). The Senator from Kentucky is recognized.

## BRENNAN NOMINATION

Mr. PAUL. Madam President, I rise today to begin to filibuster John Brennan's nomination for the CIA. I will speak until I can no longer speak. I will speak as long as it takes until the alarm is sounded from coast to coast that our Constitution is important, that your rights to trial by jury are precious, that no American should be killed by a drone on American soil without first being charged with a crime, without first being found to be guilty by a court. That Americans could be killed in a cafe in San Francisco or in a restaurant in Houston or at their home in Bowling Green, KY, is an abomination. It is something that should not and cannot be tolerated in our country.

I do not rise to oppose John Brennan's nomination simply for the person. I rise today for the principle. The principle is one that, as Americans, we have fought too long and hard for to give up on, to give up on the Bill of Rights, to give up on the fifth amendment protection that says no person shall be held without due process, that no person shall be held for a capital offense without being indicted. This is a precious American tradition and something we should not give up on easily.

They say Lewis Carroll is fiction; Alice never fell down a rabbit hole, and the White Queen's caustic judgments are not really a threat to your security. Or has America the beautiful become Alice's Wonderland?

> ''No, no!'' said the Queen. ''Sentence first—verdict afterwards.''
>
> ''Stuff and nonsense!'' Alice said loudly. ''The idea of having the sentence first.''
>
> ''Hold your tongue!'' said the Queen, turning purple.
>
> ''I won't!'' said Alice.
>
> [''Release the drones,''] said the Queen, as she shouted at the top of her voice.

Lewis Carroll is fiction, right? When I asked the President: Can you kill an American on American soil, it should have been an easy answer. It is an easy question. It should have been a resounding and unequivocal no. The President's response: He hasn't killed anyone yet.

We are supposed to be comforted by that. The President says: I haven't killed anyone yet. . . . He goes on to say: and I have no intention of killing Americans, but I might.

Is that enough? Are we satisfied by that? Are we so complacent with our rights that we would allow a President to say he might kill Americans, but he will judge the circumstances, he will be the sole arbiter, he will be the sole decider, he will be the executioner in chief if he sees fit?

Some will say he would never do this. Many people give the President consideration. They say he is a good man. I am not arguing he is not. What I am arguing is that the law is there, set in place for the day when angels don't rule government. Madison said that the restraint on government was because government will not always be run by angels. This has nothing, absolutely nothing, to do with whether the President is a Democrat or a Republican. Were this a Republican President, I would be here saying exactly the same thing: No one person, no one politician should be allowed to judge the guilt—to charge an individual, to judge the guilt of an individual, and to execute an individual. It goes against everything we fundamentally believe in our country. This is not even new to our country. There is 800 years of English law that we founded our tradition on. We founded it upon the Magna Carta from 1215. We founded it upon Morgan of Glamorgan from 725 A.D. We founded it upon the Greeks and Romans who had juries. It is not enough to charge someone to say that they are guilty.

Some might come to this floor and they might say: What if we are being attacked on 9/11? What if there are planes flying at the Twin Towers? Obviously we repel them. We repel any attack on our country. If there is a gentleman or a woman with a grenade launcher attacking our buildings or our Capitol, we use lethal force. You don't get due process if you are involved with actively attacking us, our soldiers, or our government. You don't get due process if you are overseas in a battle, shooting at our soldiers. But that is not what we are talking about.

The Wall Street Journal reported and said that the bulk of the drone attacks is signature attacks. They do not even know the name of the person. A line or a caravan is going from a place where we think there are bad people to a place where we think they might commit harm and we kill the caravan, not a person. Is that the standard we will now use in America? Will we use a standard for killing Americans to be that we thought you were bad, we thought you were coming from a meeting with bad people and you were in a line of traffic and so therefore you were fine for the killing?

That is the standard we are using overseas. Is that the standard we are going to use here? I will speak today until the President responds and says: No, we won't kill Americans in cafes. No, we won't kill you at home in your bed at night. No, we won't drop bombs on restaurants.

Is that so hard? It is amazing that the President will not respond. I have been asking this question for a month. It is like pulling teeth to get the President to respond to anything and I get no answer. The President says he hasn't done it yet and I am to be comforted. You are to be comforted in your home. You are to be comforted in your restaurant. You are to be comforted in online communicating in your e-mail that the President has not killed an American yet in the homeland. He says he has not done it yet. He says he has no intention to do so.

Hayek said that nothing more distinguishes arbitrary government from a government that is run by the whims of the people than the rule of law. The law is an amazingly important thing, an amazingly important protection. For us to give up on it so easily doesn't speak well of what our Founding Fathers fought for, what generation after generation of American soldiers has fought for, what soldiers are fighting for today when they go overseas to fight wars for us. It doesn't speak well of what we are doing here to protect the freedom at home when our soldiers are abroad fighting for us that we say our freedom is not precious enough for one person to come down and say: Enough is enough, Mr. President, come clean, come forward and say you will not kill Americans on American soil.

The oath of office of the President says that he will, to the best of his ability, preserve, protect and defend the Constitution. He raises his right hand, he puts his left hand on the Bible, and he says ''will.'' The President doesn't say, I intend to if it is convenient; I intend to unless circumstances dictate otherwise. The President says, ''I will defend the Constitution. I will protect the Constitution.''

There is not room for equivocation here. This is something that is so important, so fundamental to our country that he needs to come forward.

When Brennan, whose nomination I am opposing today, was asked directly: Is there any limit to your killing? Is there any geographic limitation to

your drone strike program? Brennan responded and said: No, there is no limitation.

So the obvious question would be, if there is no limitation on whom you can kill and where you can kill and there is no due process upon whom you will kill, does that mean you will do it in America? The Senator from Oregon asked him that question directly, in committee. And this so-called champion of transparency, this so-called advocate of some kind of process, responded to the Senator from Oregon by saying: I plan to optimize secrecy and optimize transparency.

Gobbledygook. You were asked: Will you kill Americans on American soil? Answer the question.

Our laws forbids the CIA from doing that. It should have been an easy question. The 1947 National Security Act says the CIA doesn't operate in our country. We have the FBI, we have rules, we have separated powers to protect your rights. That is what government was organized to do. That is what the Constitution was put in place to do, to protect your rights. So when I asked, he says: No answer. He says: I will evade your answer, and by letting him come forward we let him get away with it.

I have hounded and hounded and finally yesterday I get a response from Mr. Brennan, who wishes to be the CIA chief, and he finally says: I will obey the law.

Well, hooray. Good for him. It took a month to get him to admit that he will obey the law. But it is not so simple. You see, the drone strike program is under the Department of Defense, so when the CIA says they are not going to kill you in America, they are not saying the Defense Department won't. So Eric Holder sent a response, the Attorney General. His response says: I haven't killed anyone yet. I don't intend to kill anyone. But I might.

He pulls out examples that are not under consideration. There is the use of local force that can always be repelled—if our country is attacked, the President has the right to protect and defend the country. Nobody questions that. Nobody questions if planes are flying toward the Twin Towers whether they can be repelled by the military. Nobody questions whether a terrorist with a rocket launcher or grenade launcher is attacking us, whether they can be repelled. They do not get their day in court.

But if you are sitting in a cafeteria in Dearborn, if you happen to be an Arab American who has a relative in the Middle East and you communicate with them by e-mail and someone says your relative is someone we suspect of being associated with terrorism, is that enough to kill you? For goodness sake, wouldn't we try to make an arrest and come to the truth by having a jury and a presentation of the facts on both sides of the issue?

See, the real problem here is one of the things we did a long time ago is we separated the police power from the judicial power. This was an incredibly important first step. We also prevented the military from acting in our country because we did not want to have a police state. One of the things we greatly objected to of the British is they were passing out general writs or writs of assistance. These were warrants that allowed them to go into a house but allowed them to go into anyone's house. What we did when we wrote our Constitution is we made the Constitution—we made the fourth amendment specific to the person and the place and the things to be looked for. We did not like the soldiers going willy-nilly into any house and looking for anything. So we made our Constitution much more specific.

I think this is something we should not give up on so easily. I think the idea that we could deprive someone of their life without any kind of hearing, essentially allowing a politician—I am not casting any aspersions on the President. I am not saying he is a bad person at all. But he is not a judge.

He is a politician. He was elected by a majority, but the majority doesn't get to decide whom we execute. We have a process for deciding this and we have courts for deciding this. To allow one man to accuse a person in secret and to never get notified that they have been accused—their notification is the buzz of the propellers on the drone as it flies overhead in the seconds before they are killed. Is that what we want from our government? Are we so afraid of terrorism and so afraid of terrorists that we are willing to just throw out our rights and our freedoms and what we have fought for and have gotten over the centuries? We have at least 800—if not 1,000—years' worth of protections.

Originally, the protections were against a monarch. We feared a monarch. We didn't like having a monarch. When we came to this country and set up our Presidency, there was a great deal of alarm. There was a great deal of fear over having a king, and so we limited the executive branch. Madison wrote in the Federalist Papers that the Constitution supposes what history demonstrates, which is that the executive branch is the branch most prone to a war, most likely to go to war, and, therefore, we took that power to declare war and vested it in the legislature. We broke up the powers.

Montesquieu wrote about the checks and balances and the separation of powers. He was somebody whom Jefferson looked toward. They separated the powers because there is a chance for abusive power when power resides in one person. Montesquieu said there can be no liberty when the executive and the legislative branches are combined.

I say something similar; that is, there can be no liberty when the executive and the judiciary branches are combined, and that is what we are doing here. We are allowing the President to be the accuser in secret, we are allowing him to be the judge, and we are allowing him to be the jury. No man should have that power. We should fear that power not because we have to say: Oh, we fear the current President. It has nothing to do with who the President is. It has nothing to do with whether someone is a Republican or Democrat. It has to do with whether we fear the consolidation of power, whether we fear power being given to one person, be it a Republican or a Democrat. This is not necessarily a right-left issue.

Kevin Gosztola, who writes at firedoglake.com, writes that the mere fact that the President's answer to the question of whether you can kill an American on American soil was yes is outrageous. However, it fits the framework for fighting a permanent global war on terrorism without any geographic limitations, which President Obama's administration has maintained it has the authority to wage.

What is important to note is that we are talking about a war without geographic limitations, but we are also talking about a war without temporal limitations. This war has no limit in time. When will this war end? It is a war that has an infinite timeline. If we are going to suspend our rights, if there is going to be no geographic limits to killing—which means we are not at war in Afghanistan, we are at war everywhere. Everybody who pops up is al-Qaida. Whether they have heard of al-Qaida or whether they have had any communication with some network of al-Qaida, it is al-Qaida. There is a new war going on everywhere in the world, and there are no limitations.

Glenn Greenwald has also written about this subject, and he was speaking at the Freedom to Connect conference. He said there is a theoretical framework being built which posits that the U.S. Government has unlimited power. Some call this inherent power. ''Inherent'' means it has not been defined anywhere; it has not been expressly given to the government. They have decided this is their power and they are going to grab it and take what they get.

This is not new. The Bush administration did some of this too. When the Bush administration tried to grab power, the left—and some of us on the right—were critical when they tried to wiretap phones without a warrant. Many on the right and many on the left raised a raucous. There was a loud outcry against President Bush for usurping, going across due process, not allowing due process, and not obeying the restraints of warrants. Where is that outcry now?

Glenn Greenwald writes:

> There is a theoretical framework being built that posits that the U.S. Government has unlimited power, when it comes to any kind of threats it perceives, to take whatever action against them that it wants without any constraints or limitations of any kind.

As Greenwald suggests—and this goes back to Gosztola's words—answering

yes to the question that you can kill Americans on American soil illustrates the real radicalism the government has embraced in terms of how it uses its own power.

We were opposed to them listening to our conversations without a warrant, but no one is going to stand and say anything about killing a person without a warrant, a judge's review or a jury? No one is going to object to that? Where is the cacophony who stood and said: How can you tap my phone without going to a judge first? I ask: How can you kill someone without going to a judge or a jury? Are we going to give up our rights to any politician of any stripe? Are we going to give up the right to decide who lives and who dies?

Gosztola goes on to say the reason the administration didn't want to answer yes or no to this question—can you kill Americans on American soil—is because he says a ''no'' answer would jeopardize the critical, theoretical foundation they have very carefully constructed that says there are no cognizable constraints on how U.S. Government power can be asserted.

Civil libertarians once expected more from the President. In fact, it was one of the things I liked about the President. I am a Republican. I didn't vote for or support the President either time, but I admired him. I particularly admired him when he ran in 2007. I admired his ability to stand and say: We will not torture people. That is not what America does.

How does the President's mind work? The President—who seemed so honorable, so concerned with our rights, so concerned with the right not to have our phone tapped—now says he is not concerned with whether a person can be killed without a trial. The leap of logic is so fantastic as to boggle the mind. Where is the Barack Obama of 2007? Has the Presidency so transformed him that he has forgotten his moorings and what he stood for?

Civil libertarians once expected more from the President. Ask any civil libertarian whether the President should have the right to arbitrarily kill Americans on American soil, and the answer is easy. Of course no President should have the right or that power under the Constitution.

Brennan has responded in committee that now the CIA does not have the right to do it on American soil. The problem is that this program is under the Department of Defense, so it is, once again, an evasive answer. They are not answering the true question: Will the Government of America kill Americans on American soil?

Gosztola, from firedoglake.com, writes that there may never be a targeted killing of a U.S. citizen on U.S. soil—and the question of whether a U.S. citizen could be targeted and killed on U.S. soil may remain a hypothetical question for some time—but the fact that the Obama administration has told a U.S. Senator there is a circumstance where the government could target and kill an American citizen on American soil without charge and without trial is a stark example of an imperial Presidency.

This is what our Founding Fathers wanted to fight against. They wanted to limit the role and the power of the President. They wanted to check the President's power with the power of the Senate, the power of the House, and the power of the judiciary. We have three coequal branches. Not one of them should be able to run roughshod on the other.

The problem is we have allowed this to happen—not me personally, but Congress in general has allowed the President to usurp this power. If there were an ounce of courage in this body, I would be joined by many other Senators in saying we will not tolerate this, that we will come together, in a bipartisan fashion, and tell any President that no President will ever have the authority to kill Americans without a trial. When the President says he does intend to do so, we have to think that through.

One year ago, the President signed a law that says a person can be detained indefinitely and that they can be sent from America to Guantanamo Bay without a trial. He wants us to be comforted by that. He wants us to remember and think well of him because he says: I don't intend to do so. It is not enough. I mean, would we be able to tolerate a Republican who stood and said: I like the first amendment, I am quite fond of the first amendment, and I don't intend to break the first amendment, but I might.

Would conservatives tolerate someone who said: I like the second amendment, I think it is important and I am for gun ownership and I don't intend to violate the second amendment, but I might. Would we tolerate that he doesn't intend to do so as a standard?

We have to think about the standards being used overseas. Google interviewed him not too long ago and asked him if he could kill Americans at home. He was evasive. He said there are rules. He said the rules outside would be different than inside. I certainly hope so. Outside the United States the rules for killing are that someone can be killed through a signature strike. We don't have to know what that person's name is, who they are or whom they are with. If a person is in a line of traffic and we think they are going from talking to bad people to talking to other bad people, we can kill that person.

Is that going to be the standard in America? When they are asked if they have killed civilians in their drone strikes, they say no. However, a person is not counted as a civilian if they are male or if they are between the ages of 16 and 50. They are considered a potential and probable combatant if they are in the 16-to-50 age range.

My question is: If you are not a civilian, if you are in proximity to bad people, is that the standard we are going to use in the United States? If we are going to kill Americans on American soil and the standard is going to be signature strikes of a person who is close to bad people or in the same proximity of bad people, is that enough? Are we happy with that standard? Are we happy we have no jury, no trial, no charges, and nothing done publicly?

Eric Holder, the Attorney General's response to me is that they maintain they are not going to do this. We should just trust them. It is not about them, though. It is about the law. The law restrains everyone equally, regardless of their party or whether they are Republican or Democrat. The law is out there for the time when somebody inadvertently elects a truly bad person.

When World War I ended, the currency was being destroyed in Germany. In 1923, paper money became so worthless that people wheeled it in wheelbarrows; they burned it for fuel. It became virtually worthless overnight. At the beginning of September 1923, I think it was like 10 or 15 marks for a loaf of bread. On September 14, it was 1,000 marks. On September 30, it was 100,000 marks. By October 15, it was a couple of million marks for a loaf of bread. It was a chaotic situation. Out of that chaos, Hitler was elected democratically. They elected him out of this chaos.

My point is not that anybody in our country is Hitler. I am not accusing anybody of being that evil. I think it is an overplayed and misused analogy. What I am saying is that in a democracy we could someday elect someone who is very evil, and that is why we don't give the power to the government. It is not an accusation of this President or anybody in this body; it is a point to be made historically that occasionally even a democracy gets it wrong. So when a democracy gets it wrong, we want the law to be there in place. We want this rule of law.

As I mentioned, Hayek said that this is what distinguished us. Nothing distinguishes us more clearly from arbitrary government and a government of whims than a rule of law, and a stable and consistent government is the rule of law.

Heritage has an author who has written some about the oath of office. His name is Kesavan. He writes that the location and the phrasing of the oath of office for the President—this is something I mentioned earlier, that the President says he will protect and defend and preserve the Constitution—words are important. The oath doesn't say, I intend to preserve, protect, and defend; it says, I will.

Kesavan writes, though, that the location and phrasing of the oath of office strongly suggests that it is not empowering but limiting. So the President doesn't take an oath of office that says: I intend to preserve, protect, and defend the Constitution, but I also feel that I have inherent powers that were never mentioned by anybody that I will be the sole arbiter of interpreting what those powers are.

That sounds more like a king. That is not what we wanted. We did not want an imperial Presidency. What Kesavan suggests is that the oath of office is not empowering but that it is limiting, that the clause limits the President and how the President can execute or how the Executive power can be exercised.

One unanswered word in that Constitution includes the Fifth Amendment to the Constitution. What does the Fifth Amendment say? The Fifth Amendment says that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury. It is pretty explicit. The Fifth Amendment protects us. It protects us from a King placing a person in the tower, but it also should protect us from a President who might kill us with a drone.

We were granted due process. It is not always easy to sort out the details of who is a threat to the country and who is not a threat to the country. If it were people with grenade launchers on their shoulders, that is easy. In fact, I agree completely. A person does not get due process if they are actively attacking America. But we have to realize there have been reports that over half of the drone strikes overseas are not even directed toward an individual, they are directed toward a caravan of unnamed individuals.

Overseas, I have no problems. If people are shooting at American soldiers overseas, by all means, they get no due process. But we also have to realize that many—we don't know because they won't tell us the number, but many of the drone strikes overseas are done when a person is walking, whether to church, a restaurant, or along the road; they are done when a person is in a car driving; they are done when a person is in a house eating or in a restaurant eating; or they are done when a person is in a home sleeping. I am not even saying all those people didn't deserve what they got, but I am saying they were not actively involved in something that is an imminent threat, and if they were in America, they would be arrested.

If we think a person is a terrorist in America, we should arrest them. But here is the question: Who is a terrorist? That is why I have been so concerned with a lot of people around here who want to say if you are associated with terrorism. The reason is that our government has already put out things that I think are of a questionable nature.

The Bureau of Justice put out a bulletin within the last year describing people we need to be worried about. These are the people we are supposed to say something about if we see something. Who are these terrorists who live among us? People who might be missing fingers on one hand; people who might have stains on their clothing; people who might have changed the color of their hair; people who like to pay in cash; people who own more than one gun; people who own weatherized ammunition; people who have 7 days of food in their house—these are people we should be afraid of and we should report to our government, so says our government. Are they going to be on the drone strike list? I think we need to get an answer from the President.

If you are going to kill people in America, we need rules, and we want to know what your rules are because I certainly don't want to have 7 days of food in my house if that is on the list of terrorism. There are some governmental Web sites that advise us to have food in our house. If we live in a hurricane-prone area, we are supposed to keep some extra food around. Who is going to decide when it is OK to have food in our house and when it is not?

There is something called a fusion center. Fusion centers are supposed to coordinate between the Federal Government and the local government to find terrorists. The one in Missouri a couple of years ago came up with a list, and they sent this to every policeman in Missouri. This kind of concerns me. The people on the list might include me. The people on the list from the fusion center in Missouri whom we need to be worried about and whom policemen should stop are people who have bumper stickers that might be pro-life; people who have bumper stickers that might be for more border security; people who support third-party candidates; people who might be in the Constitution Party. And isn't there some irony there—people who might be in the Constitution Party, who believe in the Constitution so much, they might be a terrorist.

So I think we need to be concerned about this. Things are not so black and white. If someone is shooting a gun at us—a cannon, a missile, a rocket, a plane—it is pretty easy to know what lethal attacks are and to repel them, and there should be no due process. But we are talking about people in their home. We are talking about people in a restaurant or a cafe that someone is making an accusation against.

If the accusation is based on how many fingers you have on your hand, I have a problem with that standard. If the standard to be used for killing Americans is whether a person pays in cash, I have a problem with that. If the standard to be used in America is being close to someone who is bad or the government thinks is bad is enough for you to be killed and not even to count you as an accidental kill but to count you as a combatant because you were near them—see, here is the problem, and this is no passing problem, this is an important problem. There was a man named al-Awlaki. He was a bad guy. By all evidence available to the public that I have read, he was treasonous. I have no sympathy for his death. I still would have tried him in a Federal court for treason, and I think he could have been executed. But his son was 16 years old, and he missed his dad, who had been gone for 2 years. His son sneaks out of the house and goes to Yemen. His son is then killed by a drone strike. They won't tell us if he was targeted. I suspect, since there were other people in the group—there were about 20 people killed—that they were targeting someone else. I don't know that. I don't have inside information on that, but I suspect that.

Here is the real problem. When the President's spokesman was asked about al-Awlaki's son, do my colleagues know what his response was? This I find particularly callous and particularly troubling. The President's response to the killing of al-Awlaki's son—he said he should have chosen a more responsible father. It is kind of hard to choose who your parents are. That is sort of like saying to someone whose father is a thief or a murderer or a rapist—obviously a bad thing, but does that mean it is OK to kill their children? Think of the standard we would have if our standard for killing people overseas is that you should have chosen a more responsible parent. It just boggles the mind and really affects me to think that would be our standard.

There is absolutely no excuse for the President not to come forward on this. I have been asking for a month for an answer. It is like pulling teeth to get any answer from the President. Why is that? Because he doesn't want to answer the question the way he should as a good and moral and upstanding person—someone who believes in the Constitution should—that absolutely no American should ever be killed in America who is sitting in a cafe. No American should ever be killed in their house without a warrant and some kind of aggressive behavior by them. There is nothing American about being bombed in one's sleep. There is nothing constitutional about that.

The President says to trust him. He says he hasn't done it yet. He says he doesn't intend to do so but he might. That is just not good enough. It is not enough for me to be placated. It is not enough for me to be quiet.

So I have come here today to speak for as long as I can. I won't be able to speak forever, but I am going to speak for as long as I can to draw attention to something that I find really to be very disturbing.

People have asked about this nomination process because I have actually voted for a couple of the President's nominees, some of whom I have objected to, some of whom I have had personal differences with as well as political differences with. This is not about partisanship.

I voted for Secretary of State John Kerry. I have almost nothing in common with him politically. I have disagreed with him repeatedly on the floor. But I gave the President the prerogative of choosing his Secretary of State because I think the President won the election and he deserves to get

to make some choices on who is in his Cabinet.

I voted for the very controversial Secretary of Defense, Chuck Hagel. There were things I liked about him and things I disliked about him. I filibustered him twice before I allowed him to go forward, and people have given me a hard time. Conservatives from my party have blasted me for doing that, but I gave the President that prerogative.

So I am not standing here as a Republican who will never vote for a Democrat. I voted for the first three nominees by the President. This is not about partisanship. I have allowed the President to pick his political appointees, but I will not sit quietly and let him shred the Constitution. I cannot sit at my desk quietly and let the President say he will kill Americans on American soil who are not actively attacking a country. The answer should be so easy. I can't imagine that he will not expressly come forward and say: No, I will not kill Americans on American soil.

The Fifth Amendment says that no person shall be held for a capital or otherwise infamous crime unless on the presentment or indictment of a grand jury. It goes on to say that no person will be deprived of life, liberty, or property without due process. Now, some hear ''due process,'' and if a person is not a lawyer—I am not a lawyer—when we first hear it, we think, what does that mean? What does it mean to have due process?

What it means is we are protected. We get protections. Is our justice system perfect? No. Sometimes a person goes all the way through due process in our country, and we have actually convicted people who are innocent. Fortunately, it is very rare, but we have actually convicted people who are innocent. What are the chances that our President, going through a PowerPoint slide show and flashcards, might make a mistake on innocence or guilt? I would say there is a chance. Even our judicial system, which goes through all of these processes, including a judge reviewing the indictment, a jury reviewing it, and then a sentencing phase and all of that going forward—we sometimes make mistakes. What are the chances that one man, one politician, no matter what party they are from, could make a mistake on this? I think there is a real chance that exists. That is why we put these rules in place.

Patrick Henry wrote that the Constitution wasn't given or written or put down to restrain you; the Constitution was to restrain us. There has always been, since the beginning of the time we first had government, this desire to restrain the government, to try to keep the government from growing too strong or to try to keep the government from taking your rights.

It is interesting that when we look at the Constitution, the Constitution gave what are called enumerated powers to government. Madison said these enumerated powers were few and defined. The liberties we were given, though, are numerous and unlimited. So there are about 17 powers given to government which we have now transformed into about a gazillion or at least a million new powers—we don't pay much attention to the enumerated powers or to the Constitution anymore. But the Constitution left our rights as unenumerated; they aren't limited. Your rights are limitless.

So when we get to the 9th and 10th Amendments, they say specifically that those rights not granted to your government are left to the States and the people respectively. It didn't list what those rights are. The 14th Amendment talks about privileges and immunities being left to you also. They are to be protected.

I don't think there is a person in America—that is why I can't understand the President's unwillingness to say he is not going to kill noncombatants. Think about that. He is unwilling to say publicly that he is not going to kill noncombatants, because that is what we are talking about here. I am not talking about someone with a bazooka or a grenade launcher on their shoulder. Anyone committing lethal force can be repelled with lethal force. No one argues that point. I am talking about whether you can kill noncombatants because many of the people being killed overseas are noncombatants. Are they potential combatants? Maybe. Maybe the standard can be less overseas than it is here for people involved in a battle, but it is getting kind of murky overseas as well.

For goodness' sake, in America we can't just have this idea that we are going to kill noncombatants. We are talking about people eating in a cafe, at home, in a restaurant. I think we need to be a little more careful.

The power that was given by the Constitution to the Senate was that of advise and consent. This constitutional provision provides us with the power to consent to nominations or withhold consent. It is a check on the executive branch, but it only works if we actually use it.

I am here to speak for as long as I can hold up to try to rally support from people from both sides to say: For goodness' sake, why don't we use some advise and consent? Why don't we advise the President he should come forward and say he will not condone nor does he believe he has the authority to kill noncombatants?

As a check on the executive branch, this power that is granted to the Senate is the right to withhold consent. The Constitution does not provide Senators with the specifics or the criteria of why we withhold consent. That is left to us to decide.

I withhold my consent today because I am deeply concerned the executive branch has not provided an answer, that the President refuses to say he will not kill noncombatants.

The President swore an oath to the Constitution. He said he will protect, defend, and preserve the Constitution. He did not say: I intend to when it is convenient. He said: I will defend the Constitution. It is inexcusable for him not to come forward.

There is an author who writes for The Atlantic who has written a lot about the drone program by the name of Conor Friedersdorf. He recounts the tale of al-Awlaki's son who was killed. He said when the President's spokesman was asked about the strike that killed him, the President's spokesman replied: Well, he would have been fine if he ''had a more responsible father.''

If that is our standard, we have sunk to a real low.

Cornered by reporters after this, White House Press Secretary Robert Gibbs attempted to defend the kill list, which is secret, of course. We have to remember, if we are going to kill noncombatants in America or people we think might someday be combatants, the list will be secret. So one will not get a chance to protest: Hey, I am not that bad. I might have said that at one time, but I am not that bad. All right. I have objected to big government, not all government. I am not fomenting revolution. I was critical at that meeting. I was at a tea party meeting, and I was critical of the President, but I am not a revolutionary. Please, don't kill me.

Should we live in a country where we have to be worried about what we say? Should we live in a country where we have to worry about what we write? What kind of country would that be? Why is there not more moral outrage? Why is there not every Senator coming down to say: You are exactly right. Let's go ahead and hold this nomination and why don't we hold it until we get more clarification from the President.

Conor Friedersdorf of The Atlantic writes:

> . . . it's vital for the uninitiated to understand how Team Obama misleads when it talks about its drone program. Asked how their kill list can be justified, Gibbs—

The President's spokesman—

> replies that ''when there are people who are trying to harm us, and have pledged to bring terror to these shores, we've taken that fight to them.'' Since the kill list itself is secret, there's no way to offer a specific counterexample.

It is one thing to say: Yes, these people are going to probably come and attack us, which, to tell you the truth, is probably not always true. There are people fighting a civil war in Yemen who probably have no conception of ever coming to America.

Friedersdorf goes on to say:

> But we do know that U.S. drones are targeting people who've never pledged to carry out attacks in the United States.

So we are talking about noncombatants who have never pledged to carry out attacks are being attacked overseas. Think about it, if that is going to be the standard at home: people who have never truly been involved with combat against us.

Friedersdorf continues:

Take Pakistan, where the CIA kills some people without even knowing their identities. ''As Obama nears the end of his term, officials said the kill list in Pakistan has slipped to fewer than 10 al-Qaeda targets, down from as many as two dozen. . . . ''

Yet we are killing hundreds of people in Pakistan.

There is a quote that I think sort of brings this and makes this very poignant. There is a quote from an ex-CIA agent—I think it is Bruce Riedel—who says: The drone strike program is sort of like a lawnmower. You can keep mowing them down, but as soon as the lawnmower stops, the grass grows again.

Some people have gone one step further and said: For every 1 you kill or for maybe every 1 you accidentally kill whom you did not intend to kill, 10 more spring up.

Think about it. If it were your family member and they have been killed and they were innocent or you believe them to be innocent, is it going to make you more or less likely to become involved with attacking the United States?

I have written a couple letters to John Brennan, who has been put up for the CIA nomination. I think it looks like the first letter was sent January 25. So here we are into March, and I only got a response when he was threatened. So here is a guy whom the President promotes as being transparent and wanting to give a lot of information to the American people, he will not respond to a Senator. They treat the Senate with disdain, basically—will not even respond to us, much less the American people, when I asked him these questions. He finally responded only when his nomination was threatened.

So when it came to the committee and it appeared as if I had bipartisan support for slowing down his nomination if he did not answer his questions, then he answered his questions. It does not give me a lot of confidence that in the future, going forward, if he is approved, that he is going to be real forthcoming and real transparent about this.

I do not have a lot of anticipation or belief that we are going to get more information after this nomination hearing. Some are now saying: You have gotten your pound of flesh. Let him go, and we will keep working on this. The problem is, once he is gone, the discussion is over.

Others in my party have been trying to get information about what went horribly wrong in Benghazi and have gotten some of that information but only by using it as leverage to try to get the President to do what is the honorable thing; that is, to be more transparent with his ways.

In the first letter I sent to Brennan, I asked him the question: Is it legal to order the killing of American citizens and that you would not be compelled to even give your reasoning—not even specific to the case but any of your reasoning?

Finally, as these questions came forward, some of the things were leaked out. One of the most troubling things that came out is when Brennan and the President finally began to talk about the drone strike program, which, according to the former Press Secretary, they were to deny that it existed for years.

When they finally came out, they told us a couple things about their interpretation of it. One, they have no geographical limit to their drone strikes. The second thing is they told us what they thought was imminent. This is pretty important because a lot of Americans, myself included, believe if we are being attacked, we can respond with lethal force. But a lot of Americans think that we have to actually be engaged in that to respond with lethal force. But they told us the way their lawyers interpret ''imminent'' is imminent does not have to mean ''immediate.''

Only a bunch of lawyers could get together, government lawyers could get together and say imminent is not immediate. You have to understand, and what we should be asking the President is, Is this your standard for America? If you are going to assert that you have the right to kill Americans on American soil, are you going to assert—are you going to assert—that your standard is that an imminent threat does not have to be immediate?

I am quite concerned, when I hear this kind of evasiveness, with this sort of nonresponse to questions.

We also asked: Would it not be appropriate to require a judge or a court to review this?

See, here is the real interesting thing. We had a President who ran for office saying your phone should not be tapped without a warrant. I happen to agree with Candidate Obama. But what happened to Candidate Obama, who wanted to protect your right to the privacy of your phone, who does not care much about your right not to be killed by a drone without any kind of judicial proceeding?

I think we should demand it. The way things work around here, though, is people kind of say: Yes, we will demand it, and maybe later on this year we will talk about a bill or talk about getting something. What they should do is just say: No more. We are not going to move forward until we get some justice. We are not going to let the President—any President, Republican or Democratic—do this.

One of the other questions I asked the President was: It is paradoxical that the Federal Government would need to go before a judge to authorize a wiretap on U.S. citizens even overseas but possibly not have any kind of oversight of killing an American here in America.

We have asked him how many citizens have been killed. We have not gotten an answer to that. They say not many, and hopefully it has not been many. But I think it is important to know. I think it would be important to know, if we are going to target Americans in America, if that list exists. I think it would be important to know if being close to someone is also justified. What if you just happen to live in the neighborhood of somebody who is a suspected terrorist? Is it OK because you were close to them? What if you happen to go to dinner with a guy you did not know or a woman you did not know and the government says they are a terrorist? Just because you are having dinner with them and you are a male between the ages of 16 and 50, does that make you a combatant?

We also asked the question: Do you condone the CIA's practice of counting civilians killed by U.S. drone strikes as militants simply because they are of the same age? Similar to every other question, no answer.

We asked him whether al-Awlaki's son was a target. No answer.

We asked how many people have been targeted? No answer.

Part of the problem with this is that we are—or Congress in general is sloppy about writing legislation in general.

I will give an example. When the ObamaCare legislation was written—it is over 2,000 pages—but it leaves up to the Secretary of Health, I think 1,800 times, the power to decide at a later date what the rule would be. So since ObamaCare, of 2,000 pages, has been written, there have been now 9,000 pages of regulations.

Dodd-Frank is kind of the same way. Dodd-Frank is a couple thousand pages. It now is going to wind up with 8,000 or 9,000 pages of regulations.

We abdicate our responsibility by not writing legislation. We write shells of legislation that are imprecise and do not retain the power. Because of that, the executive branch and the bureaucracy, which is essentially the same thing, do whatever they want.

This happened also with the authorization of use of force in Afghanistan. This happened over 10 years ago now—12 years ago. I thought we were going to war against the people who attacked us, and I am all for that. I would have voted for the war. I would have preferred it to have been a declaration of war. I think we were united in saying: Let's get those people who attacked us on 9/11 and make sure it never happens again.

The problem is, as this war has drug on, they take that authorization of use of force to mean pretty much anything. They have now said the war has no geographic limitations. So it is not a war in Afghanistan; it is a war in Yemen, Somalia, Mali. It is a war in unlimited places.

Were we a body that cared about our prerogative to declare war, we would take that power back. But I will tell you how poor—and this is on both sides of the aisle—how poor is our understanding or belief in retaining that power here.

About 1 year ago, I tried to end the Iraq war. You may say: I thought the

Iraq war was already over. It is. But we still have an authorization of use of force that says we can go to war in Iraq anytime. Since they think the use of force in Afghanistan means limitless war anywhere, anytime in the whole world, for goodness' sake, wouldn't we try to take back an authorization of force if the war is over?

But here is the sad part. I actually got a vote on it. I think I got less than 20 votes. You cannot end a war after it is over up here. It has repercussions, because these authorizations to use force are used for many other things. So the authorization of force says you can go after al-Qaida or associated terrorists.

The problem is that when you allow the executive branch to sort of determine what is al-Qaida, you have got no idea. For the most part I will not be able to determine that either. All the information is classified. There are a lot of bad people. There is a war going on in Yemen. I do not know how much it has to do with us, you know, or how much there is an al-Qaida presence there trying to organize to come and attack us. Maybe there is. But maybe those are also people who are just fighting their local government.

How about Mali? I am not sure. In Mali, they are probably worried more about trying to get the next day's food than coming over here to attack us. But we have to ask these questions. We have to ask about limitations on force, because essentially what we have now is a war without the geographic boundaries.

We have many on my side who come down here and say, the battlefield is here in America. Be worried. Be alarmed. Alarm bells should go off when people tell you that the battlefield is in America. Why? Because when the battlefield is in America, we do not have due process. What they are talking about is they want the laws of war. Another way of putting that is, they call it the laws of war. Another way to put it is to call it martial law. That is what they want in the United States when they say the battlefield is here.

One of them, in fact, said, if they ask for a lawyer, you tell them to shut up. Well, if that is the standard we are going to have in America, I am quite concerned that the battlefield will be here and that the Constitution would not apply. Because to tell you the truth, if you are shooting at us in Afghanistan, the Constitution does not apply over there. But I certainly want it to apply here. If you are engaged in combat overseas, you do not get due process. But when people say, oh, the battlefield has come to America, and the battlefield is everywhere, the war is limitless in time and scope, be worried because your rights will not exist if you call America a battlefield for all time.

We have asked him whether the strikes are exclusively focused on al-Qaida and what is the definition of being part of al-Qaida. In 1947, the National Security Act was passed. It said the CIA does not operate in America. Most people—most laypeople know that. The CIA is supposed to be doing surveillance and otherwise outside the United States of foreign threats. The FBI works within the United States. They do some of the same thing. But they are different groups. The CIA operating in Iraq or Afghanistan does not get a warrant before they do whatever they do to snoop on our enemies. The FBI in our country does. They operate under different rules, and for a reason. We do not want them to operate in the United States. We are not saying the CIA are bad people, we just do not want them operating with no rules or the rules we allow them to operate with overseas. We do not want them operating in our country.

The disappointing thing is that a month ago when I asked John Brennan this question, as his nomination came forward, I could not get an answer. He would not answer the question about the CIA operating in the United States. Only after yanking his chain, browbeating him in committee, threatening not to let him out of committee does he finally say he is going to obey the law. We should be alarmed by that. Alarm bells should go off when we find that what is going on here is it takes that much for him to say he is going to obey the law.

The President has said: Don't worry, because he is not going to kill you with a drone unless it is infeasible to catch you. Now that sounds kind of comforting. But I guess if our standard for whether we kill you is whether it is practical, that does bother me a little bit. It does not sound quite strict enough. I am kind of worried that maybe there is a sequester and the President says we cannot have tours in the White House. Maybe he has not got enough people to go arrest you. He had policemen by him. He is saying he is going to lay off the policemen. Of course, he does not have anything to do with the policemen, so do not worry about that. But he had the policemen by him that he is going to lay off, so maybe it is infeasible because he has laid off the policemen so it is going to be easier to kill you.

I know that sounds as though we have gone a slippery slope beyond what he is asking for. But if his standard is it is infeasible to capture you and that is what you are hanging your hat on, I would be a little concerned that that may not be enough protection for Americans on American soil.

There is a law called posse comitatus. It has been on the books since shortly after the Civil War. It is once again one of those things a lot of people do not think about, but it is an important thing. It says the military does not operate on U.S. soil unless there is a declaration of an insurrection or a civil war. There has to be a process that Congress goes through. We have had this law for a long time.

Once again, the reason we do it is not because we think our military are bad people. I am proud of our soldiers. I am proud of our Army. I am proud of what they do for our country. But they operate under different rules. It is a much more dangerous environment they operate under. It is different. It is still dangerous in America, but policemen have different rules of engagement than your soldiers have. There are more restrictions and restraint on what we do in our country. So that is why we say the military cannot operate here.

So when we asked the President, can you kill Americans on American soil with your drone strikes, which is part of the military, it should be an easy answer. In fact, I hope someone is calling him now and asking him for an answer. It would save me a lot of time and breath. My throat is already dry and I just got started. But if they would ask him for an answer: Can the military operate in the United States? Well, no, the law says the military cannot operate in the United States. It is on the books. He should simply do the honorable thing and say he will obey the law. It is simple. But I do not get why they refuse to answer it. It worries me that they refuse to answer the question. Because by refusing to answer it, I believe they believe they have expansive power, unlimited power. The real irony of this is is that many on the left, Senator Barack Obama included, were very critical of the Bush administration. They felt as though the Bush administration usurped power. They felt the Bush administration argued invalid aggrandizement or grasping for power. John Yoo was one of the architects of this, believing basically that the President just says, hey, I am going to protect you, I can do whatever the hell I want.

Many on the left objected to that. Some of us on the right also objected to this usurpation of power by the Republican President. But the thing is, now that the shoe is on the other foot, we are not seeing any of that. We are now seeing a President who was worried about wiretaps not at all worried about the legality of killing Americans on American soil with no judicial process.

But the law of posse comitatus prevents this from happening. It is very clear. It has been on the books for 150-some-odd years. I think it would be pretty easy for the President to go ahead and say that he will obey the law. We asked Brennan the question on this and we got no answer.

The answers we have gotten are almost more disturbing than getting an answer, really, to tell you the truth. Because when the President responds that I have not killed any Americans yet at home, and that I do not intend do so, but I might, it is incredibly alarming and goes against his oath of office. He says in his oath of office that I will preserve, I will protect, and I will defend the Constitution. It does not say I intend to or that I might.

Can you imagine the furor if people were talking about the second amendment? Can you imagine what conservatives would say if the President said, well, you know, I kind of like the second amendment and I intend to, when convenient, when it is feasible, protect the second amendment? Or what about those who believe in the first amendment, if the President were to say, I have not broken the first amendment yet, I intend to follow it, but I might break it, or I intend to follow it when it is feasible? So I have all of those rules, and this is what the President answered when he was at Google Campus a couple of weeks ago. They asked him the question: Can you kill Americans on American soil? He said: Well, the rules will probably be different outside the United States than inside. That basically means, yes, he thinks he can kill Americans on American soil, but he is going to have some rules. Do not worry about it, because he will make some rules and there will be a process, but it will not be due process. It will be a process that he sets up in secret in the White House, and I do not find that acceptable.

The only answer really acceptable, you know, we ask a question that could be yes or no: Can you kill an American on American soil? It is a yes-or-no question. They have been very evasive. They have never really answered the question. But when asked it, we pretty much knew only one answer was acceptable. That answer is no. I mean, if you do not answer it, basically by not answering it you are saying yes. I was actually a little bit startled when I finally got the answer: Yes, we can kill Americans on American soil. I thought for sure that they would be evasive to the end, try to get their nominee through without opening Pandora's box.

But they have opened Pandora's box. It would be a mistake for us to ignore it. It would be a mistake for us to ignore the ramifications of what they have done. When we separate out police power from judicial power, it is an important separation. You know, the police can arrest you. They are allowed to do certain things. But the policeman that comes to our door and puts handcuffs on you does not decide your guilt. Sometimes we do not always think about how important the separation is. But it is incredibly important that those who arrest you are not the ones who ultimately accuse you. The court, through the people, accuses you, and then you are given a trial to determine your guilt.

It is complicated. It is not always clear who is innocent and who is guilty. Judges and juries make mistakes. But at least we have a process. You get appeals most of the time. We have a significant process going on that has a several-hundred-year tradition at the least. So what gets me about the process that the President favors is, it is the ''trust me'' process. You know, I have no intention of doing bad things. I will do good things. I am a good person.

I am not disputing his motives or saying he is not a good person. But I am disputing someone who is naive enough to think that is good enough for our Republic, that his good intentions are good enough for our Republic. It never would have been accepted. It would have been laughed out of the Constitutional Convention. The Founding Fathers would have objected so strenuously that that person would probably never have been elected to office in our country.

Someone who does not believe that the rules have to be in place, and that we cannot have our rights guaranteed by the intentions of our politicians—think about it. Congress has about a 10-percent approval rating. Think the American people want to face whether they are going to be killed by a drone on a politician? I certainly do not. It does not have anything to do with whether he is a Republican or Democrat. I would be here today if this were a Republican President, because you cannot give that much power to one person. We separated the police power from the adjudication or from the jury power from the decisions on innocence and guilt. It is separate from the police power, purposefully so, with great forethought.

Some transform this—and the President has tried—Brennan has tried to transform this into: Oh, well, we need to reserve this power for when planes are attacking the Twin Towers. Well, that is not what we are talking about, Mr. President. I think you misunderstand or you purposefully obfuscate or you purposefully mislead. No one is questioning whether the United States can repel an attack. No one is questioning whether your local police can repel an attack. Anybody involved in lethal force, the legal doctrine in our country, and has been historically, has always been, that the government can repel lethal attacks.

The problem is that the drone strike program is often not about combatants. It is about people who may or may not be conspiring but they are not in combat. They are in a car. They are in their house. They are in a restaurant. They are in a cafe. If we are going to bring that standard to America, what I am doing down here today is asking the President to be explicit. If you are going to have the standard that you are going to kill noncombatants in America, come forward and please say it clearly so we know what we are up against. If you are not going to do it, come up with what the easy answer is: I am not going to kill noncombatants. That would have been easy for him to say.

He could have said the military at some point in time needs to repel invasions. We know that. We are not questioning that. We are questioning a drone strike program—we don't know, because nobody will tell us the numbers. The numbers are secret. One Senator said in a public meeting that 4,700 people had been killed overseas. If I had to venture a guess, a significant amount of them weren't involved in shooting at American soldiers. If they were, by all means kill them. If we are fighting a war in Afghanistan—which we have been—and if there are soldiers around the bend who are a threat to our soldiers, there is no due process at that point. This is not what we are arguing about. We are arguing about targeted strikes of people not involved in combat. That is my concern.

My concern also is who is and what is a terrorist, who is associated with terrorism. The government has put out many documents now which tell you if you see something, say something. The documents you see, I am not so sure these people are terrorists. If you see somebody paying in cash or if you have a store, such as one of your customers comes in frequently and they pay in cash, should you report them to the government? I can't imagine that is the kind of standard we are going to have in our country for deciding drone strikes.

When it comes to some of these people, though, I think some of the drone strikes have probably been justified. Al-Awlaki, I think, was a traitor. This is not from looking at classified documents, this is from reading the lay press. By all means, he gave up on his country, renounced his citizenship, went overseas, consorted with and aided the enemy.

One of the interesting questions about aiding the enemy is what exactly that means and what are the standards to be. Kevin Williamson writes for the National Review. He wrote an article on drones that I think truly brings this home if you are going to talk about and want to know who are the people who potentially could be killed. In some ways al-Awlaki was a sympathizer, someone who aided and abetted through Internet talk and chatter. That was the main thing he was accused of. Actually, after the fact, they said he had more direct association. I don't know if that is true. I haven't seen the secret information on that.

What I would say is he was initially brought up as a sympathizer. Here is the problem. Many writers have said if you take up arms against your country, you are an enemy combatant. I think that is true. If you are in Afghanistan, have a grenade launcher on your shoulder and are shooting at Americans, you are an enemy combatant. You don't get due process.

Here is the question: If you are in Poughkeepsie and you are on the Internet, and you say I sympathize with some group around the world that doesn't like America, and say bad things about America, are you a traitor? I mean, you can try someone for treason for that. I am not sure if it will rise up to that if you are politically opposed to what your government is doing in favor of another. Kevin Williamson gets it pretty clearly:

If sympathizing with our enemies and propagandizing on their behalf is the equivalent of making war on the country, then the Johnson and Nixon administrations should have bombed every elite college in America.

During the 1960s, that is all that came out was anti-America, antiwar. Is objecting to your government or objecting to the policy of your government sympathizing with the enemy?

Some were openly sympathetic. No one will ever forget Jane Fonda swiveling around in North Vietnamese armored guns, and it was despicable. It is one thing if you want to try her for treason, but are you going to drop a drone Hellfire missile on Jane Fonda? Are you going to drop a drone Hellfire missile on those at Kent State?

Our country objected to what happened at Kent State, which was not good—but it was accidental since they were shooting over the heads of these people. Can you imagine we have gone from a country that was rightfully upset about the deaths at Kent State to a country which now is going to say, if you are in college and you are rabble rousing because you don't like the government's foreign policy or the government's war actions, you are sympathizing? There are a lot of questions that aren't being asked, because sympathizing appears to be used as a standard for the drone strike program.

We actually had students, apparently during the Vietnam war, who were actually raising funds for the Vietcong. That does to me sound like treason. It sounds to me something like we are fighting an enemy and you are giving comfort to the enemy. That does sound like treason. I have no problem with some people actually being tried for treason, but they get a day in court. They don't get a Hellfire missile sent to their house. There is a difference, though, between sympathizing and taking up arms. Most people around here who want to justify no rules, America is a battlefield, no limits to war—they really want to blur it all together. It is easier to say, oh, you don't want to stop anybody who is shooting at Americans, but it is not true. I think lethal force may be used against those engaged in lethal force.

What troubles me about the drone strike program is quite a few—I don't know the number—the Wall Street Journal says the bulk of the attacks in Afghanistan has been signature attacks. This means nobody was named, nobody specifically was identified, and civilians aren't really counted. This is because anybody, any male between the age of 16 and 60, is a combatant unless otherwise proven. If those are the standards, I think we need to be alarmed. I think there is a difference between sympathizing and taking up arms.

One of the interesting things Kevin Williamson and the National Review brings out, and it is sort of a conundrum for conservatives—because saying someone was involved and just taking the government's words, like saying al-Awlaki was involved with these other people and taking the government's word, we have no way of ascertaining or questioning whether the secret information is true or not true. A few years before this—and a lot of people don't remember this—al-Awlaki, who was killed a couple years before this, was brought to the Pentagon to speak as a part of a group of moderate Islamic preachers. They thought him to be an Islamic voice of reason. He even came to the Capitol and said prayers in the Capitol. This is the guy who the government said was a good guy for a while and later said he was a bad guy. I think ultimately the evidence he was a bad guy is pretty strong. Most of his crime was sympathizing.

It wasn't enough of a standard. I think in a court, in a treasonous court, al-Awlaki would have been convicted of treason if I were a juror. I would have voted he was committing treason, and I wouldn't have had trouble at all with a drone strike on him.

If we are going to take by extension the standard we used in putting him on the list that he was a sympathizer, agitator, and a pain in the royal you-know-what on the Internet, there are a lot of those people in America if that is going to be our standard.

That is why I would feel a little more comforted if it weren't an accusation by a politician who unleashes Hellfire missiles. I would be a little more comforted—and I think we would all sleep a little better in our houses at night—if we knew that before the Hellfire missile comes down, a policeman would come to your door and say we accuse you of this. They might put handcuffs on you and take you to jail, but they don't get to summarily execute you.

That is all I am asking. I am asking for the President to admit publicly he is not in favor of summary executions. That is really all I am asking, about summary executions of noncombatants. It seems like a pretty easy answer.

We could be done with this in a moment's notice if someone will call the President and ask the question. We could be done with this because that is what I want to hear, not that he is going to use the military to repel an invasion. Nobody is questioning the authority of the President to repel an invasion. I am questioning the authority of the President to kill noncombatants asleep at home, eating in the restaurant, or what-have-you.

One of the things Williamson brings up in his National Review article again—which is a little bit off the subject but somewhat related—we were fearful and we didn't do a very good job with 9/11, frankly. September 11 occurred because of a lot of mistakes, and some of you could look back as a Monday-morning quarterback and say, oh, we should have done this.

One of the things that sort of bothered me about 9/11 was no one was ever fired. In fact, they gave medals—the head of the FBI, the CIA, everybody gets a medal. No one was ever fired.

Some of you may remember there was a 20th hijacker. His name was Moussaoui. He was in Minnesota, and they captured him a month in advance of 9/11. When they captured him, the FBI agent there—who was spot on—was doing an excellent job. The agent who should have received the medal was the FBI agent who caught Moussaoui and was asking his superiors to get a warrant. He asked repeatedly. He sent 70 letters to headquarters, saying: May I have a warrant to open this guy's computer, to investigate him? He was turned down. He got no response. It was a horrible and tragic human error.

What do we do? We promote and give medals to the people who were in charge. That agent should have received a medal, but anybody above him who made the decision not to even ask for a warrant shouldn't have gone anywhere within the department.

Williamson makes the point if our law enforcement and intelligence agencies—particularly the State Department—had been doing a minimally competent job vis-a-vis visa overstays and application screenings, at least 15 of the 9/11 hijackers would have been caught. They were all on student visas, and they were all overstaying their student visas. Nobody was paying attention. I still ask that question today. I ask, do we know where all the students are, particularly from about 10 Middle Eastern countries? The students who aren't from our own country, do we know where they are? I think we have not a good enough system to know where they all are, whether they have come and gone. This is a real problem.

Had we actually looked at Moussaoui's computer? They did; they looked at it on September 12. The day after 9/11 they looked at his computer. I think it, within hours, led them and linked them up to several hijackers in Florida and ultimately would have perhaps exposed the whole ring.

The same thing was going on in Arizona at the same time. They had somebody in Arizona saying there are guys who want to fly planes and don't want to learn how to land them.

There were horrible and tragic occurrences that happened, human breakdown. How do we fix it? We fix it the same way we do everything in Washington: We threw a ton of money at it, and I mean a ton of money. Billions upon billions and into the trillions of dollars have now been spent. Really the main problem with 9/11 was a lack of communication, lack of trying, lack of doing a good job at what you were already supposed to be doing.

When we look at this issue, and as we go forward from here, I think what is most important to me is we not let this go. This is the first time I have decided to come to the floor and speak in a true filibuster. People talk about filibuster all the time. They say the filibuster is overused and it is abused. A

lot of times the filibuster in our country and in the Senate is actually requesting 60 votes happen and we need to do everything by unanimous consent, so it almost never happens. I have been here 2 years, and I don't think I have ever seen anybody come to the floor and speak in a filibuster as I am doing today. I think it is important, though, and I think the issue rises to such an occasion. There are a lot of things we disagree on, Republicans and Democrats. I think there are a lot of things we could actually pass up here, a lot of things we could actually agree to we could pass if we get together, try to do smaller bills, work on what we agreed and get away from some of the empty partisanship.

The reason I came to the floor today to do this is because I think certain things rise above party politics. Certain things rise above partisanship.

I think you are right to be secure in your person, the right to be secure in your liberty, the right to be tried by a jury of your peers. These are things that are so important and rise to such a level we shouldn't give up on them easily. I don't see this battle as a partisan battle at all. I don't see this as Republicans versus Democrats. I would be here if there were a Republican President doing this.

Really, the great irony of this is President Obama's position on this is an extension of George Bush's opinion. It basically is a continuation and an expansion of George Bush's opinion. George Bush was a President who believed in very expansive powers, some would say unlimited. He was accused of running an imperial Presidency. The irony is this President we have currently was elected in opposition to that. This President was one elected who, when he was in this body, was often very vocal at saying the President's powers were limited.

When I first came here, one of the first votes I was able to receive was a vote on whether we should go to war without congressional approval. The interesting part is that the war was beginning in Libya. It turned out to be a small war, but small wars sometimes lead to big wars. In fact, that was one of Eisenhower's admonitions, to beware of small wars, that you may find yourself in a big war. Fortunately, the Libya war didn't turn out to be a big war, although I think it is still a huge mess and it is still yet to be determined whether Libya will descend into the chaos of radical Islam. I think there is a chance they may still descend into that chaos.

But when the question came up about going to war in Libya, there was the question of, well, doesn't the Constitution say you have to declare war? And so we looked back through some of the President's writings as a candidate, and one of the President's writings I found very instructive and I was quite proud of him for having said it. The President said that no President shall unilaterally go to war without the authority of Congress unless there is an imminent threat to the country. I guess we should be a little wary of his ''unless'' now, since we know imminent doesn't have to be immediate and imminent no longer means what humans once thought imminent meant. But Candidate Obama did say that the President doesn't go to war by himself.

I think it would be fair to say that Candidate Obama also felt the President didn't have the authority to imprison you indefinitely without a trial. And I think it is also safe to say that Barack Obama of 2007 would be right down here with me arguing against this drone strike program if he were in the Senate. It amazes and disappoints me how much he has actually changed from what he once stood for.

But I forced a vote on his words. I took his exact words. We quoted him and put those words up on a standard next to me, and we voted on a sense-of-the-Senate that said: No President shall go to war without the authority of Congress—which basically just restates the Constitution. Now, you would think that would be a pretty easy vote for people. I think I got less than 20 votes. That is the sad state of affairs we are in. There were some who actually probably believed that but refused to vote for it because they said: Well, he is a Republican, and I won't vote with a Republican. But I honestly tell you, were the shoe on the other foot, were there a Republican President here and I a Republican Senator, I would have exactly the same opinion. My opinion today on drone strikes would be exactly the same opinion under George Bush. And I was critical of George Bush as well. Were there a Republican President now, I would have the same instinct and the same resolution to carry this forward. And on the issue of war, it is the same no matter which President.

One of the complaints you hear a lot of times in the media is about there being no bipartisanship in Congress. Well, the interesting thing is, actually, there is a lot of bipartisanship in Congress. If you look at people who don't really believe in much restraint of government as far as civil liberties, it really is on both sides. So you will find that often on these votes on whether the Constitution says we have to declare war in the Congress, Republicans and Democrats vote overwhelmingly against that.

Now, you need to realize the implications of that. What they are voting for is to say we don't retain that power and we don't want it. The Constitution gave it to us, but we are giving it back. And this has been going on for a long time, really, probably for over 100 years, starting with Woodrow Wilson, who sort of grabbed for Presidential power, and Presidents have been getting more and more powerful for over 100 years, Republican and Democratic.

There was at one time—point in time in our history a pride among the Senate and a pride among the Congress that said: These are our powers, and we are not giving them up. There were people on both sides of the aisle who would stand firm and say: This is not a power I am willing to relinquish; this is not something that is good for the country. And by relinquishing the power of Congress, we relinquish something very fundamental to our Republic, which is the checks and balances that we should have—checks and balances to prevent one body or one part of the three parts of government from obtaining too much power. So there was a time when we tried to keep that power.

Unfortunately, the bipartisanship we have now, many in the media fail to understand. They see us not getting along on taxes and on spending, but they fail to understand that on something very important—on whether an individual has a right to a trial by jury, whether an individual has the right to not be detained indefinitely—there is quite a bit of bipartisanship, although usually in the wrong direction.

Now, I will say there is some evolution and some trend toward people being more respectful of this, and there has been some work on both sides of the aisle that has brought together some of us who believe in civil liberties.

There was a bill last year called the national defense authorization bill. In that bill, there was a clause that said Americans can be indefinitely detained. What does that mean? Well, it means forever, basically, or without a trial, no sort of sentence, no sort of adjudication of guilt or innocence, an American citizen can be held. So there was another Republican Senator on the floor, and I asked the question: Does that mean an American could actually be sent to Guantanamo Bay from here, someone who is accused of something but never gets a trial? And his answer was yes. His answer was yes, if they are a danger to the country.

The problem with that kind of thinking is, who gets to determine whether you are a danger? Who gets to determine whether you are guilty or innocent? It sort of begs the question of what our court system is set up to do, which is to try to find guilt or innocence. Guilt or innocence isn't always apparent, and sometimes an accusation is a false accusation. Sometimes accusations are made because people politically don't like your point of view. So the question becomes, should we have a process where we try to determine innocence or guilt?

So in the national defense authorization bill, there was an amendment that said you can be indefinitely detained, an American could be sent to Guantanamo Bay, and we had a big fight over it. We lost the first time around in 2012. We had an amendment that tried to protect American citizens. This was a good example of bipartisanship on our side. We had 45 votes, and I would say it was probably about 38 Democrats

and about 7 Republicans. So that was an example of both sides kind of working together. But we fought and we lost.

The next year, we came back and we fought for the same amendment again and we beat them. Interestingly, we beat them. We had 67 votes to say that you cannot detain an American. An American can't be sent to Guantanamo Bay without a trial, without an accusation, without a jury, without the Bill of Rights. You can't do that to Americans. We won the battle with 67 votes. So the bill passes, the House passes their version without our amendment in it, it goes to the conference committee, where they work out the differences, and they strip out our language. So sometimes when you win around here, you lose.

But with the 67, there was a pretty good mix—maybe 35, 40 Democrats and 15, 20 Republicans. So there is some emerging consensus or some kind of emerging group. One of the other Senators has called it the checks and balances caucus, and I think that is a very accurate term because that is part of what we are arguing for. We are arguing that no one person should get too much power or no one body will get too much power.

Some people see all that fighting and disputing between the different branches of government, and they see it in a bad light. They say: Oh, with all that fighting and bickering, that is gridlock. But in some ways, our Founding Fathers weren't too opposed to a little gridlock, particularly if it were gridlock that said: You know what, we are not going to make it easy to get rid of the first amendment.

It is not easy to get a constitutional amendment in our country. We have added some through the years, but it is not easy to do. We make it hard to amend the Constitution. In fact, we make it such that we are not really a country that is majority rule. And I am sort of a stickler for talking about the differences between a democracy and a republic. I think some people are sloppy with their words and they love the idea that America is a democracy. Woodrow Wilson said we were going to war in the world war to make the world safe for democracy. Well, No. 1, we are not a democracy, and we were never intended to be a democracy.

When Franklin came out of the Constitutional Convention, a woman went up to him and asked him: What will it be? Will it be a monarchy or a democracy? And he said: It is a republic. It is a constitutional republic, if you can keep it. He was already worrying about whether democratic action would lead to people straying away and giving a government too many powers.

So we are a republic, and it is important to know the differences between a republic and a democracy, particularly with our history and our country. In our country, we had a period of time where majorities passed some very egregious and unfair and unjust laws. These were called the Jim Crow laws. They passed laws based on race or the color of your skin, and these were passed by majorities.

The important thing about the Constitution and about rights and one of the reasons I am here today talking about the fifth amendment and how it gives you the right not to be committed to prison or be killed without due process is that our Founders thought it was very important, this whole concept between a republic and a democracy, and also considering the idea that majority State legislatures were voting on things such as the Jim Crow laws that would say that a White person can't sell a house to a Black person or vice versa. Those laws were passed by majority rule.

So any time someone comes up to me and says they want a democracy, this is my first question to them: You are OK with Jim Crow, then? Because democracies did bad things. But if you believe that rights are protected and that rights should be protected and that these individual rights are not something a democracy can overturn, then you do truly believe in a protection that is more important than any democratic rule.

There has been some dispute over this. There was a Supreme Court case by the name of Lochner back in 1905. The President doesn't like Lochner at all. He is very much opposed to it. But the one thing about Lochner I like is that Lochner really expands the 14th amendment. The 13th, 14th, and 15th amendments were passed after the Civil War and usually over Democratic objection.

In my State, the Democrats ruled the State legislature in Kentucky for many, many years, and they voted against the 13th amendment, the 14th amendment, and the 15th amendment. The great champions of emancipation, of voting rights, of all of the postwar amendments were the Republicans.

Every African American in the country was a Republican before 1930—virtually every African American. In 1931, in Louisville, there were 25,730 Black Republicans, and there were 129 Black Democrats. Every African American was a Republican at one point in time.

I try to tell people, even though the numbers have been, unfortunately, reversed, we are the party that believes in the immutability of rights. We don't believe that the democracy can take away your rights, that a majority rule can take away your first, your second, or your fourth amendment rights. And I think if we got that message out, we might change some of what is going on.

But the President is an opponent of the Lochner decision. In the Lochner decision, a State legislature decides something, and it is not really of importance what the decision is so much as that it is about judicial deference, about whether the courts should say: Well, the State legislature decided this, and majorities should get to rule.

Many believed as Oliver Wendell Holmes did, who was a dissenter in the Lochner case. He basically said majorities should get to rule.

Herbert Croly, one of the founders of the New Republic, wrote that we can get trapped up in all of this support for Bill of Rights and all these ancient individual rights. If we get too carried away with this whole idea of rights thing, we will have a monarchy of the law instead of a monarchy of the people.

It was for good reason that we established a republic and not a democracy. One of the best contrasts—it may not be a perfect contrast, but I think it has some truth and validity—is that our Revolution worked. In our Revolution we established a constrained government. In France, the mob came into power. They had mob rule. The French Revolution was a disaster.

Now, we had some things going for us. We had a colonial government with English common law and adjudication, and we had adopted practices. We were Englishmen, and we believed in the rights of Englishmen. We had that for several hundred years in our country, so it was easier for us to have a revolution. They didn't quite have that going on in France, so it was different.

But one of the differences I see between America and France is that we established a republic, and we weren't going to have majority rule where the majority was setting up a guillotine. Ours wasn't perfect, obviously. The Founders left and allowed slavery to still occur. Interestingly, though, if you read the Constitution, I think they were embarrassed by it. The word ''slave'' doesn't occur in our Constitution. In fact, there were many abolitionist writers, one by the name of Lysander Spooner, who actually wrote about the unconstitutionality of slavery even before the war. And if you read the Constitution and acknowledge that there is no word in there for ''slavery'' and nothing that says you have to be consigned to slavery—there are things in there that say you can't be kept without being presented with charges. ''Habeas corpus'' means ''present the body.''

In the old days in England and in different monarchies, they just snatched you up. If you were next in line to be King or you made them mad, they snatched you up and put you into the tower. So we came up with the right of habeas corpus. You had to present the body and say: He has been arrested, and these are the charges against him. We have gotten to where there is some concern in our country about that, but we have had that right all along.

So Lysander Spooner wrote and said: Why shouldn't a slave come forward and say, this guy is keeping me; he is telling me I have to work for him, but I haven't been charged with anything. What is my crime?

Eventually, one court case did come forward, and it was ruled incorrectly. I am not sure exactly how the arguments were, but in Dred Scott they ruled that you can't make the argument. I don't know if habeas corpus

was part of that case, but it should have been.

What I am trying to say, though, is that the rights of the Constitution—the rights of the individual that were enshrined in the Constitution—are important things that democracies can't overturn.

When you get to the Lochner case, which was in 1905, the majority ruled five to four that the right to make a contract is part of your due process. Someone can't deprive you of determining how long your working hours are without due process. President Obama is a big opponent to this. But I would ask him—among the other things I am asking him today—to rethink the Lochner case because the Lochner case really is what precedes and what the case Buchanan v. Warley is predicated on.

Buchanan v. Warley is a case from 1917—interestingly, it comes from my State, Louisville, KY. There was a young African-American attorney by the name of William Warley. He was a Republican, like most African Americans were in Louisville in those days. He was a founder of the NAACP and, like most founders of the NAACP, a Republican.

What they did in 1914 was they sued because the Kentucky Legislature—by a majority rule, by democratic action—passed a law that said a White person couldn't sell to a Black person in a White section of town or vice versa. This was the first case the NAACP brought up.

Moorfield Storey was the first president of the NAACP, a famous attorney. He and an attorney by the name of Clayton Blakely went forward with this case, and they won the case. It actually passed overwhelmingly. But, interestingly, this case to end Jim Crow was based on the Lochner decision. So those who don't like the Lochner decision, I would say go back. We need to reassess Lochner. In fact, there is a good book by Bernstein from George Mason talking about rehabilitating Lochner.

The thing is, with majority rule—if you say we are going to give deference to majority rule or we are going to have judicial restraint and we are going to say that whatever the majority wants is fine, you set yourself up for a diminishment of rights.

I go back to the discussion of the Constitution limits power that is given to Congress, but it doesn't limit rights. The powers are enumerated; your rights are unenumerated. The powers given to the government are few and defined; the freedoms left to you are many and undefined. And that is important.

What does this have to do with Lochner? The case in Lochner is whether a majority rule—a State legislature—can take away your due process, your due process to contract. Can they take away your life and liberty without due process? And the Court ruled no. I think it is a wonderful decision. It expands the 14th amendment and says to the people that you have unenumerated rights.

Now, there is some dissension on how we look at these cases. But when you go forward to Buchanan v. Warley, the case about Jim Crow laws and housing segregation, one of the people who was going to dissent—and I think he thought better of it when he thought about that he would be the first Justice in probably 70-some-odd years to say that he believed in the Jim Crow laws and was upholding the Jim Crow laws—was Oliver Wendell Holmes. He actually writes an opinion that has been found but was never presented to the Court, and he ended up voting to get rid of the Jim Crow laws, but he actually wrote an opinion in favor because he believed so strongly in majority rule.

Some may think these are idle questions. I don't think it is an idle question whether or not you have a democracy or a republic. I think these questions—from Lochner, from Buchanan v. Warley, all the way through to the present—are important.

In the last couple years, we had two cases on gun rights, the second amendment, called Heller and McDonald. I think both of them can be seen as, once again, an expansion of the 14th amendment to say: Your privileges and immunities which are part of the 14th amendment include the second amendment, and they include certain rights. In fact, I think any power or any right not given up to the government or limited by the enumerated powers is yours. So when they say the privileges and immunities of the 14th amendment, I believe that means everything else. What does that mean? It means I believe in a very circumscribed view for the government.

One of the side benefits of having a circumscribed view of the government would be that a government that is not allowed to do much wouldn't get in many problems. For example, if your government wasn't allowed to spend money it didn't have or if your government wasn't allowed to spend money on programs that were not enumerated as being within the purview of the Federal Government, you wouldn't have these massive deficits. We would have never gotten in this fix if we believed in a republic and not a democracy.

Now, what proof do I have that the current officials believe in democracy versus republic? When ObamaCare came forward, the comments from then-Speaker of the House NANCY PELOSI were: A majority passed this. We passed this by majority. It is the law. Why would anybody question the constitutionality?

The President said the same thing. The President said: A majority passed this. What right has the court to overturn this?

The question has been written about by many brilliant scholars who have looked at the Constitution and looked at what it means. Some of this has to do with whether you presume liberty—and Randy Barnett has written about restoring the Constitution—whether you have a presumption of liberty or whether you have a presumption of constitutionality. That may sound a little esoteric, but what does that mean? It is whether or not, when they pass a law up here, you just presume it is fine because it is the law and the judges should give deference to it because it is a law.

It may sound confusing because you might think I am arguing for judicial activism. In a way, I kind of am because if the Congress usurps the Constitution, if the Congress takes away from your rights, the judges should stop them in their tracks. I am not arguing for deference to the legislature; I am arguing for deference to the Constitution.

I am also arguing that there is a presumption of liberty. This goes back to the way we want to look at the 14th amendment. The 14th amendment says we have unenumerated rights. I guess, by extension, when you go from the 14th amendment to the 9th and 10th amendments is the best way to look at this.

The 14th amendment talks about privileges and immunities, and when you look at what the 9th and 10th amendment do, they say those freedoms you didn't relinquish or those powers you didn't give to the government are left to the States and the people respectively, and it says they are not to be disparaged. I always loved the way that was worded—not to be disparaged. Not only is the Federal Government not to trample on your rights, they are not to be disparaged. But these rights are unlimited. They are yours. You got them from your Creator. These are natural-born rights, and no democracy should be able to take these away from you.

Now, by changing the Constitution, they could literally take away your freedom of speech or your freedom to practice your religion. I don't think I will see that ever happen, and it is difficult to change our Constitution, but it is incredibly important that our Founding Fathers put it in there and made it difficult.

I always kind of joke that if you go to a conservative meeting and you talk about the second amendment, everybody pats you on the back and they all love you—until you get to the fourth amendment. But if we are going to have the second amendment, I think you have to have the fourth amendment—the right to be free in your person from unreasonable searches and seizures, that a judge should have to have a warrant to come in your house. How are your guns going to be protected if they can come in your house without a warrant? You have to have the fourth amendment.

But you also have to have the fifth amendment. We don't talk about the fifth amendment very much. Everything is about the second amendment.

It has been all over the news. You can't turn on a channel without hearing about the second amendment. But I think today is as good a day as any to talk about the fifth amendment.

I have come here to filibuster the nomination of John Brennan because I think the fifth amendment is important. But I think we shouldn't be cavalier. I don't think we should be casual in our disregard for the Constitution.

I think that to allow the President to trample on and shred the Constitution and say that the fifth amendment no longer applies is a travesty, and it is something we should not do lightly. So I think it is worth a discussion. So far, it is sort of a one-way discussion, but we will see. But it is worth a discussion that we talk about the fifth amendment. It says that no person shall be deprived of their life or their liberty. That is what it means. It is pretty clear, and it is pretty plain. You can't take away someone's life and liberty without due process or an indictment.

So it should trouble every American. I can't imagine that there wouldn't be an American in our country who would not be troubled that we are talking about killing noncombatants in America with drone strikes. We have to get the President to respond to this. I don't think it is good enough for the President to say: I haven't done it yet. I don't intend to do it, but I might.

His oath of office says he will preserve, protect, and defend the Constitution. The oath of office doesn't say: Well, I intend to when it is convenient. I have never seen a President go out on the lawn with the Chief Justice and say: I intend to follow the Constitution when it is convenient. Because what he says is he won't drop a Hellfire missile on you unless it is infeasible to capture you. That is what they are doing overseas. If that is going to be the standard for America, if you are not going to get a Hellfire missile dropped on you unless it is infeasible—to me, that sounds like unless it is convenient; if it is inconvenient. ''Not feasible'' sounds like inconveniency is the standard.

I asked Secretary Kerry about this in his nominating process. I said: Can you go to war without Congress approving of it, without a declaration of war, like the Constitution says? And he said: No. I intend to obey the Constitution—except for when I don't intend to obey the Constitution. It is hard to get things through Congress, and it is Congress's fault. There are too many squabbles and so many fights. So most of the time we will come to Congress and we will ask for a declaration of war—which, by the way, we have not done since World War I, and when we did, it was voted on nearly unanimously.

But this is the standard we get to: We don't intend to kill anyone and we don't intend to go to war without a declaration of war unless it is impractical to get your approval.

That was the point. If you do not get the point of the Constitution, if you don't get the point of what kind of system our government set up, what kind of system our Founders set up, it was to make it impractical. It was to make it difficult to go to war. It was to make it difficult and make it important: There would be debate and checks and balances. If inconveniency is our standard for going to war without Congress, inconveniency is our standard for killing Americans on American soil with drones, I think we have sunk to a new low. I just cannot imagine as a country that is the standard you want to have.

I want to reiterate. This doesn't have anything to do with the President being a Democrat. Whether he was a Democrat or Republican, I don't question his motives. I met the President several times. I really don't think he would do this. But the thing is, I am troubled by the fact he will not tell us he will not.

If he is a good man and we believe him to be a good man who would never kill noncombatants in a cafe in Houston, sitting out in a sidewalk cafe smoking—oh, that's right, you are not allowed to smoke cigarettes anymore—let's say they are sitting out in a cafe. If the President is not going to kill them, why would he not say he is not going to kill them there? That is the troubling aspect of this, if the President will not acknowledge he is not going to kill noncombatants in America.

The real problem with this is we are now engaged in a limitless war. A lot of Americans may not know this but people all the time up here are saying it. You have to read between the lines sometimes to hear what they are saying. They are saying there is no geographic limit to the war. That is what Brennan has said. What does that mean? I thought we went to war in Afghanistan. I really thought that even at the time. I was not here, but I would have voted to go to war. I thought they were voting to go to war to get the people who attacked us on 9/11. I was all for it. I still am all for that. But we are now using that resolution to go to war to have no geographic limit for drone strikes anywhere in the whole world; and not only no geographic limit, no temporal limit, which means no timeline. There is no end to the war in Afghanistan. The war will never end.

If you have no geographic limit—many on my side say the battlefield is everywhere, and the battlefield is in the United States. It is one thing to say that, but realize what they mean by that. They say because the battlefield is here, the laws of war apply. That is what a drone strike is. A drone strike is not something you do domestically. They are saying the laws of war apply.

If you change the words around, what are the laws of war? Martial law. I think if you ask Americans are you in favor of martial law by the President, I don't think many would be. But many in this body would gladly give up their power, would gladly say America is now the battlefield so the laws of war should operate.

The laws of war are that there really is no due process in war. I am not arguing for due process in war; I think it is, frankly, impossible. If you have gone as an American to Afghanistan and you are fighting against us, you don't get due process. You don't get your Miranda rights. It is an impossibility to have the Constitution operating in a battlefield. So I am not for that.

But I am against defining the battlefield as being everywhere, including my house, my office, including everywhere in America. If it is a battlefield, you have no rights. The war zone is a zone where you do not get due process, you do not get Miranda rights, you do not get an attorney. But it should be different in our country. If our country is a battlefield, if our country is a war zone, what is left? I thought we were fighting to preserve our way. I thought we were fighting to preserve and protect our Constitution. What are we fighting for if we are not going to protect our rights at home?

The Bill of Rights is too important to scrap it. The Bill of Rights is too important to let any President, Republican or Democrat, simply come forward and say: Well, I have not broken the Constitution yet, and I do not intend to break the Constitution, but I might because they are everywhere and the battlefield is everywhere and we are so frightened that we must do anything.

I think it is good to be angry, upset, really to want vengeance sometimes against people who attack you. I was all for punishing those who attacked us after 9/11. But I think, also, at the same time we need to not let that get in the way of what is our way of life and what we are protecting here. When we look at this and we look at what is going on with terrorism, we need to keep in perspective that these people can do us harm, but they are incredibly weak people. They are incredibly cowardly, in a way. You know, they have no armies. They have the ability to inflict terrorism, which is what weak people do. People who have no armies and no strength attack the civilians. It is a weak and cowardly way to attack your enemies. But it is not something that we should cower so much that we say: Gosh, someday they may come and blow up the Senate, which would be terrible.

I think the things terrorists do are terrible, but I am not saying that because we are so frightened of them coming that we should say: Why don't we just have camps again, you know? Why don't we just round up—the Japanese Americans were a threat in the war and we just rounded them up and, guess what. No Japanese Americans attacked us, so it must have worked. I think it was an abomination what we did, one of the worst and most tragic episodes in our history, and the fact that the courts upheld it. But are we so frightened we are going to give up on

our Bill of Rights? Are we so frightened the next thing we are going to do is round up people of a different skin color because we think they have cousins who live in Lebanon?

We cannot really give up on what makes America special. What makes America special is the Bill of Rights. What makes us special is really that we are not a democracy. There are a lot of democracies around the world. We are a republic. We are a constitutional republic. We are a country that enshrined our rights, took care and deliberation and wrote down our rights, and they are not supposed to be usurped by any majority. So it is important that we know we are not a democracy, we are a constitutional republic. It is important for me to know and say that my rights came from my Creator. You don't have to agree with me on that. Some people think they came naturally to them, but they think there is a natural state of being that is free.

We do give up some freedom. We give up some freedom to pay taxes. If I work, all of my labor is mine, and I give up some of my labor and some of my wages to a government. To live in a civilized world you do give up a little bit. But what I have always argued for is that we should minimize what freedom we give up. That is why you should always minimize taxes. You should minimize the size of your government because everything you give up in taxes or everything you give up to your government is loss of your sweat equity, your labor. It is yours. It is nobody else's. So you give up the very minimum of it.

There is another argument. That is sort of the freedom argument for why we should keep government minimized. The other argument for why we should keep government minimized is more of an efficiency argument. This comes from Milton Friedman, but I think he put it very succinctly. He said nobody spends somebody else's money as wisely or as frugally as you spend your own.

It is a simple statement, but I think in one statement, one simple sentence, it sort of brings forward something about government that is very true. People up here just do not spend it wisely. The reason they don't spend it wisely is because it is not theirs. In fact, they have a perverse and wrong-headed incentive that says: I need to spend all of my money or I won't get it next year, so government agencies incredibly want to spend all the money and more to make sure there is nothing left at end of the year.

If you listen to some people, they would say: Oh, no, government is just here to help people. Without government it would be—without this massive huge government—we have to have the debt because we need all the things we get from government. Will Rogers once wrote and said: ''You're lucky you don't get all the Government you are paying for.''

George Will recently wrote, and he sort of put a twist on it, and he said that used to be true, but now I think you are getting more government than you pay for. That is sort of the truth. We get a ton of government. Our taxes cover about 60 or 70 percent of what we spend up here. What kind of country gets rich borrowing 30 cents on every dollar? What kind of family can spend 30 percent more than comes in?

Some things are pretty simple. Wealth accumulation for you or wealth accumulation for a country is by savings. You don't get wealthy by spending more money than comes in. So as we look to these things, I think we need to be cognizant of the reasons we would want to have smaller, not bigger, government. But we would have smaller government if we paid attention to the rules.

The rules are very important, and when people talk about ''oh, that would be a monarchy of the law,'' or they say ''that would be too rigid to live under the laws, we need a living, breathing, evolving Constitution,'' I think things change over time. You get new technologies; drone strikes and things are new technologies. But I think what does not change are certain freedoms that are going to be the same now as they will be in 10,000 years.

I think the freedom for people to worship is something that I don't want majority rule to decide. You say: What does the freedom to worship have to do with drone strikes? It is hard to worship after a Hellfire missile has been launched on you.

So all of our rights—there is a panoply of rights that are all interconnected, and they come from the basic right to life. If you don't have the right to be secure in your person, you don't have any other rights. So as we diminish one right we attack at the foundation. But if we are at a foundation where we are saying we can strike a person in America with no trial, with no accusation, I think we have come a long way from where we began.

I worry about it. I worry about it not just in the abstract sense, not just in the sense that these are a right in abstract and that we lose something we cannot actually touch or feel. I worry really about it in the sense that I don't know how you continue to exist as a country if you do not believe in some fundamental right, some fundamental right and wrong.

After ObamaCare passed and there were some questions about its constitutionality, they asked a Representative from the House side—he was asked: What about constitutionality? He said: Why would I care? Most of the things we do up here have no constitutional justification.

We have gotten to the point where people care more about having enough votes. They think it is right if you have a majority vote as opposed to that there are certain immutable rights and wrongs; that there are certain immutable rights that were there at the founding of our country that will be there in 100 years or 1,000 years from now: Your right to be secure in your person, the right that the government cannot take away these privileges.

This is not a new fight. Really, from the beginning of time there has been a struggle with the people versus the leaders. The leaders always want more. The amazing thing is it is sort of like a contagion. Not many people get to be President in this country. One person gets to be. We have had in the forties—44 or 45 Presidents. We have not had many Presidents. But there is something contagious about the office. It is that power corrupts, I think.

Lord Acton said it is not just that power corrupts, but that absolute power corrupts absolutely.

I think people can become intoxicated with power. I don't know if that is the explanation for President Obama's about-face. He was one who at a time when he was in this body believed in some restraint, believed in Senate authority, believed in—actually he did not even believe in raising the debt ceiling when he was here. The thing is, what we would hope for is someday we have a President who believes, even after assuming office, that the powers of the office should be protected. I think we run the risk, as we allow more and more power to gravitate to the President, we run the risk of living under an imperial Presidency.

I have said some inflammatory statements: that the President is acting like a king. Some of that is inflammatory and provocative, but some of it has some ring of truth to it or I would not get so much push-back. Kings operate by edict. They say it is so; make it so. There is no give-and-take. There are no checks and balances between the legislature and the Presidency.

This has been going on for a long time. It is a titanic struggle and, frankly, I wish more people were interested in it. I wish we had a dozen people down here saying: No President should assume such authority. No President has the right to say he is judge, jury, and executioner. No President should be allowed to say that.

It is not enough for him to say: My motives are good. I don't intend to do so. I haven't done so yet, but I might.

If that is the standard we are going to live under, we have a great danger in our country. It is not enough. We live under the rule of law, and the law is quite explicit. The fifth amendment says no person shall be detained without an indictment or without due process.

I find the answer to be incredibly easy. I have asked the President an easy question. My question is, Can you kill an American on American soil, a noncombatant, with a drone strike? It should be an easy answer.

(Mr. HEINRICH assumed the chair.)

When a President will not answer a question or when they answer the question and it is an evasive answer, our

concern is if they answer yes. I thought they would never answer the question, but they finally did. They said: Yes, we can conceive of situations when we might. The situations they conceive of, though, are attacks on the country, which I don't disagree with, so they are talking about things that are not controversial.

If planes are attacking the Twin Towers, New York or DC, there is not any question on either side of the aisle among almost anybody in the country or the universe who doesn't believe we can repel lethal threats. What we are talking about are the noncombatants who are either eating dinner, sleeping in their house or walking down the street. A large percentage of the drone strikes have been people who were not carrying arms or in combat.

Were they bad people? I am not positive I could say one way or the other, but I don't want that sort of standard to be used in America. I don't want the standard to be that if someone is close to a bad person who happens to be a male between the ages of 16 and 50, that they are no longer a civilian but actually a militant. Is that the standard we are going to use in America?

I don't want the standard to be sympathizing. Has anybody ever been on the Internet? Has anyone ever seen crackpots who are on the Internet and say all kinds of crazy things? If someone is saying crazy things and they happen to be against our government, is that enough for a Hellfire missile to come down on their house? Is sympathizing enough? People have written and talked about this. During the Vietnam war there were some people who probably were treasonist and probably should have been tried for treason. Having said that, I would not kill them without some sort of due process or trial. The idea of a right to trial by jury has been the basis of our history for hundreds and hundreds of years. It is the basis of a foundational principle for our country. I cannot imagine we would be so cavalier as to let it go.

As we move forward with this nominating process, I have decided to occupy as much time as I can on the floor to bring attention to this issue. Ultimately, I cannot win. There are not enough votes. There would be if there was truly an uprising of bipartisan support that would come to the floor and say: It is not about John Brennan. It is about a constitutional principle and we are willing to delay this until the President can explicitly say noncombatants in America will not be killed with drone strikes. I think that is pretty easy to answer, but it has been like pulling teeth.

I have written letter after letter for weeks and weeks trying to get an answer on this and we have not had much luck. There have been people who have written about the lawfulness of these lethal operations directed against citizens, and there is a question both in the country and outside the country of what the standard will be. Will it be the same standard? Some say there is no standard once we get outside the country and that anybody can be killed whether they are an American citizen or not.

Frankly, I don't like the idea of no standard. For example, the most prominent American who was killed overseas was al-Awlaki. His name was publicly known to be on a kill list for months. I see no reason why he could not have been tried in a Federal court expeditiously—if he didn't return home, he would still be tried—given representation, and tried for treason. These are not frequent cases that occur overseas, so I see no reason why we would not use a Federal court. The Federal courts are adapted in such a way that we can go into secret session if there is classified material. The Federal courts in Washington, DC, Philadelphia, and New York have done this on occasion. I think we could do this in Federal court. We have convicted quite a few terrorists—I think that they number up to several hundred—in the United States in our courts.

The main thing I object to is people becoming so fearful they cavalierly give up their rights. We had two terrorists in Bowling Green, KY, my hometown, which has 50,000 people. Who would have thought we would have two terrorists? They were conspiring to either buy or send Stinger missiles to Iraq. I am glad they were caught and punished. They were tried in a court.

Many people said let's just send them to Guantanamo Bay forever. Once we go down that path where we are not going to have any due process—our courts have done a pretty good job. In fact, I think we have not let off anybody from one of our courts that should have been kept here and tried.

I do have a question as to how the terrorists got into the country. That goes back to the issue of not wanting terrorism to occur, but how should we combat it? Is it best if we combat it in Yemen, Mali, Somalia, Afghanistan, Pakistan or should we combat terrorism by knowing who is coming into and leaving our country?

For example, we have allowed 60,000 people from Iraq to come into this country in the last 2 or 3 years. Frankly, I think that is a lot. They come here under asylum. The problem with asylum is I thought asylum is when a county was escaping a dictatorship. We won the war in Iraq. They have a democratic government over there, and I would not understand why they would want to leave a democratic government. Also, the 60,000 who leave—other than maybe the two we captured in Bowling Green, we presume that most of them are pro-Western—are the people we want to run Iraq. There are all kinds of reasons to stay in Iraq to run the country.

In letting so many people come in, we didn't do a very good job because the two terrorists who were allowed to go to Bowling Green had their fingerprints on an IED that was in a warehouse somewhere. They did not find a match on any of the fragments with their fingerprints on a database until after we caught them. Once we knew their names and had their fingerprints, we checked some fragments for their fingerprints that had been in a warehouse for years and years. So we are not quite doing the job.

Sometimes we want to analyze so much information that we get overwhelmed with the information too. We collect millions and millions and billions of pieces and bits of information, but it cannot all be analyzed. Some of it, I fear, goes against our rights to privacy. Any of our e-mails that are over 6 months old can be looked at. We found out about this recently when we had an adulterous affair in our military.

I believe our third-party records are ours. I had an amendment recently on this, and I told people my Visa bill is pretty private. Just because I use my Visa card doesn't mean I have given up my information and that the government gets to look at my Visa bill every month, but that is what we have done. A lot of these things have been slipping away from us for a long time. It is not just President Obama; it is 40 or 50 years of court cases.

Thirty, forty or fifty years ago, we decided that once a third party had your records, they were not private anymore. I think that is absurd. Think of the age we live in and how a lot of people don't use cash at all. Our Visa cards have everything on it. We can look at a person's Visa card and find out if they have seen a psychiatrist, what kind of medicines they are on, what kind of magazines they get, what kind of books they get. We can look at a person's Visa bill and find out if they gamble or drink or what their travel plans are. We can find out a ton of information on a person's Visa bill.

Should people be allowed to look at a Visa bill, without asking a judge, and then say: We think he is involved in this. We are not saying we cannot do this for a terrorist, but what we should do is go to a judge and present some evidence and say we think he is a terrorist and we want to look at his Visa bill. People in America should not be able to have their Visa bill open to scrutiny, and that is basically what we have now. Our banking records, our Visa statements, and all our records that are held by a third party are not protected.

Some people may have heard about how they want to have cyber security. Everybody wants their computers to be secure, including the computer companies. They work nonstop trying to keep hackers out of computers, but the law they want to pass gives immunity to the computer companies. A lot of us don't think much of it. We check off the confidentiality button and hope that after we have signed the contract, they will not share it. They share it in a way that is anonymous, and we put up with that in order to get a search engine. I am OK with that.

What I am concerned about is when we pass the cyber security bill, we cannot sue them if they breach the policy. So then everybody's computer, searches, and reading habits are open to the Federal Government. Because we are fearful of people coming at us and fearful of attacks, we give up our rights. I thought we were fighting to preserve our rights.

So what are we fighting for? These battles are going on and on throughout the government. The interesting thing about these battles is that they are not always Republican v. Democrat. These are battles that are sometimes coalitions of people from the right and people from the left who have gotten together and fought over these issues.

In the case of trying to get the President to acknowledge he will not do drone strikes, there have been people on the Democratic side of the aisle who have aligned with me and helped me get this information. The President probably would have refused until Hell froze over to give me anything, but the fact is we had Democrats ask to get information also. Suddenly we were able to get a coalition and get the information, but it has not been easy. The fact that they don't want to acknowledge limitations as to the President's power worries me that they believe in an expansive Presidential power. In order to stop that, we have to be protective of our rights. We have to be able to not so easily give up on our rights.

There is a white paper that was written, and the title of it is ''The lawfulness of a lethal operation directed against a U.S. Citizen who is an operational leader of al-Qaida, foreign associated forces,'' and this is from the Department of Justice. This white paper sets forth a legal framework for considering the circumstances for which the U.S. Government could use lethal force. One of the things they do in the document—this was leaked repeatedly—is they tell of the criteria for when they can kill people overseas.

We don't know the criteria for killing people in this country. They make a contention that the rules will be different, but no one is acknowledging exactly whom they can kill or what the rules will be. For the people who are killed overseas by drone strikes, the thing they come up with is that they say it has to be an imminent threat, but it does not have to be immediate.

To my thinking, only a bunch of government lawyers could come up with a definition for imminent threat that says it is not immediate, so that is the first problem with it. Is that going to be the standard that is used in America, that there has to be an imminent threat, but it doesn't have to be immediate?

My next question is: What does that mean? Does that mean noncombatants who we think might someday be combatants are an imminent threat? It is a pretty important question. What is imminent. There is no question of what imminent lethal force is. If someone is aiming a gun, a missile or a bomb at you, there is an imminent threat, and no one questions that. No one questions using lethal force to stop any kind of imminent attack. We become a little bit worried when the President says imminent doesn't have to mean immediate. When that happens—and then we see from the unclassified portion of the drone attacks overseas—many of these people are not involved in combat. They might someday be involved in combat, they might have been involved in combat, but when we kill them, most of them are not involved in combat. So even overseas there is some question of this program, but my questions are primarily directed toward what we do in this country.

It says the U.S. Government can use lethal force in a foreign country outside the area of active hostilities. That is, once again, the point. We are not talking about a battlefield. But because the battlefield has no limits—since the battlefield is not just Afghanistan. The battlefield has no geographic limits so the battlefield is the whole world, and many in this body say the battlefield is the United States. So once we acknowledge and admit that the battlefield is the United States, this whole idea of what is imminent versus what is immediate becomes pretty important because we are talking about our neighbors now.

The other thing about this is we need to try to understand who these terrorists are. Members of al-Qaida. There are no people walking around with a card that says ''al-Qaida'' on it. There are bad people. There were bad people associated with the terrorists—and we have killed a lot of them—who were in Afghanistan training and part of the group that attacked us. But there are terrorists all over the world who are unhappy with their own local governments—some of them are unhappy with us too—but to call them al-Qaida is sometimes a stretch and sometimes open to debate as to who is and who isn't.

Then they use other words, and words are important. They are either a ''member of al-Qaida'' or ''associated forces.'' I don't know what that means. Does one have to talk to al-Qaida or commit terrorism or does a person have to be in a country where we are supporting the government and people are attacking the government? It is not always clear.

The other question we get to when it is either al-Qaida or people associated with al-Qaida is that now we get to the United States and we have the government defining what they say as terrorism. So the government has put out some documents, one by the Bureau of Justice, to warn us of who might be a terrorist. In fact, the government has programs where they want people to inform: If you see someone, tell someone. If you see these people, you are supposed to inform on them. So some of the characteristics of the people who might be terrorists—and I don't know, they don't have to be an imminent threat or an immediate threat, but some of these people might be terrorists. I don't know. If the President is going to kill these people, he needs to let them know. Some of the people who might be terrorists might be missing fingers. Some people may have stains on their clothing or some people may have changed the color of their hair, some people may have accumulated guns, some people may have accumulated weatherized ammunitions, which might be half the hunters in the South this time of year, or people who might like to pay in cash, or people who have seven days of food on hand. I know people who just for religious reasons are taught to keep food on hand. In fact, government Web sites sometimes tell us to keep food on hand for hurricanes. If you live along the coast, one government Web site says keep food on hand, and another one says if you do, you might be a terrorist. They are not saying you are, but if these are the characteristics of terrorism, would you not be a little concerned that if the government is putting this list out, we are going to drop Hellfire missiles from drones on people in America who might be on this list? I am particularly concerned about that.

So I think we can't be sloppy about this. We can't allow ourselves to be so I guess afraid of terrorism or afraid of our enemies that we give up on what makes us Americans. What makes us Americans are our constitutional rights that are enshrined in our Constitution. It is why we have gone to war, to defend these rights. Will we think the war still has purpose if we are no longer able to enjoy these rights at home?

The problem as I see it as we go forward is that I wish I could tell people there is an end to this, that there would be a grand battle for our constitutional rights or for what rights we lose overseas, what rights we lose here if we travel. The problem is they don't see an end to the war. They see perpetual war, perpetual war without geographic limits, and they see the battlefield here, so they want the laws of war to apply not only there but here. In other words, what they are saying is the laws of war are martial law. These are the laws of war. These are the laws that are accepted in war.

We accept a lot of things on the battlefield that we don't want to accept here. I acknowledge we accept that we don't get Miranda rights on the battlefield. We don't get due process. We don't get an attorney. If they are shooting at us, we shoot back and kill them. But the thing is if a person is sitting in a cafe in Houston, they do get Miranda rights, they do get accused of a crime, they do get a jury of their peers. That is what we are talking about here. The President should unequivocally come forward and state that noncombatants—people not involved with lethal force—will not have drones dropped on them.

The other thing he should acknowledge is the law—not only the constitutional law but the law since the Civil War—has said the military doesn't operate in the United States. There is a reason for the military not operating in the United States. Why? The military operates under different rules of engagement than policemen. The rules are stricter for policemen. We do it because we are not in a war here so the policemen have to call judges. A lot of people don't think this through, though, and they will say, These people are terrible, awful people who would cut your head off. They are right; they really are bad people. We have really bad people in our country too sometimes. We have murderers and rapists. But tonight at 4 a.m. if there is a rapist going around the neighborhood and you get to a house and there isn't an imminent thing going on but you are told he might be in this house, before the door is broken down, they call on a cell phone, they get a judge out of bed, and they say, we have chased him into this neighborhood, no one is answering, we want to break the door down, can we have a warrant. Most of the time the police have to call for a warrant. We have a process. But when he is arrested, they don't just string him up. We don't have lynchings in our country. We don't let mobs decide who is guilty and who is not.

I don't question the President's motives. I don't think the President would purposefully take innocent people and kill them. I really don't think he would drop a Hellfire missile on a cafe or a restaurant as I have been talking about. But it bothers me that he won't say he won't. It also bothers me that when he was a Senator in this body and when he was a candidate, he had a much higher belief and standard for civil liberties and he seems to have lost that since he has been the President.

I think this is an important issue. It goes beyond John Brennan. It goes beyond the President. It goes to an issue that rises above I think all other issues we consider here. I have voted for three of the President's nominees, not because I agreed with them politically; in fact, I disagreed with the vast majority, but I disagree with the President on a lot of political issues. I voted for his nominations because I think the President does get some prerogative in deciding who his political appointees are. I have chosen to make a stand on this one and not so much because of the person but the principle of this. I have nothing personally against Brennan. I have nothing personally against the President. But I have a great deal of concern about the rights that were enshrined in the Constitution. I have a great deal of concern about this slippery slope of saying there won't be accusations, there won't be trials, that we will summarily execute people, and the question is, will we execute noncombatants. If he is not going to, he ought to say so.

In this white paper that was released, they talked about the three different conditions. One of them was imminence, but then they qualified it by saying imminent doesn't have to be immediate. Another one was feasibility. They said it is not feasible to get some of these people overseas and so we kill them. But feasibility, to a certain extent, could be defined as convenience. So the question is, in America, what if they live up in the Rocky Mountains and there are no roads leading up to where they are; they are not very accessible; it is not very feasible; so we are going to do strikes based on convenience. Is that going to be the standard?

When we talk about standards, they say they have a process in place, but the process is very important. The standard is important, but it is also important that one group of people, one political group of people or one politician doesn't get to decide that standard. And part of the way the process in our country works is that there are checks and balances between the three branches of government so that one branch of government doesn't get to unilaterally decide what these standards are. Because some of the standards are a little bit loose—whether you are near someone. Apparently, we are not counting civilians who are killed by drone strikes if they are males between the ages of 16 and 50. If they were close to the people we are targeting, we just count them as other militants. Are we going to do that in the United States?

If you are eating with 15 of your family members and one of them may or may not be communicating by e-mail with somebody in a Middle Eastern country, can we kill all 20 of them, and because some of them are within the right age group, that is fine? Let's say you are eating with your cousin who is communicating with somebody in the Middle East and that person may or may not be a bad person, and then when you leave—let's say you are going to a wedding and you are going from a preparty and there are 20 cars all going to the wedding and they know or they think they know there may be a bad person among the group; why don't we just strike the caravan? These are called signature strikes. The Wall Street Journal said that the bulk of our drone strikes overseas are signature strikes. That is a good question for the President: Are signature strikes going to be the standard for killing Americans in America?

The President simply says the rules will probably be different for inside than outside. Well, I frankly don't think that is good enough. He says he has no intent to kill Americans in America. I frankly don't think that is good enough. I don't think it is good enough for the President to say I have no intention of breaching the fifth amendment. Intending not to is not the same as saying I won't. His oath of office says I will not—no, it says: I will protect, defend, and preserve the Constitution. It doesn't say I intend to protect, defend, and preserve the Constitution except for when it is infeasible or inconvenient. That is not what the rules are about. I think the rules are pretty absolute.

The rules are the Bill of Rights and they are ours. We got them from our Creator. They were enshrined in the Constitution. Nobody gets to take them from us. Nobody. No President from any party gets to be judge, jury, and executioner.

This decision to let this go, to let this nomination go without an answer is a big mistake for us. If we do this—if we let this nomination go without a debate, without significant opposition, without demanding more answers from the President—the problem is we are never getting any more answers. There will be some in this body who say, Well, just let it go. The snow is coming and we want to go home. The problem is that he is never going to answer these questions unless he is forced to. I suspect George Bush would have been the same. I suspect a lot of the Presidents would be the same. And I think it is unfortunate that they see their power and their sphere of power as being more important than our constitutional rights. But we won't get this by just the glad hand and the winning smile. That is not going to get any information from the President.

The only way this President would ever give us information is if we were to stop this nomination. I am not even saying stop it personally. My objection really is not so much to Brennan being in charge of the CIA as my objection is to the program and to the President not admitting that he can't do drone strikes in America.

I will continue to do what I can to draw attention to this and we will see where things lead. But I am disappointed in the President. I am one who while I am a Republican—I didn't vote for him in 2008 or 2012—I am one who has admired certain aspects of his policy. I admired his defense of civil liberties. I admired him in 2007 when he said Americans shouldn't be involved in torture. I admired him when he said we should follow the rule of law and we should have warrants before we tap people's phones and that we shouldn't be trolling through people's records. But I find a great irony and, frankly, a great hypocrisy in someone who would defend getting warrants before we tap your phone but won't defend a trial before we kill you. Tapping one's phone is a breach of privacy and it should only be done if a person has been accused of a crime and evidence has been presented and a judge grants a warrant. But killing someone with no due process, with no judicial oversight—some are saying, Oh, we will get to it. We are eventually going to set up a court, maybe a FISA court. Unfortunately, a FISA court probably won't be good enough because it will be in secret and a person should have a chance to confront their accusers and have a public trial if a person is going to be killed.

Typically what I am talking about is American citizens, but there needs to be some oversight. But the problem of waiting to do this and saying, Oh, we will do this sometime, we will get to it eventually, never happens. The same way with saying, Oh, we will get to—we will keep asking the President for more information, but it never happens. If we do not take a stand for something we believe in, it is going to slip away from us. I think our rights are gradually eroding. I think they are gradually slipping away from us. I think the understanding of the Constitution as a document that restrains the government, that restrains the size and scope of the government, has been lost on a lot of people. I think it is something we shouldn't give up on.

When the President goes through his three different items that were leaked through this memo, he says there has to be an imminent threat. He says their capture has to be inconvenient or infeasible. And he says the operation of killing the person has to be conducted within a manner consistent with the applicable law of war.

Here is the problem. That sounds fine if you are in Afghanistan and in the mountains fighting a war. But I am talking about downtown Washington, DC. I am talking about living in the suburbs of Houston or Atlanta. Are we going to have drone strike programs in America consistent with the applicable law of war?

See, the other way to put ''law of war''—and this is not a stretch, this is just turning the words around—''martial law.'' Now people, if you put it that way, might have a little different impression. Do we want martial law in our country?

If you go back to the battle we had over indefinite detention last year, where they are saying they can take a citizen without a trial and actually send them from America to Guantanamo Bay if they are accused of terrorism—accused, not convicted; accused of terrorism—you start to worry about some of the stuff happening in our country, that this could actually happen.

One of the sort of ironies of looking at different governments and looking at what makes people unhappy—in Tahrir Square in Cairo, there have been hundreds of thousands of people protesting. It is interesting what they are protesting. One of the large things they are protesting is something called an emergency decree, which I believe went in place by Mubarak 20-some-odd years ago. So you get leaders who come in, and they use fear to accumulate power, and you get a decree. So you get martial law. The martial law, ironically enough, in Egypt allows detention without trial. They do have the right to trial, but there is an exception, and it has been accepted for the last 20-some-odd years, and the people are hopping mad over it. So we get involved in their country and their politics and give them money and weapons, and we have some of the same debate and problems here at home—whether or not you can indefinitely detain.

The President's response to this was also pretty disappointing. It would not have become law without him. I think he threatened to veto it, and then he signed it anyway. Empty threats are of no value, and he struck no great blow for America or for American freedoms by not vetoing this. But when he signed it, he said something similar to what he is saying now. He said: Well, I have no intent to indefinitely detain people.

Am I the only one in America who is a little bit underwhelmed by the President saying he has no intent to detain somebody but he is going to sign it into law saying he has the power to? That is the same thing we are getting now in this drone strike program: Don't worry. Everything is OK. I am your leader, and I would never detain you. I would never shoot Hellfire missiles at noncombatants. I will not do that.

I can take him at his word, but what about the next guy and the next guy? In 1923, when they destroyed the currency in Germany, they elected Hitler. I am not saying anybody is Hitler, so do not misunderstand me. I am saying there is a danger, even in a democratic country, that someday you get a leader who comes in, in the middle of chaos, and says: Those people did it. Those people are the mistake. Those people are who we need to root out.

If the laws have been removed that prevented that from happening, if the laws have been removed and they say: We can indefinitely detain—in Hitler's case, he said: The Jews, those bankers, the Jews did this to us. And they were indefinitely detained. Now, am I saying this is going to happen in our country? Unlikely. I cannot imagine any of our leaders, for all of our disagreements, doing that. But if you do not have the law to protect you, you do not have that protection because you do not know who the next guy is and the next guy or the next woman.

When Madison wrote about this, he was very explicit. He said: We have these rules in place because we do not have a government of angels. If we had a government of angels, we would not need these rules.

I will never forget the discussion with somebody about the Kelo case. The Kelo case was a case where the government took private property and gave it to a richer person who had private property who wanted to develop it. Ironically, the justification they used was blight. So they take it from one middle-class person and give it to a rich corporation, and they say they are doing that to rectify blight. But when they did that and when they came down with the ruling, it was concerning the logic of the way they get to this ruling, that basically they really do not have this right to your property.

When the Kelo decision came down, it really bothered me. But I remember we started having the battle in our local government. In our local government, there was a battle over a resolution. The resolution said—it was in the city council—the resolution said the local city government cannot take private land and give it to another person. It was really like so many other things. The intention of eminent domain was to have highways and thoroughfares that you might not get otherwise, but it was never intended to take from a private owner and give to a corporation. That is what they did with the Kelo decision.

So, anyway, local governments began talking about this, and I was talking to one of my local government officials—this is probably 20 years ago, 15 years ago—and their response was, but I would never do that. I would never take private land through eminent domain and give it to another corporation. I would never do that.

And I believed that person. And I really, frankly, give the President the benefit of the doubt. I do not question his motives. I do not think he probably will kill noncombatants. But I certainly do not want him to claim that he has the authority to kill noncombatants. So this is a big deal. It is a huge deal.

So with the eminent domain, we finally passed it in our local commission. It was like 3 to 2, but in my town in Kentucky, you cannot take private property with eminent domain and give it to another private individual, because it is not about the individuals involved, it is about the fact that we do not always have angels running our government. We do not always know whom we are going to get.

If we ask the question, Do you want a government that is run by majority rule or a government that is restrained by its documents, it is a pretty important question. Ultimately, there are ramifications to majority rule, to basically whatever the majority wants.

One, the majority can vote upon minority rules they do not pass on themselves. In fact, Martin Luther King wrote—this is one of my favorite quotes from him—he said: An unjust law is any law that a majority passes on a minority but does not make binding on themselves. I thought it was a great statement because you could probably almost apply that to any law written on any subject. If the law excludes certain people and is not applied to everyone, then by definition it is an unjust law. What a great way to put it succinctly and a great way that we should look as far as trying to write rules.

But you have to decide as a country whether you want majorities or politicians to decide things or whether you want reliance on documents and on a process and on a rule of law that protects you.

If we rely on, basically, the whims of politicians, I think it is a big mistake. If we are going to rely on the politician basically sitting in the Oval Office going through flashcards and a

PowerPoint presentation to make the decision on life and death for Americans in America, I think it is a huge mistake.

Any people who watch trials and court cases realize that even courts are not perfect. It is actually amazing how we even get it wrong with courts and trials and juries. Many States and even many people who were for the death penalty have questioned their support of the death penalty because of the imperfection of our courts. Through DNA testing, we have found we do not always get it right even with that. I think in Illinois they stopped the death penalty after having so many DNA testings that showed there was an incorrect diagnosis of who had committed the crime.

So the question becomes, even with all the checks and balances of the court, are you worried at all about having one politician accuse, secretly charge, I guess—if you can call it a charge—and then execute Americans? I am incredibly troubled by that. I cannot imagine we as a free country would let that stand. I think it is an insult to every soldier in uniform fighting for American freedom around the world that we would just give up on ours at home, that the President would cavalierly or incorrectly or without forethought, without sufficient forethought, not tell us, not go ahead and explicitly say: This will never happen in America.

His answer to me should not have been, no, we will not kill noncombatants. It should be, never—no, never. We will never in America come to that. Under my watch, we will never, ever allow this to happen in America.

It is incredibly disappointing. It should be disappointing to all Americans or anyone who believes in this. We have to realize that trying to figure out guilt or innocence is very complicated. Anybody who has ever served on a jury realizes how difficult it is to determine guilt. And sometimes you are unsure. Some cases are actually decided by, gosh, the evidence was so equal, but there was not a preponderance. I could not become completely convinced, and this person is going to be put to death?

Contrast the feeling a juror has and what a juror is trying to do in finding innocence or guilt and letting someone be punished by death with our current standard. Our current standard for killing someone overseas is that you can be sympathizing, you can be close to people who we think are bad, you can be in a caravan that we say bears the signature of bad people.

Now, there is another debate that can be had about whether those are sufficient standards for war. And the standards are different for war in our country. But we have to adamantly and unequivocally stand up and say to those who would say this is a battlefield: The hell it is a battlefield. This is our country. If you want to say this is a battlefield—if you say we are going to have the laws of war here, we are going to have martial law here—by golly, let's have a debate about it. Let's have a discussion in the country. Let's have everybody talking about, are we the battlefield? Is this a battlefield? Is our country a battlefield? Because what that means is that you get no due process in a battlefield.

I am not here to argue and say that you get due process in a battlefield. I am here to argue that we cannot let America be a battlefield because we cannot say that we are no longer going to have due process, that we are no longer going to have trial by jury, that we are no longer going to have presentment of charges and grand juries. It is impossible in a battlefield. In Afghanistan, it is impossible to say: Hey, wait a minute, can I read you your Miranda rights? It is impossible. We are not arguing for that. We are not arguing for a judge or a jury or anything else. If people are shooting at our troops, they can do everything possible, including drone strikes. It is not even the technology so much that I am opposed to, but the technology opens doors that we need to be concerned with.

Defense of our soldiers in war—there is no due process involved with that. But realize the danger to saying America is at war, America is the battlefield, because also realize the danger that these people—they are Republicans and Democrats—these people do not believe there is any limit to the war, there is no geographic limit, and there is no temporal limit. It is a perpetual war. And many of them—if you prompt them or provoke them—will open up and say: Oh, yes, America is a battlefield. We need the laws of war. And you ask them: When is the war going to end, When will we win the war, they will admit it—some of them will frankly admit it. They will say the war may go on for a long time. Some have talked about a 100-year war, 100 years being in these countries. But basically we are talking about perpetual war. We are talking about a war with no geographic limit, no temporal limit, and a war that has come to our country.

There will be bad people who come to our country whom we need to repel. We are not talking about that. If planes are being flown into the Twin Towers, we have the right to shoot them down with our military. That is an act of war. No one questions that. If someone is standing outside the Capitol with a grenade launcher, we have a lot of brave Capitol policemen. I hope they kill the person immediately. Lethal force to repel lethal force has never been questioned by anybody and is not even controversial.

But they want to make the debate about that and not about killing noncombatants driving in their car down Constitution or sitting in a cafe on Massachusetts Avenue. There may be bad people who are driving in their car, and there may be bad people sitting in cafes around the country. If there are, accuse them of a crime, arrest them and try them.

The battlefield coming to America or acknowledging that is an enormous mistake. So there are some big issues, some issues that we as a country gloss over. We watch the nightly news. There is sometimes so much hysteria about so many issues, so many people yelling back and forth. But this is an issue that I think if we could get a frank discussion—I have proposed to the leadership—I have not had much luck with this—but I proposed for a constitutional debate or a debate of importance that everybody come, and instead of hearing me all day, we take 2 or 3 minutes and we go around the room and everybody speaks, it is limited, but there is some kind of debate and discussion—less speechmaking and more debate.

I proposed we have lunch together. I have asked to come to the Democratic lunch. I have not gotten the invitation secured yet. It has only been 2 years so it may happen, but there are many reasons for discussion. There are many reasons why we should have civility. There are reasons why people on both sides of the aisle can agree to this. If we were to have a vote, maybe not on the nomination but a vote on restricting drones—there is a bill out there that we are working on that would restrict drones to imminent threats. It does not even get into the distinction of the military—things in the country would be the FBI; it would not be the military because that is the law. There is an important reason for the law.

But we have a bill we are going to come forward with that we are working on that would simply say there has to be a real imminent lethal threat, something we can see. Then I think people could agree to that because it is not so much the drone we object to. If some guy is robbing a liquor store 2 blocks from here and the policemen come up and he comes out brandishing a gun, he or she can be shot. Once again, they do not get Miranda rights. They do not get a trial. They do not get anything. If you come out brandishing a weapon and people are threatened by it, you can be shot.

So it is important to know what we are talking about. We are not talking about the guy coming out of the liquor store with a weapon. Even a drone could kill him if the FBI had drones. So my objection to drones is not so much the technology. There may be a use for law enforcement here, but there is also potential for abuses.

Many government agencies have drones. These hopefully will remain unarmed drones. This is a different subject. But it is a subject that sort of dovetails from this into the next subject, which is, should you have protection from the government snooping—from the government looking through your bedroom windows? I remember that issue when I read ''1984'' when I was in high school. It bothered me, but I could not quite connect. I felt somewhat secure in the sense that we did

not have two-way televisions. This was back in the 1970s. We did not have the ability to look at people. The government could not look at me in my house 24 hours a day.

So you kind of get the feeling for how terrible it would be for that to happen. But technology was behind that. Actually ''1984'' was written, I think, in 1949. So talk about—he was truly being able to foresee the future. But now fast forward another 30 or 40 years and look at the technology we have now. We have drones that are less than an ounce, presumably with cameras—it is hard for me to believe that—but less than an ounce with a camera. It is not impossible to conceive that you could have a drone fly outside your window and see what your reading material is.

It is not impossible to say they could not send drones up to your mailbox and read at least what kind of mail you are getting or where it is from. It is not inconceivable that drones could follow you around. We had an important Supreme Court case last year, though, that was a blow for privacy. This was a Supreme Court case that had to do with GPS tagging. Everyone knows what GPS is. But what they were doing is the police were shooting them to cars or tagging them when you were not with your car and then following you around waiting for you to commit a crime. If you tag everybody's car and wait for them to speed, we are going to have a big deal on fines. There is going to be a problem. There is also a problem with following people around waiting for people to commit a crime. So the Supreme Court ruled, I think it was unanimously, that you have to have a warrant to do that.

The thing about surveillance is those of us who believe in privacy are not arguing against any surveillance. What we are arguing is that you have to have a reason to do it and you have to ask a judge for permission. So it is not a society where there is no surveillance or a society where you have absolute privacy. If you commit a crime, the police go to the judge and ask for permission to do this.

But there are some worrisome things about the direction of drones. For example, the EPA now has drones. The EPA is flying drones over farmland. I think some of this may be even in the defecation patterns of the cows. I do not know exactly what they are looking for because manure in streams is said to be a pollutant and, actually, frankly, thousands of animals might.

But the whole idea, if you think someone is dumping anything in a stream—I am not opposed to having laws stopping that, get a warrant, search them or get a warrant and spy on them with a satellite or drone or whatever you want to do. But you have to have some kind of probable cause they are committing a crime. Because you can imagine that we would devolve into a society where every aspect of our life would just be open to the government to watch what we are doing.

They say there is something called an open spaces concept. They say: You have 40 acres. The land is open so it is not private anymore. I think that is absurd. I think that is sort of analogous to the whole banking secrecy, such as you gave your records to your bank so you do not care if anybody looks at them. That is absurd. I have a 40-acre farm. I go hunting out there. I am supposed to not care if people watch me, everything I do once I am outside my house. My privacy is only in my house and not in open spaces?

I disagree with that. One of the interesting things about the right to privacy, and you actually get some disagreement from people on the right about this. There was a case called the Griswold case. It had to do with birth control. A lot of conservatives objected to it because they saw it as a building block for Roe v. Wade. I am pro-life and did not like the decision in Roe v. Wade, but I actually do not mind the decision in Griswold so much. The reason is, going back to a little bit of the discussion we had earlier on Lochner, is that with Griswold, what I see is they talked about a right to privacy.

Some said—the conservatives who are worried about the judiciary coming up with new things or creating things—they thought the right to privacy was not in the Constitution so you do not have it. I think that is a mistake in notion. Because, for example, the right to private property, that is not in the Constitution either, but I do not think any of the Founding Fathers or most of us today would argue you do not have a right to private property. In fact, I think it is one of the most important parts. In fact, there was some debate about having it in there. But I think the right to privacy, the right to private property, they are part of what I would call the unenumerated rights. The unenumerated rights are basically everything else not given to the government.

You gave the government—or we give the government, through the compact of the Constitution, we give the government enumerated powers. There are about 17 to 19, depending on how you count them. But as Madison said, they are ''few and defined.'' When you talk about the rights, though, the 9th and 10th amendment will say those rights not specifically delegated to the Federal Government are left to the States and the people respectively. They are not to be disparaged.

So the interesting thing about your rights is there is not sort of a list of your rights. In fact, when the Founding Fathers were putting together the Bill of Rights, one of the objections to the Bill of Rights was they said if we put the Bill of Rights together, everybody will think that is all of their rights. They will say, if it is not listed, you do not get it.

So the 9th and 10th amendments were an important part of it. In fact, I do not know I would have voted for the Bill of Right's inclusion if you did not have the 9th and 10th. I like all the others, of course. But then the 9th and 10th protect all those not mentioned.

So it is an interesting thing that some on the right disagree. In fact, the majority does not like the Griswold decision. But I actually kind of like it because I think your right to privacy is yours, the same as I think your right to private property is yours. It was not delegated, it was not taken, it was not given to the Federal Government. It is yours.

It gets back to the sort of the primacy of liberty, the primacy of your individual freedom that you did not get that, you were not given your freedom by government. It was yours naturally or, as many of us believe, it is comes from your Creator. So your rights are national and inborn. They were enshrined in the Constitution, not given to you but enshrined and protected. As Patrick Henry said, it is not that the Constitution was instituted among men to protect the government, they were to protect the people from the government.

It was to limit the size of government, to try to restrain the size of government, to try to allow for a government that lived under a rule of law. When Hayek said nothing distinguishes an arbitrary government from a constitutional government more clearly than this concept of the rule of law, the important thing about the rule of law is also that the rule of law is something that—it gives a certainty. Businessmen have talked about certainty.

Without relinquishing the floor, I would like to hear a few comments from Senator LEE.

Mr. LEE. The issues we are discussing are of profound importance to the American people for the reasons Senator PAUL has identified. Americans have every reason to be concerned anytime decisions are made by government that impair one of the fundamental God-given protected rights that Americans have.

Anytime the government wants to intrude upon life or liberty or property, it must do so in a way that comports with time-honored, centuries-old understandings of due process. The rule of law, in other words, must operate in order to protect those God-given interests to make sure they are not arbitrarily, capriciously deprived of any citizen.

We are talking about the sanctity of human life. When the interest at stake is not just liberty or property but life itself, we have to protect it. We have to take steps to protect that. So I think it is important we carefully scrutinize and evaluate any government program that has the potential to deprive any American citizen of his or her life without due process of law.

I was concerned, as was Senator PAUL, recently, when the Obama administration leaked what was characterized as a Department of Justice white paper outlining the circumstances—outlining the legal criteria that this administration would

use in deciding when and whether and under what circumstances to snuff out human life, the human life of an American citizen no less, using a drone.

The memorandum started out with certain somewhat predictable or familiar concepts. The memorandum started out by explaining an imminent standard, explaining that certainly could not happen absent an imminent threat to American national security, an imminent threat to American life, for example. When we think of imminence, we think of something that is emergent, we think of an emergency, something that is going on at the moment, which unless interrupted presents some kind of a dangerous threat.

Significantly, however, this is not how the Department of Justice white paper actually read. Although it used the word ''imminence,'' it defined imminence as something far different than we normally think of, than we as American citizens use this kind of language, certainly in any legal or constitutional analytical context.

If I could read from that memorandum, I would point out this condition of imminence is described as follows.

It says: The condition that an operational leader—an operational leader of a group presenting a threat to the United States—presented imminent threat of violent attack against the United States does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.

Wouldn't it be the Senator's understanding if something is imminent, it would need to be something occurring immediately?

Mr. PAUL. Yes. I think there is really no question about using lethal force against an imminent attack. I think that is why we need to make the question we are asking the President very clearly. The question is if planes are attacking the World Trade Center, we do believe in an imminent response. We do believe in an imminent defense for that. The problem is we are talking about noncombatants who might someday be involved. If they are in America, I see no reason why they shouldn't be arrested.

Mr. LEE. If we are dealing with something that is imminent, we are talking about something that is about to occur, and it is urgent. That typically is the standard any time government officials in other contexts, law enforcement, for example—sometimes regretfully and tragically, law enforcement officers need to make a spur-of-the-moment judgment call in order to protect human life. Sometimes in doing that they have to do something they wouldn't ordinarily do. It always turns on some kind of an imminent standard. It always turns on some kind of an emergent threat, something that is about to occur, that is occurring at the moment.

Yet we are told in black and white right here in this white paper this condition, imminence, does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future. That begs the question, what then is the standard. Who then makes this determination? Presumably it is the President of the United States. Perhaps it is others reporting up in the chain of command to the President of the United States.

If actual imminence isn't required as part of this ostensibly imminent standard, what then is the standard? Is there any at all? If there is a standard, is it so wide, is it so broad you could drive a 747 right through it? If that is the case, how is that compatible with time-honored notions of due process, those notions deeply embedded in our founding documents, those notions we understand come from God and cannot be revoked by any government?

I wish I could say the imminence standard problem in the Department of Justice white paper is the only problem. It is not. We look to the very next page, the page dealing with feasibility of capture. One of the other standards outlined in the Department of Justice white paper outlining the circumstances in which the government of the United States may take a human life using a drone in a case involving a U.S. citizen is that the capture must be infeasible, and the United States must be continuing to monitor whether capture becomes feasible at some point.

As to this standard on page 8 of the Department of Justice white paper, it says:

> Second, regarding to the feasibility of capture, capture would not be feasible if it could not be physically effectuated during the relevant window of opportunity or if the relevant country were to decline to consent to a capture operation. Other factors such as undue risk to U.S. personnel conducting a potential capture operation could also be relevant. Feasibility would be a highly fact-specific and potentially time-sensitive inquiry.

In other words, they are saying it has to be something that could not be physically effectuated during the relevant window. What is the relevant window? The white paper makes absolutely no effort whatsoever to define what the relevant window is. Who then makes this determination, and according to what factors is that determination made?

Here yet again we have a standardless standard. We have a standard that is so broad, so malleable, so easily subject to so many varying interpretations, no one can reasonably look into this and decide who the government may kill with a drone and who the government may not kill with a drone. That is a problem, and that, it seems to me, is fundamentally incompatible with time-honored notions of due process. Would the Senator not agree with that assessment?

Mr. PAUL. Absolutely. I think that is where the crux comes down to this, talking about having an imminent standard. This is part of the problem in the sense he doesn't want to talk about it. If we are going to do something so dramatic as to no longer have the fifth amendment apply in the United States, to have no accusation, to have no arrest, no jury trials for folks who are to be killed in the United States, it is such a dramatic change that you would think we would want to have a full airing of a debate on this.

Mr. LEE. Would the Senator from Kentucky yield for a question?

Mr. PAUL. I won't yield the floor, but I will allow the Senator to make comments.

Mr. LEE. If the Senator will yield for a question, I will ask if the Senator was aware of the exchange some members of the Senate Judiciary Committee had with Attorney General Holder this morning on the subject.

Mr. PAUL. Yes.

Mr. LEE. Was the Senator aware of the fact some of us asked Attorney General Holder for a more robust analysis than the series of memoranda authored by the Office of Legal Counsel, the U.S. Department of Justice's chief advisory body, and the fact that so far the Department of Justice has declined to make those available to members of the Judiciary Committee?

Mr. PAUL. Yes, I am aware of that. I think we have a transcript of some of the conversation from this morning.

Mr. LEE. If I may supplement that question by describing what I encountered in connection with that, I expressed frustration to the Attorney General over the fact that members of the Senate Judiciary Committee—who have significant oversight responsibilities with regard to the operation of the U.S. Department of Justice—have not had access to that memorandum. This is part of our oversight responsibilities. This is something we ought to be able to see, and so far it is not something we have been able to see. I encouraged the Attorney General to make available to members of the Senate Judiciary Committee those very documents, which he claimed add some additional insight and would give us some additional analysis above and beyond what this white paper is saying. I thought that might be relevant to the Senator in addressing my question.

Mr. PAUL. Absolutely. At this point, I will entertain comments from Senator CRUZ and a question.

The PRESIDING OFFICER (Mr. COONS). The Senator from Texas.

Mr. CRUZ. Would the Senator from Kentucky yield for a question?

Mr. PAUL. I will not yield the floor, but I will acknowledge a question to the Chair.

Mr. CRUZ. I wish to ask the Senator's reaction to the testimony Attorney General Eric Holder gave the Senator this morning in the Senate Judiciary Committee. I wish to describe that testimony for the Senate and ask the Senator's reaction to that testimony.

I would begin by saying that Senator after Senator on the Judiciary Committee invoked the leadership of the Senator from Kentucky on the issue of

drones and asked Attorney General Holder about the standards for drone strikes in the United States. Indeed, although the Senator does not serve on the Judiciary Committee, it was as if he were serving in absentia, because the Attorney General was forced over and over again to respond.

I would note the Senator's standing here today, like a modern ''Mr. Smith Goes to Washington,'' must surely be making Jimmy Stewart smile. My only regret is there are not 99 of our colleagues here today standing with the Senator in defense of the most fundamental principle in our Declaration of Independence and our Constitution; namely, each of us is endowed with certain unalienable rights by our Creator and that first among them is life, the right to life, and the right not to have life arbitrarily extinguished by our government without due process of law.

At the hearing this morning, Attorney General Holder was asked about the letter he sent the Senator in which the Senator asked him whether the U.S. Government could use a drone strike to kill a U.S. citizen on U.S. soil. As the Senator knows, Attorney General Holder responded in writing he could imagine a circumstance where that would be permissible. The two examples he gave were: No. 1, Pearl Harbor; and No. 2, the tragic attacks on this country on September 11, 2001. In the course of the hearing, Attorney General Holder was asked for more specifics. In particular, both of those were military strikes on our country with imminent and, indeed, grievous loss of life that flowed from it. Few, if any, disagree that the U.S. Government may act swiftly to prevent a military attack which would mean immediate loss of life. The question Attorney General Holder was asked three different times was whether the U.S. Government could take a U.S. citizen, who was suspected of being a terrorist, on U.S. soil, who was not engaged in any imminent threat to life or bodily harm, simply sitting at a cafe—could the U.S. Government use a drone strike to kill that U.S. citizen on U.S. soil.

Three times when asked that direct question, Attorney General Holder responded that in his judgment that was not ''appropriate.''

The first question—and if I may, I wish to ask a series of questions—does it surprise the Senator the Attorney General would speak in vague, amorphous terms of appropriateness and prosecutorial discretion rather than the bright lines of what the Constitution protects, namely, the right of every American to have our life protected by the Constitution?

Mr. PAUL. Mr. President, I am quite surprised, although I guess I shouldn't be, that we don't get direct responses. It is a pretty direct question. It is the question I have been asking all morning. It is the question I have been asking for a month and a half. I am talking about situations where you have a noncombatant, someone not posing an imminent threat, who they think make may someday pose an imminent threat because that is what we are doing overseas. If that is the standard overseas, I am asking is that going to be the standard here? It amazes me.

Part of the reason we are here today in the midst of a filibuster is because they won't answer the question directly. I applaud the attempts to try to get a more specific question. I am not terribly surprised we have had trouble getting a direct answer.

Mr. CRUZ. Would the Senator yield for additional questions?

Mr. PAUL. As long as I do not yield the floor.

Mr. CRUZ. After three times declining to answer a direct question, would killing a U.S. citizen on U.S. soil with a drone strike when that U.S. citizen did not present an imminent threat, would that be constitutional—after three times of simply saying it would not be appropriate, finally, the fourth time Attorney General Holder responded to vigorous questioning—in particular during the course of the questioning, the point was made that Attorney General Holder is not an advice columnist giving advice on etiquette and appropriateness. The Attorney General is the chief legal officer of the United States. I will note I observed it was more than a little astonishing the chief legal officer of the United States could not give a simple one-word, one-syllable, two-letter answer to the question: Does the Constitution allow the Federal Government to kill with a drone strike a U.S. citizen on U.S. soil who is not posing an immediate threat? The proper answer I suggested at that hearing should be no. That should be a very easy answer for the Attorney General to give.

Finally, the fourth time around, Attorney General Holder stated: Let me be clear. Translate my appropriate to no. I thought I was saying no. All right? No. Finally, after three times refusing to answer the question whether it would be constitutional to do so, the fourth time the Attorney General answered.

The question I want to ask is the Senator's reaction to this exchange. In particular when Attorney General Holder on the fourth time finally stated his opinion—and I assume the opinion of the Department of Justice—that it is unconstitutional for the Federal Government to kill a U.S. citizen on U.S. soil who does not pose an imminent threat, when he stated that, my response was I wish he had simply said so in his letter to the Senator at the beginning. I wish John Brennan in his questioning the Senator provided had said so in the beginning.

Indeed I then said: The Senator from Kentucky and I are going to introduce legislation in this body to make clear that the U.S. Government may not kill a U.S. citizen on U.S. soil if that individual does not pose an imminent threat of death or grievous bodily harm. I observed that if the Attorney General's view was that it was unconstitutional for the U.S. Government to do so, then I assumed he would be supporting that legislation. I would welcome the Senator's reaction to that exchange.

Mr. PAUL. Well, Mr. President, the response is a little bit troubling; that it took so much work and so much effort of cross-examination to finally get an answer.

I will note, in his final answer, I don't ever see the words ''constitutional'' or ''unconstitutional.'' He is responding to Senator CRUZ's word of ''constitutional'' when he says: Let it be clear and translate my ''appropriate'' to ''no.'' I thought I was saying no. All right. No.

Well, words do make a difference, and I would feel a little more comfortable if we would get in writing a letter that says he doesn't believe killing people not actively engaged in combat with drones in America, on American soil, is constitutional. That sure would have short-circuited and saved quite a bit of time.

I will say, though, that I will believe a little more of the sincerity of the President and of the Attorney General if we get a public endorsement of the bill that says drones can't be used except under imminent threat, and define that as an imminent threat where you actually have a lethal attack underway. If we could get to that, I think this is something that both parties ought to be able to unite by. It is such a basic principle, I can't imagine we couldn't unite by this. And it would have gone a long way to getting these answers.

But what still disappoints me about the whole thing is that it takes so much work to get people to say they are going to obey the law. It takes so much work to get the administration to admit they will adhere to the Constitution. This should be a much simpler process.

I commend the Senator from Texas for not letting go and for trying to get this information. I would welcome any more comments that he has.

Mr. CRUZ. If the Senator would yield for one final question, is the Senator from Kentucky aware of any precedent whatsoever—any Supreme Court case, any lower court case, the decision of any President of the United States, beginning with George Washington up to the present, the stated views of any Member of this Senate, beginning with the very first Congress up to the present—for the proposition that this administration seems willing to embrace, or at least unwilling to renounce explicitly and emphatically, that the Constitution somehow permits, or at least does not foreclose on, the U.S. Government killing a U.S. citizen on U.S. soil who is not flying a plane into a building, who is not robbing a bank, who is not pointing a bazooka at the Pentagon, but who is simply sitting quietly at a cafe, peaceably enjoying breakfast?

Is the Senator from Kentucky aware of any precedent whatsoever for what I consider to be the remarkable proposition that the U.S. Government, without indicting him, without bringing him before a jury, without any due process whatsoever could simply send a drone to kill that U.S. citizen on U.S. soil?

Mr. PAUL. Mr. President, I am aware of no legal precedent for taking the life of an American without the fifth amendment or due process. What is troubling, though, is that Attorney General Eric Holder is on record as actually arguing that the fifth amendment right to due process is to be determined and is to be applicable when determined solely by the executive branch.

I would appreciate the comments and opinions of the Senator from Texas on the idea that the executive branch gets to determine when the Bill of Rights applies.

Mr. CRUZ. If I may give my views on that question and then ask for the Senator's response to my views on whether the executive may determine its own limitations, I would suggest the genesis of our constitution is found in the notion that the President is not a king, that we are not ruled by a monarchy, and that no man or woman is above the law. Accordingly, no man or woman may determine the applicability of the law to himself or herself.

For that reason, the Framers of our Constitution won not one but two revolutions. The first revolution they won was a bloody battle for our independence from King George, and a great many of them gave the ultimate sacrifice so that we might enjoy the freedom we do today. But the far more important war they won was the war of ideas, where for millennia men and women had been told that rights come from kings and queens and are given by grace, to be taken away at the whim of the monarch. What our Framers concluded, instead, is that our rights don't come from any king or queen or president; they come from God Almighty, and sovereignty does not originate from the monarch or the president, it originates from we the people.

Accordingly, the Constitution served, as Thomas Jefferson put it, as chains to bind the mischief of government. And I would suggest that anytime power is arrogated in one place—in the Executive—that liberty is threatened. And that should be a view that receives support not just from Republicans, not just from Democrats or Independents or Libertarians, that should be a view that receives support from everybody; that none of us should want to live in a country where the President or the Executive asserts the authority to take the life of a U.S. citizen on U.S. soil without due process of law and absent any imminent threat of harm.

I would suggest the idea that we should simply trust the Attorney General, trust the Director of the CIA, or trust the President to exercise an astonishing power to take the life of any U.S. citizen, in my judgment, is fundamentally inconsistent with the Bill of Rights. And I would, therefore, ask the Senator from Kentucky for his reaction and whether he shares my understanding that our rights are protected not at the whim or grace of the Executive, but they are protected by the Constitution and, ultimately, they are rights that each of us was given by our Creator, and we are obliged to protect the natural rights to life, liberty, and property that every man and woman in America enjoys?

Mr. PAUL. Well, Mr. President, this is what makes this debate so important. This debate is about the fundamental rights that we—most of us, or many of us—believe derive from our Creator and that it is important we not give up on these; that we not allow a majority vote or one branch of government to say we have now decided you don't get all these rights anymore.

Our Founders really wanted to make it difficult to change things, to take away our rights. So this is an important battle and one in which I think we should engage because the President needs to be more forthcoming. The President needs to let us know what his plans are, if he is going to overrule the fifth amendment and if the Attorney General is going to decide when the fifth amendment applies. That is a pretty important distinction and change from the history of our country.

Mr. President, at this time I would like to ask for any comments, without yielding the floor, from the Senator from Utah.

Mr. LEE. In response to Senator PAUL's question, I would like to add to the Senator's remarks and those of the junior Senator from Texas the fact that in the concluding paragraph of the Department of Justice white paper on this issue, the Department concludes as follows:

> In sum, an operation in the circumstances and under the constraints described above would not result in a violation of any due process rights.

It is a rather interesting conclusion, in light of the fact that two out of the three analytical points outlined above in the memorandum, in the white paper are themselves so broad as to be arguably meaningless or, at a minimum, capable of being interpreted in such a way as to subject American citizens to the arbitrary deprivation of their own right to live.

First, as I mentioned earlier, by proposing an imminent standard that leaves out anything imminent—in other words, it is not just peanut butter without the jelly; it is peanut butter without the peanut butter. There is no ''there'' there—they define out of existence the very imminent standard they purport to create and follow. That is not due process. It is the opposite of due process.

Secondly, they outline a set of circumstances in which this attack may occur, where capture is infeasible, and then they define an understanding of feasibility that is so broad as to render it virtually meaningless.

So at the conclusion of the memo—and the memo says:

> In sum, an operation in the circumstances and under the constraints described above would not result in a violation of any due process rights.

It is describing constraints that are not really constraints, and that is a problem. That amounts to a deprivation of due process.

In light of these circumstances, I think it really is imperative the American people, or those who serve in this body—at a minimum, those who serve on the Senate Judiciary Committee—be given an opportunity to review the wholesale legal analyses identified by the Attorney General today that have been prepared by the Office of Legal Counsel of the Department of Justice. This is the chief advisory body within the U.S. Department of Justice. It is the job of the fine lawyers in the Office of Legal Counsel to render this advice, and we ought to have the benefit of that. At a minimum, we ought to have the benefit of that within the Senate Judiciary Committee.

So when I asked the Attorney General this morning whether he would make those available, I was surprised and a little frustrated when he declined to offer them immediately. He said he would check in with those he needed to consult with. I reminded him he is the Attorney General, and he does, in fact, supervise those who work in the Department of Justice.

I hope that is satisfactory and in response to the Senator's question.

Mr. PAUL. Yes, I agree with the comments of the Senator from Utah.

The whole problem is that if the President says my plan has due process, that would be sort of like me saying I have passed my law, and I think it is constitutional. Well, the same branch of government doesn't get to judge whether it is constitutional. That is the whole idea of the checks and balances.

We pass a law in the Senate and the Supreme Court can rule on whether it is constitutional. So the President gets to decide that he is going to abrogate the fifth amendment or abbreviate the fifth amendment or do certain things, and then he says: Oh, I am really not because the way I interpret it, I am applying the fifth amendment to my process.

Well, he can't do that. He can't be judge, jury, executioner, and Supreme Court all rolled into one. That is an arrogation of power we cannot allow.

Mr. President, at this time I would like to entertain comments or a question from the Senator from Kansas without yielding the floor, if I may.

Mr. MORAN. Mr. President, I thank the Senator from Kentucky, and I would like to ask a series of questions.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. First, let me outline a thought I had in listening to this conversation and ask the Senator a question about it.

We have seen the actions of our President to be determined unconstitutional in a recent case in the court of appeals in the District of Columbia—a case in which the President made the determination he could determine the definition of a recess in the Senate—and so we now have a court that has declared the President's conclusion in that regard to be unconstitutional.

I don't know that we want to get into the magnitude or evaluating what constitutional violations are most damaging to the American people or to our rights and liberties, but I would ask the Senator to compare the consequences of the President being wrong once again in regard to the constitutionality of utilizing a drone strike to end the life of an American citizen. Again, I am suggesting that we have seen precedent where the President acts unconstitutionally. Fortunately, the legal process is there to make certain a determination is made as to the constitutionality of that act.

In this case, what would be the consequences of a drone strike as compared to whether an appointment to an administrative body under the recess clause is constitutional?

Mr. PAUL. Mr. President, I think the analogy is apt. The difference is a recess appointment you get to make your appeal to a court while still living, which makes a big difference. In the case of the recess appointments, the President decided he could determine when the legislative branch was in session or out of session. So you have the same sort of conflict again.

The President has a sphere and we have a sphere, but now he is saying he controls our sphere also; that he can tell us when we are in session or out of session, and he can basically do what he wishes. The Supreme Court rebuked him pretty sternly.

So I agree with the Senator from Kansas. There is a great deal of similarity between the two because it is, once again, the executive branch or the President acting as if the checks and balances between the Legislative and the executive branches don't exist; that he basically made the decision for us that he has decided we are in recess.

But the Senator is correct, the Supreme Court gave him a pretty stern rebuke and said that would be unconstitutional.

Mr. MORAN. Mr. President, to the Senator from Kentucky, what is the logical extension of a decision that it is constitutional to utilize a drone by our military to strike at the life of an American citizen in the United States?

And I would say, if the Senator would agree with me, most Americans would find it repulsive, unconstitutional, and a terrible violation of public duty if a military officer on the streets of Wichita, KS, pulled a gun and shot an American citizen.

Really, is that not the logical extension of the idea that a drone strike from above results in the death of a U.S. citizen without due process? Is that any different than the ability to kill somebody in any other manner that I think most Americans would recognize today as prohibited without due process of law by our Constitution?

Mr. PAUL. Mr. President, the analogy that the Senator from Kansas brings up I think is appropriate.

We have had rules on the books since the Civil War saying the military doesn't act in our country. So it is not just a drone; it is any sort of law enforcement in the United States. We recognize that.

We respect our soldiers. We are proud of our soldiers. But we have limited their sphere to the sphere of war. Within the United States, for our security we have the police and we have the FBI. It is because the rules of engagement are different. It is different being a soldier. It is a tough job being a soldier. But it is just not the same on the streets of Wichita or the streets of Bowling Green, KY. So we have different rules and we have made it different.

But the Senator is right. I think people would understand that it would be wrong for a military officer to shoot someone on the streets in America. It is prohibited for a good reason; not because our soldiers are bad people, but it is because there are different rules for soldiers. That is what is most troubling about many of these people who say, oh, Wichita is the battlefield. And if it is the battlefield, they don't understand why the military can't act in Wichita or Houston or Bowling Green, KY. So it does delve into the problem that we have to debate: Is there a limitation to where the battlefield is?

If the Senator has another question, I would yield for a question without yielding the floor.

Mr. MORAN. Mr. President, I have an additional question, and I believe it is my final question.

I would ask the Senator from Kentucky, through the President—we are here at this point in time in the juncture of the Senate with the issue of whether to confirm a particular individual to a particular office, an administrative appointment. I would ask the Senator if he doesn't believe the issue of the due process rights of American citizens is of such a magnitude that the real issue that ought to be before the Senate is not the confirmation of an individual, but we ought to resolve the issue of whether the Senate believes it is constitutional for the due process rights of an American citizen to be taken by a drone strike in the United States, and the opportunity now presents itself that it would be a reason not to grant cloture.

Let me ask it as a question. Would it not be a reason to grant cloture on this nomination until we resolve this issue?

Mr. PAUL. Mr. President, I think it is very reasonable. It is more important than just the nomination of one individual.

When we are talking about whether the Bill of Rights is going to be changed, when we are talking about whether you will have the due process to be tried in a court, or whether you could be killed—summarily executed without a trial—that is an important change in the history of our country.

The Senator's response also made me think of something else. Another way to resolve this, where we could conclude this debate and get on to the nomination, would be for the majority party to come forward with a resolution that says: You know what. We are not going to kill noncombatants in America with drone strikes; we are not going to use the military; we are going to reaffirm the law.

So there is a resolution that both parties could come forward—and it would be a wonderful resolution to this process to say: The Senate goes on record in a bipartisan fashion as saying we are not going to overturn the fifth amendment. If you are an American and you live in America, you will not be killed without being accused of a crime, tried by a jury, and convicted by a jury. I think that would be a reasonable resolution to this, and I would entertain it if the other side were interested.

Mr. MORAN. I thank the Senator from Kentucky for responding to my questions.

Mr. CRUZ. Mr. President, would the Senator from Kentucky yield for a question?

Mr. PAUL. Mr. President, without relinquishing the floor, I yield to the Senator from Texas for a question.

Mr. CRUZ. Mr. President, I ask the Senator his reaction as to the possible justification for the administration's repeated reluctance to answer what should be a very straightforward question.

I find myself genuinely puzzled that both Mr. Brennan and Attorney General Holder, when asked whether the U.S. Government may kill a U.S. citizen on U.S. soil with a drone strike, absent an imminent threat of harm to life or grievous bodily injury—I find it quite puzzling that both of them did not simply respond: Of course not. Of course we can't. We never have in the history of this country, and we never will. The Constitution forbids it.

In my understanding of the Constitution, that was not a difficult question the Senator asked, and I find it quite remarkable that they treated it as a difficult question.

To be clear, there is no dispute—at least no serious dispute—that if an individual poses an imminent threat of harm—if an individual is robbing a bank, there is no dispute that law enforcement, a SWAT team, can use deadly force to prevent the imminent threat to life or limb.

What this issue is about is an individual who is not posing an imminent threat—a U.S. citizen on U.S. soil—and

the administration's continued reluctance to say: The Constitution forbids killing that U.S. citizen without due process of law.

So what I want to ask the Senator about is efficacy.

Let's take a hypothetical individual whom the U.S. Government believes to be a terrorist, who is sitting at a cafe enjoying a cup of coffee, not posing an imminent threat to anybody. The question I would like to ask about efficacy—and if I might, I would like to ask a couple of questions.

No. 1, if it turns out the intelligence is incorrect, that this individual the U.S. Government suspects of being a terrorist is not in fact a terrorist, that they have the wrong guy; and if a drone strike is used and that individual is killed, is there an effective remedy to correct that tragic mistake?

Mr. PAUL. Mr. President, I think the question is well put.

The first aspect of the question is, What is the President thinking? Why would the President not respond to us? Why would the President not answer a pretty easy question and say that noncombatants in the United States will not be killed with drones?

I think the reason is complicated—and it is conjecture because I can't get in his mind. But I would say it is sort of a contagion or an infection that affects Republicans and Democrats when they get into the White House. They see the power the Presidency has. It is enormous. They see themselves as good people, and they say: I can't give up any power because I am going to do good with that power.

The problem they don't see is that the power itself is intoxicating, and the power someday may be in the hands of someone else who is less inclined to use it in a good way. I think that is why the power grows and grows, because everybody believes themselves to be doing the right thing.

With regard to exactly what would happen in the situation when there is not an imminent threat, it boggles the mind when we can't answer that question. And I don't have a good understanding as to why exactly we can't get a response.

I would yield for a response from the Senator from Texas.

Mr. CRUZ. Mr. President, if I could ask the second question, in the instance where the intelligence was wrong and a U.S. citizen was killed by his or her government without due process of law, there obviously would be no remedy. But I would ask about the alternate scenario.

If it were the case that this individual was in fact a terrorist, was involved in a plot to threaten the lives and threaten the safety of other Americans; if this U.S. citizen sitting in a cafe is killed with a drone strike—focusing on efficacy—once he is killed, am I correct that you can't interrogate him further; you can't find out who else was in the terrorist plot with him; you can't find out what methods he had put in place; you can't find out if there is an imminent threat planned that he may know about? But if a drone from the sky simply kills him, that knowledge perishes with him at that cafe and so undermines the legitimate efforts of our government to protect the safety and security of all Americans.

Mr. PAUL. Mr. President, I think it is an excellent question and really gets to the root of the whole problem we are talking about because we are talking about people who may not all be good people. They may be bad people and they may be plotting to do something bad to America, and they may be in a cafe. So there may be all kinds of reasons to arrest and punish them, but there may be all kinds of reasons to try to get more information from them. Particularly if they are not involved in combat, it is hard to imagine why you would want to kill them. If they are not involved in combat, why not capture them and try to get some useful information out of them?

So it is a little bit difficult to understand why the President wouldn't say what is obvious: Why would we want to kill noncombatants in America?

The reason we keep asking the question is, of the drone strikes overseas—which we are not privy to all of the details because some of it is classified. But the details that have been in the press are that a lot of these people being killed overseas are not in combat.

So the real question is, If you are going to take this drone strike overseas and it has no geographic limitations, and you are bringing it home to America, does the President not think it is incumbent upon him to say: Well, yes, we are bringing it home, but we are not going to kill noncombatants?

What an important question. I think the Senator has phrased it appropriately and I would anticipate or respect any other response he would like to give.

Mr. CRUZ. One final question for the Senator from Kentucky.

I am aware the Senator from Kentucky is originally from the great State of Texas. As the Senator is no doubt aware, today is the 177th anniversary of the fall of the Alamo.

One hundred eighty-two men were stationed at the Alamo, and after 13 days of a bitter siege, fighting an army of thousands, those patriots gave their lives for freedom. They put everything on the line to stand against tyranny and to stand for the fundamental right of every man and woman to breathe freely, to control our own lives, our own autonomy, to make decisions about what our future would be.

If I may presume to speak on behalf of 26 million Texans, I would say I have no doubt that Texans are proud to see the distinguished Senator from Kentucky, as a native-born Texan, fighting so valiantly for liberty and serving as such a clarion voice for liberty at a time when sometimes liberty has few champions.

Indeed, I would suggest if those brave patriots of the Alamo were here, William Barrett Travis and Davy Crockett and Jim Bowie and each of the others who gave their lives for freedom, they would be standing side by side with the Senator and would be proud to call him brother.

Mr. PAUL. Mr. President, I would like to say that I appreciate the remarks of the Senator from Texas. If the filibuster goes on long enough, we would like to hear a recitation of William Barrett Travis's last words at the Alamo. We had to memorize that as a kid, and I am afraid my memory has gone a little dusty. But the Senator is younger and may remember that for us.

The issue at hand is an issue that goes beyond party politics. It goes beyond nominations. It goes beyond the President is a Democrat and I am a Republican. I voted for three of the President's nominations, much to the chagrin and much to the criticism of some on my side. But I have done so because I think the President does have some prerogatives—that is just my personal viewpoint—on choosing appointees. This is a political appointee, but I do not consider this debate to be about the appointee. I think this debate is more about a constitutional issue, and I think it rises to a level above the individual and it is something to which we need to draw attention and about which we need to have a good healthy discussion in our country.

I don't think it has to be a bitter partisan battle. I have met the President personally. I have flown on Air Force One with him. I respect him, I respect the office. I think he and I could have a reasonable conversation on this issue. In fact, I think if he were here today, he might actually agree with much of what I am saying. What I am disappointed in—and I do not know if it is the muddle of a large government and not getting a message forward, but what I am disappointed in is that it is so hard to get him to agree with what I think he should already and probably already agrees with. But when we are talking about doing something so different, when we are talking about changing the way we adjudicate guilt, changing the way we decide someone's life or death, it is too important to just say: Oh, Mr. President, go ahead and do it. As long as you tell me you have no intent of breaking the law or no intent to kill Americans, that is enough.

It just simply is not enough. It is not enough to say: I have not done it yet. I do not intend to kill anybody, but I might.

He came up with some circumstances where he might use the drone strikes in America. Then, in the cross-examination of Senator CRUZ in the committee, we have gotten him to admit—under duress, I think, but to admit that they are not talking about people in a cafe.

Some might say he has never mentioned people in a cafe. The reason it

comes up, of people not involved in combat, is that a lot of the people who have been the victims or have been killed by these drone strikes were not involved in combat when they were killed. They were riding in cars, walking down the street, traveling in caravans. I am not saying they are good people. I am just saying, regarding the standard for whom we kill overseas, we have to ask the question, and I don't think we are doing our job if we do not ask the President: Are you going to use the same criteria for how you kill people overseas? Is that the same criteria over here?

And it should not be: I will tell you later. It shouldn't be, I don't intend to do it and I probably won't, but I might.

That is just not enough.

We are talking about basic protections that we fought our Revolution over and really, in a way, when I see the wars that we have gone to—and not every war has been perfectly justified or that we should have, but when our soldiers fight, I see them fighting for the Bill of Rights, and I think they say that too. No matter where they are around the world, I see them fighting for the Bill of Rights and our Constitution. But if we are giving that up, if we are not going to adhere to the fifth amendment, it takes the wind out of the sails.

Can you imagine being a soldier in Afghanistan or Iraq or in far-flung places around the world and you are told you were fighting for the Bill of Rights minus the fifth amendment? Or when we say we are going to indefinitely detain people, we are going to fight for the Bill of Rights minus the sixth amendment? It is pretty important. These things are what we are fighting for, so we really should at least have a robust debate over the magnitude of these changes, over how these will be set up, over exactly what will happen, how this process is going to work. I am just saying that ''I am not intending to do so'' is not enough.

Mr. President, I, without yielding the floor, would like to allow a question from the Senator from Texas.

Mr. CRUZ. If the Senator from Kentucky would allow this question, I would like to respond to his very gracious invitation and ask if the following letter gives the Senator from Kentucky encouragement and sustenance as he stands and fights for liberty? This letter was written February 24, 1836, and it begins as follows:

To the People of Texas and All Americans in the World:

Fellow citizens and compatriots;

I am besieged, by a thousand or more of the Mexicans under Santa Anna. I have sustained a continual Bombardment and cannonade for 24 hours and have not lost a man. The enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword, if the fort is taken. I have answered the demand with a cannon shot, and our flag still waves proudly from the walls. I shall never surrender or retreat. Then, I call on you in the name of Liberty, of patriotism & everything dear to the American character, to come to our aid, with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due to his own honor & that of his country. Victory or Death.

William Barret Travis

My question is, Does that glorious letter give you encouragement and sustenance on this 177th anniversary of the Alamo?

Mr. PAUL. Mr. President, I think what Travis's letter at the Alamo talks about is that there are things bigger than the individual. At the time he wrote that, I don't think they had much hope of surviving, and he died at the Alamo, as well as other volunteers, some from my State of Kentucky. But there was an issue bigger to them at the time, that they saw as bigger than the issue of the individual. I think that is what this debate is about.

This is not really about the person of John Brennan. This really is not about the person of Barack Obama. This is about the body of the Constitution, it is about our respect for it, and it is about whether we will hold these principles so dear and we will hold these principles so high that we are willing to try to enjoin a debate, to try to get both sides to talk about this and to try to admit it, because we don't want innocent people to be killed in America. We want to have the process that has protected our freedoms for a couple of hundred years now to remain in place, and we are unwilling to diminish that simply because of fear.

FDR said, ''There is nothing to fear but fear itself.'' I think we should also say that we should not let fear be so great that we allow the loss of our freedoms. I think that is where we are, that sometimes terrorists are everywhere and they are trying to attack us, but we need to remember that it is our freedom that is precious, and we need to try to do everything we can to uphold that.

At this time, I would entertain a question, without yielding the floor, from the Senator from Oregon.

Mr. WYDEN. Mr. President, the issue of American security and American freedom really does not get enough discussion here in the Senate. It is my view that the Senator from Kentucky has made a number of important points this day, and I would like to take a few minutes to lay out my views on this issue and then pose a question to my colleague from Kentucky. We have talked often about these issues. I always learn a great deal.

Of course the Senate will be voting on the nomination of John Brennan, the Deputy National Security Adviser, to be the Director of the Central Intelligence Agency. I voted in favor of Mr. Brennan during Tuesday's Intelligence Committee meeting, and I intend to vote for Mr. Brennan on the floor. Virtually every member of the Intelligence Committee now, in my view, believes Mr. Brennan has substantial national security expertise and experience, and it is certainly my hope that he will be the principled and effective leader the CIA needs and deserves.

I think Senator PAUL and I agree that this nomination also provides a very important opportunity for the U.S. Senate to consider the government's rules and policies on the targeted killings of Americans, and that, of course, has been a central pillar of our Nation's counterterror strategy.

For several years now, I and colleagues—Senator PAUL as well—have been seeking to get more information about the executive branch's rules for conducting targeted killings of Americans. I am pleased that after considerable efforts—efforts really that should not have to have been taken to get documents that the Intelligence Committee has been entitled to for some time—the committee has now received those secret legal opinions.

To be clear—and this is a point Senator PAUL made in the course of this discussion—targeted killings of enemy fighters, including targeted killings that involve the use of drones, can be a legitimate wartime tactic. If an American citizen chooses to take up arms against the United States, there will absolutely be circumstances in which the President has the authority to use lethal force against that American.

But I think it has been our view—a view that I hold and that I know Senator PAUL holds—that the executive branch should not be allowed to conduct such a serious and far-reaching program by themselves without any scrutiny because that is not how American democracy works. That is not what our system is about. Our unique form of government is based on a system of checks and balances that will be here long after the current President and individual Senators are gone.

From time to time, the Senator from Kentucky and I say we ought to have something that we call a checks and balances caucus here in the Senate. Those checks and balances depend upon robust congressional oversight, and frankly they depend on bringing the public into this discussion as well, that there be public oversight.

We share the view that details about individual operations do need to be kept secret, but the Congress and the public need to know what the rules for targeted killings are so they can make sure, as the Senator has touched on in the course of this day, that American security and American values are both being protected. It is almost as if we have a constitutional teeter-totter: we want both our security and our liberty. This is especially true when it comes to the rules for conducting targeted killings of Americans.

What it comes down to is every American has the right to know when their government believes it is allowed to kill them. Now the executive branch has gradually provided Congress with much of its analyses on this crucial topic, but I think more still needs to be

done to ensure that we understand fully the implications of what these heretofore secret opinions contain and we have a chance to discuss them as well.

In his capacity as Deputy National Security Adviser, John Brennan has served as the President's top counterterrorism adviser and one of the administration's chief spokesmen regarding targeted killing and the use of drones. He would continue to play a decisive role in U.S. counterterror effort if he is confirmed as Director of the CIA, and the Intelligence Committee is charged with conducting vigilant oversight of these particular efforts.

A number of colleagues on the Senate Intelligence Committee of both political parties I think share a number of the views that Senator PAUL and a number on this side of the aisle have been expressing today and in the past few days. I would especially like to express my appreciation to the former chairman of the Intelligence Committee, Senator ROCKEFELLER. There is no one more committed to the principles the CIA stands for. There is no individual more committed to the principles the CIA stands for than Senator ROCKEFELLER, and he believes more needs to be done to ensure that Congress has the power to do responsible oversight. Senator UDALL, Senator COLLINS, and Senator HEINRICH are all ones who share that view as well. In doing that, we recognize that we have a responsibility and that ultimately it is up to American voters to decide whether Congress is fulfilling its obligation to conduct vigorous oversight of the executive branch's actions and activities.

Let me then turn to the question that has received most of the attention today and is really about what I would like to explore for a moment or two with my colleague from Kentucky. The President has also said—I was encouraged by a number of his comments, including the State of the Union Address—that with respect to counterterrorism efforts, no one should take his word for it that the administration is doing things the right way. As part of that, he said he was going to engage the American people in a discussion of these kinds of issues. When it comes to continuing the public debate about the rules for conducting targeted killings, there are a number of questions which need to be explored. One question I will address to Senator PAUL involves the question he and I have been interested in for some time, and that is the question of the geographic limitation with respect to the use of lethal authority.

Senator PAUL and I—as well as others—have been asking for some time: What are the limits with respect to these lethal authorities, and in particular whether they can be used inside the United States?

I have listened to a bit of the comments made by Senator PAUL concerning the confirmation hearing tomorrow. The point the Senator has made this afternoon is an issue I and others have asked of the Attorney General for some time, and we have not been able to get an answer.

In recent weeks Senator PAUL has sent a number of letters on this topic. He has received two responses and he has shared them with me. For purposes of this question, I think the response from John Brennan—and he stated his view on this quite clearly—was quite constructive. He said the CIA does not conduct lethal operations inside the United States, and most importantly—as per the conversations the Senator from Kentucky and I have had—Mr. Brennan said the CIA does not have the authority to conduct those operations.

He was unequivocal with respect to what would happen if he was confirmed as the head of the CIA, that he would not have the authority to conduct those operations. So for purposes of anybody who is kind of keeping score, I just say that Mr. Brennan—on the questions the Senator from Kentucky and I have been interested in—was clear and forthright. I have been interested in this for some time. I am glad the Senator from Kentucky has asked the question. We have now gotten an answer that is unequivocal from Mr. Brennan.

That brings us to the second response from Attorney General Holder. This letter repeated the statement that the U.S. Government has not carried out any drone strikes inside the United States and that the Obama administration has no intention of doing so. It goes on to say that the Obama administration ''rejects the use of military force where well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat.'' I would certainly agree with this position. It is clear to me that prosecutions in Federal court provide tough effective means for dealing with terrorist suspects, which is why there are a great many terrorists who are now sitting in American prisons today locked behind bars and exactly where they belong.

The Attorney General went on to state:

> It is possible . . . to imagine an extraordinary circumstance—Such as Pearl Harbor or the 9/11 attacks—in which it would be necessary and appropriate under the Constitution and . . . laws of the United States for the President to authorize the military to use lethal force within the territory of the United States.

This is what I wish to unpack a little bit with my colleague from Kentucky after asking this question a number of times and thinking a lot about what the answer ought to be. On this particular issue it seems to me the Attorney General has certainly moved in the direction of what we wanted to hear. I want to kind of outline it, and I think we agree on most of it, but I want to have a chance to exchange some thoughts.

One of the core principles of American democracy is that we do not ask our military to patrol our streets. It was important to me to hear the Attorney General emphasize that principle. I know there are some who believe the military ought to be given more domestic counterterror responsibilities such as capturing and detaining terrorist suspects inside the country. I do not share that view, and I know the Senator from Kentucky does not share that view. I am grateful the Obama administration has now said they don't share that view either. In fact, as I have talked about with a number of colleagues, I actually voted against the annual Defense authorization bill for the past 2 years because I was concerned that those two bills didn't adequately address that particular principle.

The Attorney General suggested what I think we would all consider an unlikely scenario, the Pearl Harbor and 9/11 attacks, in which it would be lawful and appropriate for the President to use military force inside the United States. As I read that statement—and this is the point of my question to my friend from Kentucky—it sounds a lot like the language that is in article 4 of the Constitution which directs the U.S. Government to protect individual States from invasion. In my judgment, if the United States is being attacked by a foreign power, such as the 1941 attack on Pearl Harbor, the President can indeed have the military power to use the military to defend our country.

The reason I have been asking this question and have been interested in exploring it with my colleague from Kentucky is that I think it is extremely important to establish that unless we have an extraordinary situation, such as Pearl Harbor, the President should not go around ordering the military to use lethal force inside the United States. Our military—we are very proud of them—plays a vital role in efforts to combat terrorism overseas, but here at home we rely on the FBI and other law enforcement agencies to track down the terrorists, and they do their job well.

I thought it was helpful to see the Attorney General, as part of what has been discussed here, clarify and establish that the President can only use military force inside the United States in extraordinary circumstances such as the Pearl Harbor attack. The Senator from Kentucky and I have had discussions over this, and I thought about it overnight and thought about our discussions. My sense is that the Senator from Kentucky doesn't believe the Attorney General's response was clear enough. I very much respect his view on this point.

One of the reasons why I wanted to walk briefly through a little bit of history is that I think there are some issues still to be debated. My colleague has certainly been correct in asking valid questions because the Attorney General has left open the possibility of using military force inside the United

States outside of the extraordinary Pearl Harbor circumstance I have mentioned.

So, through the Chair, I ask the Senator: I think the Senator is raising some important questions. In fact, my friend has asked some of the most important questions that we could be asking here on the floor of the Senate. It seems to me the Attorney General has ruled out using military force inside the United States except in cases of an actual attack by a foreign power. I understand why my colleague from Kentucky would say we ought to be engaging more with the administration and asking for additional insight. I want it understood that I have great respect for his effort to ask these kinds of questions and force them to be debated on the floor. Senator PAUL has certainly been digging into these issues in great detail. Frankly, on the question of how we balance American security and American liberty, we have worked together often, and we are certainly going to be working together in the future on these issues in the days ahead.

I wish to allow the Senator from Kentucky to respond to my question. I ask that my friend recognize that while we might differ a bit on the aspect of the Attorney General's response which I have cited this afternoon where there would be an instance of an extraordinary threat to our country, I do see—almost as part of what article 4 is about—the President's ability to defend us in those kinds of situations. I know my colleague from Kentucky may see it differently, and, frankly, he is raising important issues. I am interested in his thoughts on that this afternoon.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Kentucky.

Mr. PAUL. Mr. President, I thank the Senator from Oregon for coming to the floor and being a champion for the Bill of Rights. We get a lot of grief in Washington about a lack of civility—people yelling and screaming at each other. In my dealings with Senator WYDEN—who is on the other side of the aisle—I think it is evident that people can be from different perspectives, find common ground, and try to get to a point which is not a partisan point. I have tried to make it not so much about red as it is about principles. I voted for two or three of the President's nominations, and I think he deserves some latitude with his political nominees. I think the Senator from Oregon said it well when he said we have use of authorization of force in Afghanistan. Most people think that was going toward Afghanistan. It has been so broadly interpreted that it means worldwide war basically forever, and that is sort of why we get into some of these problems. Not only is it worldwide, which is a big debate in and of itself, worldwide means at home too. The battlefield is here.

I agree with the Senator from Oregon that Brennan was very forthright. It was a little bit onerous getting the response, but once we got the response, it was exactly what was appropriate. He said he would obey the law, and the law was very clear: The CIA does not operate in the United States. The problem is not with his response but that the Department of Defense is the one directing the drone programs and it doesn't answer the final question.

As far as Holder's response, if it would have been written as the Senator from Oregon states it, there probably wouldn't be much of a problem. I think maybe recounting the letter gives it a little more strength than the letter actually possesses in its own words. If he were to say we were ruling out all strikes other than extraordinary strikes, that would actually be a pretty good letter. Instead he says he can imagine this under certain circumstances, and he lists a couple of circumstances. The interesting thing is that a lot of us agree that in a situation such as Pearl Harbor and 9/11—probably the Senator from Oregon and probably me—we can repel a military attack. The reason we asked the next question, and the reason I am concerned about the next question—and I have only seen the unclassified version of these—but the unclassified versions of the drone attacks indicate that a significant amount of them are not killing people with a weapon. People like to talk about taking up arms. Well, a lot of people are not carrying around arms. It doesn't make them good people, but they are not carrying around arms. They are not actively shooting our soldiers or us. At the particular time they kill them, they look like noncombatants. If we have somebody sitting in a cafe in our country—even if it is a bad person—most of us would probably rather arrest that person. If they were arrested, one, they would get the due process of our country; and two, if they were bad people, we might actually get information from them. So I wish to see a little bit better wording.

The last thing I would say—and I would appreciate hearing the Senator's response—is the Attorney General was in the Judiciary Committee this morning. He was asked a bunch of questions on this. I looked through the transcript of a couple of them and it is still like pulling teeth. He was asked four times: Do you think it is constitutional to kill someone in a cafe in Seattle or Houston or Louisville? He kept saying it wasn't appropriate, but language is important when we are talking about this. Appropriate is not strong enough. It is sort of like the President is saying: I have no intention. We want him to say he won't, rather than not having intention.

He didn't quite put it together in his response, but in his response—combined with the questioning—we can get the opinion that maybe he thinks it is not constitutional to kill noncombatants having dinner. Wouldn't it be easier if they just said that? At this point, I would entertain a question without yielding the floor.

Mr. WYDEN. Mr. President, just responding to the point of the Senator from Kentucky and noting the fact he would not be giving up the floor in the process, I think the Senator from Kentucky is making an important point, and the way I read it, it would focus on ensuring that our country would be protected against those kinds of exceptional circumstances.

I would just like to leave the discussion here by noting that I think both of us feel this is just the beginning of this debate. The nature of warfare has changed so dramatically—and I particularly appreciate the chance to work on this in a bipartisan way—we are going to have to be continually digging in and trying to excavate more information about how all of this actually works without in any way jeopardizing sources and methods and ongoing operations. I think we can do it.

With respect to how I read particularly that part of the letter—and I thought a lot about it—I think the two of us and others can be part of what we can call the ''checks and balances caucus,'' so we can just make sure people understand this is about liberty and security, and I think we can flesh this out more in the days ahead. I know I have had four sessions now with the classified documents that were made available as a member of the Intelligence Committee and I still have a lot of questions. Some of those I think we will have to ask in a classified way, but I think others of them we can ask in a public way, and the two of us can work on that together.

I also think there is a very strong case for beginning to declassify some of the information with respect to these drone policies, and I think that can be done as well, consistent with protecting our national security.

So I think the Senator from Kentucky has made a number of important points this afternoon. I thank him for the chance to work with him on these issues and I look forward to continuing this discussion in the days ahead and I appreciate the time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. PAUL. Mr. President, a lot of the process by which we are getting this information wouldn't have happened without the Senator from Oregon as well as the senior Senator from Georgia both working together to get information. It is the way the system ought to be working. One of the good things about the body is both Republicans and Democrats working together to get information from—not necessarily adversarial but in a way adversarial—another branch of government. We are a branch of government, but it is not partisan against partisan, it is bipartisan working for the power of the checks and balances to try to ensure a leveling. I thank the Senator from Oregon for helping to get the information to make this a much fuller debate.

Without yielding the floor, I will entertain a question from the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. RUBIO. I thank my colleague for the opportunity. Let me begin by—I have been here a while. Let me give my colleague some free advice: Keep some water nearby. It is handy. Trust me.

Anyway, I thank the Senator for entertaining my question. Let me just begin by saying my question is about the motivation for being here on the floor today. What brought me here is I have been reading some of the accounts of what is going on and people are talking about the involvement of the Senator from Kentucky in a filibuster and some are already characterizing it as another Republican filibuster of one of the President's nominees. Just to be clear because, as I understand, the only thing I have heard the Senator from Kentucky say leading up to now about the primary issue in coming to the floor today is that the Senator from Kentucky asked a very straightforward question on an issue of constitutional importance. Yet he has not received a straightforward answer. Not only has the Senator from Kentucky not received an answer, but we saw testimony earlier this morning that, quite frankly—I watched the video two or three times and I personally do not understand why it was so difficult to basically just say yes or no.

So I wish to start out by asking, just to be clear, the motivation to be on the floor today is not to deny the President a vote on one of his nominees but the motivation is that the Senator from Kentucky has asked this administration a very important and relevant question and has been unable to receive a straightforward answer to that question?

Mr. PAUL. Mr. President, my response to that is yes. In fact, I have actually voted for several of the President's nominations. My trying to draw attention to this issue is because I believe it is an incredibly fundamental issue; that is, how we would kill people—Americans—on American soil, whether the Constitution applies, whether the fifth amendment applies.

So my motivation in doing this is not partisan. It is something that has to do—and I have said, frankly—and I truly mean this—if it were a Republican President today I would still be in the same place because the American people deserve answers on this.

There are different rules in war than there are here. We need to acknowledge and separate ourselves and say we are not completely—we are not in the middle of a battle zone. We still do have Miranda rights and we still get an attorney in the United States. It is not the same as a battlefield, but if he is bringing battlefield strategy home, we need to know before he starts doing it and at least we need to know the rules. Does the Constitution apply?

I would entertain a further question from the Senator from Florida without yielding the floor.

Mr. RUBIO. Without yielding the floor, the followup question I have—because I think this is actually a very useful exercise for the folks who have been snowed in today and there is nothing better to watch than C–SPAN and for the people who are able to be here today to actually understand the structure of our government and how it was designed, because it is my personal opinion we have gotten away from some of that.

Let me describe for a second my position that leads up to the question I am going to ask. I am actually a member of the Intelligence Committee, which means we reviewed this nomination. I have questions that I care about that were somewhat different than the valid ones the Senator from Kentucky is raising. As a member of that committee, I asked those questions and I am going to seek answers to those questions.

We have a job to do. I think that is important for people to understand. Members of the Senate have an important constitutional role to give advice and consent on these nominations. We have an obligation not just to pass these folks through but to actually ask serious questions to determine if they are qualified for the position they are going to hold. We want our Senators to be doing that in both parties, no matter who the President may be.

So I undertook that effort as far as the Intelligence Committee. I asked my questions. I got answers to my questions. I believe the nominee is qualified and I believe the President has a right to his nominees, even if they are not the people we would nominate. I believe ultimately these nominees deserve a vote. That is why I voted yesterday to move this nomination on.

Just as the President has a right to his nominations and ultimately to have a vote on those nominations, so, too, do Members of the Senate have a right to their role and, in particular, to ask relevant questions on issues of important public policy and get answers from the administration. This is not—I think sometimes this is being lost. We have different branches of government, but they are coequal branches of government. The Presidency, the executive branch, is it important? Absolutely, it is important. It is the Commander in Chief. It is the top single office in the Nation. But the legislative branch is a coequal branch with a job just as important. In order to do that job, we have to have access to information, the ability to ask relevant questions, and to get straight answers. To be frank, sometimes I feel when we ask questions of this administration, they feel as though it is beneath them to answer questions from us, from time to time. I think that is very unfortunate.

My question is—when the Senator from Kentucky is here today raising these issues, it is my opinion—and I would like to hear what the Senator has to say—this is more than just an issue of the constitutionality of this particular program, it is a defense of this institution. It is a defense of the legislative branch. It is a defense of the Senate as an institution. Irrespective of how one feels about the nomination or the program or where the Senator falls on this constitutional issue, it is a defense of this institution, and it is a constitutional—not a constitutional right, a constitutional obligation to ask relevant questions of public policy and to get answers, to ask questions so the people back home will know the answers to these questions. If we are not going to ask these questions, who is going to ask them? The press? Maybe in a press conference, but that is not what they are paid to do; that is what we are paid to do. That is what we were elected to do.

So I would like to hear the Senator's views on that, because my belief and what I am picking up from everything Senator PAUL is saying, the Senator is actually on the floor today standing for the obligation this institution has to ask questions such as this and to be able to get straight answers to these questions.

Mr. PAUL. Mr. President, I think the Senator from Florida has it exactly right. This is about checks and balances, it is about the coequal branches of government, and it is about how we limit usurpation of power by checking and balancing each of the different powers.

So when Montesquieu wrote that there can be no liberty when you combine the executive and the legislative, they were separated for a reason. When the Constitution says Congress declares war not the President, it was separated for a reason. So when we look forward to these things—and the Senator from Kansas brought this up earlier—when the President says, I have the ability to determine when you are in session or not and I can do recess appointments when I think you are out of session, that is a great usurpation of power to one branch and we should fight it as an institution, Republican and Democrat, and not make these partisan issues.

So I agree with the Senator from Florida. I believe there is a need for those checks and balances. By the body not struggling to get as much information as they can—not even in this case as much about the individual as about the policy—then I think it is a mistake for the body not to. I agree with the Senator from Florida completely. It is something that should be defended. It is not something to be derided as partisan because I don't see it as partisan at all. I see it as a defense of the separation of powers and of the checks and balances.

At this time I yield, without yielding the floor, for another question.

Mr. RUBIO. This will probably be my last question. Before I get to it, let me say that all the other Senators—I know some of my colleagues have already come to the floor and some might be watching or some might be nearby. I would just say this, to think about this

for a moment. One may or may not agree with the position of the Senator from Kentucky on this issue. Maybe a Senator saw the Attorney General's answer and saw his testimony this morning and that Senator is satisfied with it. Maybe another Senator is not that concerned about this issue at all. I don't think that is the issue. I think what we need to remember is that all of us have something we care deeply about or multiple things we care deeply about, and the day will come when something you care about or some issue you are involved in or some question you have, you will try to raise that question, and it may be under a different administration. I think we have to remember the President will not be President forever. There will be a new President in 3½ years and after that and so forth and some folks may still be here. At some point in the future, all of us will have questions we want answered and we will have an administration or some other organization of government that refuses to give us straight answers. When that moment comes, you will want your colleagues to rally to your side, even if they don't agree with you, and defend your right as a representative of the people of your State to ask important questions, particularly questions of constitutional importance, and get straight answers to those questions.

It is my feeling—and the Senator may comment on this—if he had just gotten a straight answer to that letter, if he had just gotten a straight answer in the testimony today, this would not have been necessary. If they would have taken in the question, which I think is a pretty straightforward question, and answered it in a straightforward way, all of this could have been avoided and this nominee could have had a vote. But, instead, they decided to go in a different direction and it baffles me.

Here is a question I have. I think this is important also for the people watching back home. Often, they may say: Why do you have to do it this way? Why can't you just answer the question and not have to do this process of starting and stopping things from moving forward? My view is—and I want to share it with the Senator and get his impressions—twofold. No. 1, these are the tools that are at our disposal. That is why the system was created and designed this way. One of the things the Senate has at its disposal to preserve and protect its prerogative to ask important questions are the rules we have set up here. They don't protect just one Senator but every Senator here, even if I don't agree with others. One of the things that gives us the ability to ask and have questions answered is this role we have of confirming nominees.

Secondly, I would say this is not the Secretary of the Treasury, this is not some other unrelated Cabinet position, this is the Central Intelligence Agency, which is directly related to the program the Senator from Kentucky has relevant questions about. So I guess I wanted to hear from him a little bit more about why he chose this particular nomination and why and how it is relevant to the larger question he is asking.

Mr. PAUL. The answer to the question is that we have tried the normal channels and have been for a month. We sent the standard letters. We sent three different letters to John Brennan and we didn't get any response. But when the leverage became used or the leverage became apparent that both Republicans and Democrats on the Intelligence Committee were asking for more answers, then we finally began to get answers. The answers unfortunately didn't quite answer the question.

As the days wore on, we have actually gotten more answers. Since I have been standing here this morning, we have now gotten the report of the Attorney General's testimony before the Judiciary Committee. In that, under withering cross-examination, I guess is the best way to put it, he finally owns up and says: Well, maybe somebody in a cafe, it wouldn't be appropriate to kill them in America.

The Senator from Texas wanted to go one step further. We don't want you to say whether it is appropriate; we want you to say whether you think you have the power to do it, whether you think you have the constitutional authority to kill someone who is a noncombatant in a restaurant or in their house or in their church or wherever. Do you think you have the power to kill noncombatants? It is a pretty important question. I think we may have eked out some of the answer from Attorney General Holder.

It would be nice if we would actually get that in clean language, where the Attorney General would now say this is our policy. But, see, this comes from allowing the executive branch so much power. If you allow them the power to make the rules, to make the decisions without any kind of oversight or scrutiny, the danger is that there will be no process. So the thing is right now we have a program going on where we kill people around the world with drone strikes, and there are criteria and standards for how we do it.

The obvious question is: You are going to do that in America? Under what standards? We have had at least allegations, we have had some who have said the bulk of the drone strikes around the world have been signature killings, which means the people are not identified who are being killed, that it is a long line of traffic and we blow up the line of traffic.

Now, we can debate whether in war we may have a looser criteria for whom we are blowing up, but I would think that in America we would not blow up a caravan going from a wedding to a funeral, from a church to a house, from a political meeting back to their home. We would have different rules in America. If you are accused of a crime, if they think you are somehow a terrorist, then they would arrest you, particularly if you are in a noncombat opportunity. Why in the world would the President take the position that if you are eating in a cafeteria, you are eating at a restaurant, you are at home asleep, that you could not be arrested?

So it is a real easy question, and the President should, very frankly, answer the question: I will not kill noncombatants in America. I cannot imagine why the President cannot answer an easy question.

There have been people on both the right and the left who have been asking these questions. Glenn Greenwald writes a lot about this issue. This is a pretty interesting proposition that he puts forward. He says:

> If you posit that the entire world is a ''battlefield,'' then you're authorizing him to do anywhere in the world what he can do on a battlefield. . . .

That has been my point. If the United States is the battlefield, and we are going to have the laws of war—or another way it can be put is martial law—in America, if we are going to have that in America, you need to know about it because martial law—living under martial law—is the way they live in Egypt. That is why they just had a rebellion in Egypt and overthrew Mubarak. Because they had, by martial law, indefinite detention.

So those who say the battlefield is here, we need to live under the laws of war in our country—and they tell you to shut up if you want an attorney—by golly, be careful about that. Be quite careful if you are going to let us go to that sense.

So Greenwald says:

> If you posit that the entire world is a ''battlefield,'' then you're authorizing him to do anywhere in the world what he can do on a battlefield: kill, imprison, eavesdrop, detain—all without limits or oversight or accountability. That's why ''the-world-is-a-battlefield'' theory was so radical and alarming (not to mention controversial). . . .

He also quotes from Esquire, from Charles Pierce, who said:

> This is why the argument many liberals are making—that the drone program is acceptable both morally and as a matter of practical politics because of the faith you have in the guy who happens to be presiding over it at the moment. . . .

So you will remember, many of these people did not like George Bush, and they railed and railed about wiretaps, and now they are suspiciously quiet when we get to a killing program.

But he says: If you have so much confidence because you like the guy, the President in charge of this—he says—that ''is criminally naive, intellectually empty, and as false as blue money to the future.''

He goes on to say:

> The powers we have allowed to leach away from their constitutional points of origin into that office have created in the presidency a foul strain of outlawry that (worse) is now seen as the proper order of things.

If that is the case—

And the author says he believes it is—

then the very nature of the presidency of the United States at its core has become the vehicle for permanently unlawful behavior.

This is coming from a liberal.

Every four years, we elect a new criminal because that's become the precise job description.

So we have to ask some important questions. I am not asking any questions about the President's motives. I do not question his motives. I, frankly, do not think he will be killing people in restaurants tonight or in their house tonight. But this is about the rule of law. It is not so much about him. It is not so much about John Brennan. It is about having rules so that someday, if we do have the misfortune of electing someone you do not trust—electing someone who might kill innocent people or who might kill people whom they disagree with politically or they might kill people whom they disagree with religiously or might kill people of another ethnic group—we are protected. That is what these protections are about. But they are not so much about the individuals involved now.

But there is a program that is going on around the world that is killing individuals with drones, and it is done in a warlike fashion. The thing is, in war you do not get due process. So these people around the world do not get Miranda rights, and I am not arguing for that. If you have a gun leveled at an American in Afghanistan, you are going to be killed with no due process. I am not arguing for that. But I am arguing it is different if you are in Afghanistan pointing a weapon at us or here pointing a weapon at us. It is different if you are eating dinner or if you are in your home at night.

So I think there are clear and distinct differences, and there is no excuse for the President not giving us a clear-cut answer.

There is a writer by the name of Conor Friedersdorf who writes for The Atlantic. I will get into that in just a minute.

At this time, I would like to, without yielding the floor, stop for a question from the Senator from Georgia.

Mr. CHAMBLISS. I thank the Senator from Kentucky.

First of all, let me say, I appreciate the Senator's passion. I appreciate the fact that, as he knows—and he and I have had some discussions about this issue over the last several days and weeks—the Senator is bringing this to the forefront, as he has done.

We have talked about the Senator's question that he submitted to Mr. Brennan for answering. This is not a rocket science question. This is a question that is perfectly reasonable, perfectly rational, and a question that ought to be able to be addressed by the administration in a very quick, simple, direct response. I have been dumbfounded, as the Senator from Kentucky knows, about the fact that he did not get a straightforward, simple answer immediately.

But the fact of whether a drone attack—and I am one of those who thinks we need to detain and interrogate folks as opposed to just firing drones at everybody because we are losing a lot of valuable information from folks whom we take shots at versus folks whom we are able to detain and interrogate—but still, I know the Senator from Kentucky agrees with me that at the end of the day, we need to take out bad guys, guys who seek to do us harm. The Senator's position all along has been that with due process that ought to happen.

My question to the Senator is, with the administration not giving him a straightforward answer—and I understand the Attorney General, in response to some questions today in the Judiciary Committee, again was very evasive on the question, in spite of having given the Senator a letter just yesterday on this issue—that there still is not a straightforward, black-or-white, as it appears to me they could give you, answer to this question; am I correct about that?

Mr. PAUL. Mr. President, the Senator from Georgia is correct. I also, while he is on the floor, want to thank him for getting some of this information to come forward. Because it has been a very onerous task, and without his leadership on the Intelligence Committee, as well as Republicans and Democrats asking for more information, we would not have gotten anywhere. With that input, we have been able to get some answers.

The answers have not all been good. Brennan has answered, with the appropriate answer: The CIA does not work within the United States. That should be pretty obvious because everybody knows that and that is the law. The problem is, it does not answer the final question because the drone program is under the Department of Defense, and if we are going to bring that home to America, I think the Intelligence Committee, as well as the whole body, ought to be not just waiting for the President to tell us how he is going to use it in America. We have civil law in America and we ought to be part of that process. But I do not think we can allow it to go on without our input.

Mr. CHAMBLISS. Let me, Mr. President, if could, ask the Senator again a little different question to make sure I understand exactly what the Senator has asked for.

The Senator's position, as I understand it, has been all along that if we have bad guys flying airplanes into a tower or if we have folks who are firing missiles or tanks or weapons of any sort in the United States, seeking to carry out an act of war, an act of terrorism, taking those guys out is not a problem.

Mr. PAUL. Yes. Mr. President, the idea of combating lethal force I think is questioned by very few, if anybody. If planes are flying into the Twin Towers, we obviously send up F–16s. We have missiles. We do whatever we can to stop an attack on America.

What I am concerned about—the same way if it is a domestic terrorist. If there is someone outside the Capitol with a grenade launcher, we do not give them Miranda rights. We kill them. That is the way it works. If you are exerting lethal force against American soldiers anywhere in the world or in our country, you use lethal force to stop that. Sometimes you cannot stop to even ask permission from Congress. You do that. Imminent threats are repulsed.

But because of all the drone attacks—and I am not saying they are necessarily wrong the way they are done—it is just that they are done at people who are not in the middle of a battle. So if we transfer that to America, I do not think that is acceptable for America.

It is a different debate on whether it is always a good idea, whether we should do it, what the rules should be overseas. But the rules we have currently I do not think are appropriate for the United States.

Mr. CHAMBLISS. Again, Mr. President, if I could direct a question to the Senator: The fact is that from a pure oversight standpoint—Armed Services, Intel—these committees that have jurisdiction over the issue of fighting the war on terrorism need to have the right kind of information so we can ask the right questions. Getting the right kind of information out of this administration has been worse than having a root canal and more difficult than having a root canal.

I again am appreciative of the Senator being forceful in asking the question, and I think at the end of the day, again, he has had no issue relative to ultimately having a vote on Mr. Brennan.

I am not supportive of the nomination of Mr. Brennan, but I think he ought to have a vote, and I intend to express myself in much greater detail on it a little later. But from the standpoint of simply moving the issue forward, if the administration had come to the Senator with a direct answer days or weeks ago, when he asked the question, we probably would not be here now.

Again, I thank the Senator for his comments on this issue.

Mr. PAUL. Mr. President, I wish to thank the ranking member of the Intelligence Committee and also say this could come to a close anytime if the President will sort of say what Attorney General Holder was trying to say this morning, and put it into actual words, that he thinks he has the military authority to reject imminent attack. I think we all agree to that. But if he says he is not going to use drones on people who are not engaged in combat in America, I think we could be done with this debate—I think one phone call from the President to clarify what his position is or from the Attorney General to actually write out what his position is.

But I guess the reason I am kind of alarmed is, we have a quote from the Attorney General saying the executive

branch will decide when and if to use the fifth amendment.

I understand in times of war and on battlefields that is a different story. I am talking about in the United States. I do not think the executive branch gets an option of whether to adhere to the fifth amendment in the United States. But if they could be more clear on that, I think we could be done with this debate at any time.

I have never objected to a vote on Brennan, on the nominee for the CIA. But I have objected to the idea that basically we are just going to throw out the baby with the bathwater and the Bill of Rights becomes something of lesser importance.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, would my friend yield without losing for the floor for a unanimous consent request?

Mr. PAUL. Without yielding the floor, I would be happy to yield.

## UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 43; that the cloture motion at the desk be reported; that the mandatory quorum under rule XXII be waived; that there be 90 minutes for debate, with 30 minutes under the control of the chair and 1 hour under the control of the vice-chair of the Intelligence Committee, with 30 minutes of the vice-chair's time under the control of Senator PAUL; that following the use or yielding back of that time on the nomination, the Senate proceed to vote on the cloture motion; that if cloture is invoked, the Senate proceed to vote on the confirmation of the nomination, without intervening action or debate; further, that the motion to reconsider be considered made and laid on the table, with no intervening action or debate; that no further motions be in order to the nomination; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

Mr. President, before I hear from my friends on the consent, I have no problem if people want to talk for a long time, no problem. I have done it a time or two in my day. But I think that the rest of the body needs to know if we are going to finish tonight or tomorrow or the next day. So my consent request is pretty direct. We would have 90 more minutes of debate, an hour under the control of the Senator from Georgia, and 30 minutes under the control of Senator FEINSTEIN or their designees.

The PRESIDING OFFICER. Is there objection to the majority leader's consent request?

Mr. REID. Mr. President, I would simply say, if there is objection, we will come back tomorrow.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, reserving the right to object, let me, if I may, direct a question to the majority leader through the Chair. As I understand what the Senator is asking, for 90 more minutes—30 minutes to Senator FEINSTEIN and 30 minutes for me, and Senator PAUL would have 30 minutes—it would start right now, basically?

Mr. REID. Yes, basically.

Mr. CHAMBLISS. Continuing to reserve the right to object, I guess, then, I would direct a question to the Senator from Kentucky since he has the floor. What amount of time does the Senator think he wants to utilize?

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. PAUL. Mr. President, reserving the right to object, I would be happy with a vote now. I have talked a lot today. But the only thing I would like is a clarification. If the President or the Attorney General will clarify that they are not going to kill noncombatants in America—he essentially almost said that this morning.

He could take his remarks, that he virtually agreed ultimately with Senator CRUZ, and put it in a coherent statement that says the drone program will not kill Americans who are not involved in combat.

I think he probably agrees to that. I do not understand why we could not put that into words. But if he does, I want no more time. If not, I will continue to object. If the administration and the Attorney General will not provide an accurate answer, I object.

Mr. REID. Mr. President, I am not in a position to talk for the Attorney General. We will just finish this matter tomorrow.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, everyone should plan on coming tomorrow. We are through for the night.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. PAUL. Mr. President, at this time, without yielding the floor, I would like to entertain a question from the Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I want to thank the Senator from Kentucky for raising a very important issue. I would just like to have a little bit of clarification so that I understand exactly what has transpired and the exact question to which the Senator from Kentucky would like a response.

My perception, my understanding, is this seems like a very simple and basic request. So I am surprised that we did not have a simple and straightforward answer. So I wonder if the Senator from Kentucky would just summarize briefly for me, so that I understand clearly the exact request that he made to the administration.

Mr. PAUL. Mr. President, in late January we sent a letter to John Brennan, the nominee for the CIA, asking a bunch of questions. Included among those questions was, Can you kill an American in America with a drone strike? We got no response and no response and no response.

Thanks to the intervention of the ranking member on the Intelligence Committee, as well as members from the opposite aisle on the Intelligence Committee, we finally got an answer about 2 days ago. The answer from John Brennan was that he acknowledges the CIA cannot act in the United States. That is the law. That was nice. But the Attorney General responded and said they do not intend to. They have not yet, but they might.

Mr. TOOMEY. Am I correct in understanding that is currently the state of play? That is the most recent response the Senator has gotten in writing from the administration?

Mr. PAUL. Mr. President, that is the only direct response I have gotten. I have also read the testimony from the Judiciary Committee where the Senator from Texas cross-examined the Attorney General, who responded indirectly to my question by saying: It was inappropriate, we probably would not do that.

But he would not answer directly whether it was unconstitutional. It appears at the end that he may have said that it would be unconstitutional, say, to kill noncombatants.

It should be a pretty simple answer really. That is all I am asking. I can be done anytime if I could just get a response from the administration or the Attorney General saying they do not believe they have the authority to kill noncombatants in America.

Mr. TOOMEY. Further clarification: If the administration seems to be unwilling to state unequivocally that they recognize they do not have the legal authority to kill a noncombatant American on American soil, did they suggest under what circumstances they would?

Did they suggest a process by which they would identify an American citizen noncombatant on American soil who might be subject to being killed by a drone strike?

Mr. PAUL. Well, there has been a white paper that was released that goes through a series of things. They do have a step or a process they go through in determining whom to kill. The problem I have is that in foreign countries—I do not know the exact number because it is classified, but in foreign countries many of the people being killed are not actively engaged in combat.

I am not saying that is right or wrong or making an opinion on that matter. But I am saying that is not a standard I can live with in the United States. So let's say one-third of the drone strikes are going against people who are eating dinner with their family or walking down the road or sleeping in their house. If that is our standard and we are going to do drone strikes in America, I could not tolerate or live with myself if I would accept a standard in the United States that would allow that to happen.

Mr. TOOMEY. Mr. President, judging from the response, what I understand is

that there is a standard that applies overseas. But we have not gotten—correct me if I am mistaken—a definitive word as to whether that same standard would apply domestically to American citizens. If we have not gotten a definitive answer, then we, it seems to me—again, correct me if I am wrong—but then it would suggest to me that we have no idea what standard would be used. I cannot imagine that we would find it acceptable to be in a situation where an administration would suggest that using a drone to kill an American noncombatant on American soil, without even disclosing the process by which they would determine that was appropriate—this is kind of hard to understand. Am I understanding it incorrectly?

Mr. PAUL. Well, the interesting thing about this is for many years, no one would talk about the drone strike program at all. Then, recently, one of the former spokesmen for the President said he was instructed to never say it existed. But now that it is in the open, the President, a week ago, was asked at Google when he was there for an interview: Can you do this?

His answer: Well, the rules would probably have to be different inside than outside.

That implies he thinks he can do it in America. Then the question becomes, What are those rules? This is as much about the checks and balances of—you know, they say we have the ability to advise and consent. This is some friendly advice I am giving to the President today that he ought to think about or we should think about as a body whether we are a check and balance to the power of the Executive, whether it is Republican or Democratic.

I think it is immaterial. No President should have the power to make these decisions unilaterally.

Mr. TOOMEY. Mr. President, I will finish. I just want to make two points: One is I think we ought to have a robust debate about the circumstances under which we would use drone strikes overseas and understand the implications. Think about this. We have what is still, to the United States, a relatively new threat in the form of these nonstate actors, these terrorist organizations that are sometimes affiliated with each other, sometimes not, scattered around the globe. This is new.

In addition, we have new technology we never had before. It was not terribly long ago the idea of flying an unmanned drone and using it to kill a person who could be hundreds or thousands of miles away, that was completely implausible. Now, of course, we have the ability to do it. When new circumstances and new technology come to bear, we ought to have a discussion about when and whether and how it is appropriate to use that.

When we are talking about American noncombatants on American soil, I think the starting point ought to be, we are not going to do that. The onus ought to be on whoever has an explanation for when and whether and why and under what circumstances we would, and that ought to be debated very, very carefully and thoroughly. Until such time, I think it ought to be easy to acknowledge this is not going to take place.

If we cannot get a direct answer to that question, then I have to say I think the Senator from Kentucky is performing an important service in putting a spotlight on this. I commend him for doing it. I thank him for doing it. I am finished with my questions.

Mr. PAUL. I thank the Senator from Pennsylvania for asking his questions and being part of the debate. I think that ultimately we could get this straightened out in the sense that it is not so much about the debate about the person as it is about the issue.

If we could get the administration or the Attorney General to put their answer in a succinct form and simply say they believe they have the authority to repel an attack, which most of—I think all of us agree to that, but they do not have the authority to kill someone in a restaurant, to kill someone at home in their house, to kill someone when they are eating dinner; that, really, if you want to say that you can use drones in America to strike people, not only would it have to be remarkably different, it could not be anything like the way we use drones around the world, which brings up some other important questions.

The thing is this has brought us to a much bigger and important debate. When people tell you that America is a battlefield, when they tell you the battlefield is here, realize what they are telling you. They are telling you your Bill of Rights do not apply because in the battlefield, you really do not have due process. I am not arguing for that. I am not arguing for some kind of silly rules for soldiers to ask for Miranda rights and do all this. War is war. War is hell. But we cannot have perpetual war. We cannot have war that has no temporal limits. We cannot then have war that is a part of our daily life in our country; that we are going to say from now on in our country, you do not have the protections of the Bill of Rights.

So I think it is incredibly important. We have been kind of blase about this whole drone strike program. It should come home to where we can really think about it because that is what they are asking to do. They are asking to bring the drone strikes to the homeland.

So I think we need to be careful. We need to ask important questions. I think at the very least we need to be asking the question: Can you do this with no due process? Are we not going to have an accusation? Are we not going to have a public accusation or charge? Are we not going to have a trial by jury?

I started out today reading from ''Alice in Wonderland.'' I would like to go back to ''Alice in Wonderland,'' because it sort of points out the absurdity of where we are at this point. We think of Lewis Caroll as being fiction. Of course it is fiction. We think Alice never fell down a rabbit hole. Of course she did not. She is not real. The white queen and her caustic judgments are not really a threat to us. But there is a question: Has America the beautiful become Alice's Wonderland? We can hear the queen saying: No. No. But her response is, Sentence first, verdict afterwards.

Well, that is absurd. How could we sentence someone without determining first whether they are guilty or innocent? Only in Alice's Wonderland would you sentence someone before you try them. Would you sentence someone to death before you accuse them? Do we really live in Alice's Wonderland? Is there no one willing to stand up and say to the President: For goodness' sake, you can't sentence people before you try them. You can't sentence people before you determine whether they are guilty.

There has been discussion in our country about whether even the courts can sometimes make mistakes. Some States have gotten rid of the death penalty because they have made mistakes and through DNA testing they have found that sometimes they convicted the wrong person. Can you imagine, with all the checks and balances of our court system—which I think is the best in the entire world, with attorneys on both sides whether you can afford them or not. There is an argument back and forth, and there are all of these procedural protections, and you may appeal, and still sometimes we get it wrong.

If we can get it wrong in the best system in the world, do you think one politician might get it wrong? You will never know because nobody is told who is going to be killed. It is a secret list. How do you protest? How do you say: I am innocent. How do you say: Yes, I e-mail with my cousin who lives in the Middle East, and I didn't know he was involved in that. Do you not get a chance to explain yourself in a court of law before you get a Hellfire missile dropped on your head?

It amazes me that people are so willing and eager to throw out the Bill of Rights and just say: Oh, that is fine. Terrorists are a big threat to us, and I am so fearful that they will attack me that I am willing to give up my rights. I am willing to give up on the Bill of Rights.

I think we give up too easily.

The President has responded, and he said he hasn't killed anybody yet in America. He says he doesn't intend to kill anyone in America, but he might. I, frankly, just don't think that is good enough.

The President's oath of office says ''I will,'' not ''I might'' or ''I intend to,'' the President says ''I will protect, preserve, and defend the Constitution.'' He doesn't say ''I will do it when it is

practical'' or ''I will do it unless it is infeasible, unless it is unpleasant, people argue with me. I have to go through Congress, and I can't get anything done, then I won't obey the Constitution.'' It is out there. It is a rule. He doesn't get to choose.

Recently he made some choices where it appears as if he believes he does have some sort of superpower, some power that sort of exceeds the other branches of government. Recently he told the body of the Senate that he decides when we are in recess, he decides when we are working. The court rebuked him. The court told him it is unconstitutional, and they reversed his decision. Do you know the people he appointed through a recess—do you know what they are doing right now? They are still at their post. They are still working in defiance of the court. This will have to go to the Supreme Court. I guess it will take another year or so to go up there, but he has been told what he did was illegal.

I guess what disappoints me most about this, though, is that the President, when he ran for office, was actually someone for whom I had a great deal of respect on the issues of civil liberties. I work with many on the other side of the aisle because, frankly, many on the left and some on the right—we truly do believe in civil liberties and in protecting the individual. I think the President was one of those when he was in the Senate.

The President, when he ran for office, often talked about, it isn't American to torture people. I agree with him. He said it isn't American to give up on the right to privacy, to say you don't need a warrant to tap someone's phone. I agreed with him, and I respected that about him. I can't for the life of me understand how he goes from that kind of belief where he believes so much in the constitutional protections to your phone, but he is not willing to stand up for the constitutional protection to your life? It doesn't make any sense at all. And if he does, why won't he say it?

I have my own sort of theory on this, and this applies both to Republicans and Democrats. My theory is that it is sort of a contagion, it is sort of an infection that you get when occupying the Oval Office. They think, oh, I am a good person, so more power for me would be a good thing.

Lord Acton said that power corrupts, and absolute power corrupts absolutely. There is a danger when someone has so much power that they think more power, more power and more power—I will do good with that power. The problem is that even if that is a good person, someday someone occupying that office may not be a good person. Someday you may get someone in the Oval Office who says: What about those people? They look different from us. What about those people? They have different color skin. What about those people? They have a different color ideology than I have. What about those people?

The danger is also that we have already defined some of the people who we think might be terrorists. The Bureau of Justice came out with a list of characteristics, and they said: If you see this, report on it. If you see this, tell someone. They want you to inform on your neighbor, so you need to know which one of your neighbors is a terrorist. They gave you some descriptions of people to be worried about. They said people missing fingers, people with colored stains on their clothes, people who have weatherized ammunition, people who have multiple guns, people who like to use cash. If that is the criteria or the criterion for who is a terrorist, I would be a little bit worried if you are one of those people—you might have a drone attack in your bed tonight.

This has gone on in more than one place. The fusion centers they developed were supposed to be a liaison between the Federal Government and the local government. In these fusion centers, for example, in Missouri, they also came up with some characteristics of people who might be terrorists. They actually send it out as a memo to all the police officers. Can you imagine if you are one of these people—people who are pro-life, people who are for secure borders, people who support third-party candidates? The big irony of all is people who belong to the Constitution Party. If you believe in the Constitution too much, you might be a terrorist. They say it was a mistake, and they eventually apologized. Now they don't—they try not to have their memos become public, I think.

The point is, if this is what we are getting to and this is the criterion for who is a terrorist, you would think—you really would think you would be worried about giving your President the authority to kill Americans on American soil without any kind of due process. I find it quite alarming.

I think the answer he could have given is pretty simple. I think there is a possibility he may actually even agree with some of the things we are saying here today. Why won't he give it? I think Presidents, Republican and Democratic, don't give the answer because they are afraid of constricting their authority. They believe in some sort of inherent power, which is not listed anywhere, but they think they have it. They don't want to give up any of it. They jealously guard this power. They have this power, and they don't want to give it up. That is why they won't answer us with a straight answer.

You get things. The only word I can think of is gobbledygook. You get this craziness that comes from attorneys that doesn't make any sense.

He was asked: What is an imminent threat?

These people we are going to kill with drones have to be an imminent threat.

His attorneys say ''imminent'' doesn't have to mean ''immediately.'' That is the only way he can justify this because probably half of these drone attacks are people who really aren't engaged in any kind of combat. That is a different debate. You can argue right or wrong whether we should be killing these people not involved in combat because there is evidence they are conspiring to hurt us and to attack us. That is another argument, but it is a pretty low standard. You can argue that, well, that is war over there, and that is a lower standard, and I can accept it, but for goodness' sake, could there be any question that in America we are going to accept a standard so low, a standard that basically says that if we think you might someday be engaged in hostilities, we can kill you? We need to be careful because the criteria for the drone strike program overseas really is something that I think most Americans wouldn't accept for their fellow citizens.

Overseas, one of the most famous American citizens they killed was al-Awlaki. Before he was killed, he was primarily thought of as someone who they said was a sympathizer. I think there is no question he was a sympathizer. I think he denounced his citizenship. He was a bad guy. He sympathized with our enemies. I think he could have been tried for treason. I think if I were on a jury, from what I have read of nonclassified information, I would have voted his guilt and for his death. The thing is, some kind of process might be helpful.

His son, though, 16 years old, was killed 2 weeks later in a separate drone strike, and he was on nobody's list that I know of; they won't respond. I think the response by the President's spokesman is reprehensible. It really should be called out. It is really sort of this flippant response that I think shows absolutely no regard for individual rights or for Americans. He said: Well, the kid should have chosen a more responsible father. Think about that. Is that the standard you wish your government to operate on in America? We have a lot of criminals in our country. We have a lot of bad people. If you happen to be the son of a bad person, is that enough to kill you?

The other thing is that people killed overseas who are not the target—they don't call them civilians because they say anybody between the age of 16 and 50 who is a male is a potential combatant. Are we going to use that same standard here in our country? Are we going to use the standard in our country that if you just happen to be a male and you happen to be standing near somebody we have judged to be a problem, that we are going to go ahead, and, oh, I guess that is not even collateral damage; that person was probably a bad person because he was standing close to this person?

I think there are different standards for war than there are within our country. It is not always going to be perfect, and there is a legitimate debate over what the rules should be in a war,

where a war is overseas, and exactly what happens. I think good, honest people can disagree on some of that. What I worry about are the people who say America is a battlefield because when they say America is a battlefield, they say they want the laws of war to apply here. The reverse of that is basically, if you reverse the laws of war, they are talking about martial law, is what they are talking about, law that is acceptable under extreme circumstances.

I don't think what we have in our country right now is a circumstance where I would accept martial law, but we have already instituted some of the things you will see in other countries under martial law. In Egypt, they have indefinite detention. That is their emergency decree that occurred back in the 1970s, and it went on and on to the present. They have martial law, and they are very unhappy about having martial law, indefinite detention. You saw it last year. We have indefinite detention in America.

The President's response again was inadequate. What did the President say to having indefinite detention in our country? He said: Well, I don't intend to use it. I would rather have a President who has the chutzpa to not sign the legislation and send it back and say: Take it out or I won't sign it. I would have a lot of respect for someone like that.

Mr. President, without yielding the floor, I would be happy to entertain a question from the Senator from Texas.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The Senator from Texas.

Mr. CORNYN. Mr. President, I wanted to come to the floor to pose a few questions to my colleague from Kentucky. First, I would say that I admire his fortitude and his willingness to ask appropriate and reasonable questions of the administration on a matter of grave importance. This is a matter no less important than our constitutional government itself that does not give sole power to the administration to make these decisions but recognizes that the Congress is a coequal branch of government. Indeed, we have important oversight responsibilities in the Department of Justice, the Department of Defense, and there isn't a more delicate and important matter than the limitations placed on the government when it comes to dealing with our own citizens.

I would like to ask the Senator from Kentucky whether he is aware of some of these issues.

First of all, shortly after President Obama took office, the Holder Justice Department declassified and released detailed, previously top-secret legal memos attempting to explain the legal rationale for the enhanced interrogation program the Central Intelligence Agency used during the Bush administration. These memos were written by the Office of Legal Counsel at the Department of Justice, which is frequently called the lawyer for the executive branch, which issues those authoritative memos. President Obama, Eric Holder presumably decided that they would release those previously classified memos that explained the legal rationale for the enhanced interrogation program.

I would further ask the Senator if he recalls that when the Obama administration made these legal memos—highly classified legal memos—public documents, does he remember the Attorney General made some specific comments? In fact, he said: We are disclosing these memos consistent with our commitment to the rule of law. Yet today, that same Justice Department refuses to release to Members of Congress—including this Senator, the Senator from Kentucky, and other Members who have oversight responsibilities—the very same legal rationale in this case for the drone strikes the Senator from Kentucky is talking about.

So I wanted to ask, first of all, of the Senator from Kentucky whether he believes I have accurately recited the facts, but then to ask him whether he sees a double standard here on the part of the Obama-Holder Justice Department where on one hand they release these legal memos from the Office of Legal Counsel, and in this case, instead of releasing the legal rationale for the authority to make drone strikes, they issue what is, in essence, a white paper, or press release, that was linked to the news media.

I would ask the Senator from Kentucky to respond.

Mr. PAUL. Mr. President, the question from the Senator from Texas is a very good one, and there does seem to be a double standard going on here. There seems to be one standard for wiretapping of phones or interrogation, but there seems to be much less a standard for actually killing. It seems to be hypocritical and one would wonder why.

With regard to releasing the memos and how they come about their process, some of that was leaked. It is always curious to me that it is as if the leaks come out on purpose; as if they are intentional. The leaks happen right before a nomination process. I don't know the truth of that, but I do think that not only should we get the memos, but if there is going to be a drone strike program in America, perhaps we should actually be writing the rules and sending them to the President. That would be our job—not to listen to him and what he is going to do on drone strikes in America, but actually spelling out and having an open discussion. Because in America I don't think that should be a secret—how we are going to go about this in America.

I see no reason not only to get the drone memos, and I think it would be more consistent with their earlier position, but I think what we should do is be a part of the process of determining how we go forward, with whether we are going to have drone strikes in America and what the rules would be.

Mr. CORNYN. Mr. President, will the Senator yield for another question?

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. I would ask a further question of the Senator from Kentucky. I believe the question he has asked—whether the President has the power to authorize lethal force, such as a drone strike against a U.S. citizen on U.S. soil and without trial—is a very clearly stated question and one, I believe, the Senator and the rest of the Members of Congress are entitled to a very clear answer on.

I was in the Senate Judiciary Committee hearing with the Attorney General this morning where we attempted to ask him on a number of occasions what his answer would be to this question. Yet he equivocated and he was ambiguous. He seemed to be ambiguous when a clear answer would serve him just as well, a point the Senator from Kentucky has made.

The question I have for the Senator is: Wouldn't in all likelihood the legal rationale or justification issued by the Office of Legal Counsel at the Department of Justice include a discussion which would illuminate and elucidate the answer to the Senator's question?

In other words, I would assume, without having seen that classified memo, that it would go through a rather lengthy analysis of the hypothetical situations under which these drone strikes might be used and would, in all likelihood, I think, shed some light on and clarify the answer to the Senator's question. Wouldn't that be a reasonable way to answer what is a very straightforward and reasonable question?

Mr. PAUL. Mr. President, piecing together what I have heard of some of his testimony, I actually think he did finally admit to some things that I think are consistent with what I am saying. They haven't put it in writing previously. I would think he could almost take his testimony today—where he almost at some point seems to agree that it would be unconstitutional to kill noncombatants, people not actively engaged in combat—and if he would say that, I think he would answer my question, basically. Because I have never been talking about people engaged in lethal force. You don't get much due process there. If you are engaged in lethal force, lethal force is used against you. So one would think he could answer that simple question, similar to what he actually stated in his testimony today, but they won't give us a succinct answer, or any answer, really. So that is the answer we have been trying to get to all along.

Mr. CORNYN. If the Senator will yield for another question.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. To the Senator's last point, I am reading from a letter dated March 4. It is from the Attorney General to Senator PAUL, and he says:

The question you have posed is therefore entirely hypothetical, unlikely to occur, and

one we hope no President will ever have to confront.

But he goes on to say, in response to Senator PAUL's question:

It is possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States.

In other words, to the Senator's point, on one hand he said it was a hypothetical question, unlikely to occur, and one we hope no President would ever have to confront; and then, on the other hand, he said it is possible to imagine a scenario under which it would happen. That would appear to cast a further lack of clarity on something that should be a straightforward yes or no.

Mr. PAUL. Mr. President, here is the interesting thing about saying it is hypothetical and it wouldn't happen. I could buy that, except for the fact that our foreign drone strike program—a significant amount of the drone strikes—are on people not actively engaged in combat. Whether that is right or wrong is another question, but since we already have an example of a significant amount of those being used on those not engaged in active combat, it is hard for him to say this is a rare, unusual, hypothetical thing that could never happen, because it seems as though it is a big part of the drone program overseas.

Mr. CORNYN. Mr. President, I said that was my last question, but I would ask the Senator to yield for this last question.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. It strikes me, Mr. President, that there is a clear double standard here. The Senator has asked a reasonable question, to which he has not gotten a clear answer, and one that is clearly within the purview of the Senate in our oversight capacity for the Department of Justice and as a coequal branch of government. On one hand, the Obama-Holder Justice Department not only released a white paper but released previously classified legal memos from the Office of Legal Counsel on the enhanced interrogation program, saying it was consistent with their commitment to the rule of law, but today, in response to an eminently reasonable request, is giving the Senator from Kentucky what I think can appropriately be called the Heisman, or stiff arm, and denying him access to that.

So I wanted to come to the floor and make that point and ask those questions and say again that I admire the Senator's fortitude and willingness to stand up and challenge the administration on this issue. It would be easy to satisfy the Senator's request. He has made that very clear. He is not intending to block a vote on this nomination, but he is intending to get the information he has requested, and he is entitled to it.

Mr. PAUL. Mr. President, the questions and points the Senator from Texas has made are very good points, and it also shows we are not that far apart in trying to find an answer to this, because, there is no ultimate ability for me to stop this nomination. I am already getting tired and I don't know how long I will be able to do this, so I can't ultimately stop the nomination. But what I can do is try to draw attention to this and try to get an answer. That would be something, if we could get an answer from the President. And I think we would all sleep better and feel more comfortable if he would say explicitly that noncombatants in America won't be killed with drones. The reason it has to be answered is because our foreign drone strike program does kill noncombatants. They may argue they are conspiring or they may some day be combatants, but if that is the same standard we are going to be using in the United States, it is a far different country than I know about. Ours is a country where dissent, vocal dissent, even vehement, vociferous dissent as far as whether our country should go to war, whether our country should raise taxes, lower taxes, has always been allowed. We allow a great deal of dissent in our country. But some of the people whom we have said we are targeting have been dissenters, probably traitors too, but they have also been people who have been vocalizing it more than they have been shooting anybody.

That is not to say you can't be a traitor even if you don't shoot anybody. But if you are going to be accused of treason or of being a traitor in the United States, I would think you would get your day in court, probably. It is particularly troublesome since some of the descriptions of who might be a terrorist are such that I would be a little bit concerned about the slippery slope to who is and who is not a terrorist. I can't imagine in America we would do that without an open accusation, without a trial by a jury, without a verdict.

I think it is important this discussion go on, and I am not ultimately setting the goal that I can stop this nomination. I am here today to draw attention to a constitutional principle, to try to get the administration to admit publicly they will not kill Americans who are not involved in combat. But it hasn't so much to do with Brennan or his nomination, it has to do with a constitutional principle. Ultimately, Brennan will be approved. He will be the head of the CIA. This will be a blip in his nomination process. I hope people will see it more as an argument for how important our rights are; that no one, no branch of government, no individual politician should be above the law, should be able to dictate and say what they think the law is.

We had some of this even under a Republican President. I was critical of President Bush for saying he had the ability to interpret the law; he had the ability to put signing statements, which were extensive sometimes, which gave his interpretation of what the law was or what he thought the law was. So I have been critical of both sides thinking they have more power than they have.

Our Founding Fathers were brilliant in the sense that they separated the powers and had these coequal powers of government, these branches of government that were somewhat pitted against each other. And by having equal power and by being able to judge the power of the other branch, no one branch could accumulate too much power. But in our country it has been going the other way for a long time. It hasn't been just Democratic Presidents or just Republican Presidents, it has frankly been both. For maybe 100 years or so power has been gravitating and gravitating and gravitating to the Presidency. And not just the Presidency. When people talk about the bureaucracy, these are people who are within the executive branch—millions of them. When we passed ObamaCare, it was 2,000-some-odd pages, but there have been 9,000 pages of regulations written since. ObamaCare had 1,800 references to ''the Secretary of Health shall decide at a later date.'' We gave up that power. We gave up power that should have been ours, that should have been written into the legislation. We gave up that power, and as a consequence we gave it to the executive branch. We gave it to people—many of them we call bureaucrats—who are unelected. So we gave away power. It is a struggle, and it should be a perpetual struggle, but we shouldn't give in on that struggle and give up that power.

There was mention the President should reveal to us drone memos on how he is making the decisions. We have had some leaks about that, but I would go one step further. Not only should the President let Congress know what he is doing, maybe we should tell him what to do. Maybe the Congress should be setting the rules for how we do drone strikes. Maybe the Congress should be protecting the American people from their government.

That sounds terrible, protecting you from your government. That is what the Constitution was about. The Constitution wasn't written to restrain your behavior, it was written to restrain your government's behavior.

A lot of people get confused when we talk about religion and the first amendment. But if you read the first amendment, it says Congress shall make no law. It doesn't say anything about your religious preferences. It is not supposed to limit your involvement in government. It is really not supposed to limit so much religious involvement in government or even religion.

We have a prayer every morning in the Senate. You can't have it in your public school, but we have a prayer every morning. Explain that to me. We have the Ten Commandments around here. So does the Supreme Court. But

you can't have it in your local school. I think we have gotten confused on things. It was really about government getting involved in your religion.

We didn't want to establish a church. We thought it was a bad idea to have an official church, and I still think it is a bad idea to have an official church because then the government would be telling the church what to do. But it is really all about the documents that we have protecting you from an overbearing government.

Your government was given a few defined powers, the enumerated powers. There are 17, 19—depends on how you want to count them—but there are not very many. They are few and defined. But your liberties are many—basically, unlimited and undefined.

When you read the ninth and tenth amendment, it says those rights not explicitly given to government are left to the States and the people. They are yours. They are not to be disparaged.

These are important debates we are having. When Montesquieu talked about the separation of powers and the different checks and balances, he said: There can be no liberty when you combine the executive and the legislative. Likewise, I would add to that there can be no liberty when you combine the executive and the judiciary.

So if you allow the President to tell you he can have drone strikes on Americans, on American soil, you are allowing him to be not only the executive, you are allowing him to be the judiciary. If he makes it secret, nobody can object.

I remember one time I was complaining to another Senator about these things called suspicious activity reports. Your bank is required to file them on you. In fact, if you pay your Visa bill through your bank, over the phone, you have done a wire transfer, and you can be part of a suspicious activity report. If you turn cash in to the bank or get cash out of the bank over a certain amount, you can get a suspicious activity report.

I was concerned about this because there have been 8 million filed since 9/11, and the Senator's response is he has never heard anybody complain about it. The reason nobody complains is they are secret. They don't tell you they are doing this.

So if you get on the kill list, it is a little hard to complain. We might have a kill list for a couple of years in the United States, on American citizens, and nobody might complain because it is secret. You don't know you are on the list.

So I think it is important that we have a big debate and discussion over this; that we let the President know he doesn't get to write all of these rules on killing American citizens; that the Constitution still applies in our country.

The reason this is a big debate is that when you are in a war, the Constitution doesn't always apply on the battlefield in another country. There is a debate over whether the Constitution is here or whether it extends beyond the borders. But the practical matter is we can't really enforce the Constitution beyond our borders. You sort of consent to your Constitution, you sort of consent to your government by voting. We have that arrangement in our country, but it doesn't happen in Mexico, Europe, or Afghanistan, and it certainly doesn't happen in the middle of hostilities. So you don't really get due process over there. That is the real danger. That is the problem. That is the rub.

This whole thing is about the use of authorization of force that was passed after 9/11 to go to war in Afghanistan. If you had voted on that—you didn't; your leaders did. But had you voted on that, you would have thought: I am going to war in Afghanistan to get the people who attacked us on 9/11.

I was all for it. I still am. I think that was something we needed to do. We couldn't let people attack us, but I don't think you would have thought, when you voted for that, you were voting for a worldwide war with no end that included America as part of the battlefield. That is the real problem.

The administration, John Brennan, who wants to be head of the CIA, and Eric Holder, the Attorney General, they all believe—and many here believe this also—there is no geographic limit to the war. It is not in Afghanistan. They say it is everywhere, but they say everywhere includes here.

Here is the problem: If you don't think you can apply due process in the middle of a war, what happens if they say the war is here? That means you don't get any protection. So if you are accused of a crime, I guess that is it.

I can't imagine that is what we want as Americans. I just can't imagine we would believe or acquiesce or allow the President to basically say he is going to make the decisions for us; that he basically would kill noncombatants in America.

I, frankly, think eventually he will admit—it would be nice if he would admit it tonight—that he is not going to do it. If anybody has a phone, give him a call. Let him know we would like to know an answer. And I think it would be appropriate.

When the Attorney General came this morning to the Judiciary Committee to answer questions, he was asked repeatedly this question: Can you kill noncombatants if they are sitting and having tea somewhere in America? He kind of weebled and wobbled and went around the issue. Finally, we said: We want to know, is it constitutional? Do you think you can do this?

Instead of saying we might not, we don't intend to—and it sounds like he finally admits at the end that it is unconstitutional. But then why can't we get them to issue a statement? Why can't we get them to say explicitly: We are not going to do this? I see no reason. It would take them 5 minutes to jot this down on a piece of paper. If they don't intend to do it, why not tell us?

When your government won't tell you they are not going to do something, when they won't answer, no, they don't have the power, they are saying to you, yes, they have the power.

If they will not answer your question and say: No, I will not kill Americans who are not involved in combat here at home, if they cannot tell you that, they are saying, yes, they will kill Americans not involved in combat. It is a simple question.

Conor Friedersdorf writes for the Atlantic, and he writes:

> Does President Obama think that he has the power to kill American citizens on U.S. soil? If he accuses a guy in the Arizona desert or rural Montana of being an Al Qaeda terrorist, is it ever kosher to send a drone over to blow him up, as was done to—
>
> People overseas—
>
> Or is it never okay to drone strike an—
>
> American citizen to death here in America?
>
> It's an easy question.
>
> Answering it wouldn't jeopardize national security in any way.
>
> So why do Obama administration officials keep dodging it?

When the President was asked this question in a Google Plus interview last week, he said: Well we might have different rules inside the country than outside the country.

Well, that sort of assumes he thinks he can kill Americans here, and he might have different rules. He might have more protections, but he is not going to tell you. He says it is secret. I, for one, am not very comforted.

When the President says he hasn't killed any Americans yet and he doesn't intend to kill any Americans—but he might—that doesn't really comfort me so much. I don't think that is strong enough language.

The Presidential oath of office says, ''I will preserve, protect, and defend the Constitution.'' It doesn't say: I intend to. It doesn't say: I intend to preserve, if it is convenient; I intend to preserve, protect, and defend the Constitution if it is convenient.

In his memo, he says he is only going to kill people if it is infeasible. To me, that sounds a little bit like, yes, it is tough. It is inconvenient, so I am going to preserve, protect, and defend the Constitution as long as it is feasible. It just doesn't inspire me.

Friedersdorf goes on to say with regard to the President's answer in Google: ''But he still didn't give a straight answer.''

Counterterrorism adviser John Brennan—whose nomination we are talking about—won't answer either. He finally did answer, but only under duress. His answer was actually the appropriate answer. He said the CIA can't do this in America. But it begs the question—because the CIA is not in charge of the drone program; the Department of Defense is. So we need an answer from the Department of Defense, and we get an

answer from Eric Holder that says they haven't done it yet, they don't intend to do it, but they might. He doesn't say specifically that they will not.

These answers have been out there for a while, and we have been through this and around this and asked questions. These are simple questions. These are questions I can't imagine why we can't get an explicit answer to—unless the answer is no. Unless the answer is that they don't want limitations on their power. Unless the answer is that they don't want to be constrained by the Constitution. Unless their answer is that the Bill of Rights doesn't apply to them when they think it doesn't apply to them. And that is the real danger.

Eric Holder—your Attorney General—was asked about this and asked about the fifth amendment. He was asked: Does it apply?

He said: Well, it applies when we think it applies.

What does that mean? I know it is a debatable question—overseas, American citizens, this and that—but I don't think it is a debatable question. In our country, does the fifth amendment apply? I don't know how you can argue the fifth amendment doesn't apply. I don't know how you can argue we have an exemption to the Bill of Rights when we want to.

But this is the President—the same President who argued he gets to determine when the Senate is in recess because he didn't get a few of his appointees last year, also argued that the Senate was in recess and said he could appoint anybody he wanted—and he did.

It went to court, and the court rebuked him. The court said: You don't get to decide all the rules for all of government. The Senate decides when they are in recess; you decide when you are in recess, but you don't get to decide the rules for the Senate.

They struck him down. Has he obeyed the ruling? Has he listened to what the court did? Has he been chastised and rebuked by the court?

The people he appointed illegally are still doing that job. All of their decisions are probably invalid. So for the last 2 or 2½ years—however long these recess appointments have been out there—all of these decisions are going to be a huge mess. They have made all these decisions, and it is going to be uncertain whether the decisions are going to be valid. All of this happened because for some reason he thought he had power he doesn't actually have. I think there are some analogies to what we are talking about.

Now, one of the rules he said he would adhere to, as far as the drone strikes overseas, was that there has to be an imminence to the threat. Then his team of lawyers followed up and concluded: Well, it has to be imminent, but it doesn't have to be immediate. I think only a gaggle of government lawyers could come together and say ''imminent'' doesn't mean ''immediate.''

Spencer Ackerman wrote, in Wired, about this. The title is, ''How Obama Transformed an Old Military Concept So He Can Drone Americans.''

''Imminence'' used to mean something in military terms; namely, that an adversary had begun preparations for an assault. In order to justify his drone strikes on American citizens, President Obama redefined the concept to exclude any actual adversary attack.

It is important to get that and to register that he has defined a potential imminent attack to mean that it excludes any actual adversary attack. So you are under imminent attack but there is no attack. It is a bizarre logic, but it is done to widen what they can do to grant them more power.

Ackerman goes on to say:

That's the heart of the Justice Department's newly leaked white paper—

These drone memos—

first reported by NBC News, explaining why a ''broader concept of imminence'' (.pdf) trumps traditional Constitutional protections American citizens enjoy from being killed by their government without due process. It's an especially striking claim when considering that the actual number of American citizens who are ''senior operational leader[s] of al-Qaida or its associated forces'' is vanishingly small. As much as Obama talks about rejecting the concept of ''perpetual war'' he's providing, and institutionalizing, a blueprint for it.

This is what we are talking about. Don't think if you give the President the power to kill Americans, that it is a temporary power.

The use of authorization of force, they say, has no geographic limit and no temporal limit. There is no end to the war. There is no end to the lessening or the abrogation or the giving up of your rights. If you give up your rights now, don't expect to get them back.

Ackerman goes on:

Imminence has always been a tricky concept. It used to depend on observable battlefield preparations, like tanks amassing near a front line, missile assemblage, or the fueling of fighter jet squadrons. Even under those circumstances, there has been little consensus—

internationally about various wars that we have had in the past.

President George W. Bush contended that the U.S. had to invade Iraq not because the government knew Saddam Hussein was about to launch an attack upon America, but because it didn't.

Because it was unknown, because we fear things we don't know—we don't know so we conclude yes, and we preemptively attack.

Bush contended that the uncertainty about Saddam's weapons of mass destruction augmented by 9/11's warnings of shadowy terrorist groups plotting undetectable attacks redefined ''imminence. . . . ''

So when I say this is not a partisan battle, I am true to my word. President Bush started this. President Obama is expanding this.

The real irony, though, is President Obama ran as the anti-Bush candidate. He ran as the guy with the real moral umbrage at what President Bush was doing and in the end he is taking Presidential power to a new level beyond what President Bush could have ever imagined. So Bush contended that they could invade because they were uncertain about what Saddam could do. He:

. . . redefined ''imminence'' to mean the absence of dispositive proof refuting the existence of an unconventional weapons program. . . .

Imminence is the absence of proof that you don't have something. So you have to prove a negative, you have to prove you don't have something, or you are an imminent threat.

That would be sort of like saying to Mexico: Prove to us you don't have a nuclear weapon or we are going to bomb Mexico City. It is a bizarre notion of imminence. So Mexico is now an imminent threat to the United States because they are unwilling to prove they don't have a nuclear weapon. You can see the convoluted logic that occurs here.

But when U.S. troops invaded, they learned that Saddam did not possess what Bush or Condoleezza Rice famously termed a smoking gun that could come in the form of a mushroom cloud.

The undated Justice Department white paper, a summary of a number of still-classified legal analyses, redefines imminence once again. Al-Qaida leaders are ''continually planning attacks,'' the undated white paper says, and so a preemptive attack ''does not require the United States to have clear evidence that a specific attack on U.S. persons and interests in the immediate future.''

Realize what this means. First of all, nobody has an al-Qaida card. I think we say every terrorist in the world is in al-Qaida because then they have to prove otherwise. So nobody has an al-Qaida card. Everyone is in al-Qaida. So we say that unless you can prove that you are not attacking us, because we know the history of al-Qaida is to continue to attack us, we can preemptively attack you.

But now we are talking about bringing that kind of gobbledygook, jumbled logic to the United States. Are these going to be the standards by which we kill Americans?

Ackerman goes on:

For an adversary attack to be ''imminent'' and a preemptive U.S. response justified, U.S. officials need only ''incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on America.''

So if we say al-Qaida is always attacking us and we say you are part of al-Qaida, then we can kill you. But the thing is, that is an accusation. If you are a U.S. citizen, you live in San Francisco or Houston or Seattle and someone says you are a member of al-Qaida, should not you get a chance to defend yourself? Shouldn't you get to go to court? Shouldn't you get a lawyer? Are these not things that we would want in our country?

Ackerman goes on. He says:

There is a subtlety at work in the Justice Department framework. It takes imminence out of the context of something an enemy

does and places it into the context of a policymakers's epistemic limitations.

So really we are not looking to say someone has a rocket launcher on their shoulder. We are saying because we think that these people do not like us and will continue to attack us, we can preemptively kill them.

Realize that this kind of logic is being used overseas, and that is debatable. But now they are going to bring this logic to America. So when you read stuff like this, that imminence is out of the equation and in its place we are going to put a ''policymaker's epistemic limitations'' or estimation—that is how we are going to decide who is going to be killed in America? All we know is what we have in the foreign drone program.

We have no evidence yet because no one has told us. They just told us they have not killed anyone yet, they don't intend to, but they might—but they haven't told us what the rules are they are going to use in this context—what rules are going to be used in America? If you are going to kill noncombatants, people eating dinner in America, there have to be some rules. Does the Constitution apply?

When Eric Holder was asked about the fifth amendment, he said the fifth amendment applies when they think it applies. He says the executive branch is very careful and they are very conscious of the fifth amendment and they do try to apply the fifth amendment when they can.

I mean, it is a different story when you are talking about a war overseas and you are talking about people who live in our country. You don't get the option of determining when the fifth amendment applies.

Ackerman goes on to say:

> If there is a reasonable debate about what imminence means in an era of terrorism, and what standards ought to be accepted for defining it as an international norm, that framework—

where they talk about that they are thinking about what the terrorist is thinking rather than what the terrorist is doing basically preempts the whole idea of determining or trying to discuss or figure out what imminence really means.

Ackerman goes on:

> All that matters to justify a drone strike attack is for the U.S. to recognize that it can't be all-knowing.

So interestingly it's not intelligence that drives the attack, it's you saying I don't know but I am worried that these people do attack us continuously, so by me not knowing their plans, that is a justification for an attack. Realize, that could be the standard in the United States.

> It's the logical equivalent of the CIA's signature strikes, which target anonymous military-age males in areas where terrorists operate—

This should be the thing that should just scare the you-know-what out of you. If we are killing people overseas who we don't know their name because we think they are in a caravan going from a place where we think there are bad people to another place where there are bad people, that is a fairly loose standard. So, let's say there are people going from a Constitution Party meeting to a Libertarian Party meeting. Both these groups don't like big government. They hate big government. They are opposed to government. They are nonviolent as far as I know, but they were on the Fusion List for potential terrorists. Are we going to kill people in a caravan going from one meeting to the next? Are we going to have to name the person we kill in the United States?

You say, oh, that is absurd. We would never do that. Well, what about whose phone we tap? Do we have to name that person? It used to be the requirement. It has gotten less so over time. We have gotten to the point where the fourth amendment protections to name the person, place, and what you want to look at have become looser over time. I think it is a legitimate question. If you are going to target Americans on American soil, are you going to name them first? Are you going to tell us who is on the list? The list overseas is secret so the question is, is the list going to be secret in the United States? How do you get your due process if you don't know you are on the list? It is a little bit late after the drone attack to say: Hey, it wasn't me. I didn't really mean what I said in that e-mail. I should not have made that comment on line.

Some liberals think they have had a double standard on this and haven't been very good. Some have been more honest in their criticism of the President being hypocritical. The President seemed to be concerned at one time about warrants for wiretaps. He seemed to be concerned about Americans and torture. He seems to have lost a little bit of that when we talk about whether to kill Americans on American soil.

Eugene Robinson, whom I would consider a liberal pundit, wrote an article printed in the San Antonio News called ''Judicial Review Needed For Drone Hits Of Citizens.'' He begins this way. He says:

> If George W. Bush had told us that the ''war on terror'' gave him the right to execute an American citizen overseas with a missile fired from a drone aircraft, without due process or judicial review, I'd have gone ballistic.

These are Eugene Robinson's words. If he had heard this about George Bush, he would have gone ballistic. To his credit he says:

> It makes no difference that the president making this chilling claim is Barack Obama. What's wrong is wrong.

Robinson goes on to say:

> The moral and ethical questions posed by the advent of drone warfare are painfully complex. We had better start working out some answers because, as an administration spokesman told me recently, drone attacks are the ''new normal'' in the ongoing struggle against terrorist groups such as al-Qaida.

These attacks have become normal. They have become commonplace. They have become the rule rather than the exception. But at least Eugene Robinson is someone who is consistent in his application of criticism. He says he would have gone ballistic had George W. Bush done exactly what President Obama is doing and his response is, ''It makes no difference that the president making this chilling claim is Barack Obama. What's wrong is wrong.''

The question of when we get due process, whether it applies to you here or overseas, is a big question. But under our concept of government, it is not a question that should be left up to one branch of government. You know, should one branch of government get to decide that you don't get due process? That the fifth amendment doesn't apply to you? This is an incredibly important question. John Brennan and the nomination today pale in comparison to that question. Does the President alone, unilaterally, get to decide whether the fifth amendment applies to you? Or can he say that he is going to secretly accuse you of a crime and that the fifth amendment doesn't apply to you?

This is worrisome because the Attorney General has been asked about the applicability of the fifth amendment to the drone program. He said the fifth amendment applies when they think it applies. He says they try to give some kind of process. It is not due process. Due process involves a jury and a judge and public trial and an accusation. By process, they mean they get together and look at a PowerPoint presentation. They go through some flash cards and they decide who they are going to kill. That is the process. They may say you are demeaning the process by treating it flippantly, about whether they are serious about the process. Is that the process you want for someone in America? Do you want in America, for the process for you being accused of a crime, to be a PowerPoint presentation by one branch of government, maybe in a political party you are part of, maybe in a political party you are not part of?

There are things in politics that are partisan. I don't think I would want Americans to be subject to any partisanship with determining whether you get the fifth amendment, whether you get a jury trial. I can't imagine anybody would. I don't care whether it is a Republican or Democrat, I don't want a politician deciding my innocence or guilt; it is as simple as that. The President should say unequivocally we are not going to kill noncombatants, we are not going to do PowerPoint presentations in the Oval Office on Tuesdays. We are not going to have Terrorist Tuesdays for Americans. He should say that. I don't think it is that hard. It is an easy question to the President.

Mr. President, are you going to have Terrorist Tuesdays for Americans?

Are they going to put flashcards of Americans up and pass them around the table in the Oval Office with pictures of Americans on them and decide

who is going to die and who is going to live? Are they going to publicly charge people or are they going to secretly charge people? Are they going to have any kind of trial or any kind of representation? Does anybody get a chance to say: Hey, it wasn't me. I didn't do it. Does anybody get a chance to represent or have representation?

This is an article we found interesting also by Noah Shachtman. This was also printed in ''Wired.'' It is called ''U.S. Drones Can Now Kill Joe Schmoe Militants in Yemen.'' This is not quite about the domestic issue so much and a little bit about the foreign issue. However, there is a linkage between the foreign drone attacks and what will become the domestic drone attacks.

Why? Because those are the only drone attacks we know and we have not been told that there will be an American plan for killing Americans and a foreign plan for killing Americans or foreigners overseas. We have not been told that. We have not been told anything. We have been told to go and sit in a corner—including the Senate and Congress—and be quiet. They have a process. They have a PowerPoint presentation, and they have flashcards. I don't think that is adequate.

Noah Shachtman writes in ''Wired'':

> In September, American-born militant Anwar al-Awlaki was killed by a U.S. drone strike in Yemen. In the seven months since, the al-Qaida affiliate there has only grown in power, influence, and lethality. The American solution? Authorize more drone attacks—

It kind of brings me back to that quote from the CIA agent. He said drone attacks are like a lawnmower, but when you quit mowing the lawn, the terrorists come back; sometimes they may be more numerous. The question is, Can they kill them all? Can they kill every terrorist in the world? For every terrorist they kill, maybe 3 or 4 pop up—maybe 10 pop up. What happens to the families who happen to be the ones whom we make mistakes on or happen to be in the wrong place at the wrong time?

I know the President's spokesman found it cute to say: Oh, they should have chosen more responsible parents. I don't find that endearing or cute. I find it reprehensible to say that is the standard. We have to ask the question: Is that going to be the standard in the United States? Are we going to kill people because they are related to bad people and then flippantly say they should have chosen better parents after we kill a 16-year-old? Shachtman goes on to write:

> The American solution? Authorize more drone attacks—and not just against well-known extremists like Awlaki, but against nameless, faceless low-level terrorists as well.
>
> A relentless campaign of unmanned airstrikes has significantly weakened al-Qaida's central leadership in Pakistan.

I am not saying we should not use drones. I am not saying they are not a valuable weapon that has helped us to decimate our enemies. I am just saying it is different in a warzone than it is in our country. If the President cannot acknowledge that being in battle somewhere is distinctly different than walking down the street in Washington or Baltimore or Philadelphia, it is beyond me how we can let him get away with that.

> . . . militants were chosen for—

These drone strikes—

> robotic elimination based solely on their intelligence ''signatures''—their behavior, as captured by wiretaps, overhead surveillance and local informants.

We don't know the names of the people who were killed in these drone strikes except to know it was largely in the tribal areas of Pakistan. We are targeting people and we do not know their names. We cannot know much about them if we don't know their names. We are targeting them by their signatures, where they go, and whom they visit.

Probably, inevitably, the milkman or the doctor has to go to the terrorist camp. Maybe some of them are complicit, but some of the people who may not be quite the people we think we are after are in a caravan going from city to city. Maybe they are in the local food distribution business and make good money selling it. But the question is whether that is the kind of standard we would like to have in America. Would a signature strike be acceptable in America? These are questions that ought to be asked and the President ought to answer.

These people are being targeted by their signature. Their behavior is captured by wiretaps, overhead surveillance, and local informants.

Shachtman goes on to say:

> A similar approach might not work in this case, however.

In Yemen, where we have a lot of drone strikes, he says:

> Every Yemeni is armed.

It is going to be kind of hard to tell who is friend or foe when they are all fighting and they are all mad at each other.

> So how can they differentiate between suspected militants and armed Yemenis?

Shachtman goes on to say:

> What's more, al-Qaida in the Arabian Peninsula—the Yemeni affiliate of the terror collective—''is joined at the hip'' with an insurgency largely focused on toppling the local government, another official told the Washington Post last week. So there's a very real risk of America being ''perceived as taking sides in a civil war.''
>
> The Yemeni drone campaign—actually, two separate efforts run by the CIA and the military's Joint Special Operations Command—will still be more tightly restricted than the Pakistani drone war at its peak. Potential targets need to be seen or heard doing something that indicates they are plotting against the West, or are high up the militant hierarchy.
>
> ''You don't necessarily need to know the guy's name. You don't have to have a 10-sheet dossier on him. But you have to know the activities this person has been engaged in,'' a U.S. Official tells the Journal.
>
> Gregory Johnsen, a Yemen specialist at Princeton University, believes that these ''signature'' strikes—''or something an awful lot like them''—have actually been going on for quite a while in Yemen.

He goes on to say that he thinks that ''Awlaki's son was killed just a month after his dad,'' in a signature strike. He says he thinks '' . . . there have been 13 attacks in Yemen in 2012.''

When we talk to people around here, they say there are no signature strikes. What are we supposed to believe? A lot of people are saying they have evidence and have heard there are signature strikes. Those in power who have the secret say we are not. It is hard to know what to believe.

I think one thing that is easy to understand, though, is that I cannot imagine we would allow such a standard in the United States where we don't name whom we are killing and that we kill people involved in a caravan. I think it should be pretty easy for the President to say there will be no signature strikes in America.

Shachtman goes on to say:

> Many of them have hit lower-level militants, not top terror names. This authorization only makes targeting killings legally and bureaucratically kosher.
>
> But despite the increased pace of strikes—those 13 attacks are more than they were in all of 2011—al-Qaida in the Arabian Peninsula. . . . In fact, White House counterterrorism adviser John Brennan last week called it the terror group's ''most active operational franchise.''
>
> All of which leads Micah Zenko at the Council of Foreign Relations to wonder where this drone campaign is going. ''By any common-sense definition, these vast targeted killings should be characterized as America's Third War since 9/11,'' he writes. ''Unlike Iraq and Afghanistan—where government agencies acted according to articulated strategies, congressional hearings and press conferences provided some oversight and timelines explicitly stating when the U.S. combat role would end—the Third War is Orwellian in its lack of cogent strategy, transparency, and end date.''
>
> ''Since these attacks are covert, the administration will offer no public defense, he adds. But ''it begs [CIA director David] Petraeus' haunting question at the onset of the Iraq war in 2003: ''Tell me how this ends?''

That is a question I have for the President: How does the war end? How do we win? How do we declare victory and when will the war end? The problem is we have come up with a scheme that basically has no geographic limitations on where the war is fought. It is harder to defeat an enemy if the entire war is the battlefield. It is not only a problem with determining victory, it is a problem with ultimately coming home.

The other problem with having no geographic limitations to this is saying that war is here; the war is in America and the battlefield here at home is one where we are going to have rules or the laws of war are going to apply in our everyday life.

Before we were talking about drone strikes in America, the Center for Constitutional Rights has been concerned

even about American citizens overseas. On September 30, they put out this release which said:

Today, in response to the news that a missile attack by an American drone aircraft had killed U.S. citizen Anwar Al-Awlaki in Yemen, the Center for Constitutional Rights, which had previously brought a challenge in federal court to the legality of the authorization to target Al-Awlaki in Yemen, released the following statement: ''The assassination of Anwar Al-Awlaki by American drone attacks is the latest of many affronts to domestic and international law'' . . . ''The targeted assassination program that started under President Bush and expanded under the Obama Administration essentially grants the executive the power to kill any U.S. citizen deemed a threat, without any judicial oversight or any of the rights afforded by our Constitution. If we allow such gross overreaches of power to continue, we are setting the stage for increasing erosions of civil liberties and the rule of law.''

Now what they have said there is not completely noncontroversial, and I might even take some issue with the fact that they are saying the Constitution applies everywhere. Some argue it applies to U.S. citizens whether here or at home, and I think there is some debate as to that. I think the only place we can guarantee that the Constitution applies is in our country. The only border we ultimately control is in our country. The courts we ultimately control are here. However, the entity doing the killing is the American military killing a citizen overseas. So I personally have been of the belief that what we should do is try people for treason. It is one of the four crimes in the Constitution that is actually labeled, displayed, and given to the Federal courts.

There are specifics on what is actually treason. I personally don't think it would be that hard to try people for treason. I think we could do it without—we could start at the very top court and not have appeal after appeal.

I think there was evidence that al-Awlaki could have been tried in Federal court for treason and then targeted.

People say: Why would we want to give any protection to people who have denounced their citizenship, who hate America, and who are conspiring with the enemy?

I guess the way I would respond is that I don't like murderers and rapists either. I don't like violent people who commit crimes in our country. But because we prize our system so much and because we want to make sure we arrest, convict, and possibly execute the right person, we have trials. So we think it is pretty important that we have trials. So I agree when people say these are bad people. Yes, these are bad people. Many of them deserve what they get. The problem is, if we give up on the process of how we do it, if we give up on the Constitution, or if we say that kind of standard is going to be brought back to the homeland, or if we say America is a battlefield, there is a real problem. There is a problem in doing that because I think if we do that, the standard becomes so loose, we really won't have what we really expect as Americans.

The Center for the Constitutional Rights goes on with this comment by Pardiss Kebriaei, a senior staff attorney. They went to the court, and they asked for information on some of these drone strikes, and they were denied. She responds:

In dismissing our complaint, the district court noted that there were nonetheless disturbing questions raised by the authority being asserted by the United States.

There certainly are disturbing questions that need to be asked again and answered by the U.S. Government about the circumstances and the killing and legal standard that governs it.

In October 2012 there was an article by Greg Miller in the Washington Post. It was entitled ''Plan for Hunting Terrorists Signals U.S. Intends to Keep Adding Names To Kill List.'' The editor notes that this project was based on interviews with dozens of current and former national security officials, intelligence analysts, and others who have examined and were examining the U.S. counterterrorism policies and the practice of targeted killings.

This is the first of three stories that appeared:

Over the past 2 years, the Obama administration has been secretly developing a new blueprint for pursuing terrorists, a next-generation targeting list called the ''disposition matrix.''

The matrix contains the names of terrorism suspects arrayed against an accounting of the resources being marshaled to track them down, including sealed indictments and clandestine operations. U.S. officials said the database is designed to go beyond existing kill lists, mapping plans for the ''disposition'' of suspects beyond the reach of American drones.

Although the matrix is a work in progress, the effort to create it reflects a reality setting in among the nation's counterterrorism ranks: The United States' conventional wars are winding down, but the government expects to continue adding names to kill or capture lists for years.

Among senior Obama administration officials, there is a broad consensus that such operations are likely to be extended at least another decade. Given the way al-Qaida continues to metastasize, some officials said no clear end is in sight.

''We can't possibly kill everyone who wants to harm us,'' a senior administration said. ''It's a necessary part of what we do . . . We're not going to wind up in 10 years in a world of everybody holding hands any saying, ''We love America.''

That timeline suggests that the United States has reached only the midpoint of what was once known as the global war on terrorism. Targeting lists that were regarded as finite emergency measures after the attacks of September 11 are now fixtures of the national security apparatus. The rosters expand and contract with the pace of drone strikes but never go to zero.

Meanwhile, a significant milestone looms: The number of militants and civilians killed in the drone campaign over 10 years will soon exceed 3,000 by certain estimates.

We have heard an estimate recently by a Member of the Senate who said 4,700 have been killed.

The Obama administration has touted its successes against the terrorist network, including the death of Osama bin Laden, as signature achievements that argue for President Obama's reelection. The administration has taken tentative steps toward greater transparency, formally acknowledging for the first time the United States' use of armed drones.

Less visible is the extent to which Obama has institutionalized the highly classified practice of targeted killing, transforming adhoc elements into a counterterrorism infrastructure capable of sustaining a seemingly permanent war.

Spokesmen for the White House, the National Counterterrorism Center, the CIA and other agencies declined to comment on the matrix. Privately, officials acknowledge that the development of the matrix is part of a series of moves, in Washington and overseas, to embed counterterrorism tools into U.S. policy for the long haul.

White House counterterrorism adviser John O. Brennan is seeking to codify the administration's approach to generating capture/kill lists, part of a broader effort . . .

CIA Director David Petraeus is pushing for an expansion of the agency's fleet of armed drones. The proposal, which would need White House approval, reflects the agency's transformation into a paramilitary force and makes clear that it does not intend to dismantle its drone program and return to pre-September 11 focus on gathering intelligence.

The U.S. Joint Special Operations Command, which carried out the raid that killed bin Laden, has moved command teams into suspected terrorist hotbeds in Africa. A rugged U.S. outpost in Djibouti has been transformed into a launchpad for counterterrorism operations across the Horn of Africa and into the Middle East.

The Joint Special Operations Command has also established a secret targeting center across the Potomac River from Washington. The current and former U.S. official said the elite command's targeting cells have traditionally been located along the front lines of its missions, including Iraq and Afghanistan. But the joint committee has now created a national capital region task force that is a 15-minute commute from the White House so it can be more directly involved in deliberations about the al-Qaida list.

The developments were described by current and former officials from the White House as well as intelligence and counterterrorism agencies. Most spoke on the condition of anonymity because of the sensitivity of the subject. These counterterrorism components have been affixed to a legal foundation for targeted killings the Obama administration has discussed more openly over the past year. In a series of speeches, administration officials have cited the legal basis, including the congressional authorization to use military force.

This really gets to the crux of the matter, which is that the authorizations for all of these activities around the world and then ultimately here at home all come from the use of authorization of force when we went to war against Afghanistan after 9/11. The problem is, how do we finally conclude war? Is perpetual war OK with everybody? How would we conclude the war in Afghanistan?

The President said he is bringing troops home. It is actually another thing I admire about the President. I think it is time to come home. I think we have accomplished our battle. I think we have accomplished our plan. But the thing is, if we are going to end

the war, why would we not end the war? I think it means we end that war and we go somewhere else. There is a question of whether we can continually afford perpetual war. There is a question of whether it is advisable. There is a question of whether or not we go so many places that maybe in the end we are doing more harm than good.

The thing about the wars as they go on is we have to figure out a way to try to end war. We have to figure out a way to try to limit war. Our goal shouldn't be to expand war to proportions that have no limit. To say there are no geographic limits on war I don't think should be an admirable thing. I think it is a mistake in policy to say we can have perpetual war with no limits, with no geographic limits, with no temporal limits.

It is hard to end a war anymore, though. It used to be easy. In the old days, you won a war and you came home. The problem is that we can't even end the Iraq war. The Iraq war has been over for a couple of years now—at least a couple of years. I tried to introduce a resolution to end the Iraq war, to deauthorize the war, and it was voted down. I think I got less than 15 votes. How do we end war?

The problem is that people take these resolutions and they stretch them and they pull them and they contort them to mean things that really they were never intended to mean. I don't think being involved in a protracted war in Yemen or Mali or any of these other places was intended when we went to war in Afghanistan. I just don't think that was the intention.

Critics contend that the justifications for the drone war have become more tenuous as the campaign has extended further and further beyond the core group of al-Qaida operatives behind the strikes on New York and Washington. Critics note that the administration still doesn't confirm the CIA's involvement or the identities of those who were killed. Certain strikes are now under legal challenge, including the killing last year of the son of al-Awlaki.

Counterterrorism experts have said, though, that the reliance on these targeted killings is self-perpetuating, yielding undeniable short-term results that may obscure the long-term costs. I think that is a good way of putting it because when we think about it, obviously, they are killing some bad people. This is war, and there has been some short-term good. The question is, Does the short-term good outweigh the long-term costs not only in dollars but the long-term costs of whether we are encouraging a next generation of terrorists?

This is a quote from Bruce Riedel, a former CIA analyst. He says:

> The problem with the drones is it's like your lawn mower. You got to mow the lawn all the time. The minute you stop mowing, the grass is going to grow back.

Maybe there is an infinite number of terrorists. Maybe the drone strikes aren't the ultimate answer. There are a billion Muslims in the world. Maybe there needs to be some component of this that isn't just the killing fields. I am not saying that many of these people aren't allied against us and would attack us and they don't deserve to die; I am just not sure it is the ultimate answer, it is the ultimate way. I am also concerned that the people who are the strongest proponents of this are also those who want to bring the war to America and say that America is part of this perpetual battlefield.

> The United States now operates multiple drone programs, including acknowledged U.S. military patrols over conflicted zones in Afghanistan and Libya and classified CIA surveillance flights over Iran. Strikes against al-Qaida, however, are carried out under secret lethal programs involving the CIA and the CSOC. The matrix was developed by the NCTC under former Director Michael Leiter to augment those organizations' separate but overlapping kill lists. The result is a single, continually evolving database in which biographies, locations, known associates, and affiliated organizations are all catalogued.
>
> So are strategies for taking targets down, including extradition requests, capture operations and drone patrols.
>
> Obama's decision to shutter the CIA's secret prisons ended a program that had become a source of international scorn, but it also complicated the pursuit of terrorists. Unless a suspect surfaced in the sights of a drone . . . the United States had to scramble to figure out what to do.
>
> ''We had a disposition problem,'' said a former U.S. counterterrorism official. . . .
>
> The database is meant to map out contingencies, creating an operational menu that spells out each agency's role in case a suspect surfaces in an unexpected spot. ''If he's in Saudi Arabia, pick up with the Saudis,'' the former official said. ''If traveling overseas to al-Shabaab . . . we can pick him up by ship. If in Yemen, kill or have the Yemenis pick him up.''

There has been some discussion as to what to do with these people. It is a complicated situation, but I think the take-home message from all of this is that what we are stuck in is a very messy sort of decisionmaking, a type of decisionmaking that I do not think is appropriate for the homeland, for the United States. I think the idea that in the United States this is to be a battlefield, and you do not need an attorney, you do not need a court, or you do not get due process, is really repugnant to the American people, and should be.

I think it is something we have given up on too easily if we let the President dictate the terms of this. If the President is unwilling to say clearly and unequivocally that he is not going to kill noncombatants in America, I do not think we should tolerate that. I think there should be a huge outcry and the President should come forward and explain his position.

This discussion tonight is not so much about John Brennan, it is not about his nomination so much as it is about whether we believe that in America there are some rights that are so special that we are not willing to give up on these.

So as we move forward into this debate, it is not about who gets nominated to be the head of the CIA. It is about principles that are bigger than the people. It is about something bigger and larger than the people involved. It is about constitutional principles that we should not give up on.

I think we should all judge as inadequate the President's response when he says he has not killed Americans in America yet, he does not intend to, but that he might. I do not think that is a response that we should tolerate.

So as we move forward in this debate, we need to understand and we need to fight for something that is classically American, something we are proud of and something our soldiers fight for; that is, our rights, our individual rights, our right to be seen as an American, to be tried in a court by our peers. I think if we are to give up on that it is a huge mistake.

One of the things we have to ask is, What kind of standard will there be? If there is going to be a program in America, what kind of standard? If we are going to kill Americans in America, what kind of standard will there be?

If the standard is to be sympathy, you can imagine the craziness of this.

Mr. President, I would at this time yield for a question, without yielding the floor, from my colleague from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. Mr. President, thank you.

Through the Chair, Mr. President, I would like to ask the Senator from Kentucky a couple of questions.

I have been listening to the conversation, to the debate, to the discussion on the Senate floor throughout the afternoon, and I would ask the Senator from Kentucky these questions: Is it not true that the Constitution of the United States is a document designed to protect the freedoms and liberties of Americans?

I would ask the Senator from Kentucky, while sometimes perceived to be a grant of authority, is not really the main purpose of the U.S. Constitution to make sure the American people enjoy certain liberties and freedoms that the Founding Fathers who wrote that document believed were important for American citizens? And whether or not that is true, I will let the Senator from Kentucky tell me, but if that is the case, if it is constitutional to intentionally kill an American citizen in the United States without due process of law, then what is not constitutional under the U.S. Constitution?

If the conclusion is reached—as the administration, at least, is unwilling to say that is not the case—if the conclusion is reached that it is within the powers of the Constitution for the executive to allow for the killing of an American citizen in the United States, then what is left in our Constitution that would prohibit other behavior? If you can go this far, what liberties remain for Americans?

Mr. PAUL. Mr. President, I think it is a good question because, ultimately,

the question is, Who gets to decide? Does the President get to decide unilaterally that he is going to do this? And how would you challenge it? If you are dead, you have a tough time challenging, basically, his authority to do this.

But, no, I cannot imagine in any way that you can usurp and go beyond the constitutional requirements in the United States. I see no way he can do that, and I cannot imagine that he would even assert such a thing. But it still boggles the mind that he will not explicitly say he will not do this.

Mr. MORAN. Well, I would, again, through the Presiding Officer, ask a question of the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. Again, in the absence of the assurance or the statement from the administration—from the President of the United States or his Attorney General—I ask the Senator from Kentucky, is not this the appropriate venue for us to insist upon that answer? Is it not appropriate for this to be the venue on which we, as a U.S. Senate, make clear that it is unconstitutional, in our view, for the death of a U.S. citizen in the United States by military action?

This is the opportune moment because of the pending confirmation of the nomination of the head of the Central Intelligence Agency. So while today's order of business really is an administrative appointment, is this issue not so important that we need to utilize this moment, this time in the Senate to make certain that question is answered in a way that makes clear—not only for today and for the current occupant of the CIA and its administration, but for all future Americans, all future CIAs, all future military leaders—that it is clear that in the United States American citizens cannot be killed without due process of law?

Mr. PAUL. Mr. President, I think it is a good point. I think also a point to be made is that one resolution to this impasse would be to have a resolution come forward from the Senate saying exactly that; that our understanding is—and this has been something that Senator CRUZ and I have discussed: whether we should limit the President's power by legislation or by resolution, basically saying that repealing an imminent threat is something the President can do, but killing noncombatants is not something that is allowed under the Constitution.

I think the courts would rule that way should the courts ever have to rule on this. But it would be much simpler and more healthy for the country if the President would simply come out and say that.

Mr. MORAN. Perhaps, Mr. President, finally, I would ask the Senator from Kentucky, while this opportunity to discuss this issue on the Senate floor has occurred today, it certainly is an opportunity for the American people to understand a significant basic constitutional right may be at stake. And while the Senator from Kentucky has led this discussion, I would ask him, has he now received, as a result of bringing this attention to this issue, any additional reassurances from the Attorney General or the President of the United States that the administration agrees that there is no constitutional right to end the life of an American citizen using a drone flying over the lands of the United States and attacking a U.S. citizen?

Mr. PAUL. Mr. President, since we began this today, I have had no communications from the White House or the Attorney General. The only thing we have gotten indirectly was that the Attorney General was before the Judiciary Committee today and that he did seem to backtrack or acknowledge a little bit, under withering cross-examination. He was not very forthcoming in saying what we would like to hear: that they will not kill noncombatants in America. But I think that is still a possibility from them. I think his answers were not inconsistent with that.

But you would think it would be a little bit easier and they would make it easier on everyone, and you would think they would want to reassure the public that they have no intention—not just they have no intention—but that they will not kill Americans.

Mr. MORAN. Again, Mr. President, if I can ask the Senator from Kentucky a question through the Presiding Officer, while there is a significantly important issue before the Senate today—and that is the confirmation of the Director of the Central Intelligence Agency—I would ask the Senator from Kentucky, is not the more important issue, the less pedestrian issue, that we face on the Senate floor and in the United States of America one that has been with us throughout our history, one that was with us when the Constitution was written, and one that has been with us every day thereafter; that is, what is the meaning of the words contained in the U.S. Constitution, and what do they mean for everyday citizens, that they know that their own government is constrained by a document created now more than 200 years ago? Is that not the most important question that faces our country and its citizens on a daily, ongoing basis?

Mr. PAUL. Yes, I think American citizens get that. But not only that, I come from a State that has two large military bases. When our soldiers go off—and when I talk to them—they talk of fighting for our Bill of Rights, they talk of fighting for our Constitution. They do not think they are going off to conquer any people. They truly believe and they honestly appraise that they are fighting for our Bill of Rights.

So that is why I see this as somewhat of an insult to our soldiers, to say that and to insinuate somehow that the Bill of Rights is not so important; that our fear is going to guide us away or take us away from something so fundamental and so important.

I think Americans do realize that the protections of having a jury trial are incredibly important and that assessing guilt is not always easy when you are accused of a crime. I think Americans know it is really important to try to get it right when someone is accused of a crime. So I think the American people are with us in wanting to find these answers.

The Senator is right. This is not ultimately about the nomination; this is about a question that is bigger than any individual. It is about something that our country was founded upon; that is, basically, the individual rights.

Mr. MORAN. Mr. President, I thank the Senator from Kentucky for responding to my questions.

Mr. PAUL. Mr. President, we have had a good and healthy debate today. I think we have hit upon a few points. We may have even hit a couple points more than once.

When we think about it and put it in perspective, so many of the battles we have up here are battles that I think the American public is sometimes disgusted with. They see a lot of things we do as petty and partisan. Sometimes I see disagreements up here that I think are completely partisan and completely petty on both sides.

But I think this issue is different in the sense that this is not about this particular individual and his nomination. I have actually voted for the President's first three nominations to his Cabinet. So I have not taken a partisan position that the President cannot nominate his political appointees. I have looked carefully at the nominees. I have asked for more information. I have tried to extend debate on some of the nominees. But in the end, I voted for three out of three and many of the judges that the President has put forward, not necessarily because I agree with their politics. I do not agree with much of the President's politics.

In fact, one of the few things I did agree with the President on was the idea of civil liberties, was the idea that you do not tap someone's phone without a wire, without a warrant, that you do not torture Americans, and that you did not kill Americans without due process. These are things I thought the President and I agreed on. So I am not so sure exactly, you know, where we stand with that. I actually kind of think that probably he still does agree with me, or I still agree with him. But the question is, why cannot he publicly go ahead and announce he is not going to kill noncombatants?

This is a resolution we have talked about. This resolution says: ''To express the sense of the Senate against the use of drones to execute American citizens on American soil.''

Expressing the sense of the Senate against the use of drones to execute American citizens on American soil. Resolved, that it is the sense of the Senate that the use of drones to execute or target American citizens on American soil who pose no imminent

threat clearly violates the constitutional due process of rights. The American people deserve a clear, concise and unequivocal public statement from the President of the United States that contains detailed legal reasoning, including but not limited to the balance between national security and due process, limits of executive power, and distinction between the treatment of citizens and noncitizens within and outside the borders of the United States.

The use of lethal force against American citizens and the use of drones in the application of the lethal force within the United States territory.

There is another article that I think is of interest. This is another article by Spencer Ackerman in Wired. This talks about once again the signature strikes, the idea that basically we are killing people whose names we did not know. The title of this was: ''CIA Drones Kill Large Groups Without Knowing Who They Are.''

The expansion of the CIA's undeclared drone war into the tribal areas of Pakistan required a big expansion of who can be marked for death. Once the standard for targeted killings was top-level leaders in al-Qaeda or one of its allies. That's long gone, especially as the number of people targeted at once has grown.

This is the new standard, according to a blockbuster piece in the Wall Street Journal: ''Men believed to be militants associated with terrorist groups, but whose identities aren't always known.'' [may be targeted.] The CIA is now killing people without knowing who they are, on suspicion of association with terrorist groups. The article does not define the standards, [but the standards are said to be] ''suspicion'' and ''association.''

While this is overseas, it kind of gets to the point we have been talking about: What is the standard that will be used in America? If we are to have drone strikes in America, what is the standard we will use? Is it a standard that says you have to be suspicious, or that you have to be associated?

Strikes targeting those people, usually groups of such people, are what we call signature strikes. The bulk of the CIA's drone strikes are signature strikes now, which is a remarkable thing. So what we are talking about—that is one of the reasons why we are concerned here—is that if the President claims he can do strikes in America, and the bulk of the current strikes overseas are signature strikes, would it not be worrisome that we could kill people in America without evening knowing their name?

The bulk of CIA's drone strikes now are ''signature'' strikes.

It was written in the Wall Street Journal in an article by Adam Entous, Siobhan Gorman, and Julian Barnes. And the ''bulk'' really means the bulk. The Journal reports that the growth in clusters of people targeted by the CIA has required the agency to tell its Pakistani counterparts about mass attacks. We are talking about pretty significant attacks here. They are only notifying them when they are going to kill more than 20 at a time.

Determining who is the target is not a question of intelligence collection. The cameras on the CIA fleet of Predators and Reapers work just fine. It is a question of intelligence analysis, interpreting the imagery collected from the drones, from the spies and spotters below, to understand who is a terrorist and who, say, drops off the terrorist's laundry. Admittedly in a war with a shadowy enemy, it can be difficult to distinguish between the two. So the question is, is this the kind of standard we will use in the United States? Will we use a standard where people do not have to be named? We do not know. The President has indicated his drone strikes in America will have different rules than his drone strikes outside of America. But we have heard no rules on what those drone strikes will be.

So we have drone strikes inside and outside. They are going to have different rules. But we already know that in a large percentage of the drone strikes overseas we are not naming the person. Is that going to be the standard? We also know we have targeted people for sympathizing with the enemy. We talked about that before. In the 1960s, we had many people who sympathized with North Vietnam. Many people will remember Jane Fonda swiveling herself around in a North Vietnamese artillery and thinking, gleefully, that she was just right at home with the North Vietnamese.

I am not a great fan of Jane Fonda. I am really not too interested in putting her on a drone kill list either. We have had many people who have dissented in our country. We have had people in our country who have been against the Afghan war, against the Iraq war. I was opposed to the Iraq war. There have been people against the government on occasion. What are the criteria for who will be killed? Does the fifth amendment apply? Will the list be secret or not secret? Can you kill noncombatants?

And people say, well, the President would never kill noncombatants. The problem is, is that is who we are killing overseas. We are alleging that they may be conspiring someday to be combatants or they might have been yesterday. But are we going to take that same kind of standard and use it in America? Are we going to have a standard that if you are on your iPad typing an email in a cafe that you can be targeted in a drone strike? These are not questions that are inconsequential. These are questions that should be known. These are questions that should be public. These are questions that should be discussed in Congress. In fact, we should not be asking him for drone memos, we should be giving him drone memos. We should not be asking him how is he going to run the drone program, we should be telling him how he is to run the drone program. That is our authority. We have abdicated our authority. We do not do what we are supposed to. We are supposed to be the checks and balances. But we have let the President make those decisions because we have largely abdicated our responsibility.

In this Spencer Ackerman story from Wired, he talks about and goes on to say:

Fundamentally, though, it is a question of policy, whether it is acceptable for the CIA to kill someone without fully knowing if he is the bombsmith or the laundry guy.

The Journal reports:

The CIA's willingness to strike without such knowledge, sanctioned in full by President Barack Obama, is causing problems for the State Department and the military. As we have written this week, the high volume of drone attacks in Pakistani tribal areas contributes to Pakistani intransigence on another issue of huge importance to the United States, convincing Pakistan to deliver the insurgent groups it sponsors to peace talks aimed at ending the Afghan war. The drones do not cause that intransigence. Pakistani leaders, after all, cooperate with the drones and exploit popular anti-American sentiment to shake down Washington. The strikes become cards for Pakistan to play, however cynically.

I think this is quite true of Pakistan. They play both sides to the middle. They play both sides to get more money from us. I think they have been complicit in the drone attacks, and then they complain about them publicly. They have two faces, one to their people, and one privately to us. But the question is, have we gotten involved more in Pakistan than getting al-Qaida leaders, and have we gotten more involved with a war in Pakistan that involves people who want to be free of their central government?

Ultimately, we as a country need to figure out how to end the war. We have had the war in Afghanistan for 12 years now. The war basically has authorized a worldwide war. Not only am I worried about the perpetual nature of the war, I am also worried that there are no geographic limitations to the war. But I am particularly concerned, and what today has all been about, I am worried that they say the United States is the battlefield now. My side, their side, the President, everybody thinks that America is the battlefield. The problem is, they all think you do not get due process in a battlefield. Largely they are correct. When you are overseas in a battlefield, it is hard to have due process. We are not going to ask for Miranda rights before we shoot people in battle. But America is different.

So one of the most important things I hope that will come from today is people will say and people will listen: How do we end the war in Iraq? How do we end the war in Afghanistan? I got a vote. I tried to end the Iraq war 2 years after it ended, by taking away the authorization of use of force. I still could not get that voted on.

It is even more important not only to end the war in Iraq, but ultimately to end the war in Afghanistan. Because the war in Afghanistan, the use of authorization of force is used to create a worldwide war without limitations, to create a war that some say the battlefield is here at home. This battlefield being here at home means you do not get due process at home.

There have been Members of the Senate stand up and say, when they ask you for a lawyer, you tell them to shut up. Is that the kind of due process we want in our country? Is that what we are moving toward? So the questions we are asking here are important questions. These questions are: Does the Bill of Rights apply? Can they have exceptions to the Bill of Rights?

One of the articles from the National Review recently was by Kevin Williams. We got into this a little bit earlier. I thought it was an important article because it talked about what our concern is is about what standard we will use. What will be the standard for how we kill Americans in America? He talked a little bit about how his belief is that al-Awlaki was targeted mainly as a propagandist. An interesting thing about al-Awlaki is that before he was targeted, he was actually invited to the Pentagon. We considered him to be a moderate Islamist for a while.

We invited him to the Pentagon. I think he actually gave and said prayers in the Capitol at one point.

The question is if we made a mistake the first time about whether he was our friend—and I think we did—could you make a mistake on the other end? The question is, if governments are to decide who are sympathizers and people who are politicians, with no checks or balances, are to decide who is a sympathizer, is there a danger that people who have political dissent could be included in this?

The way Williamson describes al-Awlaki was that he was first and foremost an al-Qaida propagandist. He was a preacher and a blogger who first began to provoke United States authorities through the online bile which earned him the faintly ridiculous sobriquet the bin Laden of the Internet.

Was he an active participant in planning acts of terrorism against the United States? The FBI did not think so, at least in the wake of 9/11 attacks. The Bureau interviewed him four times and concluded he was not involved. The Defense Department famously invited him to dine at the Pentagon as part of the Islamic outreach efforts, and in 2002 he was conducting prayers in the U.S. Capitol.

Throughout the following years, al-Awlaki became a sort of al-Qaida gadfly, dangerous principally because he was fluent in English and, therefore, a more effective propagandist. It was not until the first Obama administration that al-Awlaki was promoted by United States authorities from propagandist to operations man.

You may remember the context. The Obama administration had been planning to try 9/11 conspirators in New York City when the country was thrown into a panic by the machinations of the would-be underpants bomber, Umar Farouk Abdulmutallab.

The Obama administration, in an interesting about-face—whereas it had been planning to try Khalid Shaikh Mohammed in New York and his co-conspirators there, definitively turning our back on Guantanamo—turned around and made a decision that it couldn't do it in New York. Al-Awlaki was a part of this. He was a propagandist and part of this. They said Abdulmutallab actually sought out al-Awlaki in Yemen and al-Awlaki had blessed his bomb plot and even introduced him to a bombmaker. This, according to the Obama administration, is what justified treating al-Awlaki as a man at arms earning him a place on the national secret hit list.

Williamson asked this question:

> If sympathizing with our enemies and propagandizing on their behalf is the equivalent to making war on the country, then the Johnson and Nixon administrations should have bombed every elite college campus in the country during the 1960s.

These are his words, not mine. He goes on:

> And as satisfying as putting Jane Fonda on a kill list might have been, I do not think that our understanding of the law would encourage such a thing, even though she did give priceless aid to the communist aggressors in Vietnam. Students in Ann Arbor, MI, were actively and openly raising funds for the Vietcong throughout the war. Would it have been proper to put them on kill lists?

I don't know.

Williamson said:

> I do not think that it would. There is a difference between sympathizing with our enemies and taking up arms against the country.

They aren't the same thing. We have to ask ourselves, what is the standard? Could political dissent be part of the standard for drone strikes?

You say, well, that is ridiculous. We have listed people already on Web sites and said they were at risk for terrorism for their political beliefs. The Fusion Center in Missouri listed people who were of pro-life origin and listed people who believed in secure borders for immigration. They listed people who were supporters of third-party candidates, the Constitution Party or the Libertarian Party. These people were listed in a mailing sent out to all the police in the State to be aware of these people. Be aware of people who have bumper stickers on their cars supporting these people.

That, to me, sounds dangerously close to having a standard where the standard is sympathy not for your enemies but sympathy for unpopular ideas or ideas that aren't popular with the government. That concerns me. It concerns whether we could have in our country a standard that is less than the Constitution. The Constitution is a standard where I can't imagine we would want to give up on this standard, or any President could assert a standard would not be the Constitution.

There was an article in Human Rights First which was published in December of 2012. It begins with this prefacing statement:

> We are establishing precedents that other nations may follow, and not all of those nations may—and not all of them will be nations that share our interests or the premium we put on protecting human life, including citizens.

This was a statement by John Brennan. It is a statement that actually carries some weight and should be thought through. This is the reason why I say this filibuster is not so much about Brennan as it is about a constitutional principle.

The Obama administration has dramatically escalated targeted killing by drones as the central feature of counterterrorism response.

Mr. President, at this time I have a unanimous consent request. I wish to read it into the RECORD. With this unanimous consent request, I would emphasize that this would be ending the debate and allowing a vote on Brennan. Part of this unanimous consent request would be the establishment of a vote on this resolution as well as setting a vote up on the confirmation of John Brennan to be CIA Director.

The resolution states:

> Resolved, that it is the sense of the Senate that:
>
> 1. The use of drones to execute, or to target, American citizens on American soil who pose no imminent threat clearly violates the constitutional due process rights of citizens.

That is the most important clause of that. I think it is important for the American people to know that apparently the other side is going to object. Object. It is important to know the majority party here in the Senate, the party of the President, is going to object to this statement being voted on. They may still vote against it if they wish, but they are going to object, I understand, to having a vote on this statement. The use of drones to execute a target, American citizens on American soil, who pose no imminent threat, clearly violates the constitutional due process rights of citizens.

What we are talking about is a resolution that says what we have been trying to get the President to say: You can't kill noncombatants. You can't kill people in a cafe in Seattle. That is what we are asking. It is blatantly unconstitutional to kill noncombatants. I can't understand why we couldn't get a resolution, particularly because I am willing to, with this resolution, move forward and let the vote occur on Brennan.

The second part of the resolution is:

> The American people deserve a clear, concise, and unequivocal public statement from the President of the United States that contains detailed legal reasoning, including but not limited to the balance between national security and due process, limits of executive power and distinction between treatments of citizens and noncitizens within and outside the borders of the United States, the use of lethal force against American citizens, and the use of drones in the application of lethal force within the United States territory.

Basically, the second part of the resolution asked, basically, we do our job and ask the President to let us know what is going on with the program. If there is an objection to this, it would be an objection to, No. 1, killing citizens who are noncombatants and, No. 2,

to giving us a report on what the program will actually entail.

Mr. President, I ask unanimous consent that at a time to be determined by the two leaders tomorrow, the Senate vote on this resolution as I just read it, and with the addition to it they then turn to the Brennan nomination or be allowed to proceed to a vote.

The PRESIDING OFFICER (Mr. HEINRICH). Is there objection?

Mr. DURBIN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I would say to my friend from Kentucky that I am chair of the Constitution, Civil Rights and Human Rights Subcommittee of the Judiciary Committee. We are scheduling a hearing on the issue of drones, because I believe the issue raises important questions, legal and constitutional questions. I invite my colleague to join us in that hearing if you wish to testify. I think this is something we should look at and look at closely. That is why this hearing is being scheduled. I believe at this moment it is premature to schedule a vote on this issue until we thoroughly look at the constitutional aspects of all of the questions the Senator has raised today, which are important.

Because of that, I have no alternative but to object.

The PRESIDING OFFICER. Objection is heard.

Mr. PAUL. Mr. President, I am disappointed the Democrats choose not to vote on this. The answer around here for a lot of things is we will have a hearing at some later date to be determined. The problem is this is a nonbinding resolution. This is a resolution just stating we believe in the Constitution and, A, Mr. President, send us some information about your plan, how it is going to work. It doesn't change the law. In fact, I wish it could do more than that. We have an actual bill which will be introduced. We will actually try to change the law.

This is a symbolic gesture and a way to allow us to move forward. I am disappointed we can't.

This was an article that was published in Human Rights First in December of 2012. As I said, it has an opening statement by John Brennan I think is actually well thought out and recognizes some of the advantages and disadvantages of drone strikes.

John Brennan begins by saying:

> We are establishing precedents that other nations may follow, and not all of those nations may—and not all of them will be nations that share our interests.

Think about what he is saying there. Other people are going to get drones. We have already lost a drone in Iran. How long do you think it is before Iran has drones? How long do you think it is before Hezbollah has drones or Hamas has drones? I think there is a certain amount of thought that ought to go into a drone-killing program, particularly when the people who are being killed by the drones will have their own drones, I think within short order.

> The Obama administration has dramatically escalated targeted killing by drones as a central feature of his counterterrorism response. Over the past 2 years the administration has begun to speak more openly about the targeted killing program, including in public remarks by several senior officials. While we welcome and appreciate these disclosures, they nevertheless provided only limited information.
>
> Experts in other governments have continued to raise serious concerns about:
>
> The precedent that the United States targeted killing policy is setting for the rest of the world, including countries which have acquired or are in the process of acquiring drones, yet have long failed to adhere to the rule of law and protect human rights—

We would like to believe we actually have rules in place, and we would not misuse drones. Imagine what it is going to be like when countries get drones that have none of the rules, none of the checks and balances.

> The impact of the drone program on other U.S. counterterrorism efforts, including whether U.S. allies and other security partners have reduced intelligence sharing and other forms of counterterrorism cooperation because of the operational and legal concerns expressed by these countries; the impact of drone operations on other aspects of U.S. counterterrorism strategy, especially diplomatic and foreign assistance efforts designed to counter extremism, promote stability, and provide economic aid; the number of civilian casualties, including a lack of clarity on who the United States considers a civilian in these situations.
>
> Of note and of consideration also is whether the legal framework of the program that has been publicly asserted so far by the administration comports with international legal requirements.
>
> The totality of these concerns, heightened by the lack of public information surrounding the program, require the administration to better explain the program and its legal basis and to carefully review the policy in light of the global precedent it is setting and serious questions about the effectiveness of the program on the full range of U.S. counterterrorism efforts. While it is expected that elements of the U.S. Government's strategy for a targeted killing will be classified, it is in the national interest that the government be more transparent about policy considerations governing its use as well as its legal justification, and that the program be subject to regular oversight. Furthermore, it is in the U.S. national security interests to ensure that the rules of engagement are clear and that the program minimizes any unintended negative consequences.
>
> How the U.S. operates and publicly explains its targeted killing programs will have far-reaching consequences. The manufacture and sale of unmanned aerial vehicles is an increasing global industry and drone technology is not prohibitively complicated.

I will give you an idea where there is a marketplace for drones. Last year, I introduced a bill to require a warrant before you could use a domestic drone to spy on citizens. Before I introduced it or anybody knew outside my office, we already had calls in lobbying coming from drone manufacturers. So this is a big business.

> Some 70 countries already possess UAVs, or drones, including Russia, Syria and Libya, and others are in the process of acquiring them. As White House counterterrorism chief John Brennan stated: The United States is ''establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians.''
>
> By declaring that it is an armed conflict with al Qaeda's ''associated forces,'' (a term it has not defined)—

I think this is an important point because everybody is always saying: Don't worry. You are fine. You are not a terrorist. We are only going after terrorists. The problem is, as I said, the government has defined terrorism in this country to mean things that may not include terrorists—paying cash, having weatherized ammunition—so there are a lot of different things they have used as a definition. But let's say they are going after al-Qaida, people working with them or associated forces—what that means I don't know, particularly since al-Qaida is a little hard to define because they do not have membership cards. Some of them probably don't use the label at all. I doubt many of them have any communication with any kind of central headquarters or central group called al-Qaida.

> By declaring that it is in an armed conflict with al Qaeda's ''associated forces,'' without articulating limits to that armed conflict, the United States is inviting other countries to similarly declare armed conflicts against groups they consider to be security threats for purposes of assuming lethal targeting authority. Moreover, by announcing that all ''members'' of such groups are legally targetable, the United States is establishing exceedingly broad precedent for those who can be targeted, even if it is not to utilize the full scope of this claimed authority. As an alternative to armed conflict-based targeting, U.S. officials have claimed that targeted killings are justified as self-defense responding to an imminent threat. . . .

The problem is we have defined imminent to be not immediate. So having a murky definition of what imminent is allows us to run into problems.

> It is also not clear that the current broad targeted killing policy serves U.S. long-term strategic interests in combating international terrorism. Although it has been reported that some high-level operational leaders of al-Qaida have been killed in drone attacks, studies show the vast majority are not high-level terrorist leaders. National security analysts and former U.S. military officials increasingly argue that such tactical gains are outweighed by the substantial cost of the targeted killing program, including growing anti-American sentiment and recruiting support for al-Qaida.
>
> The broad targeted killing program has already strained U.S. relations with allies and thereby impeded the flow of critical intelligence about terrorist operations.

The problem is, when we talk about this, one of the most important things to our intelligence is actually human intelligence. We get information from people who are our friends, who live in those countries, who blend into the population and are part of their population. But we have gone on to destroy some of this intelligence in the sense that one of the people who helped us to

get bin Laden was a doctor in Pakistan by the name of Dr. Shakil Afridi. If we don't stand by the people who give us intelligence and give us information, we will not get more. But when he did help us, somehow his name was leaked. I don't know where the leak came from, but his name was leaked and then he was arrested by the Pakistanis. He is now in prison for the rest of his life.

I have asked several times, both to the previous Secretary of State as well as to the current Secretary of State, and I asked the current Secretary of State point-blank and directly: Will you use the leverage of foreign aid to say we are not going to give you foreign aid if you don't release this doctor who gave us information?

It is a little ironic that we will not do it, particularly since at one point in time we actually had, I think, a $25 million reward for any information that led to helping us get bin Laden. So it is kind of disappointing that we haven't held out and supported our human intelligence and people such as Dr. Afridi, who helped us get probably the most notorious terrorist of the last century.

While the U.S. Government does not report the number of deaths from drone strikes, independent groups have estimated that the drone program has claimed several thousand lives so far.

Estimates and public comments by some Senators have said as many as 4,700. What we don't know about the 4,700 but what would be an important statistic, I think, or maybe a troubling statistic, would be how many of the 4,700 were killed in combat—actually holding weapons, fighting, going to a battle, coming from a battle—and how many of the drone strikes were actually on people who weren't involved in combat. I think if that number were released, if that number were made public, it would concern you even more because you may well find out a lot of the people—and we have seen some of the strikes on television, with people in their cars, people walking around without weapons, people eating dinner, people at home in their houses. I am not saying these are good people necessarily, I am just saying the drone strike program we have in place currently seems to have a very low threshold for whom they kill. So the question would be whether you are going to use that kind of standard if you have a domestic drone strike program in the United States.

I think we are getting to the point, and that is one of the most important questions as we look at the foreign drone program, is understanding what the parameters are that allow us to kill people in foreign countries and are those the parameters that are going to be used here.

For the most part, over the last decade, they haven't admitted we even have a drone strike program. But now that they admit it, the President doesn't want to answer any questions about it. He doesn't want to deny he will use it here. He just says he isn't intending to use it here but then says: Oh, probably there will be different rules inside the United States than outside the United States.

This is where the Senate ought to get involved, instead of punting this to another time. The Senate ought to say we are not going to wait for the President to send us a memo. We are going to send him a memo. We are going to tell him what the rules on drone strikes are. We are going to tell him the Constitution does apply to Americans, particularly Americans in the United States, and there are no exceptions.

I find it inexcusable that the Attorney General says: Well, the fifth amendment, we will use it as needed, basically. We will use it when we choose. The problem with that is I don't think the executive branch should get to pick and choose.

Without yielding the floor, I am going to allow a question from my colleague from Texas.

Mr. CRUZ. I thank the Senator from Kentucky, and I want to ask the following question: Is the Senator from Kentucky aware of the reaction the American people are having to his extraordinary efforts today?

Given the Senate rules do not allow for the use of cellular phones on the floor, I feel quite confident the Senator from Kentucky is not aware of the Twitterverse that has been exploding. So what I want to do for the Senator from Kentucky is to give some small sampling of the reaction on Twitter so he might understand how the American people are responding to his courageous leadership, to Senator PAUL's doing something that in the last 4 years has happened far too little in this Chamber, which is standing and fighting for liberty.

So I will read a series of tweets.

So proud of Rand Paul standing up for what's right. Stand with Rand.

Rand Paul: a reason to be proud of your elected representatives again. Keep going, Rand.

Proud of Senator Rand Paul and all who have joined him in this effort. Stand today with Senator Rand Paul.

So happy with Rand Paul right now. Someone finally using the system to aid, not usurp, our rights.

Rand Paul filibusters Brennan nomination—over four hours now. Glad someone in the Senate has some spine.

That was tweeted a while ago.

Rand Paul is a hero today, a man with a backbone.

Today Rand Paul is my hero.

Kentucky Senator Rand Paul is a true constitutional hero in his filibuster against CIA nominee.

I can honestly say, I am proud to currently live in Rand Paul's State of Kentucky.

So proud of Rand Paul. He's bringing it. He's not going to let our constitution get trashed. A breath of fresh air. PRAY 4 THIS FIGHT 4 RAND.

I am so beyond proud of Rand Paul and the way he is standing up for each and every American citizen right now by filibustering the Senate.

I am VERY proud of Senator Rand Paul. This is an important moment when one person had the courage to yell STOP. Stand with Rand.

So proud of Rand Paul. We need more like him. Stand with Rand.

Rand Paul is now in hour 7 of his filibuster. He is standing up for our rights. Thank you. Stand with Rand.

It is frightening that Obama seeks to have an ever growing amount of power. Drone strikes are frightening. Stand with Rand.

Dear GOP. The base is crying out for more of you to stand with Rand. If you want the base's votes, get it together.

Stand with Rand. We need you now more than ever. This president has usurped his power. We can't say anything bad against him.

Stand with Rand. So long as Rand speaks, we'll be tuned in.

It is unconstitutional to target and kill Americans on American soil with a drone. Stand with Rand.

A retweet from Senator RAND PAUL. I will commend the Senator from Kentucky. He was so flexible he was able to tweet while he was standing on the floor. A retweet from Senator RAND PAUL's tweet: ''I will not sit quietly and let President Obama shred the Constitution,'' with the hashtags ''filiblizzard'' and ''Stand with Rand.''

Here is a more mixed one, but nonetheless demonstrating the respect the Senator from Kentucky is earning across the aisle.

I may not always agree with Rand Paul but he has my respect. He's very willing to do what he feels is right. Stand with Rand.

From Congressman JUSTIN AMASH:

Why won't President Obama simply state that it is unconstitutional and illegal for government to kill Americans in U.S. without due process? Stand with Rand.

Stand with Rand, because we deserve to know if American citizens should fear murder from our Government.

Everyone should be aware of this important moment in American history. Stand with Rand.

Proud to call Rand Paul my Senator. Stand with Rand.

It is unconstitutional to target and kill Americans on American soil with a drone. Stand with Rand.

The Federal Government does not have the power to kill its citizens whenever it wants. There is something called due process. Stand with Rand.

Fight for our constitutional rights and liberties. Stand with Rand.

Stand with Rand. I have gained a lot of respect for Senator Paul today. This is not a right or left issue, it is a civil liberties issue. Thank you Rand Paul and others who are taking a stand for patriotic Americans.

A great day for liberty when Senator Rand Paul and a handful of others stood up for liberty. Stand with Rand.

It is ironic that a Nobel Peace Prize winner won't guarantee that he won't use drones against Americans. Stand with Rand.

I will note to the Senator from Kentucky and ask his reaction to these—this is but a small sampling of the reaction in Twitter. Indeed, in my office I think the technical term for what the Twitterverse is doing right now is ''blowing up.''

I suggest to the Senator from Kentucky and then ask his reaction—I suggest that this is a reflection of the fact that the American people are frustrated. They are frustrated that they

feel too few elected officials in Washington stand for our rights, are willing to rock the boat, are willing to stand up and say the Constitution matters. And it matters whether it is popular or not, it matters whether my party is in power or another party is in power. The Constitution matters. Our rights matter. And I think so many Americans are frustrated that they view elected officials as looking desperate to stay in power, desperate to be reelected to do everything except fight for the Constitution and fight for our liberties, and I think this outpouring the Senator from Kentucky is seeing is a reflection of that great frustration.

I join with the sentiments of these and many others on Twitter. I ask the Senator from Kentucky if he was aware of this reaction and what his thoughts are to the many thousands more—I haven't been able to read their tweets—and their words of encouragement as the Senator from Kentucky more than anyone is standing with Rand.

Mr. PAUL. Mr. President, I thank the Senator from Texas for coming to the floor and cheering me up. I was getting kind of tired. I appreciate him bringing news from the outside world.

As you know, we are not allowed to have electronics on the floor, so I don't really have much knowledge of the electronic outside world. But actually it is probably a good thing for every American eventually not to see their phone or their computer for about 8 hours.

The thing is, people think that we should not—people are always saying don't fight, get along, and stuff. I think people do want that. I think at the same time they want you to stand up and stand for something and believe in something. It doesn't have to mean that we do it in an acrimonious way. Even the Senator from Illinois and I usually have civilized words together. There is a smile.

The thing about it is that there are principles we ought to stand for. I think the most important principle here, though, is that really this is a tug-of-war between the executive branch and the legislative branch. There may be some partisanship, that we can't all get together in the Senate to say to the President that we think his power should be restrained, but I think at the same time there are some on the other side who are saying that. Really, that is what this should be about.

It is about how much power a President can have. Can a President have the power to decide to kill Americans on American soil? But not only that, can the President have the power to decide when the Bill of Rights applies? Can you be targeted because you have been alleged to have committed some crime and your Bill of Rights is stripped away even if you are here in the United States? I think it is a pretty easy question.

Maybe someone from the media would ask the President tonight—I don't know if he is still up or not—but ask the President the question. Ask him, do you plan on killing Americans who are not in combat? Do you plan on killing Americans who are not in a combat position, people whom you might be accusing of some kind of crime but who are actually not engaged in combat? I would think it would be a simple answer. In fact, I am willing to go home if we can get an answer from the President that says: People not engaged in combat won't be on any target list. It is a pretty simple question to ask and a pretty reasonable question to ask.

After much jockeying and debate with the Senator from Texas asking the Attorney General this question, we finally did get to where it seems as though he was coming toward not trying to but being forced to say it is not constitutional to kill noncombatants.

It should be an easy question. So we will take a telegram. We will even take a tweet. If the Attorney General would tweet us, we can have that relayed to the floor and let him know—let us know that basically they acknowledge that their power is not unlimited.

I don't think this is really an overstatement of the cause. This has been written up. Glenn Greenwald has written this up. Conor Friedersdorf has written this up, talking about if you have a war that has no end, if you have a war that has no geographic limit, and then if you have strikes that have no constitutional bounds, basically what you have is an unlimited imperial Presidency.

This is not a partisan issue. A lot of this began under George Bush. It has been continued, expanded, doubled, and quintupled and made 10 times worse by the current President. But even under George Bush, nobody ever maintained they could kill Americans at home. I can't imagine that the President, when he comes forward and says he has not killed Americans and he does not intend to do it but he might—that somehow we are supposed to be placated by that. Somehow that is supposed to be enough.

This is not the first time we have seen this—not the first time we have seen a reversal of fortunes here, reversal of what I think he stood for as a candidate. I have said many times, probably 10 times today that I admired the President. I admired the President when he was a Senator on many issues. I admired the President when he ran for office. But the President who ran for office and said we are not going to tap phones without a warrant, the President who ran for office and said we are not going to torture people now says we are going to kill people with no due process? I find that incredibly hypocritical and incredibly ironic. I see no reason why he can't come forward and say: We don't get to pick and choose when the fifth amendment applies. We don't get to pick and choose when people can be accused of crime and get no adjudication and be killed by a drone.

I just cannot imagine he can't answer these questions. It is not enough to say: I don't intend to do so.

Last year when we passed the national defense authorization bill, there was included in that the ability to indefinitely detain an individual, an American citizen. In fact, I asked another Senator on my side—I said: Does that mean you can send an American to Guantanamo Bay?

He said: Yes, if they are dangerous.

That would be fine if we all agreed who is dangerous and who committed a crime, but that would be an accusation, and that would have to be adjudicated somehow, and if you don't get a trial, how do we determine your innocence or guilt or whether you are going to be sent to Guantanamo Bay?

The President, like so many times, said: I don't support indefinite detention. I would veto that.

No, no, I won't veto that this time, but I would veto that if I were still Candidate Barack Obama. But I am President Barack Obama, I am not going to veto that.

So instead he says: I have no intention of detaining anyone.

Here is the problem. It is not good enough. The law is for everybody. It is not for saying: Oh, I am a good President. I am very—I went to Harvard. I am not going to detain anybody.

That is not enough. The law is what the law is. If the law allows you to be detained as an American citizen, what about the next guy who is not so high-minded, the next guy who decides he is going to detain political opponents and ethnic groups or people he dislikes? What happens when that happens? It is not enough to say: I don't intend to do something.

I would think the leader of the free world, the leader of I think one of the most important nations if not the most important nation or civilization we have had in historic times—I have high hopes and high estimation of who we are as a people. It is not enough for him to say: I don't intend to break the Constitution. You either believe in the Constitution or you do not.

I think illustrative of sort of this opinion was when I interviewed or asked questions to Senator Kerry when he was being nominated. I asked him these questions about, can you go to war without a declaration of war.

His answer was, oh, of course I will support the Constitution, except for when I won't support the Constitution, when it is inconvenient. It is sometimes hard to go to war, it is messy, there is all this voting stuff, and people don't want to vote to go to war, they don't want to raise taxes. It is just hard to get the votes for war. So when it is inconvenient, I will not.

That is the problem.

He asked me or sort of insinuated that I was an absolutist. I don't know how to halfway believe that Congress should declare war. I don't know how to halfway believe in the fifth amendment. This is not one we are even debating exactly what it means, what the

establishment clause of the first amendment means. There is really not a lot of debate over what due process is. When you are accused of a crime, when you are accused of something, you are indicted. When you are accused, you get a trial, you get due process. Nobody is really debating what that means. Yet the Attorney General for this President has said that the fifth amendment will be applied when they can.

To be fair, I think he is referring to foreign strikes. He is talking about foreign strikes. To tell you the truth, it is kind of muddled, whether the Constitution applies to people in foreign lands or in foreign zones. But that is the whole point of this. The point is that this is America. We are not talking about a battlefield. We are not talking about people using legal force. If you are in America, if you are outside the Capitol and you have a grenade launcher, you will be killed without due process. You don't get due process. You don't get an attorney. You don't get Miranda rights. Nobody thinks that you do. But if you are sitting in a cafe, and somebody thinks you e-mailed your cousin in the Middle East, and they think you are conspiring with them, you should be charged. You should be imprisoned if they can make the charges stick. But they should not just drop a Hellfire missile on your cafe experience.

We have to realize and the President above all people—someone who taught constitutional law should realize that his opinion is not so important. Even as the President, it is not so important. For him to say that he doesn't intend to kill people—I would defy a constitutional lawyer in our country to say that is important. The law is what it is, and he is going to give us a legal interpretation of the law and not what his intent is. To say he hasn't killed anybody yet, to say he has no intention of killing anybody but he might, is just not a legal standard I chose to live by. It concerns me.

It concerns me that we have documents in the United States that are produced by the government that indicate people who might be a terrorist. The Bureau of Justice came out with one last year, and it said people who are missing fingers, people who have colored stains on their clothes, people who have more than 7 days of food might be terrorists. Ironically, another government Web site says that if you live on the coast, you should have 7 days of food because there might be a hurricane, you might need to have the food. But another Web site says that if you do, you might be crazy and a lunatic and a survivalist, and you might be someone we might need to target with a drone. If you see somebody hiding this, you are supposed to report them. If you hear of people who have guns in their house or lots of weatherized ammunition or ready-to-eat meals, they could be on the target list. Of that is whom we are targeting to be terrorists, I would certainly want a trial. I just wouldn't think it would be enough to be accused.

People say: Oh, well, they are just members of al-Qaida, but they don't have a membership card. I don't know that we have looked at anybody's because they are dead; they were blown up with a missile, so no one is looking at their al-Qaida membership card. The thing is in the United States they might say someone is associated with al-Qaida or associated with terrorism. We have had experience with government offices and officials talking about people who might be terrorists.

The Fusion Centers in Missouri said people who are pro-life might be terrorists. They said people who are for secure borders might be terrorists. They said the people who vote for the Constitution Party or the Libertarian Party might be terrorists. So if they believe in signature strikes, I guess if we see the traffic going to the Libertarian Party Convention, that could probably hit a caravan and hit a whole bunch of them at once.

People say that is absurd. The President is not advocating that. He is advocating a drone strike in America, and all we have to compare it with is the drone strike overseas. He doesn't want to talk about it, but when forced to, he says the rules will probably be slightly different inside the United States than they will be outside the United States. I guess he does believe he has a right to have a drone strike program in the United States. He will just have slightly different rules.

I have an important question for him. He needs to give me a call. Is one of the rules of inside the U.S. drone strike program to obey the Constitution that a person will get a trial by a jury of their peers? Is that going to be in the rules for inside America as opposed to outside America?

It is disturbing that it has been so hard to get any information on this. I wouldn't have gotten any information at all—I don't think—had we not gotten some support from the other side.

The Senator from Oregon stood in the committee. In fact, he asked the question before I did. I was fascinated he asked the question. Senator WYDEN stood in the Intelligence Committee and asked: Can you do a drone strike on Americans on American soil? John Brennan's response—I kid you not—we need to optimize transparency and we need to optimize secrecy. That was his answer. Here is the followup question: What does that mean? Does that mean you can kill Americans on American soil? What are you trying to say or what are you trying not to say? To Brennan's credit, he finally answered the question only when there was a threat of him not getting out of committee—thanks to the bipartisan support of Republicans and Democrats threatening to hold him up. He finally got out, but on the day we threatened to hold him up, he finally responded.

I sent him questions a month and a half previously, and I finally got an answer after the threat of his nomination not coming out of committee. This is not the way it should work. The President is bragging about how transparent the guy is, that he believes in transparency, that he is such a high-minded fellow, but he won't give any answer unless someone forces him to. The same thing with the President.

So we finally get an answer and John Brennan says: Well, the CIA cannot kill people in the United States, it is against the law. Yes, we knew that. Thanks. Thanks for admitting you are going to obey the law. We feel blessed that you said you will now obey the law. But it is sad that it took a month and a half—and under severe duress—that they have admitted they will obey the law and the CIA will not kill you in America.

The problem is it is kind of a tricky answer because they are not the ones running the drone program. The Defense Department runs the program. You can be sure the CIA is not going to kill you, but the Defense Department might. Still the answer is: We haven't killed anybody yet. We don't intend to, but we might. So that is what we are going to have to be satisfied with.

So we got the answer from the Attorney General, and his was a little more detailed and actually had some good things in it. Basically, he concluded by saying they could conceive of a place where someone could get attacked or where the United States might attack Americans, but the examples they came up with were not what we were asking about. So it is sort of akin to answering a question but answering the question that wasn't asked.

They said: Well, if planes are flying at the Twin Towers and if Pearl Harbor is happening again, obviously, we could see a use for drone strikes. Well, me too. I mean, if we are being attacked and there is a war or even if there is a person with a grenade launcher, we have the ability to respond to that. No one is questioning that. The reason this question comes up is that a significant portion of the drone strikes overseas are occurring on people who are not involved in combat.

Now there are allegations that there are bad people and they may have been in combat but are not currently in combat. The question is: Are we going to use the foreign drone strike model in the United States? Are we going to kill noncombatants in the United States? Are we going to kill people whom we suspect? That sort of gets us to the other question when we talk about what rules and procedures we expect in our country. Do we expect that the police would come and arrest you and put you in jail for the rest of your life because they suspect something? Is suspicion enough? Obviously not. We believe that is the beginning of it. Usually, it involves probable cause and involves a judge to get information.

I have a message here—not from the White House. It is a message saying the White House hasn't returned our phone

calls. If anybody knows anybody at the White House and wants to come, we are looking for an answer from the White House. We have called Justice also. I think the answer says something about the sequester. Maybe they are going to call me when the sequester is over.

I think one of the courtesies they ought to think about is—particularly if what they are hearing is something that they don't object to—why not end the debate by going ahead and letting us know? Why not go ahead and let us know they agree they are not going to be killing noncombatants. I would think that would be a pretty easy answer for them. In negotiating with any kind of executive branch—this one or others—that when we get a nonanswer or a nonresponsive answer or get a refusal to answer, I think that is when we need to be concerned that the answer is not the answer they want to be public. It is an answer that perhaps the fifth amendment will be optional depending on who is judging the circumstances.

As we look forward and look at some of the information that has been gathered over time on this, one of the interesting articles we have collected on this was an article in the Los Angeles Times entitled ''Police employ Predator drone spy planes on the home front.'' This is an article by Brian Bennett.

Reporting from Washington—Armed with a search warrant, Nelson County Sheriff Kelly Janke went looking for six missing cows on the Brossart family farm in the early evening of June 23. Three men brandishing rifles chased him off, he said.

Janke knew the gunman could be anywhere on the 3,000-acre spread in eastern North Dakota. Fearful of an armed standoff, he called in reinforcements from the state Highway Patrol, a regional SWAT team, a bomb squad, ambulances and deputy sheriffs from three other counties.

He also called in a Predator B drone.

As the unmanned aircraft circled 2 miles overhead the next morning, sophisticated sensors under the nose helped pinpoint the three suspects and showed they were unarmed. Police rushed in and made the first known arrests of U.S. citizens with help from a Predator, the spy drone that has helped revolutionize modern warfare.

But that was just the start. Local police say they have used two unarmed Predators based at Grand Forks Air Force Base to fly at least two dozen surveillance flights since June. The FBI and Drug Enforcement Administration have used Predators for other domestic investigations, officials said.

''We don't use [drones] on every call out,'' said Bill Macki, head of the police SWAT team in Grand Forks. ''If we have something in town like an apartment complex, we don't call them.''

The drones belong to U.S. Customs and Border Protection, which operates eight Predators on the country's northern and southwestern borders to search for illegal immigrants and smugglers. The previously unreported use of its drones to assist local, state, and federal law enforcement has occurred without any public acknowledgement or debate.

Congress first authorized Customs and Border Protection to buy unarmed Predators in 2005. Officials in charge of the fleet cite broad authority to work with police from budget requests to Congress that cite ''interior law enforcement support'' as part of their mission.

In an interview, Michael C. Kostelnik, a retired Air Force general who heads the office that supervises drones, said Predators are flown ''in many areas around the country, not only for federal operators, but also for state and local law enforcement. . . .''

But former Rep. Jane Harman (D–Venice), who sat on the House homeland security intelligence subcommittee at the time and served as its chairwoman from 2007 until this year, said no one discussed using Predators to help local police serve warrants or do other basic work.

Using Predators for routine law enforcement without public debate or clear legal authority is a mistake, Harman said.

''There is no question that this could become something that people will regret,'' said Harman, who resigned from the House in February and now heads the Woodrow Wilson International Center for Scholars, a Washington think tank.

The point is it isn't so much about technology. I am not opposed to drones being used even domestically. It is about the individual freedom, it is about the process, and it is about how they are used. For example, just like in national defense, if someone is robbing a liquor store and it is safer to get the robber down with a drone, that is fine. If someone is armed and robbing and threatening people in the liquor store and people as they come out, I don't mind if that person was shot with a drone or a rifle from a policeman. It is what it is. As one of my friends who is a physician would say when people would come in wounded from robbing someone: Well, I guess that is an occupational hazard if you break into homes. The thing is it isn't the force we are talking about, it is whether the process is right. So they can use lethal force when lethal force is threatened. The question about drones is whether they are being used with warrants, if they are spying on someone or doing surveillance on someone.

One of the bills we introduced last year was a bill to require warrants for drone surveillance. This is a hot topic, and I think it will probably get up to the Supreme Court. I don't believe it has yet. There were cases that were talking about GPS tagging of cars, and the Supreme Court ruled they cannot do that without a warrant.

My suspicion is they will rule in favor of warrants on drones too. Although there is some dispute over what they call open spaces. I think that with open spaces we need to be concerned that just because you are not inside your house does not mean you don't still deserve some privacy on your own land. So it is not so much that the drone is necessarily our enemy, but it just allows the government to do so much more. We need to be very careful about the safeguards of the Constitution and requiring whether these safeguards are met as far as protecting our liberty.

This is from the same article from the Los Angeles Times:

In 2008 and 2010, Harman helped beat back efforts by Homeland Security officials to use imagery from military satellites to help domestic investigations. Congress blocked the proposal on grounds it would violate the Posse Comitatus Act.

The Posse Comitatus Act is pretty important and it has been part of our discussion today and we are not the first person to raise this. The military is not authorized to operate in the United States. Some may say: Why not? The reason is they operate under different rules of engagement than our police do. In Afghanistan, Iraq or in any kind of war theater, they have warrants, they don't have Miranda rights, and they don't get due process in war. At home we do. That is why it is important we get folks to acknowledge this is not a battlefield. America is not a battlefield. It is a place where we have constitutional rights and have for hundreds of years.

The Posse Comitatus Act—after the Civil War—regulated and prohibited the military from acting as a police or taking a police role on U.S. soil. Proponents say the high resolution cameras, heat sensors, and sophisticated radar on the Border Protection drones—and this is the other point—were legislated to be used on the border.

One could argue that there is a Federal role for monitoring borders for national defense and other reasons, but now they are loaning them out to local law enforcement and law enforcement is also buying drones directly. So they have high-resolution cameras, heat sensors, and sophisticated radar on the Border Protection drones that can help track criminal activity in the United States just as the CIA uses predators and other drones to spy on militants in Pakistan, nuclear sites in Iran, and other targets around the globe.

For decades, U.S. ports have allowed law enforcement to conduct aerial surveillance without a warrant. This is part of that sort of open spaces doctrine. I am not saying it makes it right but that the government has been doing it for decades. Some of the courts apparently have ruled that what a person does in the open—even behind a backyard fence—can be seen by a passing airplane and is not protected by privacy laws. I don't think I agree with that. If a person is swimming in their pool in their backyard or in the hot tub, just because we have the technology to be able to see them in their hot tub, does that mean they have a right to look at what people are doing in their backyard? I don't accept that. I think it has been abused and we should be fighting against this surveillance state.

Advocates say Predators are simply more effective than other planes. Flying out of earshot and out of sight, a Predator B can watch a target for 20 hours nonstop, far longer than any police helicopter or manned aircraft.

What I would say there is it seems as though that might be somewhat analogous to the GPS case. The Supreme Court ruled that you can't tag people's

cars and watch them constantly, waiting to see if they break any laws. So I would think the same for a Predator, that you stake them out, watch, and you will eventually get somebody breaking the speed limit or running a stop sign. I don't think that is what was intended.

Howard Safir says, ''I am for the use of drones.'' He is the former head of operations of the U.S. Marshals Service and former New York City police commissioner. He said, ''Drones could help police in manhunts, hostage situations and other difficult cases.''

I agree completely. If someone is being held in harm's way, if someone is being held and threatened, drones are a great idea. So it is not that I am opposed to the technology. I am not particularly excited about them hovering outside our windows looking over our shoulders at what magazines we read, whether we are reading any free market magazines that might be offensive to government officials. So I think we don't want people looking into our activities in our houses without a warrant. But I think in situations where people have already broken the law, there is lethal force being exposed and there are people in danger, why wouldn't we want to use a drone versus a policeman to save the life of a policeman going into a difficult situation. So I think those probably will come to fruition. That doesn't bother me.

In some ways it is a little bit analogous to the situation we are talking about with drone strikes by the military in the United States. It is not so much that anybody is opposed to using a drone to shoot down a plane that is flying in to attack us, or people who are flying into a building to knock a building down, or flying into the Capitol. Nobody is opposed to using a drone when there is a lethal imminent force. The problem is it has gotten so convoluted. The President said an imminent threat doesn't have to be immediate. So that is the kind of thing we are concerned about. We are not concerned about an imminent or lethal threat where someone responds. What we are concerned about is a drone strike against a noncombatant. It seems as though it ought to be an easy question for the President. Couldn't he at least respond and say, I have always believed this, I just forgot to mention it, and we weren't very clear in the way we expressed it but, obviously, we would never use a drone against a noncombatant. He needs to say that, though, because the drones overseas are being used against noncombatants and we need to know what the rules are going to be.

This is a long, drawn-out day, but it is to try to get some answers. It is to try to shame the President into doing the right thing. I think he knows what the right thing is. I think the President, part of him would like to do the right thing. But I think there is a certain stubbornness there too. I think there is a certain belief that he is the President and Presidents have all this power and he doesn't want to give up any of that power. I think some of that we see with Republicans and Democrats, frankly. When people leave the legislative branch and go to the White House, they think, I am a good person. I would never use power wrongly, so why would it be wrong if I got more power? Why would it be wrong if I said, I am going to use the fifth amendment, people will get due process, except for sometimes when I think they are bad people, and then I won't use the fifth amendment, they won't get due process.

Privacy advocates say that drones help police snoop on citizens in ways that push current law to the breaking point. Ryan Calo, director for privacy and robotics at Stanford Law School's Center for Internet and Society, says:

> Any time you have a tool like that in the hands of law enforcement that makes it easier to do surveillance, they will do more of it. This could be a time when people are uncomfortable and they want to place limits on that technology. It could make us question the doctrines that you do not have privacy in public.

I think that is a good point. Maybe we will question some of the things we have said before about open spaces now that we can crisscross every inch of our open spaces. We have to imagine that we now have drones that weigh less than an ounce, so we are not even talking about the pictures of you coming down—some of us after a while don't want pictures of us in our bathing suit, whether it is 2 miles up or whether it is from 5 feet in front of us. So I can't imagine we would eventually rule that a drone could swoop down and be 10 feet over our fence. What is the question going to be? Can they be 10 feet over our fence or 2,000 feet in the air and still snoop without any kind of problem at all?

Do we want to live in a police state is basically what the question is. Do we want to live in a surveillance state? It is going to take people to stand up and say enough is enough, that we are not going to do this, instead of everybody being like a herd of lemmings and going off the cliff saying, ''Lead me, lead me, take care of me.''

We have to ask the question that Franklin asked: Are you going to trade your liberty for security? Are you so fearful, are you so afraid that you are willing to trade your liberty for security? That is sort of the underlying question to this entire debate.

The Los Angeles Times article continues:

> This can be a time when people are uncomfortable and they want to place limits on that technology. It could make us question the doctrine that you do not have privacy in public.

This is from a June 13 article, 2012, in ''Wired'' magazine by Lorenzo Franceschi-Bicchierai:

> We like to think of the drone war as something far away, fought in the deserts of Yemen or the mountains of Afghanistan. But we now know it is closer than we thought. There are 64 drone bases on American soil. That includes 12 locations housing Predator and Reaper unmanned aerial vehicles, which can be armed.
>
> Public Intelligence, a non-profit that advocates for free access to information, released a map—

which is probably not a very good idea to release a map of where our drone bases are in the United States.

> The possibility of military drones as well as those controlled by police departments and universities flying over American skies have raised concerns among privacy activists.

The other thing that should concern everybody, and probably people saw this as they had some university students seeing if they could commandeer a drone. So they had a drone fly over and the guy who didn't know the frequency all of a sudden within 2 minutes is commandeering the drone. There are questions whether that is what happened in Iran or whether the thing landed accidentally. I don't know the answer to that, but I think it is of concern that the drones could be commandeered and used by the people. It is also a concern that ultimately our enemies are going to have these drones too, and so while war is a messy thing and there are a lot of imperfections to war, I think the way we act in war should be the way we ultimately want to be treated in war. It is easier said than done and I don't think it is an easy doctrine, but it is something I think we should aspire to.

> The possibility of military drones as well as those controlled by police departments and universities flying over American skies has raised concerns among privacy activists. The American Civil Liberties Union explained in its December report that the machines potentially could be used to spy on American citizens. The drones' presence in our skies threaten to eradicate existing practical limits on aerial monitoring and allowing for pervasive surveillance, police fishing expeditions, and abusive use of these tools in a way that would eventually eliminate the privacy Americans have traditionally enjoyed in their movements and activities.

I have told people that when I first read ''1984,'' I was bothered by it. Everybody is bothered by Big Brother being able to have these two-way televisions in your house and they see everything you do. You can't escape Big Brother. But part of the consolation I had and part of the feeling was, Well, they can't do this. The technology doesn't exist. When I was a kid it didn't exist.

It is amazing, though, to think that Orwell writes this in 1949, before any of this technology. We were getting closer in the 1970s when I was a kid and now we are there, though. The technology is there. So while technology is not an enemy and technology is not something we can or should ban, technology makes our privacy more important, it makes the defense of our privacy something that needs to be guarded more jealously, because our government now does have the technology to see our every movement, to monitor our every move. So do our enemies, for that matter. So one can imagine, we don't want

the police GPS tracking us and we probably don't want our political opponents tracking our car, either. So there have to be some protections of privacy.

The issue and discussion of privacy has been one that conservatives and people on the right haven't always been as unified about. Libertarians on the right have been better with these issues and some conservatives have as well. But the question has always been, Do you have a right to privacy? I have always said, Sure, you have a right to privacy. I can't imagine why you wouldn't have a right to privacy.

Some on the conservative side say, Well, you don't have a right to privacy; nobody talked about it in the Constitution. You don't necessarily have a right to privacy. I have to disagree because I think what is talked about in the Constitution are the freedoms we gave up or agreed to have limited. The freedoms that you didn't agree to have limited are unnamed. They are unenumerated. And the 9th and 10 amendments say they are to be left to the States and people. The 9th and 10th amendments say that there is a plethora of rights, there is an unlimited amount of rights and they are yours. They stay with you, unless the government explicitly takes these rights away from you.

So the conclusion I come to with the right to privacy is I think you do have a right to privacy. I think we have a right to private property. Private property isn't listed in the Constitution, either, but I think all of our Founding Fathers believed in private property and some of them talked about actually putting the words in there. But I think some of them liked more the idea—instead of life, liberty, and property, they liked life, liberty, and the pursuit of happiness, and I think it has a more noble ring to it because it is not talking about the property, but pursuit of happiness does involve the pursuit of gaining things you will own.

One of the things about our government and about the rule of law, and one of the things that frankly I think a lot of people don't think about but that makes us an incredibly prosperous Nation is the certainty of the law. By that, what I mean is the certainty of ownership. This gets to sort of the idea of not only do we want these rights for the civil protections so we can't be incarcerated or accused of a crime falsely without being able to defend ourselves, we also want the rule of law to be consistent for everyone and not mutable. We don't want it to be arbitrary. We don't want the whims of any politician or any executive to be able to decide what the law is.

This isn't the first time I have had some disagreement with the President on this. When we had some of the bankruptcies, when the car companies were going bankrupt, I believe it was with the Chrysler bankruptcy, that as things went through, there were people who were creditors and they owned part of the company.

I learned this firsthand because I actually had some Fruit of the Loom. When Fruit of the Loom went bankrupt, I thought, well, I will get something, right? They will be bought out, and I will get some money when they are bought out. I did not get anything. I was an unsecured creditor. Apparently, in the Chrysler thing, so were the labor unions.

Usually what happens is that as a company, unfortunately, goes bankrupt, all those contracts would be renegotiated, and really then the car companies could become competitive. They could become like Toyota or other successful companies that are nonunionized. And they might become successful again.

But instead we took the actual bankruptcy law and turned it on its head. When we do this and when we bail out banks and things and change the rules at midpoint, it changes what investors do, and it changes that certainty investors need either in banks or in car companies.

Pension plans invest in a lot of these things. So a lot of people think, oh, well, the President had preference for the union because he liked the union. Well, that is fine. But teachers are in a union too, and they had a pension plan, and they owned Chrysler stock, and they got ripped off because he changed the law and gave the money to the autoworkers' union. But he took it from somebody else.

The problem is that you need those pension funds, some of which are for regular working folks. Firemen have them. Police have them. Teachers have them. It is one of the things that were not fully explained in the Romney campaign. He got so much grief for running these funds, but a lot of the people who became successful along with him and who made money were just average, ordinary citizens who are teachers, firemen, and policemen. Their pension plan was there in Bain Capital. I think that was never fully explained.

But my point is, with the rule of law, that certainty is what creates wealth in our country. One of the reasons it is hard for Africa to get ahead—Africa has great resources—diamonds and minerals. One of the big reasons they do not get ahead is there is corruption in their government. Some of that corruption we aid and abet because we give foreign aid directly to corrupt governments that steal it.

Mubarak was one of the richest men in the world—probably worth between $5 and $10 billion, maybe between $15 and $20 billion. We gave him $60 billion, so I guess we should be thankful he only stole one-third of it. Mobutu in Central Africa stole billions. There was no running water, no electricity. He and the soldiers around him lived high off the hog, and they took our money and stole it as well.

But the problem is that not only do you have the kleptocracy and the stealing of foreign aid, but then you do not have the certainty of your property. A lot of capital formation in our country is based on your home loans. It used to be before the housing market went south, but it still is. It is where a lot of capital comes from, particularly for average, ordinary citizens borrowing against their house.

If you do not have that certainty of the law, it is a problem. So what we are talking about today is more certainty of your liberty from unfair prosecution or unfair arrest or unfair death, ultimately, from a drone, which takes consistency of law, which takes that the Constitution will be adhered to and will be adhered to consistently and not in an arbitrary fashion. So it is important not only for your civil liberties, it is also important for your private property as well to have a rule of law.

People talk about a rule of law, and they talk about it all the time. I do not think it fully gets through to everybody exactly what a rule of law means and how important it is. Hayek wrote that nothing more clearly distinguishes an arbitrary society from a stable society than the rule of law. He said that the rule of law is what gives that certainty to the marketplace. So it is not enough just to have freedom. You can have complete and random anarchic freedom, and you may well not get prosperity if you do not have a law that stabilizes things. You have to have a police force and a judiciary that enforces contracts.

So that is a lot of what goes on in the developing world that they do not have. They have kleptocracy, which we aid and abet by giving them money and giving it to thieves because the thieves are our friends, not somebody else's friends. But then they also have this instability by not having a rule of law.

> The drones' presence in our skies ''threatens to eradicate existing practical limits on aerial monitoring . . .

This comes from an article in Wired by Lorenzo Franceschi-Bicchieri.

> As Danger Room reported last month, even military drones, which are prohibited from spying on Americans, may ''accidentally'' conduct such surveillance—and keep the data for months afterwards while they figure out what to do with it.
>
> The material they collect without a warrant, as scholar Steven Aftergood revealed, could then be used to open an investigation.
>
> The Posse Comitatus Act prohibits the U.S. military from operating on American soil . . .

So once again, if we go back to asking the President this question: Can you do military strikes on Americans on American soil, you know an easy answer is, I will obey the law. The law says he cannot do it. Yet he indicates that he is going to have different rules inside America than outside America for his drone strikes, which implies that he thinks he can do it.

The Posse Comitatus Act expressly forbids the military from operating in the United States. So if he is going to kill Americans in America, it will either be in defiance of the Posse Comitatus Act or he is going to have to arm the FBI with drones to kill people.

The problem is that I think once he gets into the FBI, the ludicrous nature of what he is asserting will really be paramount. I cannot imagine that he can argue at that point that we are not going to obey the Bill of Rights with the FBI because we already do with the FBI.

So many of the answers are pretty simple here and pretty easy, and I just cannot imagine why he is resisting doing this.

This new map comes out almost two months after the Electronic Frontier Foundation revealed another one, this time of public agencies—including police departments and universities—that have a permit issued by the Federal Aviation Agency to use [drones] in American airspace.

''It goes to show you how entrenched drones already are,'' said Trevor Timm, an EFF activist, when asked about the new map. ''It's clear that the drone industry is expanding rapidly and this map is just another example of that. And if people are worried about military technology coming back and being sold in the US, this is just another example [of] how drone technology is probably going to proliferate in the US very soon.''

This is another article from February of 2013.

This is in Wired. It is called ''Domestic-Drone Industry Prepares for Big Battle with Regulators.''

For a day, a sandy-haired Virginian named Jeremy Novara was the hero of the nascent domestic drone industry.

Novara went to the microphone at a ballroom in a Ritz-Carlton outside Washington, D.C. . . . and did something many in his business want to do: tenaciously challenge the drone regulators at the Federal Aviation Administration to loosen restrictions on unmanned planes over the United States. Judging from the reaction he received, and from the stated intentions of the drone advocates who convened the forum, the domestic-drone industry expects to do a lot more of that in the coming months.

There's been a lot of hype around unmanned drones becoming a fixture over U.S. airspace. . . .

You may have seen just 2 days ago, I think, a pilot coming into New York City saw one on the way down. And I saw the report, I think yesterday, saying they are still asking whose drone it was. You would think certainly we would have found out in 24 hours. I would think for certain it probably would be a government drone. But it is a little worrisome that they are seeing drones, that they do not know who is flying them or where they are as far as getting in the way of our commercial airliners.

There's been a lot of hype around unmanned drones becoming a fixture over U.S. airspace, both for law enforcement use and for operations by businesses as varied as farmers and filmmakers.

It sort of leads to another point—that it is not the technology that we are opposed to. There are going to be all kinds of private uses for drones. There have to be some rules for where they are flown so they do not get in the way of airplanes. But I would think farmers and ranchers might want to use drones to, I don't know, count their cattle or their sheep. I do not know if you do that. But there are going to be private uses for these drones that will not be objectionable.

All have big implications for traditional conceptions of privacy, as unmanned planes can loiter over people's backyards and snap pictures for far longer than piloted aircraft.

The government is anticipating that drone makers could generate a windfall of cash as drones move from a military to a civilian role. Jim Williams of the Federal Aviation Administration told [a conclave of the drone manufacturers conference] that the potential market for government and commercial drones could generate ''nearly $90 billion in economic activity . . . ''

But there's an obstacle: the Federal Aviation Administration.

The FAA has been reluctant to grant licenses out of fear that the drones, which maneuver poorly, have an alarming crash rate, and are spoofible, don't have the sensing capacity to spot approaching aircraft, which could complicate and endanger U.S. airspace.

The FAA has been criticized some by—there is a group called the Electronic Frontier Foundation—for not being transparent about its licenses. And they have filed Freedom of Information Act because they would like to know whether the intentions of those putting the drones up is benign or whether it involves some kind of surveillance.

We talk a lot about the government spying on us, but I think there is great potential for your competitors, your enemies, and other people to spy on you with drones, particularly as they become cheaper. Those issues will be complicated. I think one way to sort of rectify or give an answer to those is to say your property from where it starts on the ground up is yours. People can fly over it, but I do not think they should be able to snoop and look down in it—I think probably private or public looking down on your property. That will be something, though, that the courts will continue to have to work out.

There was a push last year by Congress and the Obama administration directing the FAA to fully integrate unmanned aircraft into American skies. It has not been nearly enough for the drone makers. The FAA is months late in designating six test sites for drones around the country. The question is when the test site selection will begin. ''I'm sure that's what all of you are asking now,'' says Williams, the head of the FAA's drone division.

Drone makers are also frustrated by the logic of existing FAA regulations. Currently, a drone weighing under 55 pounds, flying below 400 feet within an operator's line of sight and away from an airport is considered a model airplane and cleared to fly without a license. That is, if it is not engaging in any for-profit activity—sort of. ''A farmer can be a modeller if they operate their aircraft as a hobby or for recreational purposes.''

Enter Novara, a 31-year-old who owns a small drone business in Falls Church, Va. called Vanilla Aircraft. ''If a farmer, who hopefully is profit-minded, can fly as a hobbyist an unmanned aircraft,'' Novara challenged Williams, ''why can't I, as the owner of an unmanned aircraft company, fly as a hobbyist my own unmanned aircraft over property that I own? The guidelines before this were that any commercial intent is prohibited, but . . . ''

The bottom line is that there is going to be a lot of things we are going to enter into with private drones. But opposition to the technology, either for military purposes or for private purposes, is not something we are going after. What we are talking about is whether your privacy will be respected and whether your constitutional rights will be protected.

This is a new article from today by Conor Friedersdorf. It is called ''Killing Americans on U.S. Soil: Eric Holder's Evasive, Manipulative Letter.''

On December 7, 1941, Japanese warplanes bombed the U.S. naval base at Pearl Harbor, Hawaii. Six decades later, al-Qaeda terrorists flew hijacked airplanes into the World Trade Center and the Pentagon. Neither President Roosevelt nor President . . . Bush targeted and killed Americans on U.S. soil in the aftermath of those attacks. Doing so wouldn't have made any sense.

How strange, then, that Attorney General Eric Holder invoked those very attacks in a letter confirming that President Obama believes there are circumstances in which he could order Americans targeted and killed on U.S. soil.

It is kind of strange. The things that he gives as justification are things in which we did not kill Americans.

It's possible, I suppose, to imagine—

These are Eric Holder's words now.

It's possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws for the President to authorize the military to use lethal force within the territory of the United States. For example, the President could conceivably have no choice but to authorize the military to use force if necessary to protect the homeland in the circumstances of a catastrophic attack like what happened in 1941 and again on 9/11. This very scenario to be guarded against is a President using the pretext of a terrorist attack to seize extraordinary powers. Isn't that among the most likely scenarios for the United States turning into an authoritarian security state?

To be sure, if Americans are at the controls of fighter jets en route to Hawaii, of course Obama could order that they be fired upon. If Americans hijacked a plane, of course it would be permissible to kill them before they could crash it into a building. But those are not the sorts of targeted killings we are talking about. What we are talking about is killing people not engaged in combat because you suspect them of being a terrorist.

If you read to the end of Holder's letter, to the passage where he said—

This is Friedersdorf again.

If you read to the end of Holder's letter, to the passage where he says, ''Were such an emergency to arise, I would examine the particular facts and circumstances before advising the president on the scope of his authority,'' it becomes clear that, despite invoking Pearl Harbor and 9/11, even he isn't envisioning a response to an attack in process, which would have to happen immediately. So what does he envision? If he can see that a

''for example'' is necessary to explain, he ought to give us a clarifying example rather than a nonsensical one that seems to name-check events for their emotional resonance more than for their aptness to the issue.

Elsewhere in his letter, Holder writes that ''the US government has not carried out drone strikes in the United States and has no intention of doing so. As a policy matter moreover, we reject the use of military force where well-established law enforcement authorities in the country provide the best means for incapacitating a terrorist threat.'' Interesting they reject it ''as a policy matter,'' but aren't willing to reject military force in the United States as a legal matter—

That is a good distinction—

even in instances where law enforcement would better incapacitate the threat. For the Obama Administration, conceding that the executive branch is legally forbidden to do certain things is verboten,—

So it is kind of interesting. When they are willing to admit to any kind of limitations on their power they say: ''Policywise'' they might be limited, but they are not willing to say ''legally'' they are limited. This is a problem of not just this administration, but the previous one of thinking that any kind of inch that they give to another branch of government, that they will be losing some of their power and they are unwilling to do it.

Friedersdorf goes on to say that:

For the Obama administration, conceding that the executive branch is legally forbidden to do certain things is verboten, despite the fact that an unchecked executive is much more dangerous than the possibility of a future President failing to do enough to fight back against an actual attack on our homeland.

Any thinking person can see that Holder's letter is non-responsive, evasive, and deliberately manipulative in its sly reassurances, right down to the rhetorically powerful but substantively nonsensical invocation of 9/11. (Being more subtle about it than Rudy Giuliani doesn't make it right.) To credulously accept this sort of response on an issue as important as this one is behavior unfit for any citizen of a free country, where safeguarding the rule of law is a civic responsibility. The time to discuss the appropriate scope of the president's authority is now.

I know many would rather defer this, they would rather do this at another time. But the thing is, it is now. We brought the issue up. We have spent a lot of time on this issue. Why not have a discussion, instead of putting me off and saying: Oh, we will have a committee hearing on it. Sorry you are not on that committee, but we are going to have a committee hearing on this at a later date. It will never be discussed. Nothing ever happens around here. I mean, they promise you stuff. They say: We are going to take care of it. But it never happens. I think it never will.

The time to discuss the appropriate scope of the president's authority—

This is Friedersdorf again.

The time to discuss the appropriate scope of the president's authority is now, not in the aftermath of a catastrophic attack on the nation, as Holder suggests. The fact that he disagrees speaks volumes about team Obama's reckless shortsightedness.

This is another article from Wired. This is from today. This is by Spencer Ackerman.

The Obama administration calls it ''targeted killing.'' Steven Segal would call it getting marked for death. It's the practice of singling out an individual linked to a terrorist group, for killing, and it's been played out hundreds of times in the 9/11 era—including more recently against U.S. citizens like al-Qaida's YouTube preacher Anwar al-Awlaki. The Obama team has said next to nothing about how it works or what laws restrict it. Until Monday.

Attorney General Eric Holder explained the administration's reasoning for killing American citizens overseas—and only overseas—with drone strikes and other means during a Monday speech at Northwestern University. Holder claimed that the government can kill ''a U.S. citizen who is a senior operational leader of al-Qaida or associated forces'' provided the government—unilaterally—determines that citizen poses ''an imminent threat of violent attack''—

Once again, a little bit of a problem on the imminent doctrine is that ''imminent'' does not have to mean ''immediate.''

—he can't be captured; and ''law of war principles,'' like the use of proportional force and the minimization of collateral damage, apply.''

The reason why some of this is important—even though he is talking about overseas now and not what we are trying to talk about here is that since we have not been given sort of the parameters for how they will kill Americans in America, we can only assume that they will work with the parameters they have overseas. The whole idea that an imminent threat is not immediate is problematic no matter where that doctrine is used.

The idea that the law-of-war principles—I think proportional force is a good idea as far as trying to restrain how much force we use. But there are other things within the law of war that we need to be concerned about; things that happen in war are not quite the same kind of standard that we would have in the United States.

Ackerman goes on and he says:

This is an indicator of our times.

This is actually Holder.

This is an indicator of our times, not a departure from our laws and our values. The debate over killing Awlaki, whom Holder barely discussed, began long before a Hellfire missile fired from a drone killed him and fellow propagandist Samir Kahn in September. Awlaki's father sued the Obama administration in 2010 to compel it to reveal its legal rationale for the long-telegraphed strike. The administration refused, with a judge's support.

For months after Awlaki's killing, the government never disclosed any evidence supporting its decision that Awlaki posed an imminent danger to Americans beyond his rhetoric of incitement. But during the February sentencing of the ''Underwear Bomber,'' the government put forward a court filing claiming that Awlaki worked intimately with convicted would-be bomber Umar Farouk Abdulmutallab—

Who was the Underwear Bomber.

—to blow up Northwest Airlines. Holder referred to that connection in his speech.

Several legal scholars have wondered why the United States did not have to provide Awlaki with due process of law before killing him, as stipulated under the fifth amendment. Holder contended that the United States actually did, even if no judge ever heard the case.

Well, this is sort of an interesting point. I am not making an opinion on whether the fifth amendment applies to al-Awlaki overseas. I think a lot of that is complicated and not necessarily certain whether you can apply the Constitution to people outside the United States, or whether an entity within the United States should obey the Constitution on people outside the United States.

The bottom line is, in war you are not going to get due process. You are not going to get Miranda rights if you are fighting in battle. It is a little more debatable when you are not. The point is, though, that they are saying they are applying the fifth amendment sort of in private to al-Awlaki.

The question is, if this is the standard that is going to be used in the United States, it is not going to be the actual use of the fifth amendment, which means a court and a jury, it is going to be the pretend use that is done behind closed doors. I am not so sure you can have the fifth amendment that does not involve a courtroom. I just do not understand a grand jury indictment, due process, not to be deprived of life and liberty. I do not how it happens in private.

But that is the way they are administering the fifth amendment in private. They are using their discretion as to when to administer the fifth amendment. I do not know how that is going to work. I also do not think that is appropriate for U.S. citizens. So other than the President asking and answering a question as to whether noncombatants will be killed in America, we need to ask whether he is going to—before he kills them, is he going to use the fifth amendment in private in the Oval Office, or is the fifth amendment going to be public? If it is public, I do not know how you kill someone. If you are going to get some kind of due process, you would have to get tried in a court. I am not sure how this would go forward.

This is an additional quote from Holder from the same speech:

The Constitution's guarantee of due process is ironclad, and it is essential—but, as a recent court decision makes clear, ''it does not require judicial approval before the president may use force abroad against a senior operational leader of a foreign terrorist organization with which the United States is at war, even if that individual happens to be a U.S. citizen.''

Well, that is kind of confusing. If that is going to be the standard here, I would be quite concerned. The standard over there—I think there are arguments on both sides of it. But the standard over here, I cannot imagine that this is the standard we are going to use. Because basically he is saying the Constitution applies unless we think it does not apply, and then decide it does not apply.

But then he says, as long as we are at war. Well, who are we at war with? We are at war basically with anybody who

does not like us around the world. I am not sure if there is ever an end to that. I think there are problems overseas. But particularly the problem is—I think the problem at hand that we are trying to get to the root of is, is this the standard? If you are using this standard overseas, are you going to use the standard here that basically the fifth amendment applies when we think it applies, and it does not apply when we do not think it applies?

This is Ackerman, at this point, from Wired again.

Holder did not explain why Awlaki's 16-year-old son, whom a missile strike killed two weeks after his father's death, was a lawful target. Holder did not explain how a missile strike represents due process, or what the standards for due process the government must meet when killing a U.S. citizen abroad. Holder did not explain why the government can only target U.S. citizens suspected of terrorism for death overseas and not necessarily domestically.

As I said, a lot of these things overseas you can debate and try to decide whether this is a war zone or not a war zone. But they obviously do not apply in the United States. The most troubling thing about the killing of the 16-year-old son of Awlaki is the President's spokesman's response to this. You know, the flippant nature of it and the irresponsible nature for him to have said: Well, he should have chosen more responsible parents. If that is the standard we are going to have for killing Americans on American soil, that we are going to kill people who do not have responsible parents, we have set the bar pretty low for our killing program.

I think al-Awlaki was killed—I don't know. I have not seen the classified information. I think the son was killed probably when they either targeted someone else or they did what they call these signature strikes where they don't know whom they are killing necessarily. They just think they are bad people, they came from a meeting of other bad people:

The decision to kill an American, Holder said, is ''among the gravest that government leaders can face.'' Targeted killing is not assassination, he argued, because ''assassinations are unlawful killings.'' Among the few external limitations on the government's war power that Holder mentioned were the approval of a local government where the strikes occur—which must have pleased reluctant, unsteady U.S. Allies in Pakistan and Yemen.

He is saying an interesting thing, and probably Pakistan has approved of most of the killings. However, Pakistan wants to come in and wants to convince and say: No, we haven't. They are doing it against our will, but my guess is they have been told.

Some Members of Congress don't consider that a sufficient safeguard.

''The government should explain exactly how much evidence the president needs in order to decide that a particular American is part of a terrorist group,'' says Sen. RON WYDEN, an Oregon Democrat who sits on the Senate's Intelligence Committee. ''It is also unclear to me whether individual Americans must be given the opportunity to surrender before lethal force is used against them. And I'm particularly concerned that the geographic boundaries of this authority have not been clearly laid out.''

The point on the geographic boundaries is a pretty important point because this is one of the concerning items about what they maintain. They say there are no geographic limitations. They say they get the authority for war everywhere around the world, as well as war here, because they say there were no geographic limitations to the use of authorization of force when we went to war in Afghanistan.

I think people who voted for that—and I would have voted to go to war in Afghanistan—thought we were going to Afghanistan to fight the people who got us on 9/11.

I don't think they thought, when they voted for that resolution, it meant we could have war in the United States under that resolution and that the standard would be one of the laws of war or one of martial law within the United States. I don't think anybody voting on it had that conclusion. That is a real problem. Those people are saying, including the administration is saying, no geographic limitations and, essentially, there are no temporal limitations. We have a perpetual war without any geographic limitations, which now they want to apply war principles to killing in the United States.

Ackerman continues quoting Senator WYDEN:

''And based on what I've heard so far, I can't tell whether or not the Justice Department's legal arguments would allow the President to order intelligence agencies to kill an American inside the United States.''

He is unclear about it, and he has seen a lot more information than I have because he is on the Intelligence Committee and sees secure and classified information. He is unsure of it.

This makes me think nobody in the Senate or the Congress knows whether they are asserting whether they can kill Americans on American soil.

Mary Ellen O'Connell, the vice president of the American Society of International Law, found Holder's legal rationale flimsy, stating:

''First, [Holder] restates the renamed global war on terror, which Obama himself condemned. Then he tries the United Nations Charter Article 51 but does not include the whole article: It says member states of the U.N. have an 'inherent right of self-defense' if an armed attack occurs. Article 51 does not provide a legal green light for targeted killing,'' O'Connell said in an e-mail. ''Finally, he adds the argument that the U.S. may use force against States that are 'unable or unwilling' to act. This argument has no basis in international law. It simply does not exist. So regardless of how carefully you target under the law of armed conflict, there is no right in the first instance to target at all.''

Without yielding the floor, I would like to entertain a question from the Senator from Utah.

Mr. LEE. Senator PAUL recently sent a letter requesting some information from the Obama administration relating to drone strikes.

It is significant that on March 4, 2013, just a couple days ago, Senator PAUL received back from the administration a letter signed by Eric H. Holder, Jr., which reads as follows:

Dear Senator Paul:

On February 20, 2013, you wrote to John Brennan requesting additional information concerning the Administration's views about whether ''the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial.''

As Members of this Administration have previously indicated, the U.S. government has not carried out drone strikes in the United States and has no intention of doing so. As a policy matter, moreover, we reject the use of military force where well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat. We have a long history of using the criminal justice system to incapacitate individuals located in our country who pose a threat to the United States and its interests abroad. Hundreds of individuals have been arrested and convicted of terrorism-related offenses in our Federal courts.

The question you have posed is therefore entirely hypothetical, unlikely to occur, and one we hope no President will ever have to confront. It is possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States. For example, the President could conceivably have no choice but to authorize the military to use such force if necessary to protect the homeland in the circumstances of a catastrophic attack like the ones suffered on December 7, 1941, and September 11, 2001.

Were such an emergency to arise, I would examine the particular facts and circumstances before advising the President on the scope of his authority.

Sincerely, Eric H. Holder, Jr., Attorney General.

It is good to have this letter as a response to Senator PAUL's inquiry. I believe the inquiry Senator PAUL raised is a legitimate one. It is also essential we have some clarity with regard to the administration's position on this type of an attack. It is important for us to remember every time government acts, it does so at the expense of the liberty of individual Americans.

This doesn't mean government action is bad. This simply means government action always has to be weighed. It always has to be counterbalanced against the impact it has on the citizenry. It is very important we approach these things delicately. Nowhere is this balancing act more necessary than where we have circumstances in which our government action threatens not just the liberty but also the property or, most important, the life of an individual American. Where life is threatened, the concerns of the Constitution are at their highest where life is threatened as a result of government action.

Government owes it to the citizens to undertake all its activities with utmost caution. It owes it to its citizens never to deprive human beings of their lives, particularly American citizens,

unless it has done so through operation of law with what we call due process of law.

It is on this concept, due process of law, that the 5th and 14th amendments of our Constitution focus so intently. Due process of law is a familiar phrase to many Americans. We have heard this phrase over and over. We understand on some level what it means, but I would like to talk for a few minutes in response to Senator PAUL's question about the fact that in order to have due process of law, you need to have a familiar legal standard or at least a legal standard. You have to have a law that is capable of being applied in a way that American citizens can understand.

They can read the law. They can review it. They can understand what the law requires of them. They can understand what it is that the law demands and what it is that the law authorizes the government to do. In the absence of such a law, a law that can be applied, a law that can be understood in advance of its application, you run a very real risk of arbitrary and capricious government action, where government action is arbitrary, capricious and where it threatens to underline life, liberty or property but especially life. There is the greatest level of concerns where the greatest level of detail must be examined with regard to what the government wants to do.

In this circumstance, where the question relates to under what circumstances, to what extent the government may take an American life, the government may snuff out the life of an individual American citizen, the government has an obligation to see to it and to assure its citizens that it will not ever undertake such an action without due process of law. To have due process of law, you need to have a discernible legal standard. A discernible legal standard is not entirely evident on the face of this letter. That is understandable. It is just a brief response to Senator PAUL's inquiry.

It is, however, a little troubling Eric Holder doesn't do more to assure Senator PAUL in this response to his letter that these kinds of actions wouldn't be necessary to undertake on American soil, that these kinds of actions would be fraught with constitutional problems when undertaken on American soil.

It is difficult to understand why the Attorney General wouldn't just say we will not do this. This would be fraught with constitutional problems. This is not something we would do.

Also troubling is the related point that the Attorney General has apparently relied on some legal analysis provided by the chief advisory body within the U.S. Department of Justice. The U.S. Department of Justice is something one might loosely describe as the largest law firm in the United States. It is the law firm of the Federal Government.

Within any law firm you have lawyers who do different things. There are lawyers who specialize primarily in litigation, lawyers who specialize primarily in attracting agreements or in giving advice to people.

The Office of Legal Counsel within the U.S. Department of Justice is the chief advisory office within DOJ. It was the Office of Legal Counsel which drafted one or more memos outlining the circumstances in which the Obama administration might consider undertaking actions involving lethal force against American citizens.

Sadly, most of us in the Senate have been unable to review those. The American people generally have been unable to review them, but it is particularly frustrating those of us who are members of the Senate Judiciary Committee and, therefore, have an oversight responsibility over the U.S. Department of Justice, have not been fortunate enough to review the memoranda upon which the Obama administration has apparently relied in undertaking this legal analysis.

I had the opportunity to question and did question this morning Eric Holder with regard to these memoranda. I explained to him the great need we have to be able to review these memoranda, particularly as members of the Senate Judiciary Committee. I explained to him this is part of our oversight responsibilities. This is our duty. It is our right to see such documents, and it is very frustrating we have not been allowed to see such documents.

I added to that my concern what we do have is a different document, not the Office of Legal Counsel memorandum but something simply captioned as the ''Department of Justice White Paper.'' I always thought that was an interesting phrase, ''white paper.'' I don't know why they feel the need to call it that, why they don't just call it a paper. Normally, we don't have legal analyses or other important documents which are written on green paper, orange paper or any other color of paper. Nonetheless they call it a white paper.

This paper was leaked by the Obama administration to the news media. This particular paper purported to contain some analysis, perhaps in summary form, the same type of analysis of what was used in the still secret Department of Justice Office of Legal Counsel memorandum.

There were a couple things I found very disturbing about the contents of the white paper. First, the white paper focused on the fact that the U.S. Government may use lethal force to kill an American citizen only where there is an imminent threat of some sort. Where the other conditions outlined in the memorandum are satisfied, there still has to be an imminent threat of some sort. There needs to be an imminent threat that the use of lethal force by the government on the U.S. citizen in question is designed to confront.

That is a somewhat familiar legal term. It is used in other context to identify a circumstance in which one thing has to occur in order to prevent something else even worse from happening.

(Mr. SCHATZ assumed the Chair.)

An individual, for example, when confronted with an imminent threat to his or her own life, is entitled to use lethal force in defending him or herself in order to avoid that attack—in order to avoid death. But it does have to be an imminent threat. There are other examples. When a person argues that a certain action was undertaken under duress, there does have to be some degree of imminence. And it is appropriate in this circumstance, where we are talking about authorizing the Federal Government of the United States of America to use lethal force on an American citizen, that there ought to be some sort of imminent threat to American national security that necessitates and fully justifies that action.

The strange thing about the white paper, this white paper that was leaked by the Obama administration to the news media, is that it redefined ''imminence.'' It redefined it completely. It defined it to be something else, something that bears no resemblance to what you or I would call an imminent threat. It seemed to suggest that an imminent threat may occur even when there is nothing that is about to occur on an immediate basis that would involve a loss of American life or an attack on an American compound or installation or any kind of a loss or a deprivation to American national security.

This is a problem because, as we discussed just a few minutes ago, in order to have due process of law, you have to have law operating, and you have to have law operating as something other than a tool to justify arbitrary and capricious behavior by government. You have to have a discernible, judicially manageable legal standard. Even if it is something that is never going to go through a court, it needs to be a legal standard that means something, that has teeth to it, that doesn't just say government officials may undertake action X, Y, or Z if the government official in question feels moved upon to take such action. There needs to be something that has the capacity to restrain government action, and it needs to be—and the basis of and by operation of generally applicable standards—generally applicable rules of law. That is what we mean when we say due process.

Again, due process and the restrictions that accompany it are at their highest when government wants to take an action that is designed to or could lead to the ending of a human life. The sanctity of human life requires nothing less than that.

Now, there was another part of the memo that was also a little bit disturbing. The other part of the memo suggested it would, of course, be necessary in order to carry out an action involving lethal force against an American citizen; that efforts to capture

that individual would somehow prove to be futile; that those efforts wouldn't work. But there, again, the definition supplied by the white paper suggested something else. The language of the white paper suggested almost that the government official in question, in charge of this decision to end an American citizen's life, could be made somewhat arbitrarily, somewhat capriciously. This is a problem.

You don't want someone sitting there one day having the authority to say so-and-so is a troublemaker, so-and-so shouldn't be there, so-and-so has been involved with some very bad actors. So-and-so may in fact be a bad individual, may in fact be associated with people who want to harm the interests of the United States or may even have been involved in the planning of attacks on the United States, but you don't want the government official in question to be able to end that American citizen's life just on the basis of flimsy analysis, on a toothless legal standard. You want the American people to continue to be able to live under the rule of law and with an understanding that actions of government, particularly those actions designed to bring an end to a human being's life, won't be undertaken lightly.

That is what it means to live in a society that operates under a rule of law as opposed to the rule of individual human beings. It is that we have standards and we reduce those standards to writing. Those standards are rules that are generally accepted and generally applicable, that govern the conduct of individuals in society, and both the governors and the governed will themselves determine the behavior of those involved in our society.

So our law of laws, our rule of rules, our most fundamental law, is the U.S. Constitution—this 225-year-old document that I happen to believe was written by the hands of wise men raised up by their Creator for that very purpose. These were wise men who understood human nature, wise men who understood that whenever you put an individual in charge of a lot of other individuals, there are risks—risks that are inherent in human nature, risks that can be managed if you put certain checks and balances in place, and those checks and balances will ensure that no one person, no one group of people, will become so powerful as to become a law unto themselves.

You see, that is what this document, our Constitution, the Constitution of the United States, was designed to ensure; that we, as Americans, would live free, and we would live free because our laws would govern us, not the whims or the caprice of individuals.

Now, I do have another letter that I would like to share. This is a letter that was sent to my friend, Senator PAUL, from Mr. John Brennan, currently serving as Assistant to the President for Homeland Security and Counterterrorism. This letter is dated from just earlier this week. In fact, it is dated March 5, 2013, and here is what it says:

Dear Senator Paul:

Thank you for your February 20, 2013, letter regarding the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial.

The Department of Justice will address your legal question regarding the President's authorities under separate cover. I can, however, state unequivocally that the agency I have been nominated to lead, the CIA, does not conduct lethal operations inside the United States—nor does it have any authority to do so. Thus, if I am fortunate enough to be confirmed as CIA Director, I would have no power to authorize such operations.

In addition, I have asked the CIA to respond to your letters of January 25 and February 12, 2013, which raise a number of important questions regarding issues pertaining to the advancement of America's strategic priorities around the globe.

Sincerely, John O. Brennan.

This is helpful. This is a helpful indication from a government official who has been nominated to head the Central Intelligence Agency, and who acknowledges if he is confirmed to this position, he would have no authority as Director of the CIA to order lethal drone strikes within the United States. So that is helpful.

It is still significant that we be allowed to ask from time to time what the CIA might do with regard to other persons—other persons including U.S. citizens outside the United States—and under what circumstances a lethal drone strike or a different type of lethal force might be appropriate when directed toward an American citizen outside the United States.

I notice one phrase he uses in his letter, when he says: '' . . . such as a drone strike against a U.S. citizen on U.S. soil, and without a trial.'' Whenever we are talking about any person within our jurisdiction, whenever we are talking about an American citizen, regardless of where that American citizen might be found, it seems to me we do owe that person certain responsibilities. We owe that person a duty of following the law, of following our most fundamental law—the U.S. Constitution—and following other statutory authorities we have in place specifically to protect the rights and the interests, the life and the liberty and the property of the American people.

We are told those things cannot be taken by the government without due process of law. Now, normally, when we take away someone's life or their liberty or their property, we entitle that person to a trial. This is where our constitutional protections overlap a little bit and they complement each other. We have in the fifth amendment this protection that says that no person shall be deprived of life, liberty, or property without due process of law. There, again, at a bare minimum, that entails the operation of these generally applicable laws that actually have some standards to them. It typically also involves, quite necessarily, an opportunity on the part of the person being acted upon by government to have a trial.

We have elsewhere in the Constitution other protections that guarantee this. We have protections indicating that if a person is charged with a crime by our government, under the sixth amendment they have a right to a jury trial, and they have a right to counsel in connection with that trial. They have a right even to counsel paid for by the government if they can't afford an attorney in connection with that. The seventh amendment, likewise, protects the right to a trial in the context of civil disputes.

So these and other protections overlap to guarantee that Americans will have due process. Frequently, what due process entails, among other things, is the privation of a jury trial. You see, juries do perform an important function. Juries are there to help protect our rights. When we have a jury of our peers deciding critical questions with regard to our interests in life, in liberty, in property, we see to it that a panel of lay persons, a panel of nongovernment officials, a panel of citizens who have sworn an oath to do justice will do precisely that, and they will not shrink from the obligation to enforce the demands of the Constitution. They will not shrink to enforce the demands of the law. They will not shrink from their duties, and they will not see themselves as part of a government establishment.

This is how our constitution protects us and insulates us from the government because we are the people; and we, the people, control the government. We, the people, have the right to a jury trial. And when we actually get a jury trial, we are able to see our rights protected.

So, in response to the Senator's question, I do think there are some problems that we confront as a society. I think the security of the United States is, of course, of paramount importance. We need to protect American national security. We need to protect Americans. As we do so, we also need to protect the inalienable rights of individual Americans to the due process guarantees that are hundreds of years old, that extend at least as far back as the drafting and ratification of our constitution, and are, of course, much older than that. They are centuries, indeed, they are millennia old. We must continue to honor them.

Mr. PAUL. Mr. President, I would like to thank the Senator from Utah for his expert constitutional analysis, and I rely on his advice and analysis of legislation and want to thank him very much for being part of this debate.

We are in contact with the White House, and we have told the White House we will allow debate on Brennan as soon as they will give a clarification of what their opinion is on drone strikes in America.

I think after Holder's cross-examination, his opinion may not be too far off from what we are asking for. But we want it clarified and in writing because we think this is an important battle

for the American public and an important battle for the Constitution. So if the President or the Attorney General will promise to give us something, even give us something by morning, we are more than willing to go ahead with the vote in the morning with that information.

At this time, without yielding the floor, I wish to entertain a question from the Senator from Wyoming.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator from Wyoming.

Mr. BARRASSO. Madam President, I come to the floor of the Senate in great admiration for the Senator from Kentucky, for what he is doing to try to get information. All we are asked to do is to give advice and consent to the President on this very important nominee to be the head of the Central Intelligence Agency, the key to central intelligence in this Nation. I come to the floor this evening to thank my colleague from Kentucky for the leadership he has continued to show by asking questions which are not just questions of his, they are questions of the American people.

I was traveling around the State of Wyoming last week, talking to folks. I went to 13 different counties in our State of 23 counties. There were many questions being asked about drones, not just their accuracy but their intent and what this administration's policy is related to drones and how they can be used. People in my home State of Wyoming are concerned about drones being used in the United States, not just specifically for attacks against American citizens but also the concept in observation, in surveillance. What about our rights as citizens to privacy? Those are the questions that come up as I travel around the State.

I had a telephone townhall meeting the other evening with many people from all around Wyoming on the line. They admire the questioning from the Senator from Kentucky. They have concerns: Is Big Brother watching? What is happening and what role has government in observing and surveillance and looking into the lives of the American people?

It was not until Senator PAUL asked the question would there be strikes on American citizens in America that I think things became very focused at home and all around the country. Then we got more e-mails, more concerns, because the specific question that Senator PAUL is asking is a question that is on the minds of all Americans. I believe Senator PAUL deserves an answer. The American people deserve an answer. So it is not just Senator PAUL who deserves an answer, it is an answer to all of the people of this country. But I appreciate Senator PAUL's leadership in asking the specific question.

The Intelligence Committee, the Select Committee on Intelligence met, they had hearings, they had debates, discussions, deliberations, and actually they voted. That is why we are here on the floor tonight, to ask finally from the White House and from the nominee what the specific position and policy of this administration happens to be on drones. I know we have a unanimous consent request from Senator PAUL and in a second I am going to ask him to explain and maybe reiterate his unanimous consent request, explain the resolution he wishes to vote on. I think the Senator deserves a vote. We want to make sure the public understands what we are discussing here. That is why I appreciate the leadership of Senator LEE who has come here as a constitutional scholar to address some of these concerns.

I think before many Senators are able to make the final decision of how to vote, how to give advice and consent to the White House, we need more information. We need to hear from the White House. We need to hear from the administration because the people all around the country want those same questions answered.

We do have a situation where the Senator from Kentucky said he is willing to have a vote. He is willing to allow a vote on this nominee on the floor of the Senate as soon as his question is answered. He would be happy to proceed with that vote as early as tomorrow morning.

The American people deserve better than they are getting right now from this administration in so many ways. This is but one. That is why I think all of us try to go home every weekend to learn what is on the minds of folks in our home States, in our home communities. This is clearly what I have been hearing about, traveling around Wyoming, a State of vast open spaces, a State of great majesty and beauty, but a State where people are concerned with their own privacy, with overhead surveillance and of course not just their own personal privacy but their security.

What are the rights and responsibilities of a national government when new technology exists, as we have seen with drones? I had the privilege of visiting our soldiers overseas in Afghanistan with a number of Senators in January. We have seen up close, through detailed video, the capabilities of drones, capabilities that were not there that many years ago. Questions such as this would have never arisen a number of years ago because the technology was not there. But now the technology is there. With that given technology, that raises new questions. That is why I think so many Americans are appreciative of the work by Senator PAUL to specifically ask questions that have never been asked before because the technology was not there before. Now we have the technology, we have the know-how, and the question continues to be asked.

I ask my friend and colleague from Kentucky if he could explain perhaps his unanimous consent request, what vote he is asking for, why it is so important, and what it means to all of us as free citizens in this great Nation.

Mr. PAUL. Madam President, I thank the Senator from Wyoming for coming to the floor and helping to advance this debate. One of the points that was made toward the end is about our soldiers he visited and that he saw the capacity of the drones. The one thing that should not be lost here is that we are not arguing about the use of drones, particularly in defense of our military. When people are shooting at our soldiers I want the best equipment in the world that we have to defend them and to win our battles. That is something I think we should all want.

But I think our American soldiers would be disappointed in us here at home if they felt, which I think many of them do, that they are fighting for our Bill of Rights, they are fighting for our Constitution, they are fighting for our conception of freedom—in doing so, I think they would be disappointed if they felt the drones that were being used against the enemy in the mountains of Afghanistan and Pakistan were going to be used against Americans in America without any kind of due process, because the whole idea of the Constitution is what they are fighting for. That is what the President has pledged to uphold and preserve. So it is such an important battle.

The unanimous consent that we put forward, which we had hoped they would let us vote on in the morning also but they have disagreed with, basically says the use of drones to execute or target American citizens on American soil who pose no imminent threat clearly violates the constitutional due process rights of citizens.

The point we are trying to get at, which I think for the administration ought to be an easy question—we are not talking about someone attacking the Twin Towers. We are in agreement that the military can repulse attacks by American citizens in planes. Some of the hijackers—I think some of them—I don't know if any of them were citizens or not but—yes, some of them were citizens, I think. The point is, no matter who you are, if you attack the United States you can be repelled and that lethal force can be used.

The point is we are concerned that some of the drone strikes overseas are of people not involved in combat at the time, and that is another question, but here at home I don't think we want to have a standard where someone who we think might be a terrorist, who we think might be engaged in something, who is in a restaurant eating dinner, would be killed. I think we want more protections for Americans. We want, if you are accused of a crime, to have the ability to defend yourself in a court of law.

I, without relinquishing the floor, would be happy to entertain any other questions.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Madam President, I come and ask my colleague if this is

something he may have heard about at home as well, because this is something clearly on the mind of the people of Wyoming. Of course, just like Kentucky—and I will tell you when I was overseas in Afghanistan I ran not just into soldiers from Wyoming—I met eight of them in four different locations that I went to throughout Afghanistan. I met soldiers from Kentucky in each of those locations. So we are both from States with a significant commitment to our military. People over the centuries have continued to fight and defend our freedoms. But today in Afghanistan we have soldiers from my home State and your home State doing what they do to keep us free, defending the Bill of Rights, defending the Constitution.

When we talk about the Bill of Rights, let's think about what Ronald Reagan said. The Bill of Rights was not established to protect the government from the people, it was established to protect the people from the government. Search and seizure, freedom of press, freedom of speech, freedom of religion, our second amendment rights to own and bear arms—those are the constitutional rights, individual rights that people are fighting for every day in Afghanistan. They want to know when they get home what sort of freedoms are there going to be in this country? Where is the role of liberty and freedom in our society?

That is why there is no better time, I would say, than this evening, before voting on the nominee to be the Director of the Central Intelligence Agency—the head of the CIA for the country—what better time to have this debate than during that nomination process about where is that line between freedom of individual citizens and the rights of a government which now has a technology which has not previously been there up until most recently.

So I ask my friend and colleague—No. 1, I congratulate him and thank him for remarkable leadership. I hear that all around my home State and I know he hears it at home as well. He hears it all around the country. But is this a concern on the minds of people? Is there a reason we are here to bring this out, not just because a couple of Senators are on the floor debating it? This is a crucial issue for this Nation.

Mr. PAUL. Madam President, one of the things I hear at home, similar to what the Senator from Wyoming is talking about, is that we hear people worried about the erosion of their rights. They worry about statements from the President when the President says he intends to protect the Constitution—except for maybe when it is infeasible or when it is inconvenient. I think that worries people.

One of the other things about drones, which is not particularly related to this, necessarily, but I know in Wyoming I bet they have the same concerns, is our farmers are not too happy about the government flying drones over their property. That is something on which we had an interesting vote last year. We had a vote on whether the EPA could continue these without explaining to us. Once again, it was sort of similar to this fight in the sense that we wanted to stop the drone flights over farms. It was a pretty simple request, an easy request until we got the government to explain what kind of criteria, what kind of rules they were using for flying over farms.

We got 56 Senators to vote to ban these drone flights until we got more information. But it is like a lot of other things in the Senate, it took 60 votes, so we didn't actually quite win even though we had a majority.

With regard to what we are trying to accomplish through this, the main thing we want is a public acknowledgment from the President or from the Attorney General, saying that their policy is not to kill noncombatants in America. Many of the drone strikes overseas have been noncombatants—at least at the time they are killed they were not involved in combat. I don't think it is too much to ask the President to clarify that what he means is the United States can repel invasion, the United States can repel attacks, whether they are American citizens or not. We don't have a dispute with that. Our concern is when you look at the drone program overseas, a lot of people are sitting around eating, walking, sleeping in their house—that that is not the sort of a program I can imagine using in the United States. I cannot imagine we are going to have drone strikes on people while they are asleep in their home or when they are out eating in a cafe or eating in a restaurant. I cannot imagine that is the standard we are going to use. Maybe it is just a misunderstanding. Maybe the President can clear this up.

When Attorney General Holder was there this morning, the Senator from Texas asked him this question and under pointed questioning it seemed as if he was backing toward an answer that might be acceptable. He said it was not appropriate, but what we are looking for from the lead legal officer of the President, from the President, is something a little more precise than ''I don't intend to,'' or a little more precise than ''it is not appropriate.'' We would like him to say that they don't have a legal authority to kill Americans on American soil. We just don't believe they do. Targeted drone strikes in America, I don't think they have the legal authority nor the constitutional prerogative to do this, and they need to admit to that. It has been like pulling teeth trying to get information or get them to acknowledge anything. Our goal is to try to get the President to acknowledge something publicly, more so than any kind of legislation.

We do have some legislation that we are interested in. We are not demanding that it pass in order to let this nomination go forward. What we are asking for is we will let them have a vote any time they want if they will at least give us a little more of a clear understanding that they are going to obey the law. It took a month and a half for us to get the response from them that the CIA doesn't operate in the United States; that just is the law. It has been the law since 1947.

One would not think it would be that hard to get them to acknowledge they are going to obey the law. The posse comitatus law has been here since the 1860s, and it says the military doesn't operate in the United States. How hard is it for the administration to say we are going to adhere to the posse comitatus law and that we are not going to use the military in the United States? That clarifies quite a few things because if they think they are going to kill Americans with the FBI, at least we already know the FBI works under the rules of the Constitution. I would think at that point we are getting somewhere or at least moving in the right direction.

We are not looking for something where we permanently stop the President from getting his political appointees. I have mentioned previously I voted for three of the President's political appointees. My point in being here doesn't have so much to do with the CIA Director as it has to do with the policy of the administration on drones. He just happens to have been in charge of that policy on drones and the CIA has something to do with drones overseas. At least Brennan has been forthright and finally came forward with a letter that says the CIA doesn't operate in the United States.

Unfortunately, Attorney General Holder's response has been somewhat muddled in the sense that he kind of says we have not yet, we don't intend to, but we might. Now he says there is an extraordinary circumstance, but his extraordinary circumstance doesn't quite make any sense because it is 9/11 or Pearl Harbor. Well, in both of those instances we would react immediately to stop somebody, but they would not be targeted drone strikes. I cannot imagine that we would know the person's name and who they are when they are flying a plane into a building. We would respond to them, but it would not have anything to do with the targeted drone strikes. It is sort of answering a question that wasn't asked.

At this time, Madam President, and without yielding the time, I wish to entertain a question from the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Madam President, I have been able to put my hand on the letter Senator PAUL has written to John Brennan on February 20. This is something that I believe brought in focus the key piece of what has been on the minds of the people in my home State with regard to their support for the question that Senator PAUL is asking. Since I don't serve on that committee and was not part of the hearings, I wish to review this letter so I

can specifically ask Senator PAUL about the response he has received to this. Perhaps then we can share that with the American people as to why so many folks who have been focused on this believe it is of key importance.

The letter from Senator PAUL says:

Dear Mr. Brennan, In consideration of your nomination to be Director of the Central Intelligence Agency, (CIA), I have repeatedly requested that you provide answers to several questions clarifying your role in the approval of lethal force against terrorism suspects, particularly those who are U.S. citizens.

It goes on to say:

Your past actions in this regard, as well as your view of the limitations to which you were subject, are of critical importance in assessing your qualifications to lead the CIA.

That is what we are doing. We are here in our role to advise-and-consent the President on a nomination he has made.

The letter goes on:

If it is not clear that you will honor the limits placed upon the Executive Branch by the Constitution, then the Senate should not confirm you to lead the CIA.

The people of Wyoming carry their Constitutions in their breast pockets. We have them with us just as Senator Bob Byrd used to do right here on the Senate floor, and many Members of the Senate do. We need to make sure the limits placed upon the executive branch by the Constitution are still upheld; otherwise, the Senate should not confirm Mr. Brennan to lead the CIA.

So the letter from Senator PAUL goes on to say:

During your confirmation process in the Senate Select Committee on Intelligence, committee members have quite appropriately made requests similar to questions I have raised in my previous letter to you.

I agree. Members of the committee did make appropriate requests and wanted to have those same questions answered that Senator PAUL has been offering, and they are that you expound on your views, Mr. Brennan, on the limits of executive power in using lethal force against U.S. citizens. This is against U.S. citizens, especially when operating on U.S. soil.

That is among the fundamental questions I have been asked during telephone townhall meetings when I travel the State of Wyoming. It comes down to the use of lethal force against U.S. citizens, especially when operating on U.S. soil.

The letter from Senator PAUL goes on and says:

In fact, the Chairman of the SSCI, Sen. Feinstein, specifically asked you in post-hearing questions for the record whether the Administration could carry out drone strikes inside the United States.

We are now getting to the crux of the matter: drone strikes inside the United States.

Senator PAUL goes on:

In your response, you emphasized that the Administration ''has not carried out'' such strikes and ''has no intention of doing so.''

So has not done it, doesn't intend to do it, but it doesn't answer the question that Senator PAUL, the people of his home State, the people of my home State, and the people all across this country are asking.

Senator PAUL goes on in his letter to Mr. Brennan:

I do not find this response sufficient.

As people are following what the Senator from Kentucky is doing here, more and more people are asking and focusing on this specific question. The question I and many others have asked is not whether the administration has or intends to carry out drone strikes inside the United States, but whether they believe they have the authority to do so. The question is about whether it has the authority to do so. The question is not whether they have carried them out, not whether they intend to, but do they have the authority to do so. This is an important distinction that should not and, I would add, cannot be ignored.

Well, the letter goes on:

Just last week, President Obama also avoided this question . . .

So the President has avoided the question when posed to him directly. Instead of addressing the question of whether the Administration could kill a U.S. citizen on American soil, he used a similar line, that ''There has never been a drone used on an American citizen on American soil.''

Well, we believe that. We know that to be the case. We know that is the President's belief. We know that is the testimony of the nominee to be the CIA Director, but it evades the question. That is actually what Senator PAUL says in his letter.

The evasive replies from the Administration to this valid question have only confused the issue further without getting us any closer to the actual answer.

So it is not whether they have intent or whether they have done it before, but do they have the authority to do so. This is the distinction which Senator PAUL is trying to get at, as are many Americans all around the country who are tuning in to this important debate.

Senator PAUL goes on to say in his letter to John Brennan:

For that reason, I once again request you answer the following question: Do you believe that the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial?

Let me repeat:

For that reason, I once again request you answer the following question: Do you believe that the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial?

Senator PAUL goes on to say:

I believe the only acceptable answer to this is no.

And that is what the American people believe as well.

Senator PAUL concludes:

Until you directly and clearly answer, I plan to use every procedural option at my disposal to delay your confirmation and bring added scrutiny to this issue and the Administration's policies of the use of lethal force.

He says:

The American people are rightly concerned, and they deserve a frank and open discussion of these policies.

So I come to the Senate floor tonight in support of my colleague and agree with what he is writing to John Brennan because the fundamental question is: Do you believe the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil and without trial.

Senator PAUL goes on:

I believe the only acceptable answer to this is no.

So I would ask Senator PAUL, through the Chair, if he could perhaps add a little light to this matter. This letter was sent to Mr. Brennan on February 20. It is now March 6. I know there has been some give-and-take and back-and-forth, but the fundamental question is one that has been on the minds of the people in my home State of Wyoming, as I traveled the State over the last few weeks.

Mr. PAUL. Madam President, we sent our last letter to John Brennan, I believe, in the latter part of January. We got no response. We then sent him a second letter in the first or second week of February and got no response. We then sent our third letter, which I believe is the letter the Senator was reading from, and that was a couple of weeks ago. We got no response to any of these letters.

However, when the committee—both Republicans and Democrats—was holding up his nomination last week and the chairman of the committee asked for a response, all of a sudden we got a response. The response from Brennan was actually encouraging. The response, I believe, was this morning or yesterday. The day has kind of run together. That response was basically that the CIA doesn't have the authority to operate in the United States and that is the rule. It has been the law since the 1947 National Security Act.

Our concern is that the Attorney General's response has been a little more vague. Basically they have not done any killings in the United States yet. They don't have any intention to, but they might. The problem with the ''they might'' part is they left it kind of vague. They said it would have to be extraordinary, but they point out two occurrences in which they would not have targeted drone strikes. They point out Pearl Harbor and 9/11.

In both of those instances, I think it is appropriate to respond militarily, but they would not have targeted drone strikes. They might use drones, but they would not have targeted drone strikes because they would be responding immediately to someone attacking us. I think we all agree that we can respond to lethal force at any point in time.

I think the problem is the drone program around the world often targets

people who are not in combat. It is hard for me to imagine that we would have people who—I don't know if they are conspiring or what they are doing—are talking to an individual or someone in a restaurant or cafe, that we wouldn't arrest them.

The ranking member on the Intelligence Committee made a good point. He said: Particularly if they are in a noncombat area in the United States, wouldn't you want to arrest them to get some information from them to see if they might be a threat? One reason would be to see if they are innocent or guilty. If they are truly guilty, you would probably be able to get some information from them by interrogating them.

The Senator asked the question about the limitations. That is ultimately what we are asking Brennan, Eric Holder, the Attorney General, and the President. What limitations do you cede to your authority? The President takes an oath that he is going to preserve, protect, and defend the Constitution. He says he will do that, but the oath doesn't say: I intend to do that. It says: I will preserve, protect, and defend the Constitution.

The problem we have is that when John Brennan has been asked what are the limitations to your authority, his response has been that we have no geographic limitations. He says he gets that from the use of authorization of force to go to war in Afghanistan. The problem with that is I don't think people who voted for that intended that there would be no limitations and that we could have war anywhere.

Then the question is: Is there a limitation at the U.S. border?

Well, there is a law—a posse comitatus law—from after the Civil War which says the military doesn't operate here. It is not because we think the military are bad people, we just have different rules for the military. Our soldiers are not used to dealing with due process, and we don't make them. On a battlefield when they are shooting, they don't give people their Miranda rights. They don't get to have a jury trial.

There is none of that going on on the battlefield so soldiers don't have to deal with that, but policemen in our country have different rules of engagement. They are required to deal with that, and we want that because we want there to be a process because we have always been concerned in our country—we broke away from the mother country in England because we were concerned about too much power. We wanted that power to be reined in.

So our biggest problem is that when they say they have no geographic limitations, that could include America. So that was our next question. Senator WYDEN asked Brennan in the committee: Do you have the authority to do strikes in America? John Brennan's answer was—this was the first answer before we got the second answer: Well, we want to optimize transparency and we want to optimize secrecy, and that was his conclusion. It was like, what does that mean? So that is when we got more and more involved with asking this question and asking it repeatedly.

But I think there are limitations. Ultimately, there is a limitation of the Constitution, but also there is a big debate that needs to go on about what are the limitations of what we voted on when we went to war. I was all in favor of doing everything possible to those who attacked us on 9/11, of going to Afghanistan. We need to figure out how and what the completion of that mission is, and whether that use or authorization of force is open-ended, forever, or whether we are ever going to vote on that again, which I think means when we vote on that again, we retain that power to bring it back to the Senate, to the Congress. It doesn't mean we would not do it again, but we should have that debate and a vote again if we are going to have another war.

At this time I would be happy to entertain another question from the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. What I just heard from the Senator from Kentucky is that these questions were asked in a bipartisan way. This was not partisan at all. I heard Senator WYDEN from Oregon had similar questions. So this is a request for information.

Now, I have been able to find a copy for the first time of that January 25 letter that Senator PAUL referenced to John Brennan, sent to him in his capacity as Assistant to the President for Homeland Security and Counterterrorism, and I just wanted to go through some of that and perhaps ask Senator PAUL some specific questions related to it because it is my understanding that he has not gotten any kind of response to that.

The Senator mentioned three specific letters: First, the January 25 letter, then the letter of February 14, and then the letter of February 20 which, asks, really, the ultimate question: Do you believe the President has the power to authorize lethal force such as a drone strike against a U.S. citizen on U.S. soil and without trial?

So now I have all three of those letters sent by Senator PAUL to Mr. Brennan in his capacity currently as the Assistant to the President for Homeland Security and now the nominee to be the head of the Central Intelligence Agency.

So the letter goes:

> As the Senate moves forward with its consideration of your nomination to be the next director of the Central Intelligence Agency, it will be necessary to examine not only your qualifications and record, but also to determine whether you will provide the necessary leadership as the head of an agency that operates under unique rules for transparency and that quietly holds significant influence over the advancement of America's strategic priorities around the globe.

No other agency is like the CIA—unique rules for transparency. So Senator PAUL goes on:

> After reviewing your record as well as the record of President Obama to whom you have provided a great deal of advice and direction on issues of national security and terrorism, I must ask several questions to help inform my decision on your nomination.

That is what a responsible Senator does, a Senator who has taken quite seriously his role in providing advice and consent to the President on a nominee—a key nominee of a specific agency that operates under unique rules for transparency.

So I think it is absolutely appropriate that Senator PAUL would write such a letter, and the questions raised are appropriate, many of which have been raised in a bipartisan way.

So question No. 1: Do you agree with the argument put forth on numerous occasions by the executive branch that it is legal to order the killing of American citizens and that it is not compelled to explain its reasoning in reaching that conclusion? Do you believe this is a good precedent for the government to set?

What better, clearer question to ask than that? He goes on:

> Congress has been denied access to legal opinions and interpretations authorizing placement of U.S. citizens believed to be engaged in terrorism on targeting notices, thus denying Congress the ability to perform important oversight.

Oversight is a key role of this Congress. Oversight is a key, critical role of this branch of government, of Congress.

Senator PAUL goes on:

> Will you provide access to those opinions as well as future opinions?

Very reasonable question.

The Senator said:

> Would it not be appropriate to require a judge or a court to review every case before the individual in question is added to a targeting list?

Legitimate question.

> Please describe the due process requirements in place for those individuals being considered for an addition to a targeting list.
>
> Would you agree that it is paradoxical that the Federal Government would need to go before a judge to authorize a wiretap of a U.S. citizen overseas, but possibly not to order a lethal drone strike against the same individual?

I want to go back to this question when I am visiting with Senator PAUL, but this is the kind of thing I get asked in Wyoming, and I am sure the Senator from Kentucky is hearing the same thing: Would you agree that it is paradoxical that the Federal Government would need to go before a judge to authorize a wiretap on a U.S. citizen overseas, but possibly not to order a lethal drone strike against the same individual?

So what you have to do if you wanted to perform a wiretap would be more than you would have to do if you wanted to do a drone strike. I think it is a very legitimate question because if not, Senator PAUL goes on to ask:

> Please explain why you believe something similar to the FISA standards should not be applied in regards to illegal action against

U.S. citizens. Is it still your intent to codify and normalize the so-called disposition matrix, a targeting list that you helped to establish—

This would be Homeland Security Counterterrorism Assistant Brennan—

to direct counterterrorism operations in future administrations as well as the targeted killing procedures you have outlined in your playbook?

Then Senator PAUL goes on and asks:

Aside from the President, how many people have access to the full disposition matrix? Of those, how many participate in the process to add individuals to the targeting list, and how many have the authority to veto an individual's inclusion?

This is a very thoughtful letter from Senator PAUL to Mr. Brennan dated January 25, 2013. I want to continue to share with the American people the questions that have been asked by Senator PAUL because I think they are so telling and so appropriate:

How many times have you specifically objected to an individual's inclusion on a targeting list? How many times have you recommended to the President against including an individual on the targeting list?

These are questions people want to know the answers to:

How often are the criteria used for determining whether an individual should be included on a targeting list amended?

Not simply reviewed; he is not asking about a review but an amendment.

How many government officials and which agencies participate in establishing these criteria? Does the National Counterterrorism Center have final say over all criteria?

Anybody who watches this issue closely has asked these questions and wants to know the answers.

Of those individuals who have been but are no longer included in the disposition matrix or other target list, how many have already been killed? How many have been removed from the list by other means? How many individuals remain in the disposition matrix or other targeting list today? And how does the number compare to the number in prior years? Is the number growing? Is the number shrinking? Is the number static? What is happening to those numbers?

How many U.S. citizens have been added to this disposition matrix or other targeting list? How many remain on the list? How many U.S. citizens have been intentionally killed by U.S. drone strikes since 2008? How many have been unintentionally killed by U.S. drone strikes during that same period of time?

In how many countries has the United States executed a drone strike against a presumed terrorist?

In each of the countries where the United States has executed a drone strike in the past 4 years, please provide a year-to-year estimate of those who self-identify or otherwise associate with al-Qaida within that country.

I come to read this as somebody who has just come to see the capacity of the drones. I see the junior Senator from Texas has been on the Senate floor as well. He and I traveled together to Afghanistan. We have been able to see directly video from drone strikes. We know the capacity. We know their ability to target precisely. These are questions that in previous wars were not asked because the technology was not there, but now these are questions that are asked, that are being asked, which is why I am so grateful for the leadership of Senator PAUL in asking these questions.

The letter goes on:

You have indicated that no credible evidence exists to support recent claims that civilian casualties resulted from U.S. drone strikes.

Again, this is the letter from Senator PAUL to John Brennan. He asks:

Please indicate how you define credible evidence and what process is in place to evaluate the legitimacy of alleged civilian casualties.

Which countries have publicly stated their support for U.S. drone strikes within their territory? Have any publicly indicated support for U.S. drone strikes in the long term?

In this letter:

How relevant is the opinion of the public in the countries where U.S. drone strikes are ongoing? In those countries, how would you characterize public opinion toward U.S. drone strikes?

In light of civilian casualties caused by the extensive use of drone strikes under your guidance, do you continue to stand by your remark that ''sometimes you have to take life to save lives?''

Do you condone the CIA's practice of counting certain civilians killed by U.S. drone strikes as militants simply because they were of military age and within close proximity of a target? Do you believe such accounting provides an accurate picture of our drone program?

These are key questions to be asked for a nominee to the Central Intelligence Agency and they deserve answers before anyone makes a vote yes or no.

What changes to the CIA review process will you put in place or have you attempted to put in place in your previous role to prevent further unintentional killings of U.S. dissidents? What role did you play in approving the drone strike that led to the death of the under-aged U.S. citizen, son of al-Awlaki? Unlike his father, he had not renounced his U.S. citizenship. Was this young man the intended target of the U.S. drone strike which took his life? Further, do you reject the subsequent claim apparently originating from anonymous U.S. Government sources—

Always a concern when you hear anonymous U.S. Government sources—

that the young man had actually been a military age male of 20 years or more of age, something that was later proven false by the release of his birth certificate.

Senator PAUL goes on in the letter:

Do you believe that the inadvertent killing of civilians and the resulting anger from local populations should cause us to limit rather than expand the drone program?

Key question:

The CIA has and will reportedly continue to have authorization to carry out lethal drone strikes in Pakistan, autonomously and without approval from the President. Will you seek to reduce or eliminate this practice or keep it in place? Will you hold to the discussed 1 or 2 year phaseout of this authority or work to expedite the phaseout?

I could go on and on because these are key questions Senator PAUL asked, and it all gets back to the fundamental question of: Do you believe the President has the power to authorize lethal force, such as a drone strike against a U.S. citizen on U.S. soil and without trial?

So as I look at this letter of January 25 and look at the questions being asked:

Do you believe the lethal drone strikes constitute hostilities as defined by the War Powers Act?

On what legal basis does the administration derive authorization to conduct such strikes?

Then the President's own words:

The President has stated that al-Qaida has been decimated. Do you believe this assertion is correct and, if so, what is it that we are now targeting if not al-Qaida?

That is a fundamental question that came up in the hearings with then-Secretary of State Hillary Clinton. When she came to the Senate, to the Foreign Relations Committee, they changed their tune and said: No, it was core al-Qaida; not just al-Qaida but core al-Qaida in Afghanistan, but, fundamentally, the tune has changed.

Senator PAUL goes on:

Is the U.S. drone strike strategy exclusively focused on targeting al-Qaida or is it also conducting counterinsurgency operations against militants seeking to further undermine their governments such as in Yemen? Would you support expansion of the CIA's drone program in Mali to provide support to counterterrorism operations?

We all know what happened there and the impact in Benghazi and the concern that those who weren't captured or tried in Benghazi for the atrocities there went then to Mali. So, again, a key question.

The Senator goes on:

Do you believe a long-term, sustained drone strike program can eliminate all threats to the American people or completely eliminate al-Qaida as you have indicated in your intent? If not, how would we eventually wind down the drone program? At what point do you believe drone strikes will reach the point of diminishing returns? If so, can it be done on the scale the drone program operates on now or would it have to be expanded?

I was going to specifically ask Senator PAUL to discuss this question:

Do you support the Attorney General's 2012 guidance to the NCTC that it may deliberately collect, store and continually assess massive amounts of data on all U.S. citizens for potential correlations to terrorism, even if the U.S. citizens targeted have no known ties to terrorists?

That gets into the whole thing we started on earlier today. Where is the role of individual freedoms, the right to trial, the right to be heard, the right to present their case? What about the fundamental rights in the Bill of Rights?

The final question here to Mr. Brennan is this:

Please describe in detail the steps you have taken as assistant to the President as well as transparency measures you would support as Director of the CIA to improve the transparency of the administration's counterterrorism policy.

Mr. President, I would just say that they are extremely well-thought-out

questions by a very thoughtful Senator and questions to which the American people would like to have answers.

There is more to the letter, but I would like to take a second to ask Senator PAUL if he feels those have been adequately addressed and if he feels he has gotten closer to the solution to the question of, do you believe the President has the power to authorize lethal force such as a drone strike against a U.S. citizen on U.S. soil and without trial? That would be my question to Senator PAUL.

(Mr. SCHATZ assumed the chair.)

Mr. PAUL. Mr. President, we have sent three different letters over the last month and a half or so, and we really have not gotten a detailed response to any of the letters.

We finally had one question answered from John Brennan, and that question was answered by him by saying the CIA does not operate within the United States, which is a reassertion of the law, which we at least appreciated. But they have not responded by saying they will follow the law. We have not gotten an adequate answer yet, although we are getting closer to it.

Maybe the Senator from Texas can give us a little more insight into this in the sense that the question now really is not just Brennan. Brennan has answered that the CIA cannot operate in the United States. But there is a question: Can the military operate in the United States? And this question was asked, I think very poignantly, by the Senator from Texas today, trying to get an answer from the Attorney General on this question: Can you kill Americans on American soil who are not involved in combat? The answer has been evasive because he has brought up basically a red herring: Pearl Harbor or the Twin Towers, which none of us are disputing that the military can respond to a lethal attack with lethal force.

So what I would like to do without relinquishing the floor is see if the Senator from Texas would like to respond as to his interpretation of what he was hearing from Attorney General Holder and whether the comments he was hearing—if Attorney General Holder were willing to sort of try to complete that conversation in a letter to us—whether actually we might get close to actually being on the same page.

Mr. CRUZ. I thank the Senator from Kentucky for allowing me to ask him a series of questions and to address both what the Attorney General said and the substantive issue.

I wish to begin my questioning, though, with simply an observation. I would like to take a moment to thank the Senator from Kentucky. I have had the privilege of serving in this body 9 weeks, and today is the first day I have ever had the extraordinary privilege of speaking on the floor of the Senate. On my first time to speak on the floor of the Senate, I found myself being given the chance to read from Travis's letter from the Alamo. As I observed walking off the floor of the Senate, as they say in the beer commercial, it don't get no better than this. So I thank the Senator from Kentucky for giving me the opportunity to be welcomed to the floor of the Senate and having a chance to stand with him fighting for liberty.

There are a number of things I would like to address and ask the views of the Senator from Kentucky. I will begin by observing, as I did the last time the Senator from Kentucky and I had a colloquy, that Twitter never sleeps, and we heard from a number of tweets across the country. But those have not ceased. So since the Senator from Kentucky is still prohibited from looking at his cell phone, I wanted to prevent him from going into technology shock and withdrawal and provide an in-person feed for him.

This is about The Constitution. Stand with Rand. Get it together GOP.

Stand with Rand. Rand praising Dem OR Sen Ron Wyden for raising the same questions and concerns he has. Where are all the other Dems?

Sad day when killing Americans is up for debate. Sad day that every Senator is not up there with him. Stand with Rand. We are watching you guys.

I don't know how Sen Rand Paul does it . . . I'm tired just from WATCHING him. . . . a tip of the cap to you, sir. Thank you. Stand with Rand.

Sen Rand Paul is extemporaneously giving a better human rights speech than Barack Obama ever has. Stand with Rand.

And I am pretty certain that for the record I can confirm that no teleprompter was in front of the desk of the Senator from Kentucky.

Sen Rand Paul, Jimmy Stewart would be proud, sir.

Sen Rand Paul, look what's trending. Stand with Rand.

It's been awhile since I could say I am a proud American. Thank you, Rand Paul. Stand with Rand.

Rand Paul might be waiting a long time for an answer from The White House. Stand with Rand.

I would note that it has been 10 hours, so that would indeed be a correct observation of fact.

Democrats—Why not just agree that the POTUS cannot use drones to summarily kill US citizens on US soil? Stand with Rand.

Sen. Rand Paul crosses 8 hr threshold of filibuster. Stand with Rand.

Stand with Rand, please.

Sen Rand Paul did not filibuster for the right or the left, he did it for every person in this country. Stand with Rand.

Once you give up your rights, you will not get them back. Believe that. Stand with Rand.

We should all go to the U.S. Capitol and Stand with Rand.

I would note that quite a few Members of the House of Representatives have crossed over the Capitol and joined us precisely to stand with Rand, as have the men and women in the gallery who have been here throughout this long and historic stand.

Finally able to sit and watch the Rand Paul filibuster. Just epic. Stand with Rand.

Read the constitution and explain why each sentence is relevant to today. Not worthless and outdated.

7 hours and counting for Sen Rand Paul in the filibuster. This can end, Brennan, just say u won't unilaterally kill us. Stand with Rand.

America is watching. Stand with Rand.

I get the feeling that a more libertarian stance is the only thing which can bring about a fresh start for the GOP. Stand with Rand.

I stand with Rand in his 9th hr awaiting the President saying he doesn't have the power to kill Americans at will.

''I haven't killed anyone yet and I have no intention of killing Americans, but I might''—Barack Obama. Stand with Rand.

The federal government was closed today. Yet Sen Rand Paul working overtime. YouDaMan.

D-a-M-a-n is the precise spelling of that.

Sen Rand Paul, 100% support you. Keep going. Stand with Rand.

This isn't a filibuster. This is a line in the sand drawn with a quill pen that penned the constitution.

I think that one is particularly cool.

Do you agree with your colleague, Rep Justin Amash? Stand with Rand.

Almost always the answer to that one should be yes.

Do you stand with Sen Rand Paul and demand an answer from the WH on extra-judicial assassinations of Americans?

There is a word we do not hear too often within our own borders—assassinations. Yet that is exactly what we are talking about here tonight.

Don't think I've ever been quite so proud to say I'm from Kentucky. Stand with Rand.

Sen Rand Paul getting to the heart of issues. Not partisan politics, but a question of due process.

He's just about 8 hours away from having the 5th longest filibuster.

I apologize to the Senator from Kentucky if that is less than encouraging.

Stand with Rand.

I have a renewed sense of hope for our leaders in Washington today. Thank you, Sen Rand Paul, for standing by We The People. Stand with Rand.

I am a strong liberal supporter and two time Obama voter. I Stand with Rand.

Dr. Rand Paul, Excellent, excellent work today. We stand with Rand, too.

I hope Sen Rand Paul Can keep them up all night. There hasn't been a real filibuster on the Senate floor in years. Stand with Rand.

And I would note, as I was walking in, that this is certainly the least well-shaven I have been on the Senate floor. And it is particularly ironic that the desk at which I am standing, in addition to having been the former desk of a great hero of mine, Senator Barry Goldwater, was also the former desk of Senator Richard Nixon. So perhaps that spirit is animating the 5 o'clock shadow that I find myself at 10 o'clock at night sporting.

Stand with u I do. Stand with Rand.

I wonder if that one was from Dr. Seuss.

Stand with Rand because you have the freedom to do so.

Obama is going to have to address the points raised by Paul. Stand with Rand.

I stand with Rand . . . best line of the filiblizzard thus far. RT—

Yet another of Senator Rand Paul's miraculous tweets that he did from the floor of the Senate, a tweet of Senator Rand Paul—

''They shouldn't just drop a hellfire missile on your cafe experience.''

I would suggest to the Senator from Kentucky that at the end of what I am sure will be a long and very distinguished career in politics, fighting for every American, that with statements such as that, a subsequent career at Starbucks may indeed be promising.

The fight for liberty has a real hero. May the spirits of past patriots fuel you.

Until you get an answer, Rand, keep on going. Let's take it into tomorrow.

Is suspicion enough? Obviously not. Sen Rand Paul.

If you have family or friends in the Middle East, you might be a terrorist. Stand with Rand.

For the first time since November, I feel like I see a light at the end of the tunnel. It is a long tunnel. Stand with Rand.

Sen Rand Paul: If you have no bounds, you have an unlimited imperial presidency. So true.

Sen Rand Paul, eight hours, and still going strong. Thanks for standing for the Constitution. God bless you. Stand with Rand.

Thank you, Rand Paul, for standing up for our Constitution. We are behind you. Stand with Rand.

Go get 'em, Rand Paul. Great way to end my birthday. Stand with Rand.

I hope we do not make it to that individual's next birthday.

Best TV I've seen in a while. Stand with Rand.

Sen Rand Paul, I'm superproud of my Senator today. I have always been proud of him, but today I'm more proud than ever. STAND WITH RAND.

My kids—watching Rand Paul give a lesson to the country—on their own, without me telling them to. Stand with Rand. Thank you, Sen Rand Paul.

Why won't Obama say that he won't use drones to kill noncombatant U.S. citizens on U.S. soil? Seems a simple question. Stand with Rand.

Senator Rand Paul, thank you. Be encouraged and stay strong. Would stand there with you if we could. We are no longer free. Thank you for standing up for freedom.

''Stand with Rand'' is trending worldwide. That is pretty darn cool.

Rand Paul goes into his 9th hour of filibuster over drones. Watch it here.

I will not read the link to C–SPAN.

Senator Rand Paul, I am so proud of you. Way to stand tall. Stand with Rand.

Senator Rand Paul, your loyalty and dedication to we the people are not going unnoticed. Stand with Rand.

If you give back your rights, don't ever expect to get them back. Stand with Rand.

Call the White House. 202–456–1111. Take a stand.

For some reason, I feel compelled to read that tweet a second time.

Call the White House. 202–456–1111.

Rand Paul, standing for liberty and freedom. God bless you. Stand with Rand.

Rand Paul, the 21st century version of Washington, Jefferson and Madison.

No matter how you fall politically, you have to admire Rand Paul's absolute conviction.

I cannot stop watching Senator Rand Paul filibuster. Greatness. Stand with Rand.

Are you going to retweet Stand with Rand all night? I am. Liberty. Rand Paul.

And the final one.

Senator Rand Paul, I am a grandma who just learned how to Twitter tonight so that I could stand with Rand and the Constitution.

The first question I will ask of the Senator from Kentucky—and I have several more—is simply: What would you say to these millions of Americans and people worldwide who are coming together to stand with Rand?

Mr. PAUL. Mr. President, I thank the Senator from Texas for coming to the floor. I am overwhelmed with all the responses. What I would say is that I think there are things that are more important than personalities, more important than party, and they are the things our country was founded upon.

These are the things that bring people together who want us to stand and say these protections will exist. The interesting thing about our Constitution is it protects people who are—those who are defenseless often, those who can be falsely accused of crimes is what the Constitution is there for. I think there are people from all walks of life who say my brother was falsely accused or my brother was put in jail for 5 years or something, either they did not do it or it was an inappropriate sentence.

I think people understand the idea of wanting to be protected from false accusation, not only for something where you might be put in prison but for something, in this case, you might be killed for. We all understand. All you have to do is get online to read comments to any kind of story online to know people make all kinds of wild accusations and wild comments online. Do we want to have that be one of the indications for whether you might be targeted for surveillance or whether you might be targeted for a drone strike, that anything such as this could happen without you having your due process, that the fifth amendment somehow would be optional, that the executive branch would decide when they are going to apply the fifth amendment.

I am overwhelmed with the responses. I think it is something that unifies people. It has brought together both people from the Democratic side of the aisle as well as the Republican side of the aisle because, to me, this is not about whether the President is a Republican or Democrat. I have supported several of his nominees. I have supported people because I think he has the right to make political nominations, even though I do not agree with much of any of the nominees or the politics of the administration.

This is different. There is a constitutional principle. We are here today to filibuster against or for a constitutional principle not necessarily an individual. But it is something I think a lot of Americans believe strongly in. I thank Senator CRUZ very much for the comments I have gotten from the Senator and I would entertain any other questions.

Mr. CRUZ. Mr. President, I thank the Senator from Kentucky. I do indeed have additional questions. The heart of what the Senator is standing for, what some of the other Senators tonight are standing for, is liberty. I think that has always been the foundational value in the United States of America.

Our country was founded by Framers who understood that concentrated power is always inimical to liberty, that any time great power is undivided the freedom of the people is at jeopardy. As Lord Acton observed: Power tends to corrupt, and absolute power corrupts absolutely. It is for that reason that the Framers of our Constitution did what the Supreme Court has described as splitting the atom of sovereignty, taking what used to be one discrete indispensable concept of power and sovereignty and breaking it up, breaking it up between the three branches of the Federal Government and breaking it up between the Federal Government and the 50 States and the local government as well.

The purpose of doing all that is to prevent what James Madison in Federalist No. 10 described as factions. Today we would call them special interests that might take control of one branch of government. If all power were concentrated in the Executive, and one faction, one special interest was to gain influence in that Executive, then the liberty of the people would be at peril.

In Federalist 10, Madison explained the factions are never going to go away. Human nature is such that we will divide into factions with different interests. The genius of the Framers was not to imagine human nature was somehow different than it was but to recognize that it was. As the Federalist Papers explained: If men were angels, no government would be necessary. The great challenge in forming a government is to enable the governed to do what it must. Yet at the same time oblige it to govern itself.

For that reason, splitting the atom of sovereignty, separating power prevents any one branch of government from acquiring unchecked power. It is, indeed, the responsibility of this body to do what we are doing now. If a President of the United States decrees the power to take the lives of U.S. citizens on U.S. soil without due process of law, I would suggest it is integral to the oath of office of every Member of the Senate and every Member of the House of Representatives to stand and say: Mr. President, respectfully, no, you may not. The Constitution gives you no such power. Each of us on entering office—in my case just a few weeks ago standing on those steps, the Vice President asked me to raise my hand and take an oath to honor and defend the Constitution. Every Member of this body took that oath.

It is our responsibility, especially when one branch of the government is overreaching, is usurping power that the Constitution forbids him and that is threatening to the liberty of the people, it is the responsibility of all of us to stand and resist that.

One of my alltime heroes, Ayn Rand in ''Atlas Shrugged,'' described how the

parasitical class would put into place arbitrary power, standardless rules precisely so the productive citizens in the private sector would have to come on bended knee to those in government seeking special dispensation, seeking special favors, because that arbitrary and standardless rule empowers the political class and disempowers the people.

I could not help but think about Ayn Rand's observation this morning as I heard the Attorney General over and over refuse to say it would be unconstitutional for the Federal Government to kill a U.S. citizen on U.S. soil. He would say it would be inappropriate. He said that three times in response to direct questioning. It would be inappropriate and we should trust him. The Federal Government would not do so.

I found myself thinking of those arbitrary standards Ayn Rand talked about; that if the only protection we the people have against the Federal Government choosing to take the life of a U.S. citizen on U.S. soil is our trust that they would refrain from doing what is inappropriate rather than the protections of the Constitution, then I would suggest our liberty is fragile indeed.

Indeed, when we think about the concentration of power, no judicial opinion is more important than Justice Robert Jackson's concurring opinion in the Youngstown Steel seizure case. Justice Jackson, as the Senator from Kentucky knows, was a giant on the U.S. Supreme Court. My former boss, Chief Justice William Rhenquist, served as a law clerk to Justice Robert Jackson.

Indeed, Justice Jackson took time off from serving on the U.S. Supreme Court to serve as the chief prosecutor at the Nuremberg trials, during which he made the powerful observation following World War II, when the United States brought to trial the horrific war criminals in the Nazi regime.

Justice Jackson observed at Nuremberg that four great nations, flushed with victory and stunned with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law, is one of the most significant tributes that power has ever paid to reason.

I would suggest to the Senator from Kentucky, and I feel confident he would agree, that what we are talking about right now is the tribute that power must and should pay to reason and that unchecked power is always a threat to liberty.

As Justice Jackson opined in Youngstown Steel seizure ''that comprehensive and undefined Presidential powers hold both practical advantages and grave dangers for the country will impress anyone who has served as a legal adviser to a President in a time of transition and public anxiety.''

Those words could have been written as easily tonight as they were half a century ago. Justice Jackson continued:

While the Constitution diffuses power to better secure liberty, it also contemplates that practice will integrate the dispersed power into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. Presidential powers are not fixed but fluctuate, depending on their disjunction or conjunction with those of Congress.

When a President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.

Justice Jackson explains:

No. 2: When the President acts in absence of either a congressional branch or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which the distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least, as a practical matter, enable, if not invite, measures on independent Presidential responsibility. In this area, any actual test of power is likely to depend upon the imperatives of events and contemporary imponderables, rather than on abstract theories of law.

Now, perhaps, prior to 11:45 today, Eric Holder and John Brennan would have argued they fall into this second category, a category where Congress has been silent and, accordingly, they might presume some Presidential power. But as of 11:45 today, they can no longer claim that.

Justice Jackson explained the third category of Presidential powers.

When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain executive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

As we stand here tonight, later than the typical hour for the Senate being in session, indeed, later than many Members of this body had anticipated being in Washington, DC—many Members of this body had envisioned being on planes and returning home by now—it occurs to me that those Senators who have heeded the encouragement of the twitterers to stand with RAND, those Senators who have come here today, I am reminded of Henry the Fifth, as Shakespeare observed:

What's he that wishes so?
My cousin Westmoreland? No, my fair cousin;
If we are mark'd to die, we are enow
To do our country loss; and if to live,
The fewer men, the greater share of honour.
God's will. I pray thee, wish not one man more.
By Jove, I am not covetous for gold,
Nor care I who doth feed upon my cost;
It yearns me not if men my garments wear;
Such outward things dwell not in my desires.
But if it be a sin to covet honor,
I am the most offending soul alive.
No, faith, my coz, wish not a man from England.
God's peace. I would not lose so great an honour
As one man more methinks would share from me
For the best hope I have. O, do not wish one more.
Rather proclaim it, Westmoreland, through my host,
That he which hath no stomach to this fight,
Let him depart; his passport shall be made,
And crowns for convoy put into his purse.
We would not die in that man's company
That fears his fellowship to die with us.
This day is call'd the feast of Crispian.
He that outlives this day, and comes safe home,
Will stand a tip-toe when this day is nam'd,
And rouse him at the name of Crispian.
He that shall live this day, and see old age,
Will yearly on the vigil feast his neighbours,
And say ''To-morrow is Saint Crispian.''
Then he will strip his sleeve and show his scars,
And say ''These wounds I had on Crispian's day.''
Old men forget; yet all shall be forgot,
But he'll remember, with advantages,
What feats he did that day. Then shall our names,
Familiar in his mouth as household words—
Harry the King, Bedford and Exeter,
Warwick and Talbot, Salisbury and Gloucester—
Be in their flowing cups freshly remembered.
This story shall the good man teach his son;
And Crispin Crispian shall ne'er go by,
From this day to the ending of the world,
But we in it shall be remembered—
We few, we happy few, we band of brothers;
For he to-day that sheds his blood with me
Shall be my brother; be he ne'er so vile,
This day shall gentle his condition.
And gentlemen in England now-a-bed
Shall think themselves accurs'd they were not here,
And hold their manhoods cheap whiles any speaks
That fought with us upon St. Crispin's day.

I would observe to the Senator from Kentucky that those glorious sentiments expressed centuries ago are precisely applicable to the stand here tonight because it is a stand against, indeed it is a stand against an administration that refuses to acknowledge limits on its power. It is a stand for the same purpose, for liberty.

There is a frustration across this country, a frustration not with Democrats or Republicans, not with one party or another, a frustration with entrenched politicians in Washington who don't seem to work for anybody.

I am convinced there is something credible happening in this country when the people are standing and reminding the men and women of this body that every one of us works for ''we the people.'' It is our principal task to stand and defend liberty, especially when liberty is threatened.

Indeed, that St. Crispin's Day speech had a saying—and even in some ways a different manifestation. In one of the greatest movies of all time, Patton, the opening scene of Patton, I will confess to the Senator of Kentucky I have more than once in preparation for an oral argument in court simply watched George C. Scott marching out in front of a flag the size of North Dakota. Standing in front of the flag, General Patton observed in a tribute to that very same speech I just read—I am going to modify it slightly to make it PG.

I want you to remember that no ''fellow'' ever won a war by dying for his country. He won it by making the other poor ''fellow'' die for his country.

Men, all this stuff you've heard about America not wanting to fight, wanting to stay out of the war is a lot of horse dung. Americans traditionally love to fight. All real Americans love the sting of battle.

When you were kids you all admired the champion marble shooter, the fastest runner, big-league ball players, the toughest boxers.

Americans love a winner and will not tolerate a loser.

Americans play to win all the time. I wouldn't give a hoot in hell for a man who lost and laughed. That's why Americans have never lost and will never lose a war because the very thought of losing is hateful to Americans.

George C. Scott continues as Patton:

Now there's another thing I want you to remember. I don't want to get any messages saying we are ''holding our position.'' We're not ''holding'' anything. Let the Hun do that. We're advancing constantly. We're not interested in holding on to anything except the enemy. We're going to hold on to him by the nose and kick him in the ''posterior.'' We're going to kick the ''heck'' out of him all the time and we're going to go through him like crap through a goose.

Thirty years from now when you're sitting around your fireside with your grandson on your knee and he asks you, ''What did you do in the great World War II?'' You won't have to say, ''Well, I shoveled 'manure' in Louisiana.''

That same sentiment, the same sentiment in St. Crispin's Day speech, talked about a tradition that has been a tradition in America for centuries, of men and women rallying against hard odds, rallying against challenging obstacles.

(Ms. HEITKAMP assumed the chair.)

I would observe that fight should not be a partisan fight. This is not a question of Republican or Democrat, liberty, the right to life of every American citizen. Arbitrary taking at the hands of the Federal Government should not simply be a value that one side or another of this Chamber embraces.

Indeed, I would note during the hearings this morning with Eric Holder, some of the most enthusiastic audience participants in that hearing were self-identified members of Code Pink, who I would suggest are not ordinarily individuals who would be described as card-carrying members of the Republican Party.

But liberty does not have a partisan affiliation. Indeed, to the Senator from Kentucky, I think it is an interesting question what the reaction in this Chamber and outside would be if the very same statements that have been made were made by a President who happened to be Republican. I think there is little doubt the outcry would be deafening, and rightly so. I will say to the Senator from Kentucky, if a President made the identical representations and happened to have an ''R'' behind his or her name, I have not one shadow of a doubt that the Senator from Kentucky would be standing here 10 hours protesting the arbitrary assertion of power by a President regardless of whether we share his party or not.

Indeed, I would note to the Senator from Kentucky this is a scenario which is not entirely hypothetical. Prior to serving in this body, I had the great privilege of serving my home State of Texas as the solicitor general of Texas. During that time, we faced a tragic and epic battle in a case called Medellin v. Texas.

Medellin began with a crime that shocked the conscience. Two little girls were horrifically abused and murdered by a gang in Houston. They were apprehended, confessed, and they were convicted by a jury of their peers, quite rightly.

At that point, the case took a very strange turn because the World Court, which is the judicial arm of the United Nations, issued an order to the United States to reopen the convictions of 51 murderers across this country, including one of the murderers in this case, Jose Ernesto Medellin.

I will tell you, Jose Medellin wrote a four-page handwritten confession in that case. It is one of the most chilling documents I ever had the displeasure of reading. In it he bragged about hearing those little girls beg for their lives. A tiny detail he included in those letters was in many ways the most haunting, and I know it will remain with me for the rest of my life. He described how the youngest of those girls was wearing a Mickey Mouse watch and how he kept it as a trophy of that night because he was so proud of the atrocities they had committed. It is truly sickening what those young boys did that evening. And yet the World Court asserted a power that heretofore has never been asserted. It was the first time in history a foreign court has ever tried to bind the U.S. justice system. The World Court claimed the authority to reopen those convictions, so Texas stood up and fought the World Court.

I had the honor of arguing this case twice in front of the U.S. Supreme Court. On the other side, 90 foreign nations came in against the State of Texas—90 nations came in and argued the U.S. justice system should be completely subject to the authority of the World Court and the United Nations.

Also on the other side, most disturbingly, was the President of the United States. The President signed a two-paragraph order that attempted to order the State courts to obey the World Court. Again, that order, like the World Court's order, was unprecedented. It was the first time in history any President had ever attempted to order the State courts to do anything.

Unfortunately, the President at issue in that case was a Republican. It was President George W. Bush, a man for whom I worked, a man who, in many respects, I respect. Yet in that case, he asserted a power that could be found nowhere in the Constitution. And in consultation with my boss at the time, Attorney General Greg Abbott, I went before the U.S. Supreme Court and argued on behalf of the State of Texas that the President of the United States has no authority to give away U.S. sovereignty.

That was done notwithstanding the fact that he was a Republican, notwithstanding the fact the President was the former Governor of my home State of Texas. Because at the end of the day, defending liberty, defending sovereignty, defending the Constitution is not a partisan choice. It is not a game of dodge ball with shirts and skins; that if your team happens to have the ball, you stick together. Every one of us has taken an oath of office and we have an obligation to stand up.

So I stood before the U.S. Supreme Court representing the State of Texas and arguing that no President of the United States, be he Republican or Democrat, has the authority to give up U.S. sovereignty and make the State courts subject to the World Court.

I would note in that case the State of Texas had support from a number of unlikely sources. Indeed, we had a wide range of amicae—friends of the court—who came in and supported us. One brief was filed on behalf of law professors. It was joined by several law professors, one of whom, John Yoo, is widely considered the law professor with the most expansive view of Presidential authority. And, indeed, he was an individual who served in the Justice Department and had advocated under President Bush an expansive view of Presidential authority.

That very same brief was joined by Erwin Chemerinsky, the dean of the University of California at Irvine School of Law. Dean Chemerinsky is a very well-known and proud liberal academic. I suspect it may well be right that this is the only time ever that John Yoo and Erwin Chemerinsky joined a single brief before the U.S. Supreme Court. And both agreed, despite the fact they come from very different places in the legal academy, that unchecked power in the hand of the executive is fundamentally a threat to liberty.

Indeed, I would note for the Senator from Kentucky, in talking to both of them and asking for their support in Medellin, I made the point to each to imagine a President from the other side who might have the power that was being asserted.

To the friends of mine on the right, I suggested that if a President had the power to set aside State laws on grounds of international comity, which was the basis that was being asserted in that case—without any sanction from Congress, without any sanction from another branch of the Federal Government, but simply on his own unilateral authority—an activist President on the left could use that power to assert, for example, that in his or her judgment the marriage laws of all 50 States should be set aside.

It may well be that all 50 States will choose to set their marriage laws aside. That is a judgment right now that has

been in the hands of the voters in each State. But regardless of what the 50 States decide—and I suspect they will not decide the same thing—it seems to me clear that no President has the authority unilaterally, with the flick of a finger, to remove laws from the State books of all 50 States.

Likewise, to my friends on the left, I asked them to envision their nightmare of a rightwing President. They each had slightly different incarnations, but they all managed to do that. And I said: If this assertion of power is correct, that any President can set aside any State law if he or she deems it inconsistent with international comity, even though no treaty requires this—and, indeed, in Medellin the Justice Department maintained no treaty required this, this was simply a power that was being asserted to further comity, to further our relationships with foreign nations—I suggested if the President has that power, what is to stop a President on the right from saying: I am setting aside the punitive damages laws in all 50 States? It upsets comity when foreign companies are subject to punitive damages awards; therefore, tort reform shall be the law of all 50 States.

And for that matter, there are States such as California that persist in putting in place incredibly restrictive environmental laws. If the President has the authority to flick aside State laws, what would prevent a President on the right from saying those environmental laws are no more?

I would note for the Senator from Kentucky that my view on all those questions was very clear and very straightforward. No President may do so, whether he or she is of the right or of the left. If the Federal Government is to set aside a State law, it may do so only through exercise of the supremacy clause. The Framers required that in order to set aside a State law that had been adopted by the democratically elected legislature in the State, that two branches had to work together in concert, either through legislation that passes the House of Representatives, passes the U.S. Senate and is signed into law by the President or through the form of a treaty that is signed by the President and ratified by two-thirds of the U.S. Senate. But in both instances the Framers required two branches to work together.

Why? The same reason we discussed before. The reason from Federalist 10, that you do not want power unified in one branch of government, where a faction, a special interest, may seize control of it. You want it divided.

I will note that it was an unusual position for the State of Texas to appear before the U.S. Supreme Court and argue that an action by a Republican President and former Governor of the State of Texas was unconstitutional. Yes, I can tell you I was very proud to have the opportunity to do just that, and I was even more proud when the Supreme Court of the United States ruled by a vote of 6 to 3 in favor of the State of Texas, concluding, No. 1, that the World Court has no authority whatsoever to bind the U.S. justice system; and No. 2, the President has no authority under the Constitution to give away our sovereignty.

I would suggest that is the way our system is supposed to work; that all of us, regardless of party, should be standing together for liberty. And when I think of standing for liberty, some of the frustration people have across this country is they feel it doesn't do any good. It doesn't make a difference who they vote for. Whoever they vote for, they go to Washington and keep spending money, and spending more money, and more money, and more money, and the debt goes up and up and up, and the Federal laws get bigger and bigger and bigger and bigger, and the Federal regulations get more and more and more, and nothing seems to change. And I understand that frustration. It is a real frustration. It is a frustration I share, and I know it is a frustration the Senator from Kentucky shares.

I would suggest that part of the import of tonight is that the Senator from Kentucky is standing with millions of Americans who are frustrated by politicians in Washington who are unwilling to rock the boat, who are unwilling to stand for change. I am reminded that change can sometimes seem hopeless. Indeed, I mentioned that the desk I am standing at was previously occupied by Barry Goldwater. I have yet to acquire, but I intend to acquire, a leather-bound copy of ''Conscience of a Conservative,'' which I intend to keep in this desk.

When Barry Goldwater became a national leader, it was thought impossible for his views to receive a wide audience. The views that were in the ascendancy were the views of the left; that government control of the economy, of our lives, was the proper and right direction for our Nation.

I am reminded of someone else, as the Senator from Kentucky knows, who gave a speech on October 27, 1964. He said the following:

> I have spent most of my life as a Democrat. I recently have seen fit to follow another course. I believe that the issues confronting us cross party lines. Now, one side in this campaign—

And here he is referring to the campaign in 1964 for President.

> —has been telling us that the issues of this election are the maintenance of peace and prosperity. The line has been used, ''We've never had it so good.''
>
> But I have an uncomfortable feeling that this prosperity isn't something on which we can base our hopes for the future. No nation in history has ever survived a tax burden that reached a third of its national income. Today, 37 cents out of every dollar earned in this country is the tax collector's share,

Ah, those were the days.

> and yet our government continues to spend $17 million a day more than the government takes in.

Would that we could say today the government spends only $17 million a day more than it takes in.

> We haven't balanced our budget in 28 out of the last 34 years. We've raised our debt limit three times in the last 12 months,

I will remind you this speech was given in 1964, not last week.

> and now our national debt is one and a half times bigger than all the combined debts of all the nations of the world. We have $15 billion in gold in our treasury; we don't own an ounce. Foreign dollar claims are $27.3 billion. And we've just announced that the dollar of 1939 will now purchase 45 cents of its total value.

Again, a scenario with which we are quite familiar.

> As for the peace that we would preserve, I wonder who among us would like to approach the wife or mother whose husband or son has died in South Vietnam and ask them if they think this is a peace that should be maintained indefinitely. Do they mean peace or do they mean we just want to be left in peace? There can be no real peace while one American is dying someplace in the world for the rest of us. We're at war with the most dangerous enemy that has ever faced mankind in his long climb from the swamp to the stars, and it's been said if we lose that war, and in doing so lose this way of freedom of ours, history will record with the greatest astonishment that those who had the most to lose did the least to prevent its happening. Well, I think it's time we ask ourselves if we still know the freedoms that were intended for us by the Founding Fathers.

This next section is a section particularly dear to my heart. It was given before I was born.

> Not too long ago, two friends of mine were talking to a Cuban refugee, a businessman who had escaped from Castro, and in the midst of his story one of my friends turned to the other and said, ''We don't know how lucky we are.'' And the Cuban stopped and said, ''How lucky you are? I had someplace to escape to.'' And in that sentence he told us the entire story.

Turning and seeing the junior Senator from Florida, I know he and I both know, as I hope every Member of this body knows, just how precious and fragile the freedom is that we enjoy in this country.

As President Reagan continued in that speech:

> If we lose freedom here, there's no place to escape to. This is the last stand on Earth.

This idea that government is beholden to the people, that it has no other source of power except the sovereign people, is still the newest and most unique idea in all the long history of man's relation to man. This is the issue of this election: whether we believe in our capacity for self-government or whether we abandon the American revolution and confess that a little intellectual elite in a far distant capitol can plan our lives for us better than we can plan them ourselves.

> You and I are increasingly told that we have to choose between a left or right. I would like to suggest there is no such thing as left or right. There is only up or down—[Up] man's old-age dream, the ultimate in individual freedom consistent with law and order, or down, to the ant heap of totalitarianism. Regardless of their sincerity, their humanitarian motives, those who would trade freedom for security have embarked on this downward course.

Given the topic of this discussion, the asserted power of the President to take the life of a U.S. citizen on U.S. soil without due process of law, that last portion bears reading again. ''Those who would trade our freedom for security have embarked on this downward course to the ant heap of totalitarianism.''

In this vote-harvesting time, they use terms like the ''Great Society,'' or as we were told a few days ago by the President, we must accept a greater government activity in the affairs of the people. But they've been a little more explicit in the past and among themselves; and all of the things I now will quote have appeared in print. These are not Republican accusations. For example, they have voices that say, ''The cold war will end through our acceptance of a not undemocratic socialism.'' Another voice says, ''The profit motive has become outmoded. It must be replaced by the incentives of the welfare state.'' Or, ''Our traditional system of individual freedom is incapable of solving the complex problems of the 20th century.'' Senator Fullbright has said at Stanford University that the Constitution is outmoded. He referred to the President as ''our moral teacher and our leader,'' and he says he is ''hobbled in his task by the restrictions of power imposed on him by this antiquated document.'' He must ''be freed,'' so that he ''can do for us'' what he knows ''is best.'' And Senator Clark of Pennsylvania, another articulate spokesman, defines liberalism as ''meeting the material needs of the masses through the full power of centralized government.''

Well, I, for one, resent it when a representative of the people refers to you and me, the free men and women of this country, as ''the masses.'' This is a term we haven't applied to ourselves in America. But beyond that, ''the full power of centralized government''—this was the very thing the Founding Fathers sought to minimize. They knew that governments don't control things. A government can't control the economy without controlling people. And they know when a government sets out to do that, it must use force and coercion to achieve its purpose. They also knew, those Founding Fathers, that outside of its legitimate functions, government does nothing as well or as economically as the private sector of the economy.

Now, we have no better example of this than government's involvement in the farm economy over the last 30 years. Since 1955, the cost of this program has nearly doubled. One-fourth of farming in America is responsible for 85 percent of the farm surplus. Three-fourths of farming is out on the free market and has known a 21 percent increase in the per capita consumption of all its produce.

I am going to skip further along, to the end of the speech which, I will confess, not unlike the speeches given on this floor, was not a short speech. I will move to the end where President Reagan continued and said:

> Those who would trade our freedom for the soup kitchen of the welfare state have told us they have a utopian solution of peace without victory. They call their policy ''accommodation.'' And they say if we will only avoid any direct confrontation with the enemy, he will forget his evil ways and learn to love us. . . . We cannot buy our security, our freedom from the threat of the bomb by committing an immorality so great as saying to a billion human beings now enslaved behind the Iron Curtain, ''Give up your dreams of freedom because to save your skins we are making a deal with your slave masters.'' Alexander Hamilton said, ''A nation which can prefer disgrace to danger is prepared for a master, and deserves one.'' Let's set the record straight. There is no argument over the choice between peace and war, but there is only one guaranteed way you can have peace—and you can have it in the next second—surrender.
>
> Admittedly there's a risk in any course we follow other than this, but every lesson of history tells us the greater risk lies in appeasement, and this is the specter that we face. You and I know and do not believe that life is so dear and peace so sweet as to be purchased at the price of chains and slavery. If nothing in life is worth dying for, when did this begin?
>
> You and I have the courage to say to our enemies. ''There is a price we will not pay. There is a point beyond which they must not advance.'' And this, this is the meaning in the phrase of Barry Goldwater's ''peace through strength.''
>
> Winston Churchill said, ''The destiny of man is not measured by material computations. When great forces are on the move in the world we learn we are spirits—not animals. And he said, ''There is something going on in time and space, and beyond time and space which, whether we like it or not, spells duty.''
>
> You and I have a rendezvous with destiny.
>
> We will preserve for our children this, the last best hope of man on Earth or we will sentence them to take the last step into 1000 years of darkness.
>
> We will keep in mind and remember that Barry Goldwater has faith in us, he has faith that you and I have the ability and the dignity and the right to make our own decisions and to determine our own destiny.
>
> That path, the path of standing and fighting for freedom, even when it seems daunting, even when it seems the gestalt of the moment is on the other side, is a path with many honorable forebears.

I can tell you, speaking and echoing the sentiment of the millions on twitter, of the people following this stand for principle tonight, if the 100 Senators in this body stand together and say regardless of party, liberty will always prevail; regardless of party, the Constitution is the governing body, the governing document in this Nation, then we will be doing our jobs.

I commend Senator PAUL for a lonely stand that, as the night has worn on, has not proven quite so lonely. Indeed, were he the only Senator standing at his desk this evening, it would not be lonely in that circumstance either because he would be standing shoulder to shoulder with millions of Americans who do not wish the Federal Government to assert arbitrary power over our lives, over our liberty, over our property, but who, instead, want a government that remains a limited government of enumerated powers that protects the God-given rights each of us is blessed to have.

The question I ask: What in the Senator's judgment is America without liberty? Who are we, if we are not a free people?

Mr. PAUL. Mr. President, I thank the Senator from Texas for his remarks. I think he has hit it exactly on the head. The question is a very pertinent question. The question is really where do we go from here.

I see this as a struggle. I see that we are engaged in an epic struggle, but it is not a struggle between Republicans and Democrats; it is a struggle between the President and the Constitution.

The question is, Does the President have the power and the prerogative to have his way regardless of the Constitution?

The question is, Does the Attorney General get to say that he will adhere to the fifth amendment when he chooses to? Is there a choice for American citizens on American soil that they either get the fifth amendment protections or they don't get the fifth amendment protections? This really is a struggle not only between the President and the Constitution but between the Senate and the Congress and the President, to say whether the President gets to determine this policy or whether this is a policy that should come from Congress.

I think we should be asking not just for the President to give his memos on drones, we should be giving him our memos on drones. We need to be dictating the law to the President and not acquiescing and giving the President this authority. This should be a battle between the executive and the legislative. It should involve Republicans and Democrats trying to restrain the President from saying that he has the ability to decide when you get fifth amendment protections and when you do not.

At this time, I, without yielding the floor, would like to entertain a question from the Senator from Florida.

The PRESIDING OFFICER (Mr. SCHATZ). The Senator from Florida.

Mr. RUBIO. Mr. President, let me congratulate the junior Senator from Texas on a fantastic question. In that question he used Shakespeare references; he used references to the movie ''Patton.'' I didn't bring my Shakespeare book, so let me just begin by quoting a modern-day poet. His name is Wiz Khalifa, called ''Work Hard Play Hard.'' That is how it starts.

If you look at time, I think it is a time when many of our colleagues also expected to be back in the home State playing hard, but we are happy we are still here working hard on this issue. It is actually pretty stunning. If you watch from home you hear the audience of people watching on the news or whatever, what is going on here. I think it is important to explain what exactly is happening here. What is happening is pretty straightforward.

The Senator from Kentucky has asked a question of the administration. It is a pretty straightforward question. Is it constitutional for the Federal Government to kill a noncombatant citizen in the United States? We all have strong feelings about that program. We all have strong feelings about the war on terror. These are all legitimate issues, but this is a very direct question that has been asked.

What would have resolved this hours ago, from my understanding—and if I am incorrect the Senator from Kentucky will correct me in a moment—my understanding is he has offered two ways to bring this to a resolution. One is just a clear, unequivocal statement from the White House that says, of course, it is unconstitutional. That is not going to happen. Unconstitutional. Just a straightforward statement of that magnitude.

I have been watching on television the last few hours. I saw the Senator from Kentucky say they have reached out to the White House. They have been, I believe, unable to get a direct response.

The other is I heard he made a motion to have a resolution heard that made it clear that was the sense of this body. The sense of this body would be that this is unconstitutional. Again, pretty straightforward.

Let's just say there are those among us who believe this is important. I don't know anybody in this body who believes a noncombatant U.S. citizen in the United States who is not doing anything of imminent danger should somehow be killed by the U.S. Government, nor do people at home believe that either. It was the sense of the Senate that this was the case, and in exchange for that vote, of course the vote on Mr. Brennan would move forward, and that has been rejected. This doesn't make a lot of sense to me.

I actually went to a movie—one of the great American movies, ''The Godfather''—and there was a quote in that movie. I don't have the Patton quote, but I have ''The Godfather'' quote, and this is the best known one, ''I'll make him an offer he can't refuse.'' To me these are straightforward offers they can't refuse. Yet they have been refused. I think that is stunning.

The third thing I wish to say—I want you to imagine what this conversation would be like tonight if the President was George W. Bush and if this issue was about George W. Bush. Just imagine that for a moment now—if he had been asked this direct question and refused to answer—what this Chamber would look like and what the arguments being made would look like tonight. Imagine that for a moment.

That takes me back to another modern day poet by the name of Jay-Z from one of the songs he wrote: It's funny what seven days can change, it was all good just a week ago. I don't know if it was all good a week ago, but I can tell everyone that things have changed.

If the President was George W. Bush and this was the question asked of him and the response was the silence we have gotten, we would have a very different scenario tonight except I actually believe the Senator from Kentucky would make the exact same arguments he is now making on the floor.

I want everyone who is watching to clearly understand—and if I am wrong, the Senator from Kentucky is going to correct me—that what he is asking is a simple, straightforward response or, if we cannot get that, a simple and straightforward response from the Members of this body in a sense of the Senate resolution vote. Both have been rejected.

The last observation I would have tonight is that there have been pretty phenomenal legal analyses on the floor. That reminds me of the most famous quote from ''The Godfather'' that was never actually used in the movie. I don't know how that happened. Maybe they cut it out. Here is the quote: ''A lawyer with his briefcase can steal more than a hundred men with guns.'' I don't know how that is relevant to this, but I thought it was a very good quote. I thought I would bring it up because I went to law school. I am a lawyer. I was a land use and zoning attorney, which meant if I wound up in the courtroom, something went horribly wrong with the land use and zoning application.

The point is we have had good arguments on the constitutional issues with regard to this, and I think those are important to discuss. I am glad so much time has been spent on those. It is important for the people at home to fully understand the legal arguments here because I think they are important. They go to the heart of our Constitution. They go to the heart of our civil liberties. They go to the heart of the things that distinguish our Nation.

I think what is stunning to me—clearly the constitutional issue is important—is how simple and straightforward this issue is and how easily it could have been resolved. I don't know how many hours we are into this now—I think it is about 11 hours and 15 minutes—but we cannot get a straightforward answer. The Members of this body deserve that. The Members of this body deserve an answer. It doesn't matter what party you or the President is in. This is an important question that is being asked.

All of this could be over if we get a straightforward answer. I think that is something every Member of this body should care about. It is not a Republican question. It is not a conservative question. It is a constitutional question, a relevant question, and one that should be easy to answer.

They are refusing to answer it for some reason. I don't know if it is because of pride or it is beneath them or they have something else going on or the answer department was shut down. Either way I don't understand how they cannot answer this very straightforward question.

It reminds me of another line from ''The Godfather'' when Michael turns to Fredo and says: Fredo, you are my older brother, and I love you but don't ever take sides with anyone against the family again. That is kind of what is happening here. As an institution—as the Senate—we have a right to those answers. It doesn't matter who the President is. We have a job to do that we are held responsible for and that we are held accountable.

Thirty years from now, forty years from now, twenty years from now, ten years from now, these sorts of decisions will have ramifications long after we are gone. All of us here will be gone and there will be other people in these chairs. Maybe it will be our children, grandchildren or great-grandchildren who will visit this building, and they will read about the time we served here. If we make mistakes, history will record those mistakes and hold us accountable for those mistakes. If things are happening today that set the groundwork for future administrations—because that is the other thing we need to remember. No matter how anyone feels about the current President, he is not going to be President forever. The precedence he sets could very well guide what future Presidents do.

So the point is, if we are laying the groundwork and making mistakes by not asking certain questions, history will hold us accountable for that and that is all of us. It is not one of us, not five of us, not the Republican part of the Senate but all of us. We have a right to ask these questions and to get these questions answered. That is not being an obstructionist, that is not being partisan, that is being a Senator.

I have only been here 2 years, but I know enough of this process already to know that when the majority changes or when a new President is elected, at some point every single one of us is going to want to have an answer from the administration or some other branch of government and they are going to hold us off. They are going to give us the Heisman and stiff-arm us and not answer the question. I would sure hope at that moment—whether you agree with that person or not—that you would stand and defend their prerogative and right as a representative of their State to get legitimate questions answered in a straightforward way.

As I said earlier today when I came to the floor, this issue is about this institution as much as anything else. It is about the right of every single Member of this body to be able to ask legitimate questions of the administration or other branches of government and to get a straightforward answer.

I guess the question I have for the junior Senator from Kentucky is—just to clarify my understanding—that this issue could have been brought to a resolution quite a long time ago if the White House had made their feelings well known in a statement. They could

just put that out in a 30-second statement, and it would be done. Just come out and say it, that it is unconstitutional to kill U.S. citizens that are noncombatants who are in the United States. That is one route.

The other thing that could have ended this is the unanimous consent motion he made to have this body vote on the sense of the Senate, and that would have brought it to a vote. Is that accurate? Are those the options before us?

Mr. PAUL. Mr. President, that is exactly the sequence of things. We have been in contact with the White House throughout the night. We have made several phone calls to the White House. We told them we are willing to allow a vote on the Brennan nomination. All we ask in return is that we get a clear implication of whether they believe they have the authority under the Constitution to target Americans on American soil. I think it is a question that is fair to ask, and we have been willing to let them have the vote at any time either earlier tonight, obviously, as well as in the morning. All we ask in return from the White House is a clarification.

The last report I got from the White House is that they were done talking tonight. I hope that doesn't mean they are done talking tomorrow. I think this struggle is an important struggle, and I think there needs to be clarification from the White House before this goes forward. This is a point in time when the question has been raised. I think it is important for them to answer the question, and the fifth amendment is not optional. They don't get to choose to adhere to the fifth amendment. This applies to U.S. citizens on U.S. soil, and there are no exceptions to that.

Without yielding time, I would like to entertain a question from the Senator from South Dakota.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator from South Dakota.

Mr. THUNE. Madam President, I thank the Senator from Kentucky for yielding for a question. I appreciate his diligence in continuing at this late hour to get an answer to some very important questions.

I think many of us when we got up and came in this morning were preparing and getting ready for the big blizzard of 2013 which, of course, never materialized here in Washington, DC. Evidently, there were a lot of agencies of government that were not here today. Perhaps when they get back, maybe the Senator from Kentucky will get an answer to his question. I think it is a straightforward question.

I am someone this evening who has supported the use of drones in fighting the war on terror. I think they have been very effective in killing terrorists, people who want to do harm to the people of this country. But I think the question that has been raised by the Senator from Kentucky—and the reason we are here this evening—has to do with a straightforward issue. He has a sense of the Senate on which he is prepared to have the Senate go on record, and it is very simple and very straightforward. It says: Resolved that it is the sense of the Senate that, No. 1, the use of drones to execute or target American citizens on American soil who pose no imminent threat clearly violates the constitutional due process rights of citizens.

No. 2, the American people deserve a clear, concise, and unequivocal public statement from the President of the United States that contains detailed legal reasoning including, but not limited to, the balance between national security and due process, limits of Executive power, and distinction between treatment of citizens and noncitizens within and outside the borders of the United States, the use of lethal force against American citizens, and the use of drones and the application of lethal force within the United States territory.

It is a very straightforward resolution, a sense of the Senate, and all that the Senator from Kentucky is simply doing is trying to get a response and get a vote on that and make that the statement of the Senate. He obviously wants to get the President of the United States, the White House, and Mr. Brennan—whose nomination is pending before us—to make a clarification on that point.

It is not like this issue popped up overnight. The Senator from Kentucky has been trying for some time to get an answer to this question. He has submitted numerous letters addressed to Mr. Brennan.

This is a letter from February 12 where he poses numerous questions, one of which is: Do you believe that the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil? What about the use of lethal force against a non-U.S. person on U.S. soil? These are straightforward questions to which the Senator from Kentucky deserves an answer, and this is a perfectly fitting and appropriate time in which to try and get that answer.

The nomination of the CIA Director is an incredibly important and strategic position in this country, and under the Constitution of the United States, article II, section 2, the President has the power by and with the advice and consent of the Senate to make treaties provided two-thirds of the Senators concur. ''He shall nominate, and with the advice of the Senate, shall appoint ambassadors, other public ministers, counsels, judges of the Supreme Court, and other officers of the United States.''

It is the advise and consent power that the Senate has under the Constitution that the Senator from Kentucky is exercising on this nomination.

Again, it has been pointed out many times on the floor of the Senate today this is not something that is a partisan issue. It is not a Democratic or Republican issue. This is something that has ramifications. It is a constitutional question. It has to do with due process under the law. It has to do with the advise and consent power of the Senate under the Constitution. So when the Senator from Kentucky continues to press the administration for a straightforward answer, he continues to get sort of these vague, ambiguous answers, if you will. Again, these are questions that did not just pop up overnight. Back on January 25 of this year, 2013, the Senator from Kentucky posed to Mr. Brennan a series of questions at that time. The follow-on letter, which I quoted from earlier, was from February 12. He put forward questions, such as:

> Do you agree with the argument put forth on numerous occasions by the executive branch that it is legal to order the killing of American citizens and it is not compelled to explain its reasoning in reaching this conclusion? Do you believe this is a good precedent for the government to set?

He goes on to ask another question:

> Would it not be appropriate to require a judge or court to review every case before the individual in question is added to a targeting list? Please describe the due process requirements in place for those individuals being considered for addition to a targeting list. Would you agree it is paradoxical that the Federal Government would need to go before a judge to authorize a wiretap on U.S. citizens overseas but possibly not to order a lethal drone strike against the same individual? If not, please explain why you believe something similar to the FISA standard should not be applied in regard to lethal actions against citizens of the United States.

These are straightforward questions. These are questions to which I believe the Senator from Kentucky deserves an answer. Many of us this evening, at this late hour, are here to support him in that endeavor and his attempt at least to try—as this nomination moves through the process—to get the answers to the questions that would allow him to perform the advise and consent function that is in the U.S. Constitution as it applies to nominations and as it has been implemented here by the Senators in history.

I want to say to the Senator from Kentucky—and I have a question for him in a moment—that it is remarkable to see this process unfold. In my time here—and I came in the 2004 election; started my service in the U.S. Senate in January of 2005—I have not seen a time where we had a Senator who as a matter of principle stood down here for the number of hours he has today and insisted on getting some answers. I give him great credit for the job he has done in pressing this issue.

He has not been given that answer yet. It sounds as though it has kind of come up to the line a couple of times. It is very simple. They could put this thing to rest. All they have to do is come forward and answer that very simple question about the legal authority to target American citizens on American soil with drone attacks. It doesn't seem to me, at least, that it would be that hard of a question to answer. They say as a matter of policy

they have not done that and they don't have any intention of doing it in the future. Why don't we put this issue to rest once and for all, and the Senator from Kentucky will allow the process to go forward and Mr. Brennan can get his vote.

In the time I have been here, at least, it certainly is remarkable to me to see the amount of effort the Senator from Kentucky has put forward in trying to get an answer to a very straightforward question. I give him great credit for that, because a principled stand is something we don't see enough of around here. So to stand here and use his powers as a Senator in a way that is very fitting with the tradition and history of this great institution—we look at the U.S. Senate and those who have come before, the place of great characters of our history, including Calhoun and others who have graced the U.S. Senate and some of the great debates that have occurred in the past. It is nice to see a discussion and debate about a major constitutional issue, a major constitutional question.

I, as do many of my colleagues who are here this evening, support the Senator from Kentucky in his quest to get answers. I think it is certainly appropriate. I think it certainly should be expected that the administration respond to what are very straightforward questions with regard to the issue that has been raised by the Senator and I hope that answer will be forthcoming. If it is not, it is entirely possible, I suppose, that this could continue for some time into the future.

But in any event, I ask the Senator from Kentucky what it will take in terms of some sort of affirmation, some sort of answer, some sort of response from the White House, from the nominee, the Director of the CIA, to satisfy the question he has raised. It seems to me, at least as a Senator from South Dakota, that the question he poses is a straightforward and simple one and merely requires a very simple answer.

Mr. PAUL. Madam President, I thank the Senator from South Dakota for his remarks and would make the comment that I, as has he, have seen what drones can do to protect our soldiers and no one is arguing against that. No one is arguing against drones or any other kinds of force to defend the country against any kind of an attack. What we are arguing for is that noncombatants—people not engaged in combat in our country—are due fifth amendment protections, and that the White House should acknowledge this. This is important because the drone strikes overseas, when looking at the category and looking at the way they are being done and under what standards, there are some of those standards that we don't think are appropriate for U.S. citizens on U.S. soil. So we are asking for a clarification. We think Attorney General Holder got close to that today, under the duress of cross-examination. We wish to see him do it voluntarily in a nice, concise statement and we would be happy to vote on the Brennan nomination as early as tomorrow morning.

I wish to yield time to the minority leader.

Mr. MCCONNELL. I thank my colleague from Kentucky. First let me say I think our mutual constituents will certainly learn——

Mr. DURBIN. Madam President, was there a unanimous consent request?

Mr. MCCONNELL. Would the Senator from Kentucky yield for a question?

Mr. PAUL. Yes.

Mr. MCCONNELL. First let me thank my friend from Kentucky for his courage and conviction. Having been here a while in the Senate, we have only rarely, as Senator THUNE pointed out, had extended debate on any matter. A body that came into existence for the purpose of lengthy discussions of weighty issues has, in recent years, had very little lengthy discussion of weighty issues.

If I understand the issue the Senator from Kentucky feels so passionately about, it is that the administration should answer a question that is pretty easily stated, as I understand it, as follows: Does the administration take the view that a drone strike against a U.S. citizen on U.S. soil would be an appropriate use of that weapon? Am I correct that is the question the Senator from Kentucky hopes to get an answer to from the administration?

Mr. PAUL. Yes.

Mr. MCCONNELL. And I assume the Senator from Kentucky shares my view that it is a pretty easily understood question. It strikes me that the question again is pretty easily understood and has to be something the administration has given some thought to, given the development of this new weapon.

I heard Senator BARRASSO earlier today talking about how this technology has changed—we would never have thought of this a few years ago—this technology has actually changed warfare in a very dramatic way. So as I understand it, what the Senator from Kentucky is looking for is how this dramatic new weapon applies to the U.S. Constitution—how the use of it applies to the U.S. Constitution on American soil.

So I think it is entirely appropriate that the Senator from Kentucky engage in an extended debate with the support of his colleagues to get the answer to this question. I wanted to congratulate him for his tenacity, for his conviction, and for being able to rally the support of a great many people, as well as people who have come over from the House of Representatives who feel also, I gather, that this is a legitimate question the administration ought to be answering.

I might say, at whatever point we get to a cloture vote to extend debate on the nomination of Brennan, it is my view cloture should not be invoked. This is a controversial nominee. Should cloture be invoked, I intend to oppose the nomination.

I congratulate my colleague from Kentucky for this extraordinary effort.

Mr. PAUL. Madam President, I wish to thank the minority leader for his remarks and for his insightful questions. The question about whether the President has actually gotten involved with what the rules will be has actually been somewhat broached. He was asked at Google about whether this could occur and he said, Well, the rules would have to be different outside than inside. So it implies they have thought about what the rules should be outside, but to my knowledge no one in the Intelligence Committee has been informed what the rules are inside.

It troubles me that they think they have the authority to do targeted drone strikes inside, particularly when there are examples of the Twin Towers and 1941 Pearl Harbor. Those would be attacks we would repulse no matter who we knew was coming in. There wouldn't be a targeted strike on an individual at a designated time. We would repulse those attacks militarily and they wouldn't even fall into the category of what we are talking about here as targeted drone strikes. We might use drones, but they wouldn't be what we are talking about. These are questions we have been asking all day. So they have answered a question, just not the question we asked.

Mr. MCCONNELL. I thank my friend from Kentucky.

Mr. PAUL. Madam President, I wish to yield for a question to the Senator from Pennsylvania.

Mr. TOOMEY. Madam President, I wish to spend a couple of moments here revisiting the context in which this discussion occurred. I want to commend the Senator from Kentucky for raising what I think is an extremely important issue and forcing the attention of this body to this issue at an appropriate time, which he has done, and, I might add, at great personal inconvenience to himself.

This arose from a letter the Senator from Kentucky sent to Mr. Brennan, the nominee for the Director of Central Intelligence, and the response he got. These are short letters. I want to review this so it is very clear exactly what was posed and what the response was and where we are at the moment in this debate.

The letter from the Senator from Kentucky begins:

> Dear Mr. Brennan: In consideration of your nomination to be the director of the Central Intelligence Agency, I have repeatedly requested that you provide answers to several questions clarifying your role in the approval of lethal force against terrorism suspects, particularly those who are U.S. citizens. Your past actions in this regard as well as your view of the limitations to which you are subject are of critical importance in assessing your qualifications to lead the CIA. If it is not clear that you will honor the limits placed upon the executive branch by the Constitution, then the Senate should not confirm you to lead the CIA.

Clearly, this is the idea that is under scrutiny this evening.

The letter goes on to say:

During your confirmation process in the Senate Select Committee on Intelligence, committee members have quite appropriately made a request similar to questions I have raised in my previous letter to you, that you expound on your views on the limits of executive power in using lethal force against U.S. citizens, especially when operating on U.S. soil. In fact, the chairman of the SSCI—

The Senate Select Committee on Intelligence

Senator Feinstein, specifically asked you in post-hearing questions, for the record, whether the administration could carry out drone strikes inside the United States. In your response, you emphasize that the administration ''has not carried out'' such strikes, and ''has no intention of doing so.'' I do not find this response sufficient.

Let me just add editorially, I do not know how anyone could find that sufficient. It clearly is an evasion of the question. That doesn't answer the question that was posed by Senator FEINSTEIN, just as we haven't been able to get an answer to the question posed by the Senator from Kentucky.

The letter goes on to say:

The question that I and many others have asked is not whether the administration has or intends to carry out drone strikes inside the United States, but whether it believes it has the authority to do so. This is an important distinction that should not be ignored.

And this, of course, goes to the heart of the question: Does this administration believe it has the authority to carry out a lethal strike by a drone against an American citizen on American soil.

The letter goes on to say:

Just last week, President Obama also avoided this question when posed to him directly. Instead of addressing the question of whether the administration could kill a U.S. citizen on American soil, he used a similar line that ''there has never been a drone used on an American citizen on American soil.''

The evasive replies from the administration to this valid question have only confused the issue further without getting us any closer to an actual answer.

I would say that is—again, this is my editorial comment—I think that is a generous assessment. When a direct question is asked and the party to whom the question is directed repetitively evades the question, it makes one seriously wonder what their intentions are.

The letter goes on to say:

For that reason, I, once again, request you answer the following question: Do you believe that the President has the power to authorize lethal force such as a drone strike against a U.S. citizen on U.S. soil and without a trial? I believe the only acceptable answer to this is no. Until you directly and clearly answer, I plan to use every procedural option at my disposal to delay your confirmation and bring added scrutiny to this issue and the administration's policies on the use of lethal force.

The American people are rightly concerned and they deserve a frank and open discussion on these policies.

Sincerely, Rand Paul, M.D., United States Senator.

I have to say, this is a very straightforward and simple question. It has been posed clearly. It has been posed repeatedly.

Now I want to share with my colleagues the answer, such as it is, that we have received, the most recent answer that was directed to the Senator from Kentucky which, again, I would suggest is not responsive to the question.

A letter dated March 4, addressed to Senator PAUL, says:

On February 20, 2013, you—

Referring to Senator PAUL—

wrote to John Brennan requesting additional information concerning the Administration's views about whether ''the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial.''

The letter goes on to say:

As members of this Administration have previously indicated, the U.S. government has not carried out drone strikes in the United States and has no intention of doing so. As a policy matter, moreover, we reject the use of military force where well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat. We have a long history of using the criminal justice system to incapacitate individuals located in our country who pose a threat to the United States and its interests abroad. Hundreds of individuals have been arrested and convicted of terrorism-related offenses in our federal courts.

The question you have posed is therefore entirely hypothetical, unlikely to occur, and one we hope no President will ever have to confront. It is possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States. For example, the President could conceivably have no choice but to authorize the military to use such force if necessary to protect the homeland in the circumstances of a catastrophic attack like the ones suffered on December 7, 1941, and September 11, 2001.

Were such an emergency to arise, I would examine the particular facts and circumstances before advising the President on the scope of his authority.

Sincerely,
Eric H. Holder, Jr.
Attorney General

The reason I read the entire letter is because I did not want anyone to think any part of this was taken out of context or anything was being left out.

When you read the entire letter, in response to the entire letter that was sent as a request, I think it is very clear. This administration refuses to answer a simple and very important and very legitimate question.

Our Attorney General suggests that under a certain set of circumstances—which he will not specify any guiding principles or rules that would allow us to understand those circumstances—he would examine the facts and circumstances and then advise the President on the scope of his authority.

There is no suggestion of what legal authority he has to do this. There is no description of the constitutional authority. I find this very disturbing. We have all observed the very new developments that we are experiencing in national security. The minority leader alluded to this in some respects.

As I mentioned earlier today, there is no question we have a relatively new phenomenon in our national security challenges. It is only in very recent times that we have come to understand the nature of a whole new kind of enemy. It is not just a nation state anymore, which has historically been the nature of military threats. But now there is a very different kind of threat—dispersed, somewhat affiliated, sometimes affiliated, hard to discern—a geographically widespread network of terrorists. That is very different than the traditional nation state. That is a different kind of threat, and we have spent a lot of time trying to come to terms with how best to address this.

In an overlapping period of time, a new technology has emerged. We have developed it. It is an amazing technology that gives us the ability from vast distances away to send out a very sophisticated unmanned aircraft that is quite lethal and quite capable of destroying a target. I think most of us probably feel that there are many cases where this is an appropriate tool under an appropriate set of circumstances. But, frankly, I think it should be the subject of an ongoing discussion: How would we use this? Under what circumstances? Does the President have unlimited unilateral authority? That is a discussion we ought to have about the use of this technology overseas where I think, as I say, it has a very important, very useful, very legitimate function.

But when we are talking about using this, the American Government using this military asset to kill American citizens on American soil, I am a little shocked that there is not an automatic presumption that that is not permissible—certainly not legal. I cannot understand the constitutional basis for this. I would certainly suggest that the burden ought to be on those who would suggest that that is permissible.

So what the Senator from Kentucky has said is: Just tell us the answer to this question. Do you believe you actually do have this authority? And could you tell us that? If they believe they have this authority—and since they will not answer unequivocally that they lack the authority, it is hard to infer anything other than that perhaps they think they do have this authority.

It obviously raises a whole lot of very important questions, such as under what circumstances would you feel you have the authority to exercise this power? And exactly who would be targeted? And how would you decide whom to target? And in the event you are carrying out a strike using lethal force of this magnitude on American soil against an American citizen, what kind of criteria would govern your judgment about the risks that would be imposed on innocent people who are in the vicinity? And what about any judicial review at all? Would there be any appropriate role for it because, of

course, we have a very long tradition of due process.

There are a lot of Americans who have serious reservations about the idea of indefinite detention on American soil. Indefinite detention is pretty tame compared to being destroyed by a drone.

So I would suggest the failure of the administration to answer this basic question of whether they believe they have the authority to do something that is completely unprecedented is a very fundamental and important question and completely legitimate. And it is completely appropriate for this body to insist on an answer to this question before we would go ahead and confirm a person who would have enormous power and authority over a variety of national security issues.

I want to commend the Senator from Kentucky for putting a bright light on this issue. This is a very important issue, and, as I mentioned earlier, he has done it at great personal inconvenience to himself because he has a passionate commitment to the liberty of the American citizens. He manifests that all the time in many ways, and this is one of the ways he is doing it. I commend him for that.

I would conclude my question by addressing the Senator, through the Presiding Officer. My question for the Senator is, has there been any change in the status of the lack of response from the administration since the last time we have heard from the administration?

Mr. PAUL. Madam President, we have been asking the question of the White House all day, and we have said all along that we would allow the vote to proceed, but we have not gotten any response from the White House. The consideration of whether we will get a response tonight I think is unlikely. We will still keep pressing the issue in the morning as well.

But with regard to the Senator's remarks, I think one of the things I hope will come out of this debate will be that we will reassert our authority as a function of the separation of powers, where our body will say to the President: We not only would like your drone memos on how you think you can do this, but we should reassert our authority and tell the President, this is how we think you should do it, and this is the law that is going to dictate and circumscribe how you will do this.

That is an authority that I think has been long necessary and we have been letting go by the side and I think we should reassert.

At this time, Madam President, I wish to yield to——

Mr. DURBIN. Madam President, will the Senator yield for a question?

Mr. PAUL. Without relinquishing the floor, I will yield for a question.

Mr. DURBIN. I thank the Senator from Kentucky, and I apologize to my friend from Wisconsin. I know he has been waiting. But the question asked by the Senator from Pennsylvania prompted me to recall a specific set of circumstances which I think address his concerns, our mutual concerns, about the use of lethal force.

I know we are talking about this in the context of drones, but a drone is a weapon, and there are other weapons by which our government can use lethal force to kill people.

So I think, going to the question the Senator asked Mr. Brennan, in a more generic sense, the question is, When can our government use lethal force in the United States against perhaps U.S. citizens? I think it is a legitimate question.

I was not misleading the Senator earlier when I said there is a scheduled hearing—the only scheduled hearing—on this question coming up before the Judiciary Subcommittee on the Constitution, which I chair. And the ranking member is Senator CRUZ of Texas who was here earlier.

So I think it is important, and it is an important constitutional question, but, while my colleague from Pennsylvania is here, I wish to recount a set of circumstances for him, and then pose a question to the Senator.

The circumstances were September 11, 2001. Some of us were in this Capitol Building, in fact, just outside this door. As we came to work, we heard that some plane had crashed into the World Trade Center in New York. As we were watching on television, a few minutes after 9, a second plane crashed into the World Trade Center—the adjoining building. We all know what happened following that.

As we were in our meeting here, just a few feet away, we started seeing black, billowy smoke coming across the Mall right outside our window here. A third plane, taken over by these terrorists, was crashing into the Pentagon. What we did not know at the time was that there was a fourth plane. But we evacuated the Capitol. All of us, literally every one, raced out of this building to stand on the lawn outside. It was not a safe place, but we did not know where to go—all the tourists, all the staff, and all the rest.

It was not but a few minutes that we were out there, and we heard something that sounded like a shot, a discharge of a weapon. In fact, it was fighter planes that were being scrambled to protect the United States Capitol. At that time, the order had gone out to all commercial airplanes in the United States: Land immediately, so that we would know who was in our airspace and not responding to that command.

It turns out there was a fourth plane involved, and that plane crashed in Pennsylvania, we believe because of the heroism and bravery of the passengers on board; that when they realized what was happening, they tried to take control of that plane before it could be used as a weapon.

Many people believe that plane was aimed for this building or for someplace in Washington, DC. We had scrambled our military planes. And had that plane not crashed into the countryside in Pennsylvania and come within the airspace of this Capitol, I think we know what would have happened. Our government would have used lethal force—military lethal force—to shoot down a civilian airplane that was threatening, we believed, the lives of innocent Americans. It would have been the use of lethal force on our soil to stop a person or persons whom we believed were terrorists about to kill innocent Americans.

So when I listened to the response from Attorney General Holder in hypothetical and put it in the context of 9/11, I can imagine that President Bush might have been called on in an instant to make a decision as Commander in Chief to bring down the fourth plane before it crashed into another building and killed innocent people.

That is a circumstance, I would say to the Senator from Pennsylvania and the Senator from Kentucky, which I fully understand and expect the Commander in Chief to respond to.

So I do not think this is such a clear and easy situation. It is important that we have this hearing and explore the many possibilities—the possibility of a terrorist overseas who threatens our safety and the use of lethal force, drones or otherwise, the possibility of a non-U.S. terrorist in the United States and use of lethal force to deter them. And then obvious questions: What if it is a U.S. citizen overseas? What if it is a U.S. citizen in the United States?

I joined 10 other Senators asking for the same legal memos, which I think the Senator would like to see as well, justifying whatever course of action this administration has used. I think it is a legitimate constitutional responsibility of the Senate and the House and this Congress.

But I also understand, having lived through—as all of us did in some respect—9/11, the complexity of those decisions that have to be made in such a fashion.

So my question to the Senator—as I said before, we have to end with a question mark—don't you consider the situation of 9/11 and the use of lethal force, even military force, to shoot down a civilian plane—if it had survived the passenger effort in Pennsylvania and was headed for the U.S. Capitol—to be a legitimate exercise of a Commander in Chief to protect the United States?

Mr. PAUL. Madam President, absolutely. My answer to the question the Senator raised is absolutely. We have the right to defend ourselves. It would have been a decision that has to be made imminently because a lethal threat needs to have a lethal response immediately.

My whole problem with this whole debate is, none of us disagrees with that, I do not think. We all agree that you can repel an imminent attack. We all agree if someone is outside the Capitol with a rocket launcher or grenade launcher, lethal force can be used

against them. None of us disagrees on that.

We are talking about a targeted drone program where we target individuals. Overseas, the standard seems to include people who are not actively engaged in combat who we think either might be in the future or have been in the past. I do not think that standard can be used in the United States. I think when you are in a battlefield, you do not get due process. If you are shooting at Americans, drones can hit you anytime, missiles can hit you. There is no due process in a battle.

This is a big debate because many have said the battlefield is here. But if the battlefield is here, that would imply the fifth amendment does not apply here. The President has said he will use the fifth amendment in the process of deciding drone attacks overseas, but he does not get the option to kind of use it privately. Using the fifth amendment privately to me is not using the fifth amendment.

I will say, I have a great deal of respect for the Senator from Illinois. We have often been on the same side on civil liberties issues. I do not question that he and I may well see eye to eye on this issue, that targeted killings of people in restaurants, in their house, in a hotel, are not something we can or will tolerate. It contravenes the Constitution. It is a simple question. The President should simply answer that question. I think Attorney General Holder was coming in the direction of that. But why is it so hard? Why is it like pulling teeth to get them to admit they do not have this power? Presidents need to more easily say: By golly, no, the Constitution says you cannot do that. The fifth amendment does apply. There are no exceptions to the fifth amendment for American citizens on American soil. That is all we are asking.

But I think the 9/11 comparison and Pearl Harbor is a red herring in the sense that none of us disagrees with repelling a lethal attack, an imminent lethal attack, an ongoing lethal attack with lethal force. No one disagrees with that.

Mr. DURBIN. Will the Senator yield further for a question?

The white paper that has been presented to us by the Justice Department concludes that the right to national self-defense and the 2001 authorization to use military force gave the U.S. Government legal authority to kill a U.S. citizen in a foreign country that is not an area of active hostilities, if the target is a senior operational leader of al-Qaida or an associated force. So it is qualified in that regard.

The white paper argues, such an attack does not violate the constitutional rights of a U.S. citizen in this circumstance, ''if he poses an imminent threat of violent attack against the United States.'' Imminent threat. No. 2, ''his capture is not feasible,'' or the Justice Department white paper goes on to say, ''and the operation complies with the law of war principles, such as the need to minimize collateral damage.''

I will say to the Senator, I stand with him. I want an answer to his question. I think we should pursue it on a bipartisanship basis, as we have many issues together in the past. I think it is a legitimate question. But I would say that the white paper we have been given relative to this U.S. citizen overseas has some fairly narrow circumstances in terms of the use of force.

When it comes to the use of that force in the United States, I believe the circumstances should be just as narrow, if not more. I would say to the Senator, I am genuine in my concern for bringing these issues out in a full hearing of our constitutional subcommittee. I think I have answered the question. I hope he appreciates my sincerity.

Mr. PAUL. Madam President, in very quick response to that, one of the few problems with that is they also go on to say that imminent does not need to be immediate. You are also implying that you can kill this American citizen in a noncombat situation, not an active battlefield. I do not accept that standard for the United States. It is another debate whether we accept the standard overseas. I think it is an important debate. But the debate about whether that is a sufficient standard for America, it is not. To kill someone not in combat—one, it is not wise. You are not going to get any information. When someone is eating dinner, why do you not send the police over and arrest them? To kill someone who is in a noncombat situation in America is unacceptable in America under any circumstances. I think we need to come to an agreement on that.

I wish to yield for a question to the Senator from Wisconsin.

Mr. JOHNSON of Wisconsin. Madam President, all of us have come down here to support a very legitimate request to have a legitimate question answered. I think the Senator deserves those answers. If not an answer from the White House, he at least deserves a vote.

I started watching here this morning. The Senator started about 11:57. It is now past midnight. I think my primary action is one of just being puzzled. I have been here for 2 years. I have never served in any kind of legislative body. I certainly came to the Senate thinking this was the world's greatest deliberative body. What I found is a body that is utterly dysfunctional. Even though this is actually one of the best examples of how this body ought to work, it is also an example of that dysfunction. I cannot believe this issue has not been resolved within a half hour, within an hour. Just take a vote.

We have a number of our colleagues from the House coming here in support of the Senator from Kentucky. The House is operating, I believe, as our Founders intended. They are passing budgets. They are debating issues. They are passing real pieces of legislation that, unfortunately, are being dropped over here in the Senate, where those good pieces of legislation die. That is a real shame.

For example, I serve on the Budget Committee of the Senate. I have been on that Budget Committee for 2 years. We have not yet voted on a budget in the Budget Committee. This is, by the way, when this Nation is facing a fiscal crisis unlike anything we have ever faced in our history. We have racked up 4 years now where our debt exceeds $1 trillion. There is no end of that in sight. We have not passed or even brought to the floor an appropriations bill all year long. How can we function as a body if this is how it operates?

A number of Republican Senators joined the President at his gracious invitation for dinner tonight. It was an excellent dinner. It was a genuine, sincere, open discussion of the fiscal problems facing this Nation. I was part of a group of 44 Senators a year and a half ago, almost 2 years now, who also joined the President prior to the final debate on the first debt ceiling in the summer of 2011. The President of the United States leaving that meeting should have come away with a very strong understanding that those 44 Republican Senators were incredibly sincere in their desire to work with the President, to work with our colleagues across the aisle, to solve these problems. I will tell you, I am one Senator who ran for office not to become a Senator but because we are losing this country. We are bankrupting it.

One of the things I do when I talk around the country, I make it a point that fortunately I do not know of any parent who would willingly max out their credit cards, get in debt way over their heads never intending ever to pay it off, but fully intending to pass it off to the children and the grandchildren. I do not know any parent that way, fortunately. But as a society that is exactly what we are doing.

Frequently in this political town, Republicans are accused of waging a war on women, waging a war on immigrants. None of that is true. What Washington is doing is we are waging a war on our children. We are mortgaging their future. It is absolutely immoral. Americans have got to stop and consider what it is we are actually doing to future generations.

So I felt good at the dinner with the President tonight—I think all of my colleagues did. I hope the President did—with a pretty strong sense, once again, that there is a great deal of sincerity, a great deal of desire to roll up our shirt sleeves, put down partisan bickering, put down partisan differences, work together to solve this problem.

I think there has got to be a realization that neither side is going away. If we are going to start solving these problems, we have got to start working together. We have got to return the Senate into that deliberative body that

our Founders intended it to be. We have got to be willing to be held accountable. We have got to take votes. It should not be that hard. We should not be afraid.

I would ask the Senator from Kentucky—as I understand it, this is puzzling that we are here now after midnight. I applaud the Senator for his resolve here. That is why he sees every Member coming down here and providing the support. But I think all he wanted was either unanimous consent or possibly a vote on this simple question:

Resolved, that it is the sense of the Senate that:

No. 1, the use of drones to execute or to target American citizens on American soil who pose no imminent threat clearly violates the Constitutional due process right of citizens.

That seems like a pretty simple question, seems like one most Senators would want to express their opinion by taking a vote, or allowing this resolution to pass by unanimous consent. So I guess my only question is, is that all the Senator is looking for, either an answer from the White House or a simple unanimous consent agreement or a simple vote?

Mr. PAUL. Madam President, I thank the Senator from Wisconsin. Yes, we had two simple requests tonight. The first was for a vote on a nonbinding resolution to express our opinion that it is unconstitutional to kill Americans on American soil. That was denied by the majority party.

The second request we have had, in communication with the White House, is for the White House to say or clarify their opinion that they are not going to be doing targeted drone strikes on noncombatants in America. We have not had much success with either one. We will continue to ask that question.

I have told them I will remove myself from the blockage of John Brennan's nomination as soon as we get some clarification from the White House. I am still hopeful in the morning that they will do that, and by doing that, we can move forward with it.

But I have been more than willing to compromise, because I do not think it is so much about John Brennan as it is about a constitutional principle, that I want the President to publicly acknowledge the fifth amendment does apply to Americans in our country, and that we are not going to cherry-pick when we apply the fifth amendment.

At this time, I wish to yield for a question from the Senator from South Carolina.

Mr. SCOTT. The drone issue is not an issue. It is not a question about Democrats versus Republicans or the DNC versus the GOP. It is not a question about the executive branch versus the legislative branch. It is not a question about conservatives versus liberals. It is a question about the Constitution.

Another one of our friends said that this Nation, our great Nation, needs to stand and recognize what RAND PAUL is doing today for Americans. All of our aspirations mean nothing, nothing at all without our rights.

Another said you do not have to like our political party. You did not even have to like Senator RAND PAUL to stand with RAND. You only need to be against the assassination of Americans without due process on U.S. soil.

I will close with the question that we have heard many times already. Why will this administration not simply state it is unconstitutional and illegal—unconstitutional and illegal—for the government to kill Americans in the United States on our soil or, as I think about it, it is illegal on the soil of Greenville, SC, it is illegal in Oconee County, SC.

It is illegal in Charleston, SC. It is illegal throughout the coast of South Carolina, without due process, to kill an American citizen. Is that what you are asking?

Mr. PAUL. Madam President, I think it is an easy question to have answered, and it boggles my mind. I think the President in general, though, and other Presidents in general, hang on to their power with a tenacious grip, and they don't want to allow that there is any possibility that by saying they don't have this power, they have given up some power.

I think that is a mistake for Presidents. I think it goes against what the candidate, Barack Obama, was for and the Senator, Barack Obama. I hope in the morning when they wake up they will think about what Candidate Barack Obama said in 2007 and what Senator Barack Obama once stood for as a Senator; that is, the power of the Presidency is limited and checked by the Constitution.

Madam President, at this time I would like to yield for a question from the Senator from Arizona.

Mr. FLAKE. I thank the Senator for yielding, and I want to commend the Senator for this 12-hour long quest.

I think it is now. It is an important topic. I recently traveled to Afghanistan and received a briefing there about the drone program and how it is working in Afghanistan. After seeing that briefing, seeing examples of how it is being used, I have to tell you, I was awed by it. I thought what a powerful weapon, what a great weapon, in this case, to use against terrorists.

My second thought is what happens when that is in the hands of our enemy. I can tell you, it is a sobering thought to think of what happens when our enemies get this kind of technology. It is also sobering to think of what could happen if we use this technology here domestically. I think the question you have asked is totally right and proper. Where does the President derive authority? Does he believe he has the authority to use these weapons or any kind of weapon for lethal means when there is no imminent threat?

I think the question the Senator is asking, if I understand that question correctly, is right and proper. My understanding is all you want to find out is does the President believe the administration has the authority to use lethal means in this manner domestically; is that correct?

Mr. PAUL. Madam President, that is correct. It is a simple question. I think we are not asking for any heavy lifting here. We are asking the President: Do you have the authority.

I think it is important that it is a legal question in the sense we want to ask and get a legal, constitutional response. We are not asking—we probably won't do it, we don't intend to do it, or it is not appropriate, or it is not, as a policy matter we don't like doing it. We want the constitutional answer: Do you really believe you have the constitutional authority to do this.

Mr. FLAKE. I thank the Senator.

Mr. ROBERTS. Mr. President, I rise today, in support of Senator PAUL's filibuster on the nomination of John Owen Brennan, to be Director of the Central Intelligence Agency. I have stated my opposition to Brennan's nomination from the beginning.

During my time on the Intelligence Committee and as chairman, I presided over hearings before which Mr. Brennan testified.

His inability to give a straight yes or no answer was greater than any other witness I experienced. But his approach is exactly what we see from the Obama administration today.

Senator PAUL has asked a very simple question to which the President refuses to give a direct answer. The appropriate question is: Will the administration clarify any circumstance when it is acceptable to target and kill American citizens on American soil?

Senator PAUL is only asking for a clear, unwavering statement that protects Americans' fifth Amendment rights as well as our national security. All Americans await the answer.

The Senate's duty is to conduct oversight and ensure our government is protecting its people and the Constitution. In that regard Senator PAUL's filibuster has been true to our oversight, obligations and duties; and I congratulate him.

Mr. PAUL. Madam President, at this point I would like to recognize for a question, without yielding the floor, the Senator from Utah.

Mr. LEE. A question I have with regard to an issue that was raised by my friend a few minutes ago, my friend, my distinguished colleague, the senior Senator from Illinois, touches upon an important point, upon a principle of law which dates back centuries and has application in myriad contexts, one that deals with the concept of imminence.

My friend from Illinois is certainly correct in pointing out the white paper leaked by the Obama Department of Justice to the news media recently does include some analysis that talks about imminence.

It is significant, however, to point out, on page 7 of that white paper the

administration goes on to essentially eviscerate that concept of imminence. In fact it makes clear that this condition, that is the condition dealing with imminence, with the idea of protecting an imminent threat of violent attack against the United States ''does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.''

That is at the top of the first full paragraph on page 7 of the very same white paper that my friend from Illinois was quoting.

In response to that question, it is important to point out that they have taken the imminence out of imminent. There is no more imminence in this standard. So if, in fact, we are to believe the white paper is the correct assessment of the administration's position, it is no longer an imminent standard. It is something else. It is something of a new development. It is something that was created out of whole cloth by this administration that has nothing to do with the traditional imminent standard.

I ask my friend from Kentucky whether this is consistent with time-honored notions of due process.

Mr. PAUL. Madam President, this is exactly what I understand. It is a significant problem. I will be happy to yield if there is a question from across the aisle or a question that is in the form of an explanation as well on his understanding, if we understand this incorrectly, this is a real problem. Because the idea of imminence that people think of is someone leveling a weapon at you, you are in a battlefield, and all of these things which none of us disagrees there should be a response.

The problem is it really is. I am not an attorney, so it is easy for me to disparage attorneys even though I am standing among two I admire—more, probably. The whole point is that sounds like a bunch of government attorneys got together and tried to write some gobbledygook no one could understand and doesn't make sense; that imminence now means something that is not immediate.

I would be happy to entertain a question without yielding the floor.

Mr. DURBIN. This is getting perilously close to a debate, and I am sorry, for those observing, it looks like the Senate is actually in a debate.

The obvious question is was bin Laden an imminent threat to the United States when we took him out? I think he was.

Was he hatching a plot to cause harm to the United States in an imminent manner? Probably not.

Mr. PAUL. Madam President, I would say touche, a good response, I think well worth thinking about and difficult in the sense that I don't think there are any of us who really were opposed to getting bin Laden. There is a question, you are right, exactly whether there was imminence involved.

I think, though, when we start talking about standards, whether we have standards in battlefields, standards overseas, and standards at home, I think the standard at home has to be incredibly high. I don't believe we are involved in a battlefield here. I don't believe you have given up due process here. I don't know that bin Laden had any due process.

I yield for a question from the Senator from Texas.

Mr. CRUZ. I thank the Senator from Kentucky.

I would point out that the questions of imminence, I don't think, are difficult as has been suggested. Indeed, I would like to thank the senior Senator from Illinois for braving this long evening and for expressing his equal and heartfelt concerns about the limitations on the power of the executive to take the lives of U.S. citizens on U.S. soil.

I would point out that at the hearing we had yesterday with the Attorney General there was a series of questions exploring in further depth what the position of this administration was because, in response to the inquiry of the Senator from Kentucky, Attorney General Holder put in writing that he could imagine circumstances in which it would be permissible to take the lives of U.S. citizens on U.S. soil.

The two examples he gave were Pearl Harbor and 9/11. As the Senator for Kentucky responded, and I think everyone here agrees, those examples are unobjectionable. Both of those instances were instances of grievous military attacks. I think nobody doubts that if Kamikazi planes are coming down on our ships in Pearl Harbor, the United States can use lethal force to take out those planes and to save the lives of our service men and women. There is no question about that, legal or otherwise.

Likewise, I think nobody doubts if terrorists have taken over an airliner and are steering it into a building, that tragic a decision would be as heart-rending as the decision on 9/11 must have been for the President to give the order to shoot down that fourth commercial airline—if it began approaching yet another target where it could inflict thousands of deaths—I think nobody disputes that stopping an imminent, immediate, act of violence, and indeed, a military act of war is fully within the authority of the Federal Government.

The question posed to the Attorney General was the question Senator PAUL had asked originally—not that question—rather, it was if there is an individual, a U.S. citizen on U.S. soil who is suspected of being a terrorist, and for whom we can say arguendo there is abundant evidence to demonstrate this individual as a terrorist, and if this individual is on U.S. soil and is not currently an imminent threat of violence—if he or she is sitting in a cafe in rural Virginia having a cup of coffee, the question I posed to the Attorney General is, in those circumstances, would it be constitutional for the U.S. Government to send a drone to kill that U.S. citizen on U.S. soil with no due process of law if that individual did not pose an imminent threat?

In my judgment that was not a difficult question. I think the answer, frankly, I expected was, of course not. Of course the Federal Government cannot kill a U.S. citizen on U.S. soil who does not pose an imminent threat. That has been the state of the law from the day our Constitution came into effect and from before.

Instead, the first response of the Attorney General was it wouldn't be appropriate to use lethal force there, and we wouldn't do so. I pressed the question again on the Attorney General and said: With respect, the question is not whether it is appropriate, it is not a question of prosecutorial discretion. Do we trust you would not choose to exercise lethal force in those circumstances? Rather, it is a question would it be constitutional to kill a U.S. citizen on U.S. soil with a drone if that individual did not pose an imminent threat?

The second time the Attorney General said: I don't believe it would be appropriate. Yet a third time I asked the Attorney General: I am not asking about appropriateness. As the Attorney General of the United States, you are the chief legal officer for this Nation. Does the Department of Justice have a legal opinion as to whether it is constitutional for the U.S. Government to kill a U.S. citizen on U.S. soil if he or she does not pose an imminent threat? Yet a third time the answer was it wouldn't be appropriate.

Then, finally, when asked a fourth time, the Attorney General said: When I say ''appropriate,'' I mean it wouldn't be unconstitutional.

Finally, after asking four times, the Attorney General agreed.

My response to that questioning was: General Holder, I am very glad you have stated that position. I emphatically agree with that position. I don't understand why it took such gymnastics to get to that position. I wish you had simply said that in response to Senator PAUL now 2 days ago. It would have been a very straightforward and simple thing to say.

What I also said to the Attorney General is Senator PAUL and I have drafted legislation which will make explicitly clear the U.S. Government may not kill a U.S. citizen on U.S. soil who does not pose an imminent threat.

I hope, based on the Attorney General's representations, the Department will support that legislation. That ought, in my judgment, be legislation which should be bipartisan legislation that should pass this body 100 to 0 because it is truly phrased with as unobjectionable a legal truism as I could come up with.

I will admit I have been flabbergasted as these days have gone on why John Brennan, when asked by Senator PAUL this question, did not simply say no. Why didn't Eric Holder, when

asked repeatedly, simply say no—at least not at the first. Why now, over 12 hours since this filibuster has proceeded, the White House has not put in writing the absolutely correct statement of constitutional law the Federal Government cannot kill U.S. citizens on U.S. soil if they do not pose imminent threats.

I would note, with the hypothetical that the Senator from Illinois posed to Senator PAUL, even in that situation, Osama bin Laden was a horrible enemy of the United States who committed a grievous act of terror and was the mastermind behind it. I am very glad that after a decade-long manhunt, we were able to find him and we were able to, on a military battlefield, take him out. I would suggest that if he were not in Pakistan, if he were living in an apartment in the suburbs of Chicago, and if he were asleep in bed—and even if he were Osama bin Laden, a really, really, really bad guy—there is nothing in the Constitution that gives the Federal Government the authority to fire a missile at an apartment with a sleeping person in it in the United States of America if that individual was a U.S. citizen. And if he was in the United States, what we would do is what we would expect to do with any other really, really, really bad guy, which is go in and apprehend him.

Behind enemy lines, you can't always do that. There are things that happen on the battlefield that we would never do at home. But I would suggest that any argument that says someone sleeping at home in bed presents an imminent threat is an argument that stretches the bounds of the word ''imminence'' beyond where its natural meaning should lie.

If an individual is pointing a bazooka at the Pentagon or robbing a bank or committing another crime of violence, there is no doubt that force—and lethal force—can be used to stop that crime of violence. But I think that there likewise should be no doubt that the Federal Government lacks the authority to kill U.S. citizens on U.S. soil if there is no imminent threat of death or grievous bodily harm.

So I am hopeful that the results of this extended discussion will be several. I am hopeful, No. 1, it will prompt the White House to do what the White House has heretofore refused to do, which is, in writing, explicitly answer the question posed by Senator PAUL now over a week ago and expressly state as the position of the United States of America that the Federal Government cannot kill a U.S. citizen on U.S. soil if that individual does not pose an imminent threat of death or grievous bodily harm.

I also hope that a consequence of this extended discussion is that we will find widespread agreement in this body behind passing legislation to make clear that the Constitution does not allow such killings. I am hopeful that legislation will command wide support on the Republican side of the aisle but likewise wide support on the Democratic side of the aisle.

I would hope for and would certainly welcome the support of the senior Senator from Illinois and, indeed, every Member of the Democratic caucus. And should this body come together in a bipartisan way or, even better, in a unanimous manner and clarify that the Constitution prohibits killing U.S. citizens on U.S. soil absent an immediate threat, I would suggest this debate will have accomplished a great deal because it will have made clear the limits of the Executive power, and it would be, indeed, carrying out the finest traditions of this body—serving as a check on unchecked government power.

So I would ask the Senator from Kentucky, does he agree that if those were the outcomes of these proceedings, this would have indeed been a beneficial proceeding for helping focus the American people on these issues and helping draw a line that the Executive cannot cross consistent with the Constitution?

Mr. PAUL. Mr. President, I am hopeful that we have drawn attention to this issue; that this issue won't fade away; that the President will tomorrow come up with a response. I would like nothing more than to facilitate the voting and the continuation of the debate tomorrow. I hope the President will respond to us. We have tried repeatedly throughout the day, and we will see what the outcome of that is.

I would like to thank my staff for being here for a long day, for their help. I would like to thank fellow Senators for being supportive of this cause. I would like to thank the Members of Congress who came over to support this cause, as well as the clerks, the Capitol Police, the staff of the Senate, the doorkeepers—who, apparently, I may have gotten in trouble—and anybody else who came to support us, and even the senior Senator from Illinois, for better or worse, for being here to support the cause. The cause here is one that I think is important enough to have gone through this procedure.

I sit at Henry Clay's desk, and they call Henry Clay the ''Great Compromiser.'' When I came to Washington, one of my fellow Senators said to me: Oh, I guess you will be the great compromiser. I kind of smiled at him and laughed. I learned a little bit about Henry Clay and his career.

People think some of us won't compromise, but there are many compromises. There are many things on which I am willing to split the difference. If the Democrats will ever come to us and say: We will fix and we will save Social Security, what age we change it to, how fast we do it—there are a lot of things on which we can split the difference. But the issue we have had today is one on which we don't split the difference. I think you don't get half of the fifth amendment. I don't think you acknowledge that the President can obey the fifth amendment when he chooses. I don't think you acknowledge that the fifth amendment, due process, can somehow occur behind closed doors.

So while I am a fan of Henry Clay, I have often said I am a fan of Cassius Clay. Cassius Clay's weapons of choice were said to be his pen and his Bowie knife. He was said to be so good with the first, that he often had recourse to the latter. He was a fierce abolitionist. He didn't suffer fools, and he didn't compromise often.

But what I would say is that it is worth fighting for what you believe in. I think the American people can tolerate a debate and a discussion. There has been nothing mean-spirited about this debate for 12 hours. I think, in fact, more of it would be even better. I wish we had more open and enjoined debate. The senior Senator from Illinois has brought up good points, and I think there is much discussion. I just hope that this won't be swept under the rug and that this isn't the end of this but that it is the beginning of this.

I would go for another 12 hours to try to break Strom Thurmond's record, but I have discovered there are some limits to filibustering, and I am going to have to go take care of one of those in a few minutes here. But I do appreciate the Senate's forbearance in this, and I hope that if there are some on the other side of the aisle who have been listening and feel they may agree on some of these issues, they will use their ability to impact the President's decision and will, No. 1, say the Senate should be trying to restrain the executive branch, Republican or Democratic, and, No. 2, will use their influence to try to tell the President to do what I think really is in his heart, and that is to say: Absolutely, we are not going to be killing Americans not in a combat situation. We will obey the fifth amendment; that the constitution does apply to all Americans and there are no exceptions.

I thank you very much for your forbearance, and I yield the floor.

The PRESIDING OFFICER (Mr. SCHATZ). There will be order. Expressions of approval or disapproval are not permitted in the Senate.

The Senator from Illinois.

Mr. DURBIN. Mr. President, let me first, on a personal note, thank the Senator from Kentucky. He and I have agreed on many things and worked together on many more, and there is much common agreement on what we hope to achieve with this issue, as important as it is, and I thank him for his spirited defense of his position today in these 12 hours. I want to excuse him from the floor whenever he wishes.

## NOMINATION OF JOHN OWEN BRENNAN TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

Mr. DURBIN. Mr. President, I move to proceed to consideration of Calendar No. 43.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read as follows:

Nomination: Central Intelligence Agency. John Owen Brennan, of Virginia, to be Director of the Central Intelligence Agency.

The PRESIDING OFFICER. The Senator from Illinois.

CLOTURE MOTION

Mr. DURBIN. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The motion having been presented under rule XXII, the clerk will report the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of John Owen Brennan, of Virginia, to be Director of the Central Intelligence Agency.

Harry Reid, Dianne Feinstein, John D. Rockefeller IV, Debbie Stabenow, Sherrod Brown, Jack Reed, Benjamin L. Cardin, Thomas R. Carper, Christopher A. Coons, Robert P. Casey, Jr., Mark L. Pryor, Bill Nelson, Mark Begich, Barbara A. Mikulski, Patty Murray, Carl Levin, Joe Manchin III

## LEGISLATIVE SESSION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate resume legislative session.

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

## MORNING BUSINESS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

## FOR-PROFIT COLLEGES

Mr. DURBIN. Grant Schaffer is a Marine veteran. He attended the Art Institute of Pittsburgh, a for-profit college owned by Education Management Corporation. Grant saw an advertisement for the school and thought the program he enrolled in would give him the skills he needed to succeed in the workforce after he left the Marines. After enrolling at the Art Institute of Pittsburgh, Grant became concerned about the quality of the school. He started doing his own research about the school, the program, and how many of the graduates actually got a job. What he realized was the program wasn't going to provide him with the skills that were promised. In fact, the jobs that his program would have prepared him to do didn't even require a college degree.

Grant decided the program at the Art Institute of Pittsburgh was not worth his time or the Government's money—he was on the GI bill—so he decided to transfer to a community college. The problem was none of his credits from the Art Institute of Pittsburgh would transfer to any school, not even to a community college. Although he received GI bill benefits, those benefits did not cover the costs, all the costs of the inflated tuition of this Art Institute of Pittsburgh. After 1 year in the program—1 year—Grant had borrowed $32,000 over and above his GI bill benefits. Now Grant is in debt with worthless college credits from a for-profit school, the Art Institute of Pittsburgh. He is now attending a community college, learning the skills he needs to succeed. He still is going to have to struggle to pay off $32,000 in debt to a for-profit school that was a worthless experience. He says one-quarter of his paycheck goes to his loans and he is living paycheck to paycheck. He says he cannot save for anything and all his money goes for student loans. He would save for retirement if he could.

Grant was lucky, in some ways. Many of his peers stay at for-profit colleges and take on $70,000 or $80,000 or more in student loans, only later to find out the education at these for-profit schools was virtually worthless. Students also discover their credits will not transfer. That ought to be the first question any student asks: If I go to your for-profit school, will any other school recognize my credits? In this case the Art Institute of Pittsburgh would have had to answer no, and that might have given Grant some pause.

These students such as Grant are stuck with mortgage-sized debts and end up with no home to show for it and worthless college credits. Grant Schaffer's credits would not transfer because his school had a different accreditation than even the community college he now attends.

It is a little known fact these for-profit schools do not reveal to students: The credits will not transfer anywhere because the school is not accredited.

Our current accreditation system favors schools, not students. That is upside-down. Schools pay accreditors to accredit them, creating a cozy relationship that does not foster any real accountability. Once a school is accredited, the Government dollars just flow in, but an accreditation is not always the guarantee of academic quality that most students believe it is and not all accreditations are equal.

The University of Phoenix, the largest university in the United States, was recently told by its accrediting agency that the school would be put on notice. The regional accreditor, the Higher Learning Commission, announced it had some real problems with the way the University of Phoenix is running its business and treating its students. More accreditors, both regional and national, should take a closer look at the schools they accredit and the standards used to accredit them.

How many more people have to go through the experience of Grant Schaffer? Essentially, this former Marine wasted his GI bill benefits and got into more debt than he can realistically manage and has nothing to show for it from a for-profit school. We need to look at the current system of accreditation, consider how for-profit schools are aggressively recruiting our military, as well as using up the DOD tuition assistance benefits and veterans' GI bill benefits for low-income students. We need to commit to reforming our current system to protect our students and not to protect those who are in charge of the for-profit schools. We need to direct taxpayers' dollars to affordable, meaningful education that will literally help our men and women in uniform and students across America.

I yield the floor.

## TRIBUTE TO LYMAN HUBBARD, SR.

Mr. DURBIN. Mr. President, last year, we lost a great American from my hometown of Springfield, IL, and I rise today to pay tribute to him and his legacy.

Lyman Hubbard, Sr., grew up on a small farm near Springfield that had been in his family for 165 years—long enough that at one point the family's lawyer for the land was a local attorney named Abraham Lincoln.

In high school, Mr. Hubbard was a member of the National Honor Society, ran track, and played basketball and football. I have heard someone who knew him at the time say that he was ''the best athlete in Springfield.'' And he was an Eagle Scout.

During World War II, before he had even graduated from high school, he signed up to serve his country in the Air Force.

When he graduated from pilot training, he became the only person from Springfield to join the Tuskegee Airmen the first African-American military aviators in the U.S. Armed Forces. From there, he fought for both our Nation and for racial equality. He logged more than 7,000 hours of flight time in the course of his multitour career, flying planes from the B–25 bomber to the EC–121 Super Constellation. He flew them well and became a leader among his peers, ultimately earning a Bronze Star, an Air Medal with oak leaf clusters, the Air Force Commendation Medal, and a Vietnamese Honor Medal. Lyman Hubbard accomplished all of this despite the well-documented discrimination that the Tuskegee Airmen faced.

The people of Springfield, and all of us, owe a great deal to Lyman Hubbard, Sr., not just for his exceptional valor in combat but also for his devotion to preserving the history of the city of Springfield.

When the Lincoln Colored Home, one of the first African-American orphanages in the United States and a historic property, was at risk of being destroyed, Mr. Hubbard purchased the home outright to save it and planned to turn it into a community center.

While we may have lost Lyman Hubbard, Sr., his legacy lives on.

Just last week, it was announced that his sons will donate a collection of their father's medals, badges, and photographs so that we can all have a chance to see them.

They will be displayed at the Abraham Lincoln Capitol Airport in Springfield, and I hope that those of us who can will take the time to see them and reflect on the life and heroism of Lyman Hubbard, Sr.

I know I will.

## TRIBUTE TO BILL ROBERTSON

Mr. DURBIN. I rise today to say a few words in honor of Bill Robertson, an extraordinary man from Rockford, IL, whom we recently lost to illness.

Bill Robertson was a public servant in the best sense of the term. For the last few years, he was considered the voice of reason on the Rockford, IL, City Council, but his service started well before his election to the City Council.

After college, he served in the Marines before signing up for the Rockford Fire Department. To put this another way, after serving in a job where he would have been under fire, he decided to take a job running into fires. It made sense to him, and he loved it.

He spent 36 years of his life in that fire department, rising to command the department's training academy. He will be remembered for always knowing cadets by name and frequently checking in to see how recruits were doing.

He did so well that in 1991 he was asked to be the ninth chief in the Rockford Fire Department's 133-year history. He held that job for 17 years, until he retired in 2008.

Retirement turned out to be short-lived for Bill Robertson. In 2009, he was elected to the Rockford City Council, and he quickly became a leader there too.

His council colleagues recall that, even in a time of bitter and occasionally over-the-top politics, Robertson always strove for common ground and acted as a voice of reason. Perhaps that is one of the reasons one of the many reasons so many people from the Rockford community came to pay tribute and celebrate his life when he passed away. I am told there were hundreds of well-wishers in attendance, and I am sorry Loretta and I were not able to be there to pay our respects to this generous leader.

Each and every one of them were touched by the good work he did throughout his life. He will not be forgotten, but he will be missed.

## REMEMBERING DR. STEPHEN B. THACKER

Mr. HARKIN. Mr. President, I rise today in honor and memory of Stephen B. Thacker, MD, MSc, RADM/ASG, retired, USPHS, who passed away on Friday, February 15, 2013.

Dr. Thacker was a true public health hero whose long and distinguished career at the Centers for Disease Control and Prevention began as an Epidemic Intelligence Service, EIS officer in 1976. On his first day, he was sent out on an investigation of an unknown illness, which turned out to be the first recognized Legionnaire's epidemic. Throughout his 37 years at CDC, Dr. Thacker was a leader of public health science and the professionals who practice that science. Programs under his leadership introduced thousands of professionals to careers in public health and brought epidemiology directly into middle school and high school classrooms. He was instrumental in launching the field epidemiology training programs in more than 35 countries.

In all of the many position he held, Dr. Thacker was a steadfast champion of epidemiology, public health surveillance, and the development of a global public health workforce. Programs developed or expanded under his leadership have introduced thousands of professionals to careers in public health. Given all this, it is no surprise that Dr. Thacker's accomplishments were recognized through more than 40 major awards and commendations throughout his career, including the Surgeon General's Medallion, which he received just 2 weeks before his death.

Dr. Thacker's accomplishments were only exceeded by his treatment of all persons with dignity, honesty, and respect. His career has embodied the best of CDC's commitment to science and, most importantly, to service.

I offer my deep condolences to Dr. Thacker's family. Mr. President and colleagues, please join me in honoring the memory of Dr. Steve Thacker. I believe there is no question that his important influence on public health will continue well into the future.

# ADDITIONAL STATEMENTS

## TRIBUTE TO WOODS EASTLAND

• Mr. COCHRAN. Mr. President, I am pleased to commend Woods E. Eastland of Indianola, MS, as the recipient of the 2012 Harry S. Baker Distinguished Service Award. The officers of the National Cotton Council of America recently selected Mr. Eastland to be the 27th recipient of this award, which is given annually to the individual who has contributed most significantly to the advancement of the U.S. cotton industry.

In bestowing this honor on Woods E. Eastland, the National Cotton Council cited his extraordinary leadership during his year as the council's chairman and his continued service to the U.S. cotton industry. The Harry S. Baker Distinguished Service Award was started in honor of former council president Harry S. Baker, and it is the industry's most prestigious award.

Woods E. Eastland is the chairman of the board of Staple Cotton Cooperative Association and the Staple Cotton Discount Corporation, which are headquartered in Greenwood, MS. He served as their president and CEO from 1986 until 2010. A native of Doddsville, MS, Mr. Eastland earned a B.A. degree from Vanderbilt University and a J.D. degree from the University of Mississippi School of Law. He practiced law and was a faculty member of the Jackson School of Law from 1972 until 1974. In 1974, Woods married Lynn Ganier Wood and became a cotton, soybean and rice grower in Sunflower County, MS. He and Lynn have two children and three grandchildren.

Woods E. Eastland, in addition to being a farmer, has built a remarkable record of service to the cotton industry, his State and our Nation. He is a past chairman of the National Cotton Council, past president and chairman of Cotton Council International, and a past director of the Memphis Branch Federal Reserve Bank of St. Louis. He was a member of the board of managers of the New York Board of Trade when it was formed from the merger of the Cotton and Coffee, Sugar and Cocoa Exchanges. He served 1 year as the vice chairman of the board of governors of the New York Board of Trade.

In 2005, during Mr. Eastland's term as the council's chairman, international trade in cotton and textiles dominated the U.S. cotton industry's policy concerns. In addition, the World Trade Organization's, WTO, Doha Round of negotiations was a primary focus of the cotton industry during Mr. Eastland's tenure as council chairman.

Under Mr. Eastland's leadership, the council worked as part of a fiber/textile/labor initiative that successfully convinced the United States to self-initiate WTO-sanctioned textile safeguards to impose a measure of discipline on the shipment of Chinese textiles into our country. U.S. officials were also persuaded to make changes in provisions of the Dominican Republic—Central America Free Trade Agreement that led to the U.S. cotton industry's support for congressional approval of that pact.

Mr. Eastland traveled to Geneva and Washington, D.C., to confer with key trade officials on trade developments and to convey the U.S. cotton industry's message that cotton should not be singled out for different treatment from the rest of agriculture in the WTO Doha negotiations.

Beyond his year of service as the Council chairman, Mr. Eastland has remained active in Council leadership. He was named chairman of the council's Trade Promotion Authority task force in 2007 to guide the industry on trade promotion policy. He is an advisor to the Council's board of directors and an active member of its Operations Committee.

I am pleased to congratulate Mr. Eastland on receiving this prestigious award, and to commend him for his contributions to the cotton industry, American agriculture and fair trade.•

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ROCKEFELLER (for himself, Mr. MANCHIN, Ms. WARREN, and Mr. BROWN):

S. 468. A bill to protect the health care and pension benefits of our nation's miners; to the Committee on Finance.

By Mr. MENENDEZ:

S. 469. A bill to assist the Secretary of Housing and Urban Development in stabilizing the Home Equity Conversion Mortgage program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. TESTER (for himself, Mr. HELLER, Mr. BOOZMAN, Mr. MANCHIN, and Mr. BAUCUS):

S. 470. A bill to amend title 10, United States Code, to require that the Purple Heart occupy a position of precedence above the new Distinguished Warfare Medal; to the Committee on Armed Services.

By Mr. SANDERS (for himself, Mrs. BOXER, Mrs. FEINSTEIN, Mr. MENENDEZ, and Mr. LAUTENBERG):

S. 471. A bill to amend the Fair Credit Reporting Act to require the inclusion of credit scores with free annual credit reports provided to consumers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HELLER:

S. 472. A bill to prohibit the further extension or establishment of national monuments in the State of Nevada except by express authorization of Congress, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HELLER:

S. 473. A bill to ensure that Federal Register notices submitted to the Bureau of Land Management are reviewed in a timely manner; to the Committee on Energy and Natural Resources.

By Mrs. HAGAN (for herself, Mr. TOOMEY, Mr. WARNER, and Mr. JOHANNS):

S. 474. A bill to amend provisions in section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to Federal assistance for swaps entities; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HARKIN (for himself and Mr. BLUNT):

S. 475. A bill to reauthorize the Special Olympics Sport and Empowerment Act of 2004, to provide assistance to Best Buddies to support the expansion and development of mentoring programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CARDIN (for himself and Ms. MIKULSKI):

S. 476. A bill to amend the Chesapeake and Ohio Canal Development Act to extend to the Chesapeake and Ohio Canal National Historical Park Commission; to the Committee on Energy and Natural Resources.

By Mrs. FEINSTEIN:

S. 477. A bill to amend the Indian Gaming Regulatory Act to modify a provision relating to gaming on land acquired after October 17, 1988; to the Committee on Indian Affairs.

By Mr. GRASSLEY (for himself, Mr. CHAMBLISS, and Mr. ROBERTS):

S. 478. A bill to clarify that the revocation of an alien's visa or other documentation is not subject to judicial review; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself, Mr. NELSON, Mr. PORTMAN, and Mr. PRYOR):

S. 479. A bill to amend the Internal Revenue Code of 1986 to clarify the employment tax treatment and reporting of wages paid by professional employer organizations, and for other purposes; to the Committee on Finance.

By Mr. GRAHAM (for himself, Mr. BEGICH, Mr. FLAKE, Mr. PRYOR, and Mr. HELLER):

S. 480. A bill to improve the effectiveness of the National Instant Criminal Background Check System by clarifying reporting requirements related to adjudications of mental incompetency, and for other purposes; to the Committee on the Judiciary.

By Ms. KLOBUCHAR (for herself, Mr. LEE, and Mr. BLUMENTHAL):

S. 481. A bill to require that Federal Communications Commission to direct that wireless providers permit the unlocking of mobile devices; to the Committee on Commerce, Science, and Transportation.

By Mrs. FEINSTEIN (for herself, Mrs. BOXER, Mr. LAUTENBERG, Mr. SANDERS, and Mr. TESTER):

S. 482. A bill to amend the Public Health Service Act to provide protections for consumers against excessive, unjustified, or unfairly discriminatory increases in premium rates; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BOXER:

S. 483. A bill to designate the Berryessa Snow Mountain National Conservation Area in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INHOFE (for himself, Mr. VITTER, Mr. COBURN, Mr. ENZI, Mrs. FISCHER, Mr. BLUNT, and Mr. GRASSLEY):

S. 484. A bill to amend the Toxic Substances Control Act relating to lead-based paint renovation and remodeling activities; to the Committee on Environment and Public Works.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CASEY (for himself and Mr. TOOMEY):

S. Res. 68. A resolution congratulating the Penn State IFC/Panhellenic Dance Marathon on its continued success in support of the Four Diamonds Fund at Penn State Hershey Children's Hospital; to the Committee on the Judiciary.

By Mr. BARRASSO (for himself and Ms. HEITKAMP):

S. Con. Res. 6. A concurrent resolution supporting the Local Radio Freedom Act; to the Committee on Finance.

## ADDITIONAL COSPONSORS

S. 119

At the request of Mrs. BOXER, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 119, a bill to prohibit the application of certain restrictive eligibility requirements to foreign nongovernmental organizations with respect to the provision of assistance under part I of the Foreign Assistance Act of 1961.

S. 135

At the request of Mr. VITTER, the name of the Senator from Nebraska (Mrs. FISCHER) was added as a cosponsor of S. 135, a bill to amend title X of the Public Health Service Act to prohibit family planning grants from being awarded to any entity that performs abortions, and for other purposes.

S. 138

At the request of Mr. VITTER, the name of the Senator from Nebraska (Mrs. FISCHER) was added as a cosponsor of S. 138, a bill to prohibit discrimination against the unborn on the basis of sex or gender, and for other purposes.

S. 154

At the request of Mr. COBURN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 154, a bill to amend title I of the Patient Protection and Affordable Care Act to ensure that the coverage offered under multi-State qualified health plans offered in Exchanges is consistent with the Federal abortion funding ban.

S. 210

At the request of Mr. HELLER, the names of the Senator from Texas (Mr. CORNYN) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 210, a bill to amend title 18, United States Code, with respect to fraudulent representations about having received military declarations or medals.

S. 258

At the request of Mr. BARRASSO, the name of the Senator from North Dakota (Mr. HOEVEN) was added as a cosponsor of S. 258, a bill to amend the Federal Land Policy and Management Act of 1976 to improve the management of grazing leases and permits, and for other purposes.

S. 296

At the request of Mr. LEAHY, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 296, a bill to amend the Immigration and Nationality Act to eliminate discrimination in the immigration laws by permitting permanent partners of United States citizens and lawful permanent residents to obtain lawful permanent resident status in the same manner as spouses of citizens and lawful permanent residents and to penalize immigration fraud in connection with permanent partnerships.

S. 309

At the request of Mr. HARKIN, the names of the Senator from Minnesota (Mr. FRANKEN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 309, a bill to award a Congressional Gold Medal to the World War II members of the Civil Air Patrol.

S. 346

At the request of Mr. TESTER, the name of the Senator from West Virginia (Mr. MANCHIN) was added as a cosponsor of S. 346, a bill to amend title 10, United States Code, to permit veterans who have a service-connected, permanent disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces entitled to such travel.

S. 443

At the request of Mr. LEAHY, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 443, a bill to increase public safety by punishing and deterring firearms trafficking.

S. 462

At the request of Mrs. BOXER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 462, a bill to enhance the strategic partnership between the United States and Israel.

S. RES. 60

At the request of Mrs. BOXER, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. Res. 60, a resolution supporting women's reproductive health.

S. RES. 65

At the request of Mr. GRAHAM, the names of the Senator from Delaware (Mr. COONS), the Senator from Wyoming (Mr. BARRASSO) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. Res. 65, a resolution strongly supporting the full implementation of United States and international sanctions on Iran and urging the President to continue to strengthen enforcement of sanctions legislation.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROCKEFELLER (for himself, Mr. MANCHIN, Ms. WARREN, and Mr. BROWN):

S. 468. A bill to protect the health care and pension benefits of our nation's miners; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, in West Virginia, we revere our miners—the men and women who put their lives on the line every single day to provide for their families and bring light and heat to millions. Their grit, their courage and their determination are inspirational to each of us. The work they do every day provides nearly half of our Nation with power and it helps underpin the economy of the State we call home.

For their hard work in these grueling jobs mineworkers receive promised pensions and lifetime health benefits. Health care for all retirees is important. But, in many cases, it is even more so for retired miners, who have stared the possibility of injury or illness in the face every day. Unfortunately, today there are looming threats to the pensions of more than 100,000 mineworkers and to the healthcare benefits of nearly 12,000 miners and their dependents.

The miners' pension fund is on the road to insolvency. It has been hit by the perfect storm—the recent financial crisis, the smaller number of active mineworkers who provide the funding base for the pension plan, and the large number of ''orphans'' who receive their pensions under the plan. These ''orphans'' are retired mineworkers for whom a company no longer makes contributions to the pension fund, typically because the company is out of business.

Additionally, the bankruptcy of one coal company is threatening the health benefits of nearly 12,000 miners and their dependents, the vast majority of whom never worked for the company that is actually going bankrupt. So despite the fact that they were promised lifetime healthcare benefits by their employers when they gave their lives to this industry doing the hardest work imaginable under that sacred pledge they are now losing those benefits because a company they never worked for is going bankrupt. That is unfair and unjust.

That is why today I am introducing the Coalfield Accountability and Retired Employee Act. This legislation protects pensions for more than 100,000 mineworkers by taking excess funds from the Abandoned Mine Land Reclamation Program and transferring that money to the miners' 1974 pension plan. The Coalfield Accountability and Retired Employee Act also would protect retiree health benefits by making any retiree who loses benefits following the bankruptcy or insolvency of his or her employer eligible for the health benefits provided by the COAL Act. And, importantly this legislation would hold employers accountable for the commitments they make to their workers. That is just basic fairness.

Supporting our Nation's miners is not a new issue for our country and it is not a new fight of mine. Dating back to President Harry Truman, the Federal Government has assumed a responsibility to our mineworkers. In 1992, I was deeply proud to work on the passage of the COAL Act, through which we recommitted to our miners that a promise made would be a promise kept. That bill allowed the transfer of interest accruing to the unappropriated balance of the Abandoned Mine Reclamation Fund to be used to provide health care for a large number of orphaned miners and their widows. This helped avert a nationwide coal strike and it preserved health benefits for 200,000 retired miners and their widows. This Federal commitment was renewed in the 2006 amendments to the Abandoned Mine Reclamation Program that again protected the healthcare plans of miners from insolvency.

Now, 20 years after passing the COAL Act, I am again renewing my commitment to the hardest working people I have ever known with the Coalfield Accountability and Retired Employee Act. We must preserve the solvency of our miners' pension plans and protect the healthcare benefits they need, earned and were rightfully promised. This is about human decency, it is about doing what is right, and it is about having the backs of those who have ours deep underground.

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By Mr. HARKIN (for himself and Mr. BLUNT):

S. 475. A bill to reauthorize the Special Olympics Sport and Empowerment Act of 2004, to provide assistance to Best Buddies to support the expansion and development of mentoring programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 475

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Eunice Kennedy Shriver Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REAUTHORIZATION OF SPECIAL OLYMPICS ACT

Sec. 101. Reauthorization.

TITLE II—BEST BUDDIES

Sec. 201. Findings and purpose.
Sec. 202. Assistance for Best Buddies.
Sec. 203. Application and annual report.
Sec. 204. Authorization of appropriations.

**TITLE I—REAUTHORIZATION OF SPECIAL OLYMPICS ACT**

**SEC. 101. REAUTHORIZATION.**

Sections 2 through 5 of the Special Olympics Sport and Empowerment Act of 2004 (42 U.S.C. 15001 note) are amended to read as follows:

**''SEC. 2. FINDINGS AND PURPOSE.**

''(a) FINDINGS.—Congress finds the following:

''(1) Special Olympics creates the possibilities of a world where everybody matters, everybody counts, and every person contributes.

''(2) The Government and the people of the United States recognize the dignity and value the giftedness of children and adults with intellectual disabilities.

''(3) The Government and the people of the United States recognize that children and adults with intellectual disabilities experience significant health disparities, including lack of access to primary care services and difficulties in accessing community-based prevention and treatment programs for chronic diseases.

''(4) The Government and the people of the United States are determined to end the isolation and stigmatization of people with intellectual disabilities, and to ensure that such people are assured of equal opportunities for community participation, access to appropriate health care, and inclusive education, and to experience life in a nondiscriminatory manner.

''(5) For more than 40 years, Special Olympics has encouraged skill development, sharing, courage, and confidence through year-round sports training and athletic competition for children and adults with intellectual disabilities.

''(6) Special Olympics provides year-round sports training and competitive opportunities to more than 4,200,000 athletes with intellectual disabilities in 30 individual and team sports and plans to expand the benefits of participation through sport to more than a million additional people with intellectual disabilities within the United States and worldwide over the next 5 years.

''(7) Research shows that participation in activities involving both people with intellectual disabilities and people without disabilities results in more positive support for inclusion in society, including in schools.

''(8) Special Olympics has demonstrated its ability to provide a major positive effect on the quality of life of people with intellectual disabilities, improving their health and physical well-being, building their confidence and self-esteem, and giving them a voice to become active and productive members of their communities. In the United States, for example, adults with intellectual disabilities who have participated in Special Olympics have a 100 percent greater chance of being employed than adults with intellectual disabilities who have not.

''(9) In society as a whole, Special Olympics has become a vehicle and platform for reducing prejudice, improving public health, promoting inclusion efforts in schools and communities, and encouraging society to value the contributions of all members.

''(10) The Government of the United States enthusiastically supports the Special Olympics movement, recognizes its importance in improving the lives of people with intellectual disabilities and their families, and recognizes Special Olympics as a valued and important component of the global community.

''(b) PURPOSE.—The purposes of this Act are to—

''(1) provide support to Special Olympics to increase athlete participation in, and public awareness about, the Special Olympics movement, including efforts to promote broader community inclusion;

''(2) dispel negative stereotypes and establish positive attitudes about people with intellectual disabilities;

''(3) build community engagement through sports and related activities; and

''(4) promote the extraordinary gifts and contributions of people with intellectual disabilities.

**''SEC. 3. ASSISTANCE FOR SPECIAL OLYMPICS.**

''(a) EDUCATION ACTIVITIES.—The Secretary of Education may award grants to, or enter into contracts or cooperative agreements with, Special Olympics to carry out each of the following:

''(1) Activities to promote the expansion of Special Olympics, including activities to increase the full participation of people with intellectual disabilities in athletics, sports and recreation, and other inclusive school and community activities with people without disabilities.

''(2) The design and implementation of Special Olympics education programs, including character education and volunteer programs that support the purposes of this Act, that can be integrated into classroom instruction and community settings, and are consistent with academic content standards.

''(b) INTERNATIONAL ACTIVITIES.—The Secretary of State, acting through the Assistant Secretary of State for Educational and Cultural Affairs, may award grants to, or enter into contracts or cooperative agreements with, Special Olympics to carry out each of the following:

''(1) Activities to increase the participation of people with intellectual disabilities in Special Olympics outside of the United States.

''(2) Activities to improve the awareness outside of the United States of the abilities of people with intellectual disabilities and the unique contributions that people with intellectual disabilities can make to society, and to promote active support for sports programs for people with intellectual disabilities.

''(c) HEALTHY ATHLETES.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may award grants to, or enter into contracts or cooperative agreements with, Special Olympics for the implementation of on-site health assessments, screening for health problems, health education, community-based prevention, data collection, and referrals to direct health care services.

''(2) COORDINATION.—Activities under paragraph (1) shall be coordinated with appropriate health care entities, including private health care providers, entities carrying out local, State, Federal, or international programs, and the Department of Health and Human Services, as applicable.

''(d) LIMITATION.—Amounts appropriated to carry out this section shall not be used for direct treatment of diseases, medical conditions, or mental health conditions. Nothing in the preceding sentence shall be construed to limit the use of non-Federal funds by Special Olympics.

**''SEC. 4. APPLICATION AND ANNUAL REPORT.**

''(a) APPLICATION.—

''(1) IN GENERAL.—To be eligible for a grant, contract, or cooperative agreement under subsection (a), (b), or (c) of section 3, Special Olympics shall submit an application at such time, in such manner, and containing such information as the Secretary of Education, Secretary of State, or Secretary of Health and Human Services, as applicable, may require.

''(2) CONTENT.—At a minimum, an application under this subsection shall contain each of the following:

''(A) ACTIVITIES.—A description of activities to be carried out with the grant, contract, or cooperative agreement.

''(B) MEASURABLE GOALS.—A description of specific measurable annual benchmarks and long-term goals and objectives to be achieved through specified activities carried out with the grant, contract, or cooperative agreement, which specified activities shall include, at a minimum, each of the following activities:

''(i) Activities to increase the full participation of people with intellectual disabilities in athletics, sports and recreation, and other inclusive school and community activities with people without disabilities.

''(ii) Education programs that dispel negative stereotypes about people with intellectual disabilities.

''(iii) Activities to increase the participation of people with intellectual disabilities in Special Olympics outside of the United States and promote volunteerism on behalf of such activities.

''(iv) Health-related activities as described in section 3(c).

''(b) ANNUAL REPORT.—

''(1) IN GENERAL.—As a condition on receipt of any funds for a program under subsection (a), (b), or (c) of section 3, Special Olympics shall agree to submit an annual report at such time, in such manner, and containing such information as the Secretary of Education, Secretary of State, or Secretary of Health and Human Services, as applicable, may require.

''(2) CONTENT.—At a minimum, each annual report under this subsection shall describe—

''(A) the degree to which progress has been made toward meeting the annual benchmarks and long-term goals and objectives described in the applications submitted under subsection (a); and

''(B) demographic data about Special Olympics participants, including the number of people with intellectual disabilities served in each program referred to in paragraph (1).

**''SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated—

''(1) for grants, contracts, or cooperative agreements under section 3(a), $9,500,000 for fiscal year 2014, and such sums as may be necessary for each of the 4 succeeding fiscal years;

''(2) for grants, contracts, or cooperative agreements under section 3(b), $4,500,000 for fiscal year 2014, and such sums as may be necessary for each of the 4 succeeding fiscal years; and

''(3) for grants, contracts, or cooperative agreements under section 3(c), $8,500,000 for fiscal year 2014, and such sums as may be necessary for each of the 4 succeeding fiscal years.''.

## TITLE II—BEST BUDDIES

**SEC. 201. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds the following:

(1) Best Buddies operates the first national social and recreational program in the United States for people with intellectual disabilities.

(2) Best Buddies is dedicated to helping people with intellectual disabilities become part of mainstream society.

(3) Best Buddies is determined to end social isolation for people with intellectual disabilities by promoting meaningful friendships between them and their typical peers in order to help increase the self-esteem, confidence, and abilities of people with and without intellectual disabilities.

(4) Since 1989, Best Buddies has enhanced the lives of people with intellectual disabilities by providing opportunities for 1-to-1 friendships and integrated employment.

(5) Best Buddies is an international organization spanning 1,500 middle school, high school, and college campuses.

(6) Best Buddies implements programs that will positively impact more than 700,000 individuals in 2013.

(7) The Best Buddies Middle Schools program matches middle school students with intellectual disabilities with other middle school students and supports 1-to-1 friendships between them.

(8) The Best Buddies High Schools program matches high school students with intellectual disabilities with other high school students and supports 1-to-1 friendships between them.

(9) The Best Buddies Colleges program matches adults with intellectual disabilities with college students and creates 1-to-1 friendships between them.

(10) The Best Buddies e-Buddies program supports e-mail friendships between people with and without intellectual disabilities.

(11) The Best Buddies Citizens program pairs adults with intellectual disabilities in 1-to-1 friendships with other people in the corporate and civic communities.

(12) The Best Buddies Jobs program promotes the integration of people with intellectual disabilities into the community through supported employment.

(13) The Best Buddies Ambassadors program educates and empowers people with intellectual disabilities to be leaders and public speakers in their schools, communities, and workplaces. Best Buddies Ambassadors prepares people with intellectual disabilities to become active agents of change.

(14) Best Buddies Promoters empowers youth to become advocates for people with intellectual disabilities. Students who take part in Best Buddies Promoters are introduced to the disability rights movement and the importance of inclusion through local awareness events.

(b) PURPOSE.—The purposes of this title are to—

(1) provide support to Best Buddies to increase participation in and public awareness about Best Buddies programs that serve people with intellectual disabilities;

(2) dispel negative stereotypes about people with intellectual disabilities; and

(3) promote the extraordinary contributions of people with intellectual disabilities.

**SEC. 202. ASSISTANCE FOR BEST BUDDIES.**

(a) EDUCATION ACTIVITIES.—The Secretary of Education may award grants to, or enter into contracts or cooperative agreements with, Best Buddies to carry out activities to promote the expansion of Best Buddies, including activities to increase the participation of people with intellectual disabilities in social relationships and other aspects of community life, including education and employment, within the United States.

(b) LIMITATIONS.—Amounts appropriated to carry out this title may not be used for direct treatment of diseases, medical conditions, or mental health conditions.

(c) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the use of non-Federal funds by Best Buddies.

**SEC. 203. APPLICATION AND ANNUAL REPORT.**

(a) APPLICATION.—

(1) IN GENERAL.—To be eligible for a grant, contract, or cooperative agreement under section 202(a), Best Buddies shall submit an application at such time, in such manner, and containing such information as the Secretary of Education may require.

(2) CONTENT.—At a minimum, an application under this subsection shall contain the following:

(A) A description of activities to be carried out under the grant, contract, or cooperative agreement.

(B) Information on specific measurable goals and objectives to be achieved through activities carried out under the grant, contract, or cooperative agreement.

(b) ANNUAL REPORT.—

(1) IN GENERAL.—As a condition of receipt of any funds under section 202(a), Best Buddies shall agree to submit an annual report at such time, in such manner, and containing such information as the Secretary of Education may require.

(2) CONTENT.—At a minimum, each annual report under this subsection shall describe the degree to which progress has been made toward meeting the specific measurable goals and objectives described in the applications submitted under subsection (a).

**SEC. 204. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary of Education for grants, contracts, or cooperative agreements under section 202(a), $4,000,000 for fiscal year 2014 and such sums as may be necessary for each of the 4 succeeding fiscal years.

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By Mr. CARDIN (for himself and Ms. MIKULSKI):

S. 476. A bill to amend the Chesapeake and Ohio Canal Development Act to extend to the Chesapeake and Ohio Canal National Historical Park Commission; to the Committee on Energy and Natural Resources.

Mr. CARDIN. Mr. President, today I am proud to reintroduce legislation to support greater public involvement in the administration of one of Maryland's most treasured National Historical Parks. The Chesapeake and Ohio Canal National Historical Park Advisory Commission Act ensures that the communities located along the 184½ mile-long C&O Canal National Historical Park have a voice with the National Park Service regarding decisions affecting the administration of the Park. The Commission keeps the people and small businesses most affected by the operation of the C&O Canal National Historical Park informed and involved in the decisions surrounding the Park. Citizen involvement in the governmental process is a hallmark of our democracy and the C&O Canal National Historical Park Advisory Commission Act exemplifies the goal of ensuring the public's role in government decision making.

The importance of the Commission is intrinsically tied to the uniqueness of the C&O Canal National Historical Park. The Park covers an area of 20,000 acres winding North and West along the Potomac River from the heart of Georgetown's old industrial district in Washington D.C. to Cumberland, MD nestled in the valleys and mountains of Western Maryland. The Park's watered canal, contiguous towpath, popular among cyclists, backpackers, day hikers and runners, hundreds of historic structures and towns like Hancock, Hagerstown, Brunswick, Harpers Ferry, Williamsport and Sharpsburg that grew during the Canal's heyday, all tell the story of how the C&O Canal once served as a crucial East/West commercial link. The Park also preserves pristine views of the Potomac River, evocative of the C&O Canal's working days. At its widest points, the C&O Canal National Historical Park spans less than two-tenths of a mile across and in many areas directly abuts neighboring commercial and residential properties bordering the Park.

During the commercial operation of the C&O Canal, these towns were local commercial centers where area farmers and tradesman utilized the canal boats to deliver their goods to market. Today, the hospitality and tourism industries of these communities thrive upon the C&O Canal National Historical Park's popularity and are integral to enhancing the park user experience. Whether it is a hotel or Bed and Breakfast to spend the night in, a restaurant or diner to grab a meal, stores to shop in and perhaps stock up on camping provisions, boathouses to rent a canoe for the afternoon, bike shops to service a flat tire or make repairs to your bike or any of the myriad of goods and services park visitors may need, the communities along the C&O Canal are as important to the Park user experience as the Park's users are to maintaining their businesses.

In 2009, more than 3.75 million people visited the C&O Canal National Historical Park. To put it in perspective, in 2009, more people visited this historic treasure than the number of people who visited Yellowstone, Yosemite, the Everglades or Shenandoah National Park. Much of the C&O Canal National Historical Park's success is attributable to the positive relationship that has developed over time between the National Park Service and the local community leaders that span the length of the Park. The Park's Commission has greatly facilitated this relationship.

The Commission provides the vital link between the affected communities that the Park runs through and the National Park Service. The Commission ensures that the public is engaged in the numerous processes surrounding operational policy and infrastructure maintenance and restoration projects on the C&O Canal National Historic Park. The Commission plays a vital consultation and planning role for park activities and operations. The cooperation that has developed between the Commission and the National Park Service helps tie the Park to its communities. The Commission serves a purely advisory function and does not have the authority to make binding park policy.

The Commission was first established as part of the 1971 Chesapeake and Ohio Canal Development Act sponsored by Rep. Gilbert Gude, R–MD. Every ten years, a bill like mine comes before Congress, when the 10-year extension of the Commission's authorization expires. Three times over a 40-year period extension bills have passed by unanimous consent and without controversy. My bill is another 10-year extension of the Advisory Commission's authorization and makes no changes to the Commission's authority. Legislative precedent has never set an authorization amount for the Commission, but the Commission has always functioned at a nominal cost.

The General Services Administration's Federal Advisory Commissions Act database determined that the C&O Canal Advisory Commission's expenses totaled $33,199 for fiscal year 2010. All expenses came out of the National Park Service's general operating budget. Expenses covered the cost of travel for commission members, $295, Federal staff time, $28,074, and miscellaneous expenses, $4,830, like meeting space, printing, supplies and website maintenance.

The National Park System is a showcase of America's natural and historical treasures. So much of the National Park System's success is rooted in the citizen stewardship projects and the involvement of caring citizens and community leaders. Like so many of our National Parks the C&O Canal National Historical Park has an extensive backlog of maintenance and repair projects. The Commission plays a critical role in helping keep these projects moving forward and assisting the National Park Service with their completion because there is recognition of the shared responsibility between the Park Service and the Commission about the importance of continuing to make the Park a desirable tourism and outdoor recreation destination. The Commission provides that bridge between the government and public. I urge my colleagues to support this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 476

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CHESAPEAKE AND OHIO CANAL NATIONAL HISTORICAL PARK COMMISSION.**

Section 6(g) of the Chesapeake and Ohio Canal Development Act (16 U.S.C. 410y–4(g)) is amended by striking ''40'' and inserting ''50''.

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By Mrs. FEINSTEIN:

S. 477. A bill to amend the Indian Gaming Regulatory Act to modify a provision relating to gaming on land acquired after October 17, 1988; to the Committee on Indian Affairs.

Mrs. FEINSTEIN. Mr. President, I rise today to reintroduce the Tribal Gaming Eligibility Act.

This bill sets forth what I believe is a very reasonable, moderate standard for where tribes are allowed to open gaming establishments.

The standard is simple: a tribe must demonstrate that it has a modern and an aboriginal connection to the land before it can open a gaming establishment on it.

The new standard is needed because too many tribes in California and across the nation are ''reservation shopping''. They look for a profitable casino location, and then seek to put that land in trust regardless of their historical ties to the area.

To be clear, most tribes do not fit this mold. Most play by the rules and acquire land in appropriate locations.

But as wealthy Las Vegas casino interests search for ways to expand their gaming syndicates, the problem is getting worse. These syndicates have no interest in preserving native cultures and they have little interest in pursuing other forms of economic development; so they also have little interest in limiting casinos to bone fide historical tribal lands.

The tragic part is that these casinos are going up despite objections from communities and other Native American tribes. That is why I am introducing the Tribal Gaming Eligibility Act.

This legislation addresses the problems that arise from off reservation casinos by requiring that tribes meet two simple conditions before taking land into trust for gaming:

First the tribe must demonstrate a ''substantial direct modern connection to the land.''

Second, the tribe must demonstrate a ''substantial direct aboriginal connection to the land.''

Simply put, tribes must show that both they, and their ancestors, have a connection to the land in question.

California voters thought they settled the question of reservation shopping in 2000 when Proposition 1A authorized the Governor to negotiate gambling compacts with tribes, provided that gaming only occurred ''on Indian lands.''

The words ''on Indian lands'' were critical. This made clear that gaming is appropriate only on a tribe's historical lands, and voters endorsed this bargain with 65 percent of the vote.

But fast-forward 12 years and this agreement is being put to the test. More than 100 new Las Vegas style casinos have opened in the State in the last 12 years.

Unfortunately things aren't slowing down; the Department of the Interior has approved three extremely controversial new casinos just last year, some nowhere near the tribe's aboriginal territory or current reservation.

When given the opportunity voters have rejected the idea of reservation shopping. Two years ago in Richmond, CA, a tribe proposed taking land into trust at Point Molate to open a 4,000-slot-machine mega-casino. Proponents touted it as a major economic engine for a depressed area.

But the voters of Richmond knew the reality was far different. The project threatened to burden state and local government services, and it threatened to irreparably change the character of the community.

So Richmond voters made it clear how they felt by overwhelmingly rejecting the advisory measure by a margin of 58 to 42. Voters also elected two new city council members who strongly opposed the casino. It was an unambiguous rejection of this reservation shopping proposal.

Fortunately the Department of the Interior rejected the misguided Point Molate proposal. But voters in Yuba County were not so lucky.

In 2005, Yuba County voters had an opportunity to weigh in on a casino in this mostly rural and suburban Northern California community. By a margin of 52–48, voters rejected the proposal. Many cited concerns about crime as a reason they opposed the project.

But after the dust settled, the Department of the Interior decided to move forward with the project anyway. Despite the fact that voters rejected it and only one of the 21 public officials in the area polled on the issue expressed support for the project.

Moreover, the Department's claim that even one local official supported the project is dubious. The so-called support is based on a Memorandum of Understanding the County entered into prior to the advisory election. The county never offered a letter of support when consulted and still has not to this day.

As a former mayor, I know the financial pressures that local governments face, especially in these tough times. The temptation to support large casinos, with the promises of hundreds of construction jobs, can be strong.

But I also know the heavy price that society pays for the siren song of gambling. This price includes addiction and crime, strained public services and increased traffic congestion.

Some Indian gaming proponents and their out of state gaming syndicate backers would have us believe that these off-reservation gaming establishments are a sign of growth and economic development.

But a 2006 report, titled Gambling in the Golden State, paints a different picture. The report compiled a comprehensive body of research on the effects of casinos on their surrounding communities. The results were staggering.

New casinos are associated with a 10 percent increase in violent crime and a 10 percent increase in bankruptcy rates.

New casinos are also associated with an increase in law enforcement expenditures of $15.34 per resident.

California spends an estimated $1 billion to deal with problem-gamblers and pathological-gamblers, 75 percent of which identify Indian casinos as their primary gambling preference.

The report confirms what many local elected officials and community activists already know: casinos come at a tremendous cost.

Some have tried to mischaracterize my legislation. They have said it limits the sovereignty of tribes or it destroys the ability to undertake economic development.

But I am here today to say that nothing could be farther from the truth.

The bill preserves the right of tribes to acquire trust land in any location, provided they secure the approval of the Governor and meet the strict two-part determination standards.

The bill puts no limits on where a tribe can acquire land for any purpose other than gaming.

Because the fact of the matter is that most casinos are appropriately placed, on historical tribal lands, and there is no need to argue about the legitimacy of these establishments.

My legislation only deals with those proposals that are truly beyond the scope of Congressional intent when the Indian Gaming Regulatory Act was passed in 1988.

I look forward to working with my colleagues on this important issue.

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By Mr. GRASSLEY (for himself, Mr. CHAMBLISS, and Mr. ROBERTS):

S. 478. A bill to clarify that the revocation of an alien's visa or other documentation is not subject to judicial review; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, back in 2003, the Government Accountability Office, the investigative arm of Congress, issued a report that revealed that suspected terrorists could stay in the country after their visas had been revoked on grounds of terrorism because of a legal loophole in the wording of revocation papers. The GAO shed light on a serious problem in our visa policies that posed a threat to our national security. The GAO found that many individuals were granted visas, but later, the FBI and intelligence community suspected ties of terrorism. The FBI didn't share the derogatory information with our consular officers in

time. Consular officers had one tool at their disposal, and that was to revoke the visas. But, many of the individuals had made it to the United States.

What the GAO found was that even though the visas were revoked, immigration officials couldn't do a thing about it because the revocation didn't go into effect until after the alien departed. They were handicapped from locating the visa holders and deporting them. Today, our immigration agents may not be able to locate the individual even if they could deport them.

The GAO report opened our eyes and showed us how revocations were not being used effectively, and how terrorists could exploit a loophole to stay in the country. Since the GAO report was issued, I have attempted to plug this hole in the system. Today I am reintroducing a bill to give the Department of Homeland Security a critical tool that allows the Secretary to issue revocations and remove aliens from the United States without the hurdles they currently face.

Let me elaborate. Under current law, visas approved or denied by consular officers abroad are non-reviewable. We give our consular officers great latitude to protect the country and make a determination if an applicant is eligible for admission into the United States. This is known as consular non-reviewability. In 1950, the U.S. Supreme Court, in Knauff v. Shaughnessy, 338 U.S. 537, determined that ''it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien.''

Justice Minton, in his decision, stated, ''At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as the United States shall prescribe. It must be exercised in accordance with the procedure which the United States provides.''

The doctrine of non-reviewability is a long-standing one that allows the Department of State to keep foreign nationals from entering the United States. But, the doctrine should be applied in instances when a person is granted a visa, enters in the country, and the Government subsequently revokes that visa.

There are some national security implications at stake. The ability to deport an alien on U.S. soil with a revoked visa is nearly impossible today if the alien is given the opportunity to appeal the revocation. So, in effect, the State Department doesn't use their authority to revoke. In fact, I am told they aren't doing it at all when the alien, even a potential terrorist, is in the country. They need a change so that foreign nationals are not able to freely roam our communities when they shouldn't be here in the first place.

Secretary Chertoff, former Secretary of the Department of Homeland Security agreed that the policy needed to be changed. When Secretary, he said,

> The fact is that we can prevent someone who's coming in as a guest. We can say, ''You can't come in overseas,'' but once they come in, if they abuse their terms and conditions of their coming in, we have to go through a cumbersome process. That strikes me as not particularly sensible. People who are admitted as guests like guests in my house—if the guest misbehaves, I just tell them to leave; they don't get to go to court over it.

What's more, allowing judicial review of revoked visas, especially on terrorism grounds, could jeopardize the classified intelligence that led to the revocation. It can force agencies such as the FBI and CIA to be hesitant to share information. Why would our intelligence community share information with the State Department if they knew State wouldn't revoke a visa when the alien is in the U.S.? Current law could be reversing our progress on information sharing. Intelligence officials need to share information with immigration and consular officers to prevent terrorists from entering the United States and to impede their mobility.

My bill would give the U.S. Government the ability to expedite the deportation of suspected terrorists by applying the same ''non-reviewability'' standard for revocation decisions. It would treat revocations similar to visa denials. My bill gives the Federal Government the ability to deport an alien who has already entered the United States but shouldn't have ever been granted a visa.

Terrorists took advantage of our system before 9/11. We can't let that happen again. We should not allow potential terrorists and others who act counter to our laws to remain on U.S. soil and run to the courts and seek relief from deportation. We need to ensure that the government has all the tools at its disposal to keep the homeland safe.

I urge my colleagues to support my bill.

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By Mr. GRASSLEY (for himself, Mr. NELSON, Mr. PORTMAN, and Mr. PRYOR):

S. 479. A bill to amend the Internal Revenue Code of 1986 to clarify the employment tax treatment and reporting of wages paid by professional employer organizations, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today I am reintroducing the Small Business Efficiency Act with my colleagues Senators NELSON, PORTMAN, and PRYOR. Many small businesses rely on Professional Employer Organization, PEOs, and to handle many of their human resources responsibilities. The Small Business Efficiency Act will provide an important layer of certainty and protection for small business owners and their workers by eliminating any ambiguity about a certified PEOs ability to assume employment tax responsibility. It further implements safeguards for the certified PEOs small business clients. This will give small businesses peace of mind that their human resources and employment tax responsibilities are taken care of so they can focus on their core business and create more jobs.

I urge my colleagues to support this common sense legislation.

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By Mrs. FEINSTEIN (for herself, Mrs. BOXER, Mr. LAUTENBERG, Mr. SANDERS, and Mr. TESTER):

S. 482. A bill to amend the Public Health Service Act to provide protections for consumers against excessive, unjustified, or unfairly discriminatory increases in premium rates; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President, we have made great strides in improving the accountability of health insurance companies and protecting consumers from egregious practices. However, despite the progress we have made, many States still lack the ability to regulate excessive health insurance rate increases.

Health insurance premiums in the individual and small group market continue to grow beyond the rate of medical inflation. The Affordable Care Act has brought greater scrutiny to the market and we've seen some great progress. In fact, the number of requested increases in health insurance premiums beyond 10 percent comprised 75 percent of rate filings in 2010, and that has declined to 34 percent in 2012. This is a large step forward but without closing the remaining loophole not all consumers will be able to benefit from protection from unreasonable rate increases. Health insurance companies will continue to do what they have done for far too long: put their profits ahead of people. Rapidly escalating insurance costs strain businesses, families, and individuals.

Currently, 15 States still have little or no authority to block or modify unreasonable rate increases in the individual and small group markets. This means that even when the state's insurance regulators find a rate increase to be excessive, they do not have the ability to block or modify the increase. The Health Insurance Rate Review Act creates a Federal fallback for States currently lacking this authority. This will create parity across the country and give greater consistency of review and accountability for insurance companies seeking to raise rates beyond what is reasonable.

This legislation is a simple, common-sense solution: for States where the insurance commissioner does not have or use authority to block unreasonable rate increases, the Secretary of Health and Human Services can do so.

Affordability is vital to insuring access to quality health care. A 2010 survey by the Commonwealth Fund found

that 70 percent of people with a health problem found it difficult or impossible to find affordable coverage on the individual market. This problem goes beyond the increased cost of overall medical care. From the year 2000 to 2010, average premiums for family coverage increased by 117 percent, compared to medical inflation which rose close to 49 percent.

Insurance premiums make up a higher percentage of household income than ever before, increasing around three times faster than wages are. This means that more and more families have to choose between health care and daily living expenses, saving for retirement, and education. This is unacceptable, and more must be done to protect consumers.

The Affordable Care Act made important steps forward in defining the rate review process and making rate increases and reviews public information. This has improved transparency but falls short of creating a strong rate review system in all States, and relies too heavily on the notion that public disclosure of rates will cause insurance companies to change their behavior every time they should.

I believe there needs to be a Federal fallback in states that lack the legal authority, capacity, or resources to conduct strong rate review.

In some States, like California, companies are not required to go through prior approval before rate increases go into effect. This means that when the California Insurance Commissioner finds rate increases to be unreasonable and excessive, he has no authority to actually stop or modify the increases to consumers. California is facing double digit rate hikes again this year and this legislation would help prevent such excessive increases.

Earlier this year the California Insurance Commissioner found a rate increase by Anthem Blue Cross to be unreasonable and the company decided to proceed anyway. This affected around 250,000 small business policy holders who saw an increase of around 10.6 percent, and when combined with previous increases the average rate hike over two years reaches 19.5 percent.

In 2012, proposed rate increases across nine States by the John Alden Life Insurance Company and Time Insurance Company were found to be unreasonable but went forward anyway. These increases varied from a 12 percent increase in Louisiana to a 24 percent increase in Wisconsin. These increases in the individual and small group market also affected Arizona, Idaho, Missouri, Montana, Nebraska, Virginia, and Wyoming.

In some States, insurance commissioners already have this authority and are using it to protect consumers. This bill doesn't touch what they are doing.

In New York, because state regulators have the authority to modify rates, the average individual market increase for 2013 is four and a half percent instead of the initial request of a nine and a half percent increase.

In 2011, the Connecticut Insurance Department found an increase of nearly 13 percent by Anthem Blue Cross and Blue Shield to be excessive, and approved a four percent increase instead.

Also in 2011, some North Dakota consumers on the individual health insurance market were facing a nearly 30 percent increase before state regulators stepped in and decreased the proposed hikes by almost half.

I strongly believe that we need to take action to strengthen the law so all consumers get the protection of effective health insurance rate review. I appreciate working with Representative SCHAKOWSKY, who is sponsoring the House companion bill.

I urge my colleagues to join me in supporting the Health Insurance Rate Review Act to stand up for American families struggling to pay for health coverage. I look forward to working with my colleagues on this important issue.

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By Mrs. BOXER:

S. 483. A bill to designate the Berryessa Snow Mountain National Conservation Area in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I am pleased to introduce the Berryessa Snow Mountain National Conservation Area Act. Congressman MIKE THOMPSON and I introduced this legislation in the 112th Congress, and I am glad to continue working on this effort with him in this new Congress.

This important legislation designates close to 350,000 acres of public lands in Lake, Mendocino, Napa, Solano, and Yolo Counties as the Berryessa Snow Mountain National Conservation Area, or NCA. The area is a haven for hiking, camping, rafting, and horseback riding, and is home to a diverse array of wildlife including black bears and bald eagles.

My bill does not add any new lands to the Federal Government, the lands included in this NCA are already managed by the Bureau of Land Management, the Bureau of Reclamation, and the U.S. Forest Service and it does not apply to state or private lands. A National Conservation Area designation will require these three agencies to develop a multi-agency management plan in consultation with stakeholders and the public, improving coordination on wildlife preservation, habitat restoration, and recreational opportunities. Creation of the NCA will also help the agencies take a more coordinated approach to preventing and fighting wildfires, combating invasive species and water pollution, and stopping the spread of illegal marijuana growth.

By unifying these individual places under one banner, my bill helps put the Berryessa Snow Mountain region on the map as a destination for new visitors. This region is one of the most biologically diverse, yet least known regions of California. By raising its profile, an NCA designation will boost tourism and increase business opportunities in the region's gateway communities. The Outdoor Industry Association has estimated that outdoor recreation supports 732,000 jobs and contributes $85.4 billion annually in consumer spending to California's economy, underscoring the immense potential of sites such as the proposed Berryessa Snow Mountain NCA to drive local economic growth. Additionally, the region will become recognized by more people as uniform signage and publications are created to reach more diverse audiences, allowing them to learn more about this beautiful area.

Creation of this proposed National Conservation Area has strong support from a large coalition of local governments, elected officials, business owners, landowners, farmers, private individuals, and many conservation and recreation groups. This bill is the culmination of a grassroots effort of concerned citizens taking the initiative to care for the beautiful areas in their communities, and I am proud to support their work and commitment.

The Berryessa Snow Mountain region deserves national status and recognition, and I urge my colleagues to join me in supporting this effort.

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By Mr. INHOFE (for himself, Mr. VITTER, Mr. COBURN, Mr. ENZI, Mrs. FISCHER, Mr. BLUNT, and Mr. GRASSLEY):

S. 484. A bill to amend the Toxic Substances Control Act relating to lead-based paint renovation and remodeling activities; to the Committee on Environment and Public Works.

Mr. INHOFE. Mr. President, I rise today to introduce the Lead Exposure Reduction Amendments Act of 2013.

In April 2010, an EPA rule governing work done in homes constructed before 1978 took effect. The aim of this rule is to protect at-risk populations, defined as pregnant women and children under the age of six, from harmful lead paint dust particles that may be generated during home construction, rehabilitation, and remodeling work. While lead paint was generally discontinued from in-home use in the 1960s and 1970s, the rule applies to all homes built before 1978 and requires all contractors to be certified by the EPA and be supervised by an EPA certified renovator while following rigorous and costly safe lead work practices.

Some of these requirements include sealing off the area where the renovation is occurring; removing all objects from the work area; covering any porous work areas with smooth, cleanable areas; using special tools that have emission exhaust controls; vacuuming all items, including people's clothes, who leave the work space; and generally cleaning the work area to ensure there is no dust following completion of the job.

I believe everyone in this chamber stands strongly behind the intent of the rule, which is to protect children

and pregnant women from the harmful effects of lead. With 20 kids and grandkids, I appreciate the importance of the rule, and the potential it has to further decrease lead exposure. But this rule does add significant cost to the completion of renovation jobs and adds significant regulatory hurdles to many small business owners in situations where it may not at all be necessary.

Fortunately, the original rule included an opt-out provision for homeowners who did not have any at-risk individuals living in their homes. Provided the contractor made them aware of the potential lead-paint risks, the homeowner could give the contractor permission to carry out the job without following the EPA's lead safe work practices. This makes sense because the health issues caused by renovation work in homes with lead paint are minor for adults and older children who are not members of the at-risk population.

But in July 2010, just three months after the rule took effect, the EPA removed this opt-out provision. By doing this, EPA more than doubled the number of homes requiring safe work practices and increased the economy-wide cost of compliance by well more than $336 million by EPA's own estimate, which is significantly less than reality.

Further, EPA has failed to meet the requirements of its own rule because there are no commercially available lead paint test kits. Test kits would allow contractors to see whether work spaces include any lead paint, and if none is detected then the contractor would not have to follow lead safe work practices, which makes sense. Unfortunately, the test kits that are currently available produce 60-percent false positives, requiring many homeowners to pay significantly more for home remodeling work, even though there may not be any lead to protect them from.

The bill I'm introducing today is simple. It would first require the EPA to restore the opt-out provision. If homeowners have no residents who are at-risk to lead paint contamination, then they should be able to waive the regulatory requirement.

The bill will also suspend the rule for homes built after 1960 if the EPA does not develop workable test kits, unless those homes include members of the at-risk population. The bill would also provide a de minimis exemption for first-time paperwork violations against contractors. The EPA has focused its enforcement efforts on these violations despite the fact that the contractors may be appropriately following safe lead practices.

Finally, the bill prohibits EPA from expanding this regulation to commercial and public buildings until it has completed a study to determine the risk of such practices. EPA is in the process of writing these regulations even though it has not yet completed the corresponding study. If there is no risk, why would EPA issue regulations? They would be a solution in search of a problem. EPA needs to do its due diligence and determine whether there would be any meaningful health benefits from extending this rule to other areas.

In closing, I want to reiterate my dedication to the cause of protecting the health of vulnerable populations, and particularly pregnant women and children. But it is important for EPA's regulations to be pursued in a way that make sense, and that is what my bill intends to do. This is an ongoing goal of mine as a senior member of the Environment and Public Works Committee.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 484

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Lead Exposure Reduction Amendments Act of 2013''.

**SEC. 2. DEFINITIONS.**

Section 401 of the Toxic Substances Control Act (15 U.S.C. 2681) is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting the clauses appropriately;

(B) in the first sentence, by striking ''The term'' and inserting the following:

''(A) IN GENERAL.—The term'';

(C) by striking ''Such term includes—'' and inserting the following:

''(B) INCLUSIONS.—The term 'abatement' includes—''; and

(D) by adding at the end the following:

''(C) EXCLUSIONS.—The term 'abatement' does not include any renovation, remodeling, or other activity—

''(i) the primary purpose of which is to repair, restore, or remodel target housing, public buildings constructed before 1978, or commercial buildings; and

''(ii) that incidentally results in a reduction or elimination of lead-based paint hazards.'';

(2) by redesignating—

(A) paragraphs (4) through (12) as paragraphs (5) through (13);

(B) paragraph (13) as paragraph (15); and

(C) paragraphs (14) through (17) and paragraphs (18) through (21), respectively;

(3) by inserting after paragraph (3) the following:

''(4) EMERGENCY RENOVATION.—The term 'emergency renovation' means a renovation or remodeling activity that is carried out in response to an event—

''(A) that is an act of God, as that term is defined in section 101(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; or

''(B) that if not attended to as soon as is practicable—

''(i) presents a risk to the public health or safety; or

''(ii) threatens to cause significant damage to equipment or property.'';

(4) by striking paragraph (10) (as redesignated by paragraph (2)) and inserting the following:

''(10) LEAD-BASED PAINT.—

''(A) IN GENERAL.—The term 'lead-based paint' means paint or other surface coatings that contain lead in excess of—

''(i) 1.0 milligrams per centimeter squared; or

''(ii) 0.5 percent by weight.

''(B) TARGET HOUSING.—With respect to paint or other surface coatings on target housing, the term 'lead-based paint' means paint or other surface coatings that contain lead in excess of the lower of—

''(i) the level described in subparagraph (A); or

''(ii) a level established by the Secretary of Housing and Urban Development under section 302(c) of the Lead-Based Paint Poisoning Prevention Act.'';

(5) by inserting after paragraph (13) (as redesignated by paragraph (2)) the following:

''(14) POSTABATEMENT CLEARANCE TESTING.—The term 'postabatement clearance testing' means testing that—

''(A) is carried out upon the completion of any lead-based paint activity to ensure that—

''(i) the reduction is complete; and

''(ii) no lead-based paint hazards remain in the area in which the lead-based paint activity occurs; and

''(B) includes a visual assessment and the collection and analysis of environmental samples from an area in which lead-based paint activities occur.''; and

(6) by inserting after paragraph (15) (as redesignated by paragraph (2)) the following:

''(16) RENOVATION.—The term 'renovation' has the meaning given such term in section 745.83 of title 40, Code of Federal Regulations, as in effect on the date of enactment of this paragraph.

''(17) RENOVATION AND REMODELING REGULATION.—The term 'renovation and remodeling regulation' means a regulation promulgated under section 402(a) and revised pursuant to section 402(c)(3)(A), as such regulation is applied to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings.''.

**SEC. 3. LEAD-BASED PAINT ACTIVITIES TRAINING AND CERTIFICATION.**

Section 402(c) of the Toxic Substances Control Act (15 U.S.C. 2682(c)) is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) STUDY OF CERTIFICATION.—

''(A) IN GENERAL.—Not later than 1 year prior to proposing any renovation and remodeling regulation after the date of enactment of the Lead Exposure Reduction Amendments Act of 2012, the Administrator shall conduct, submit to the Congress, and make available for public comment (after peer review) the results of, a study of the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, or commercial buildings—

''(i) are exposed to lead in the conduct of such activities; and

''(ii) disturb lead and create a lead-based paint hazard on a regular or occasional basis in the conduct of such activities.

''(B) SCOPE AND COVERAGE.—Each study conducted under subparagraph (A) shall consider the risks described in clauses (i) and (ii) of such subparagraph with respect to each separate building type described in such subparagraph, as the regulation to be proposed would apply to each such building type.'';

(2) in paragraph (3)—

(A) in the first sentence by striking ''Within 4 years'' and inserting the following:

''(A) IN GENERAL.—Not later than 4 years''; and

(B) by adding at the end the following:

''(B) EXEMPTION.—An emergency renovation shall be exempt from any renovation

and remodeling regulation, and a person carrying out an emergency renovation shall be exempt from any regulation promulgated under section 406(b) with respect to the emergency renovation.

''(C) PROHIBITION ON POSTABATEMENT CLEARANCE REQUIREMENT.—No renovation and remodeling regulation may require postabatement clearance testing.''; and

(3) by adding at the end the following:

''(4) TARGET HOUSING OWNERS.—

''(A) IN GENERAL.—Not later than 60 days after the date of enactment of this paragraph, and subject to subparagraph (B), the Administrator shall promulgate regulations to permit an owner of a residential dwelling that is target housing, who resides in such residential dwelling, to authorize a contractor to forgo compliance with the requirements of a renovation and remodeling regulation with respect to such residential dwelling.

''(B) WRITTEN CERTIFICATION.—The regulations promulgated under subparagraph (A) shall require that an owner of a residential dwelling that is target housing, who resides in such residential dwelling, may only authorize a contractor to forgo compliance with the requirements of a renovation and remodeling regulation if the owner submits to such contractor a written certification stating that—

''(i) the renovation or remodeling project is to be carried out at the residential dwelling in which the owner resides;

''(ii) no pregnant woman or child under the age of 6 resides in the residential dwelling as of the date on which the renovation or remodeling project commences, or will reside in the residential dwelling for the duration of such project; and

''(iii) the owner acknowledges that, in carrying out the project, such contractor will be exempt from the requirements of a renovation and remodeling regulation.

''(C) RESTRICTION.—A contractor may not forgo compliance with the requirements of a renovation and remodeling regulation pursuant to a written certification submitted under subparagraph (B) if such contractor has actual knowledge of a pregnant woman or child under the age of 6 residing in the residential dwelling as of the date on which the renovation or remodeling commences (and for the duration of such project).

''(D) LIMITATION OF CONTRACTOR LIABILITY.—The Administrator may not hold a contractor responsible for a misrepresentation made by the owner of a residential dwelling in a written certification submitted under subparagraph (B), unless the contractor has actual knowledge of such a misrepresentation.

''(5) TEST KITS.—

''(A) IN GENERAL.—

''(i) RECOGNITION.—The Administrator shall recognize for use under this title a qualifying test kit, and publish in the Federal Register notice of such recognition.

''(ii) SUSPENSION OF ENFORCEMENT OF CERTAIN REGULATIONS.—If, not later than 1 year after the date of enactment of this paragraph, the Administrator does not recognize a qualifying test kit under clause (i), the Administrator—

''(I) shall publish in the Federal Register notice of such failure to recognize a qualifying test kit; and

''(II) except as provided in clause (iii), may not enforce any post-1960 building renovation and remodeling regulation, with respect to a period beginning on the date that is 1 year after the date of enactment of this paragraph and ending on the date that is 6 months after the date on which the Administrator—

''(aa) recognizes for use under this title a qualifying test kit; and

''(bb) publishes in the Federal Register notice of such recognition and of the date on which enforcement of the post-1960 building renovation and remodeling regulations will resume.

''(iii) APPLICABILITY OF SUSPENSION.—The Administrator shall not suspend enforcement of any post-1960 building renovation and remodeling regulation for the period described in clause (ii)(II) with respect to a residential dwelling in which a pregnant woman or child under the age of 6 resides.

''(B) QUALIFYING TEST KIT.—In this subsection, the term 'qualifying test kit' means a chemical test that—

''(i) can determine the presence of lead-based paint, as defined in section 401(10)(A);

''(ii) has a false positive response rate of 10 percent or less;

''(iii) has a false negative response rate of 5 percent or less;

''(iv) does not require the use of off-site laboratory analysis to obtain results;

''(v) is inexpensively and commercially available; and

''(vi) does not require special training to use.

''(C) POST-1960 BUILDING RENOVATION AND REMODELING REGULATION.—In this subsection, the term 'post-1960 building renovation and remodeling regulation' means a renovation and remodeling regulation, as it applies to—

''(i) target housing constructed after January 1, 1960;

''(ii) public buildings constructed between January 1, 1960 and January 1, 1978; and

''(iii) commercial buildings constructed after January 1, 1960.

''(6) APPLICABILITY OF CERTAIN PENALTIES.—Any renovation and remodeling regulation requiring the submission of documentation to the Administrator shall provide—

''(A) an exemption from an applicable penalty for failure to comply with such requirement for a person who—

''(i) is submitting the required documentation for the first time; and

''(ii) submits documentation that contains only de minimus or typographical errors, as determined by the Administrator; and

''(B) a process by which a person described in subparagraph (A) may resubmit the required documentation.

''(7) ACCREDITATION OF RECERTIFICATION COURSES.—The hands-on training requirements required by subsection (a)(2)(D) shall not apply to any recertification course accredited by the Environmental Protection Agency that is otherwise required to be completed under this title by a person that is certified to engage in renovation and remodeling activities.''.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 68—CONGRATULATING THE PENN STATE IFC/PANHELLENIC DANCE MARATHON ON ITS CONTINUED SUCCESS IN SUPPORT OF THE FOUR DIAMONDS FUND AT PENN STATE HERSHEY CHILDREN'S HOSPITAL

Mr. CASEY (for himself and Mr. TOOMEY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 68

Whereas the Penn State IFC/Panhellenic Dance Marathon (commonly referred to as ''THON'') is the largest student-run philanthropy in the world, with 710 dancers, more than 15,000 volunteers, and more than 300 supporting organizations involved in the annual event;

Whereas student volunteers at the Pennsylvania State University annually raise money and dance for 46 consecutive hours at the Bryce Jordan Center, bringing energy and excitement to the Pennsylvania State University campus for the mission of conquering pediatric cancer and promoting awareness of the disease to thousands of individuals;

Whereas all THON activities support the mission of the Four Diamonds Fund at Penn State Hershey Children's Hospital, which provides financial and emotional support to pediatric cancer patients and their families and funds research on pediatric cancer;

Whereas THON is the largest donor to the Four Diamonds Fund at Penn State Hershey Children's Hospital each year, having raised more than $100,000,000 since 1977, when the 2 organizations first partnered;

Whereas, in 2013, THON set a new fundraising record of $12,374,034.46, surpassing the previous record of $10,686,924.83, set in 2012;

Whereas THON—

(1) has helped more than 2,000 families through the Four Diamonds Fund;

(2) is helping to build a new Pediatric Cancer Pavilion at Penn State Hershey Children's Hospital; and

(3) has supported pediatric cancer research that has caused some pediatric cancer survival rates to increase to nearly 90 percent; and

Whereas THON has inspired similar organizations and events across the United States, including at high schools and institutions of higher education, and continues to encourage students across the United States to volunteer and remain involved in great charitable causes in their communities: Now, therefore, be it

*Resolved,* That the Senate—

(1) congratulates the Penn State IFC/Panhellenic Dance Marathon (commonly referred to as ''THON'') on its continued success in support of the Four Diamonds Fund at Penn State Hershey Children's Hospital; and

(2) commends the Pennsylvania State University students, volunteers, and supporting organizations for their hard work in organizing another record-breaking THON.

### SENATE CONCURRENT RESOLUTION 6—SUPPORTING THE LOCAL RADIO FREEDOM ACT

Mr. BARRASSO (for himself and Ms. HEITKAMP) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 6

Whereas the United States enjoys broadcasting and sound recording industries that are the envy of the world, due to the symbiotic relationship that has existed among those industries for many decades;

Whereas, for more than 80 years, Congress has rejected repeated calls by the recording industry to impose a performance fee on local radio stations for simply playing music on the radio, as such a fee would upset the mutually beneficial relationship between local radio and the recording industry;

Whereas local radio stations provide free publicity and promotion to the recording industry and performers of music in the form of radio air play, interviews with performers, introduction of new performers, concert promotions, and publicity that promotes the sale of music, concert tickets, ring tones, music videos, and associated merchandise;

Whereas committees in the Senate and the House of Representatives have previously reported that ''the sale of many sound recordings and the careers of many performers have benefitted considerably from airplay and other promotional activities provided by both noncommercial and advertiser-supported, free over-the-air broadcasting'';

Whereas local radio broadcasters provide tens of thousands of hours of essential local news and weather information during times of national emergencies and natural disasters, such as on September 11, 2001, and during Hurricanes Katrina and Rita, as well as public affairs programming, sports, and hundreds of millions of dollars worth of time for public service announcements and local fund raising efforts for worthy charitable causes, all of which are jeopardized if local radio stations are forced to divert revenues to pay for a new performance fee;

Whereas there are many thousands of local radio stations that will suffer severe economic hardship if any new performance fee is imposed, as will many other small businesses that play music including bars, restaurants, retail establishments, sports and other entertainment venues, shopping centers, and transportation facilities; and

Whereas the hardship that would result from a new performance fee would hurt businesses in the United States, and ultimately the consumers in the United States who rely on local radio for news, weather, and entertainment, and such a performance fee is not justified when the current system has produced the most prolific and innovative broadcasting, music, and sound recording industries in the world: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress should not impose any new performance fee, tax, royalty, or other charge relating to the public performance of sound recordings on a local radio station for broadcasting sound recordings over the air, or on any business for such public performance of sound recordings.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on March 6, 2013, at 10 a.m. to conduct a hearing entitled ''The Department of Homeland Security at 10 Years: A Progress Report on Management.''

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

### COMMITTEE ON THE JUDICIARY

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on March 6, 2013, at 9:30 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Oversight of the U.S. Department of Justice.''

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

### COMMITTEE ON VETERANS AFFAIRS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on March 6, 2013, at 10 a.m. in room 345 of the Cannon House Office Building.

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

## ORDERS FOR THURSDAY, MARCH 7, 2013

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Thursday, March 7, 2013; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and following any leader remarks, the Senate resume executive session and consideration of the Brennan nomination; further, that the Senate recess from 12:30 p.m. until 2 p.m. to allow for caucus meetings.

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

## ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. DURBIN. If there is no further business to come before the Senate, I ask unanimous consent it adjourn under the previous order.

There being no objection, the Senate, at 12:41 a.m., adjourned until Thursday, March 7, 2013, at 10 a.m.