

I believe we need to be sensitive to what small employers can contribute to our economy and the vital role they play. I believe this mandate, this bill will make it much more difficult to stay in business, and, consequently we will begin to lose that pool of talent that is so vital to the health of this country.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, under the order that is now before the Senate, if the Senator from Colorado yields back his time, we will do so and finish this debate in the morning under the time that is scheduled.

Mr. ALLARD. Is the Senator from Nevada yielding back his time?

Mr. REID. Yes.

Mr. ALLARD. I will yield back the remainder of my time.

Mr. REID. We will complete the debate in the morning. The Senator from Colorado will have an hour in the morning.

Mr. ALLARD. That is my understanding, there will be an hour.

Mr. REID. Evenly divided.

I yield back our time and the minority has yielded back their time.

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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.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. REID. Mr. President, I ask unanimous consent there be a period of morning business, and Senators be permitted to speak for up to 5 minutes each.

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

#### PRESIDENTIAL TRADE NEGOTIATING AUTHORITY

Mr. BYRD. Mr. President, I am very much concerned about our loss of direction with regard to Presidential trade negotiating authority. Many Members of the House, and some of my colleagues here in the Senate, advocate a wholesale surrender—a wholesale surrender—of Congress' constitutional authority over foreign commerce, as well as the evisceration of the normal rules of procedure for the consideration of Presidentially negotiated trade agreements.

I am talking about what is commonly known as "fast-track,"—fast track—though the administration has chosen the less informative moniker—the highfalutin, high sounding "trade promotion authority." "Trade promotion authority" sounds good,

doesn't it? "Trade promotion authority," that is the euphemistic title, I would say—"trade promotion authority." The real title is "fast-track."

What is this fast-track? It means that Congress agrees to consider legislation to implement nontariff trade agreements under a procedure with mandatory deadlines, no amendments, and limited debate. No amendments. Get that. The President claims to need this deviation from the traditional prerogatives of Congress so that other countries will come to the table for future trade negotiations.

Before I discuss this very questionable justification—which ignores almost the entire history of U.S. trade negotiating authority—I think we ought to pause and consider—what?—the Constitution of the United States. I hold it in my hand, the Constitution of the United States. That is my contract with America, the Constitution of the United States.

Each of us swears allegiance; we put our hand on that Bible up there. I did, and swore to support and defend the Constitution of the United States against all enemies, foreign and domestic.

Each of us swears allegiance to this magnificent document. As Justice Davis stated in 1866:

The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

*Ex Parte Milligan*, 71 U.S. 2 (1866). This was the case that refused to uphold the wide-ranging use of martial law during the Civil War.

Thus, Mr. President, let us review the Constitution to see what role Congress is given with respect to commerce with foreign nations. Article 1, section 8, says that "The Congress shall have power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian tribes . . ."

This Constitution also gives Congress the power "to lay and collect . . . Duties, Imposts, and Excises." The President is not given these powers. Congress is given these powers. There it is. Read it. The President is not given these powers. These powers have been given to Congress on an exclusive basis.

Nor is this the extent of Congress's involvement in matters of foreign trade. It scarcely needs to be pointed out that Congress's central function, as laid out in the first sentence of the first article of the Constitution, is to make the laws of the land. Were it not for that first sentence in this Constitution, I would not be here; the Presiding Officer would not be here; the Senator from the great State of Minnesota,

Ohio, Florida, the great States, Alabama, we would not be here. Congress makes the laws of the land. Some people in this town need to be reminded of that.

For example, Congress decides whether a particular trade practice in the U.S. market is unfair. Congress decides whether foreign steel companies can use the U.S. market as a dumping ground, which they have been doing, for their subsidized overcapacity. Are we to give this authority to the President and make Congress nothing more than a rubber stamp in the process of formulating important U.S. laws? As the great Chief Justice of the United States John Marshall might have asked: Are we "mere surplusage"? Is the Senate mere surplusage?

The Founding Fathers' memories were not short. Those memories were not occluded by real-time television news, nor were they occluded by the proliferation of "info-tainment." The Founding Fathers had a vast reservoir of learning, particularly classical learning, to draw upon and a treasure trove of political experience.

Our Founding Fathers were not enamored with the idea of a President of the United States who would gather authority unto himself, as had been experienced with King George III of England. Most of the administrations that have occurred—there have been at least 10 different Presidents with which I have served; I have never served under any President, nor would any of those framers of the Constitution think well of me if I thought I served under any President. The framers didn't think too much of handing out executive power.

So this exclusive power to regulate foreign commerce was not centered upon the legislative branch by whim or fancy. There were weighty considerations of a system founded on carefully balanced powers.

The U.S. Congress tried to give away some of its constitutional authority by granting the President line-item veto power a few years back. Fie on a weak-minded Congress that would do that, a Congress that didn't know enough and didn't think enough of its constitutional prerogatives and powers and duties to withhold that power over the purse which it did give the President of the United States. Mr. Clinton wanted that power. Most Presidents want that power. Congress was silly enough to give the President of the United States that power. It was giving away constitutional power that had been vested in this body of Government, in the legislative branch.

Thank God, in that instance at least, for the Supreme Court of the United States. It said Congress can't do that. Congress can't give away that power that is vested in it, and it alone, by the Constitution of the United States.