

CONCLUSION OF MORNING
BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the Bush nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of John Kenneth Bush, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.

Mr. ENZI. Mr. President, I ask unanimous consent to speak for a few minutes as in morning business.

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

HEALTHCARE

Mr. ENZI. Mr. President, my colleagues and I have been on this floor for the last 7 years talking about the problems with ObamaCare and the need to address them.

In the early days, when ObamaCare was still being cobbled together, we talked about individuals losing their coverage. Promises were made that if you liked the plan you had, you could keep it. That turned out to be a broken promise.

In 2009 and 2010, we talked about premiums skyrocketing. Today, we are still talking about it. Premiums are more than 100 percent higher in Wyoming today than they were when the law was passed. Our insurer has fortunately been more conservative in their approach. So premiums didn't spike the way they did in other States.

I usually enjoy being right, but in this case, I am very sad to have watched the worst possible scenario play out. Time after time, President Obama was faced with problems in implementation and in outcomes, and he would dismiss them by saying: "It just needs more time," or, as this cartoon shows, "it just needs a tune up."

We and the American people gave it time and money—specifically, 7 years and hundreds of billions of dollars. We are now left trying to pick up the pieces of health insurance markets all across the country.

You can see here that this ambulance is ObamaCare. Behind it is its engine and other key components, and they have completely fallen apart. That is the private insurance market today. The part you don't see here is that there is a patient in the back of this ambulance. This isn't just about politics. This is about real people and whether they can afford an insurance premium that is in some cases higher than their rent or their mortgage payments each month.

Even before its passage, my Republican colleagues and I talked about the

danger that ObamaCare posed to private insurance markets.

Insurers have already left the market in droves. In Wyoming, we are down to one carrier. We lost the others to the economics of ObamaCare, and we will be lucky to keep the one we have. I know many people in our country are going to be in the position of having no insurers offering plans in their county.

How could this happen? It has happened because of politics being put before patients and an unwillingness to take on the hard task of fixing something that you have sold as the perfect solution.

I can tell you that healthcare isn't a simple issue. It is incredibly complex and, really, there is no one right way to tackle it. I was the ranking member of the Health, Education, Labor, and Pensions Committee when ObamaCare passed. We worked hard to find common ground. When it became clear that there was not a reciprocal commitment to that from our colleagues on the other side of the aisle, we did work hard to try to stop it.

Now we are finally in a position to do so. We have a President in the White House who is committed to repealing and replacing ObamaCare with better care before more irreparable harm is done. Republicans have been working on an approach that attempts to address both the short-term and long-term problems caused by ObamaCare.

We have problems to solve right now. We are proposing to stabilize insurance markets in the short term and to get insurance costs on a more manageable trajectory over the longer term. We are striking at the heart of ObamaCare by removing its mandates and taxes while putting Medicaid on a more sustainable footing.

Doing this isn't easy. You may have read a little something about the challenges of moving a healthcare bill forward, but the alternative is to do what our colleagues on the other side of the aisle have done for 7 years and watch ObamaCare crater. We don't think that is the right thing to do. We think we have an obligation, even if it is not an easy vote, to salvage our insurance system.

Getting something done in Washington isn't always a pretty process, but I am proud to be working with the women and men in my conference who see that there is something larger at stake than themselves and who know that sitting this out means more harm and, perhaps, harm that can't be undone later.

I will keep working. I am committed to passing the best product that we can deliver for the people of Wyoming and for our whole country. I look forward to continuing to work together to repeal ObamaCare and replace it with policies that will truly improve healthcare in America. I hope my colleagues will join me in this worthy endeavor.

I yield the floor.

I suggest the absence of a quorum.

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

The senior assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SULLIVAN). Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, yesterday, several of my Democratic colleagues spoke in opposition to the nomination of John Bush to serve on the Sixth Circuit Court of Appeals. They were particularly concerned about his activities outside of the courtroom, especially his personal blog posts. The comments of my friend, the junior Senator from Minnesota, were representative of their concern.

He reminded us that he has been serving on the Judiciary Committee for 8 years. He said that by confirming someone to the Federal bench like Mr. Bush, who has blogged about controversial political and policy matters, the Senate would be doing something unprecedented. Specifically, my friend from Minnesota—in angst—said, "I don't think we have been here before."

"I don't think we have been here before," he said. I would encourage my friend to think a little harder about his tenure on the Judiciary Committee. Just a few years ago, the Senate considered President Obama's nomination of Stephen Bough to be a Federal judge in Missouri. Mr. Bough had been quite an active blogger himself. His blogging and online commentary were not simply confined to political satire and sarcasm. His blogging didn't use merely flippant or intemperate language. His blogging demonstrated a real and palpable animus toward conservatives and Republicans in general, toward elected Republicans in particular, and by name—by name. He insulted and impugned people from his home State, such as Senators, his Governor, the President of the United States, and a Republican nominee for President, just to name a few.

Mr. Bough's posts were truly mean-spirited. It wasn't just that he called Republicans "knuckleheads"—which he did. That was when he was feeling especially kind. No, he said specific Republicans were "corrupt." They had done "evil things"—"evil things." I can go on and on about his corrosive rhetoric.

He approvingly posted an article describing how San Francisco was contemplating naming a sewage plant after President Bush as a suitable legacy for the President and posted another one that said his Governor was highly "ignorant."

His invective was not reserved to members of the political branches. He said that his State supreme court was the most corrupt in the history of the State. I am not making this up. He is an officer of the court, calling the supreme court the most corrupt in the history of his State.

For my Democratic colleagues who now profess to care about the judgment of judicial nominees who blog, I submit that impugning the integrity of the tribunal that has jurisdiction over their professional conduct and law license, as Mr. Bough did, is more than a few tweaks shy of exhibiting sound judgment.

Mr. Bough also implied that President Bush made his Supreme Court appointments as some sort of quid pro quo. He harshly criticized sitting Supreme Court Justices by name, and he claimed that the Republican nominee for President wanted only Federal judges who would disregard the law and rule in favor of the “religious right” and that he was “sucking up.”

He made a crude comment about women that I will not repeat.

Now, some of our Democratic colleagues have criticized John Bush because he said that he would try hard to be impartial as a judge. By contrast, in one of his blog posts, Stephen Bough flat-out said that he, himself, “shouldn’t be a judge.” This is commentary on himself. But every one of our Democratic colleagues on the Judiciary Committee at the time, including our friend from Minnesota, obviously disagreed with his own judgment about himself. They all voted for him, which is especially curious in hindsight, given the superior weight our Democratic colleagues now place on blog posts. Only one Member of the Democratic conference voted against Mr. Bough. These are many of the same Democrats, of course, who are supposedly aghast—aghast—at the Bush nomination. Mr. Bough is now Federal District Court Judge Stephen Bough.

Finally, I would like to set the record straight on the subject of the slur. Mr. Bush did not use the slur in a blog post, and he did not use it flippantly. In fact, he said he has never used this term and would never use it.

Rather, Mr. Bush quoted by name someone else—a prominent author who had used the slur. Mr. Bush quoted him to show how various authors had viewed our hometown of Louisville over time—both those who praised it and those who criticized it. In short, Mr. Bush said that he used it to show “the good, the bad, and the ugly.”

So who was the author he quoted verbatim and by name? Why, it was noted liberal Hunter Thompson. I note that Mr. Thompson’s use of the slur did not prevent liberals, including Democratic officeholders, from praising him. In fact, not one but two Democratic Presidential candidates went to his funeral—George McGovern and John Kerry.

The Senate has considered a judicial nominee who did use this slur in a blog posting, who actually did use the exact same slur, in fact. The judicial nominee was not quoting any literary or published work, and this judicial nominee did not use the slur for any critical purpose. The judicial nominee used it flippantly and cavalierly. Who was the

judicial nominee? It was President Obama’s judicial nominee and current Federal District Court Judge Stephen Bough, who sits on the bench right now for life, after being confirmed by the votes of our Democratic colleagues.

I hope I have at least refreshed the memory of my friend from Minnesota and some of my other Democratic colleagues.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

THOUGHTS AND PRAYERS FOR SENATOR MCCAIN

Mr. SCHUMER. Mr. President, first, on a sad note but one always of hope when it comes to Senator MCCAIN, his cancer diagnosis sent a shock wave through the Senate last night. He is one of my dear friends, as he is a dear friend to many in this body, and from the bottom of my heart, I wish him and his family well. So does every Member of this Chamber. The respect that this man has is broad and deep, both based on his service to America and on what he has done here in this Chamber.

I agree with what the majority leader said earlier, in that JOHN MCCAIN is an American hero. There is no one who has done more to serve his country and this Chamber than Senator MCCAIN. There is no one who is more passionate in the defense of our soldiers and in our defense than Senator MCCAIN.

The same courage that he showed as a soldier he showed here. JOHN MCCAIN and I led a group to deal with immigration reform. He had to take so many tough positions to do what was right. He was fearless. His word was good. He was good at compromising, and he was good at making his views known.

With that bill, which passed this body with 67 or 68 votes—a large number of Democrats and Republicans—had it become law, our country’s economy would have been better, and our security would have been better because it was so tough on the border. We would have been in a better place for it had that bill passed.

The point I want to make is not with regard to the bill but to MCCAIN—how we were in rooms for hours and hours, day after day, and we got to see the mettle of the man. Boy, the more you knew him, the better he looked, and the better he was.

So we know that, against this new battle, Senator MCCAIN will fight in the only way he knows how—with every fiber of his being. We wish him well. Our prayers are for him and his family. We hope that he joins us very soon because this country needs JOHN MCCAIN now more than ever.

HEALTHCARE

Mr. President, on the issue of healthcare, yesterday President Trump seemed intent on pushing forward the Republicans’ failing healthcare plan with a vote sometime early next week. We have been on the topic of healthcare for 7 months, and I am still not sure which version of the Republican plan we will be voting on.

Will it be repeal and replace? Will we be voting on the Senate bill that would cause 22 million Americans to lose their coverage and that would cause costs to go up and care to go down? Will it be with the Cruz amendment, which would annihilate the “pre-existing condition” requirement, in quoting my friend Senator GRASSLEY? Or will it be repeal without replace, which would cause our healthcare system to implode, creating chaos, which would cause millions to lose insurance and millions more to have their coverage diminished?

The CBO confirmed last night that repeal without replace would cause 32 million Americans—that is about a 10th of the country—to lose their insurance and would cause premiums to double after 10 years.

It was a horrible idea in January and was rejected, wisely, by our Republican colleagues. We were not involved. The door was closed on us on January 4. It is a horrible idea now.

So will that be the focus next week or will it be a new bill that has more money thrown in, as some have suggested—the same core bill of devastating cuts to Medicaid, tax breaks for the wealthy and the special interests, the cruel Cruz amendment, and an extra \$2 billion slush fund? Is that going to be the bill?

We Democrats do not know what our Republican friends are planning to vote on next week. I will bet that many Republicans do not know yet either. What we do know is that a \$200 billion slush fund, tacked onto a bill that would gut Medicaid and other services by well over \$1 trillion, is like putting an old bandaid on a bullet wound. The \$200 billion in additional funding would only offset 17 percent of the bill’s total cuts to coverage. It would not come anywhere close to covering the wound that the Republicans are inflicting on Medicaid, on Americans in nursing homes, on Americans in rural areas, on those who are suffering from opioid addiction. It just will not work, and repeal without replace is even worse. All of the options are horrible options for the Republican Party, but, more importantly, they are horrible options for the American people.

It is time to start over. It is time for our Republican colleagues to drop this failed approach and work with Democrats on actually improving our healthcare system. They closed the door on us on January 4 in passing something called reconciliation, which basically says: We do not need the Democrats; we will do it ourselves. Let them open the door now that they have

seen that that failed approach does not work. I outlined three specific, non-ideological proposals yesterday that we could work on together, right now, to stabilize the marketplaces and help bring down premiums. I believe they would pass quickly. My Republican friends do not seem to know what to do. My suggestion is to drop these failed ideas and work with Democrats on the commonsense, nonideological solutions that we Democrats have offered.

Here is one more point. I have heard some of my colleagues say they may vote for the motion to proceed next week because they are in favor of debate. I will remind them that the rules under reconciliation only allow for 20 hours of debate to be equally divided between the parties and 1 minute of debate allowed per amendment. That is not debate. The idea that you would vote on the motion to proceed in order to have a healthcare debate is absurd. If my colleagues want to debate healthcare, they should vote no on the motion to proceed and urge their leader to hold a real debate—in committees, in public hearings, on the floor, and through regular order, which is a process that they have spurned for 7 months—not 10 hours for each party, with 1 minute per amendment, on such an important proposal. That is not a debate. It is the legislative equivalent of “Beat the Clock.” This is serious business—the health and welfare of the American people—not some game show.

TRADE AND OUTSOURCING

Mr. President, just as the administration is flailing and failing on healthcare, they are failing on trade and outsourcing as well.

I read today that the administration has failed to secure any concessions from China on its dumping of excess steel and aluminum in our markets, which is killing jobs in my State and in many others. As well, today, the Carrier plant at which President-Elect Trump tweeted about saving jobs just laid off 300 workers in Indiana and moved the positions to Mexico. It is exactly 6 months to the day since President Trump took office. It is a shame that we are losing these good-paying American jobs. Despite all of the President's tough talk on trade and his Commerce Secretary's “100 days of trade talks” plan, the loss of these jobs shows that, in 6 months, the Trump administration has been unable to actually deliver results on trade, with the exception of the first U.S. beef shipment to China, which was the result of an agreement that President Obama helped to broker before the end of his term. The Trump administration has made few inroads in reducing our trade deficit or in making it easier for our companies to compete abroad.

It is all well and good to tweet about a few hundred jobs saved at the Carrier plant, as the President-elect did last December—and I am glad he saved them—but as President, you have to

actually take strong action, not go to one plant. You need policies that will protect millions of workers from the rapacious policies of China and other countries. Making America great again requires more than 140 characters per issue. The 338 jobs that are leaving Carrier today are a reminder that, when it comes to actual substance and policy, the Trump administration has done very little to change the game on trade to keep jobs in the United States—another broken promise to the American worker.

Mr. President, I reiterate my remarks from yesterday on the nomination of John Bush to the Sixth Circuit Court of Appeals. Many of my colleagues have been down on the floor and have expressed just how distressing and damaging this nomination will be.

His extreme record demonstrates that John Bush simply does not have the temperament to be an impartial Federal judge—the very least our system requires. Once again, I urge my colleagues to oppose his confirmation.

Thank you.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

THOUGHTS AND PRAYERS FOR SENATOR MCCAIN

Ms. HASSAN. Mr. President, I thank our leader, Senator SCHUMER, for his remarks.

I join with Senator SCHUMER and all of our colleagues in wishing the very best to our tough and resilient American hero and colleague, JOHN MCCAIN. Our thoughts and prayers are with him and his family. We need him back here as fast as he can get here.

HEALTHCARE

Mr. President, I also share Leader SCHUMER's remarks and concerns about the current status of the healthcare bill as we understand it.

I urge my colleagues on the other side of the aisle to vote down the motion to proceed so that we can have regular order and so that we can hear from stakeholders and the American people about how changes in healthcare would impact them and what ideas they have for us to be able to lower costs and make sure that all Americans have access to truly affordable, high-quality care.

Mr. President, I also rise to oppose the nomination of Attorney John K. Bush to serve on the U.S. Court of Appeals for the Sixth Circuit.

An independent and impartial judiciary is critical to our democracy and to our march toward progress. Our Founders established our court system to serve as an independent arbiter that would protect the rights of every American and ensure equal justice under our laws. Unfortunately, it is clear that Mr. Bush lacks the impartiality and commitment to equal justice for every American that is needed to qualify for a lifetime appointment on the Sixth Circuit Court of Appeals.

President Trump's nomination of Mr. Bush represents yet another attempt by this administration to undermine

the rights of American women to make their own healthcare decisions and to control their own destinies. To fully participate not only in our economy but also in our democracy, women must be recognized for their capacity to make their own healthcare decisions, just as men are, and they must have the full independence to do so, just as men do. Mr. Bush has made it clear that he fundamentally disagrees with that principle and that he does not support a woman's constitutionally protected right to have a safe and legal abortion. Hiding behind a pseudonym on an online blog, Mr. Bush has gone so far as to compare a woman's right to make her own reproductive health decisions to slavery, saying they are “the two greatest tragedies in our country.” The fact that someone nominated for the bench would believe something like this is nothing short of appalling.

Mr. Bush has also criticized essential programs that women and their families depend on, referring to programs like the Women, Infants, and Children Program—otherwise known as WIC—and grants to combat violence against women as “wasteful.”

I also have real concerns with Mr. Bush's record when it comes to the rights of LGBTQ Americans. Mr. Bush has made clear that he is vehemently opposed to marriage equality, calling it a “no-compromise” position. In 2011, he criticized the State Department for an announcement that led to more equal treatment of same-sex parents, and he has even used an offensive, anti-gay slur in a quote that he chose to use in public remarks.

Mr. Bush's deeply offensive public statements and his record indicate that he is an individual who is focused on extreme partisanship and who does not recognize the basic equality of all Americans. His statements and his actions tell us that he is not committed to the concept of equal justice under our laws. This is unacceptable for someone seeking a lifetime appointment to a job that requires sound judgment, objectivity, and, more than anything else, an essential commitment to fairness.

I will oppose Mr. Bush's nomination to the Sixth Circuit Court of Appeals, and I urge my colleagues to do the same.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WHITEHOUSE. I ask unanimous consent to be allowed to speak as in morning business for up to 15 minutes.

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

CLIMATE CHANGE

Mr. WHITEHOUSE. Mr. President, to the disappointment of the American

public, the world scientific community, and even to corporate giants like Goldman Sachs and Cargill, President Trump recently decided to withdraw the United States from the Paris Agreement. He cited as justification a slew of alternative facts. Some of the most egregious of these alternative facts came from a National Economic Resource Associates—a group we will call NERA in this speech—report that was commissioned and promoted by a group that calls itself the U.S. Chamber of Commerce but fronts for the fossil fuel industry. “U.S. Chamber of Carbon” might be a better and more accurate name for it.

The U.S. Chamber of Commerce, so-called, is a heavy hitter in Washington. It was the second largest spender of anonymous outside money, or dark money, in the 2016 Federal elections, second only to the National Rifle Association. In addition to all that political election spending, it wields the largest lobbying force on Capitol Hill. In 2015, the chamber dropped over \$100 million on lobbying.

The U.S. Chamber of Commerce is one of climate action's most implacable enemies, as everybody here knows, despite the good climate policies of so many companies on its board. Along with Senators WARREN, SANDERS, and others, I examined this inconsistency between the positions of the chamber and of its board members in our recent report, “The U.S. Chamber of Commerce: Out of Step with the American People and its Members.”

Mr. President. I ask unanimous consent to have printed in the RECORD excerpts from the report, “The U.S. Chamber of Commerce: Out of Step with the American People and its Members.”

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

THE U.S. CHAMBER OF COMMERCE: OUT OF STEP WITH THE AMERICAN PEOPLE AND ITS MEMBERS

A Report from Senators Sheldon Whitehouse, Elizabeth Warren, Barbara Boxer, Bernard Sanders, Sherrod Brown, Jeff Merkley, Richard Blumenthal, and Edward Markey

(Select Climate Change Specific Excerpts)

EXECUTIVE SUMMARY

The United States Chamber of Commerce (the Chamber), the largest lobbying organization in the country, has used its considerable resources to fight legislation in Congress and Obama Administration actions on tobacco and climate change at home and abroad. A series of 2015 New York Times articles exposed the Chamber's aggressive tactics to help the tobacco industry fight international antismoking laws, regulations, and policies, and described the organization's systematic efforts to undermine the Environmental Protection Agency's work to address climate change and carbon pollution. These activities raised questions about the Chamber's policy-making process; one analyst concluded that “the Chamber is at odds with the interests of some, if not most, of its membership in three other areas: climate change, minimum wages and tobacco,” and described its advocacy as “aligned with the

small number of companies that are its largest contributors.”

In response to the 2015 allegations, Senators Sheldon Whitehouse, Elizabeth Warren, Barbara Boxer, Bernard Sanders, Sherrod Brown, Jeff Merkley, Richard Blumenthal, and Edward Markey examined the positions and actions of Chamber Board members to determine the extent to which the Chamber's activities on tobacco and climate change reflect its Board members' views and interests. The analysis focused on the 108 private-sector members of the Chamber's Board of Directors, which the Chamber describes as “the principal governing and policymaking body of the U.S. Chamber of Commerce. . . . [that] determine[s] the U.S. Chamber's policy positions on business issues and advise[s] the U.S. Chamber on appropriate strategies to pursue.” The findings of this analysis—based on correspondence with the Chamber's Board members and a review of publicly available information on Chamber Board member positions on tobacco and climate change—reveal the following:

The Chamber's positions and actions on tobacco and climate change are at odds with those of its Board members. Approximately half of the companies on the Chamber's Board of Directors have adopted anti-tobacco and pro-climate positions that contrast sharply with the Chamber's activities. Chamber Board member companies have acknowledged the public health harms of tobacco and support the efforts of their employees to quit smoking. They have also taken public positions and actions in support of efforts to reduce carbon emissions and address climate change. Despite the positions of its Board members, the Chamber opposes efforts in Congress and by the Administration to address these issues.

Not a single Board member explicitly supported the Chamber's lobbying efforts. In response to inquiries from several senators, 21 Chamber Board members distinguished their actions from the Chamber's on tobacco by describing their own positive efforts, and five respondents distinguished their actions and positions on climate change. Five additional companies on the Chamber's Board explicitly disagreed with the Chamber's positions on tobacco or tobacco lobbying activities. For example, Chamber Board member Celgene stated that it “[does] not support tobacco use or policies that promote tobacco use.” Steward Health Care Systems elaborated on its disagreement with the Chamber's actions, saying that it “was the only company on the Chamber Board that went on record to oppose the initiative.” Other respondents sidestepped key questions and failed to respond to questions about how they viewed the Chamber's activities. Not one Board member explicitly supported the Chamber's actions on tobacco and climate.

The Chamber's decision-making process and Board policy decisions are not transparent. Ten Chamber Board members revealed, in their responses to the congressional inquiries, that they had no knowledge of or input into the Chamber's lobbying activities on tobacco or climate issues. For example, Chamber Board member Edward Jones, Inc., indicated that the company “[was] not advised of any campaigns... [and is] not aware of any processes” to develop these campaigns. Sempra Energy reported that “the issues raised in [the] letter have not been discussed during the short time [it has] been a member of the organization.” Despite the Chamber's description of the Board as its “principal governing and policy-making body,” not one Chamber Board member explicitly indicated that they were fully aware of and able to provide their input and views to the Chamber regarding its actions on tobacco and climate.

The findings in this report raise serious questions about the Chamber's credibility and its actions on tobacco and climate policy, and indicate that the Chamber does not accurately represent the positions, input, and knowledge of its membership.

I. INTRODUCTION

The United States Chamber of Commerce is the largest lobbying organization in the country. OpenSecrets, a nonprofit, nonpartisan research group that tracks the effects of money and lobbying, showed that in 2015 alone, the Chamber spent roughly \$85 million on lobbying efforts, more than twice the amount spent by the second-highest organization (the National Association of Realtors). During the 2013–2014 election cycle, the Chamber spent \$35 million on political expenditures (through super PACs, 501(c) organizations, and/or political party committees) that were “outside” or independent of candidates' campaign committees.

The Chamber has used its considerable resources to fight legislation and government action on tobacco and climate change at home and abroad. A series of 2015 New York Times articles exposed the Chamber's aggressive activities helping the tobacco industry to fight international antismoking laws, regulations, and policies, and described the organization's systematic efforts to undermine the Environmental Protection Agency's work to address climate change and carbon pollution.

While the Chamber claims that it “reflects the grassroots views of the entire business community” and that it represents the “interests of more than three million businesses of all sizes, sectors, and regions” when it interacts with Congress, its positions and actions on tobacco and climate do not appear to reflect or communicate the positions of many of its member companies. The following analysis shows that approximately half of the companies on the Chamber's Board of Directors have publicly taken positions on tobacco and climate change that are in conflict with the Chamber's actions and positions. This calls into question the Chamber's allegedly transparent decision-making process, and suggests that the Chamber does not accurately represent the positions of its member companies.

Moreover, the Chamber's lobbying is at odds with its own public positions. The organization strongly professes that it is anti-tobacco, saying that it “is not in the business of promoting cigarette smoking at home or abroad, period.” It also claims to support the environment, saying that it “has in its public documents, Hill letters and testimony, supported efforts to reduce greenhouse gas emissions in the atmosphere,” and calling for a “comprehensive climate change law.” Plainly, there is a broad gap between the Chamber's stated policies, its Board members' positions, and its actual lobbying activities.

III. THE CHAMBER'S LOBBYING ON TOBACCO AND CLIMATE ISSUES

When the Chamber weighs in, many in Washington, D.C., listen. The Chamber is the largest lobbying organization in the country and claims to represent the “interests of more than three million businesses of all sizes, sectors, and regions” when it interacts with Congress. OpenSecrets, a nonprofit, nonpartisan research group that tracks the effects of money and lobbying, showed that in 2015 alone, the Chamber spent roughly \$85 million on lobbying efforts, more than twice the amount spent by the second-highest organization (National Association of Realtors). During the 2013–2014 election cycle, the Chamber spent \$35 million on political expenditures (through super PACs, 501(c) organizations, and/or political party committees)

that were “outside” or independent of candidates’ campaign committees.

The Chamber has attacked U.S. climate policies with similar zeal. According to The New York Times, in early 2014, a group of 30 corporate lawyers, coal lobbyists, and Republican political strategists gathered at the Chamber’s headquarters to devise legal strategies to dismantle the President’s Clean Power Plan—before President Obama had even introduced a draft proposal of it. The Chamber has also been vocal about its opposition to climate action when testifying before Congress. For instance, the Chamber has testified in opposition to the Paris Agreement, despite the fact that many of its Board member companies have pledged to support the goals of the Agreement. Additionally, nearly all of Chamber campaign contributions—94%—have reportedly gone to climate change denier candidates.

V. FINDINGS

Based on the responses to the Tobacco and Climate Letters and public positions and policies of Board members, the report finds that:

Approximately half of the companies on the U.S. Chamber of Commerce’s Board of Directors have anti-tobacco and/or pro-climate positions.

None of the respondents to the Tobacco and Climate Letters expressed explicit support for the Chamber’s activities, and numerous Chamber Board members distanced themselves from Chamber activities on tobacco or climate.

The Chamber’s decision-making process lacks transparency, even with respect to its Board members. A number of Board members were unaware of key Chamber policymaking and lobbying decisions on tobacco and climate.

Climate Change Findings

Almost half of the Chamber Board members (52 of 108, 48%) have taken public positions supporting efforts to reduce carbon emissions and address climate change, including eight of the companies that responded to the Senate inquiry on Chamber climate policies (see Appendix V). The remaining Board member companies appear to have no public position on climate change as a public health or environmental issue.

These 52 companies that support efforts to address climate change, have undertaken their own initiatives to reduce carbon emissions, support the EPA’s work on climate change, or have publicly committed to support of the Paris Agreement.

Indeed, many Chamber Board members are national and international leaders on this issue. For example:

Allstate is a member of the Ceres Company Network, a group of companies that have agreed to improve their environmental and social performance, publicly report on their sustainability practices, and continuously improve their performance and disclosure on sustainability issues. Allstate was also named to the Climate Disclosure Leadership Index (CDLI) from 2008 to 2014 for its efforts to reduce its carbon footprint and transparency on its climate change adaptation.

AT&T is one of more than 150 companies to have signed on to the American Business Act on Climate Pledge. AT&T has committed to reduce its direct greenhouse emissions by 20 percent and reduce its electricity consumption by 2020.

BMO Financial Group stated that it is “focused on reducing our environmental footprint, setting clear goals and consistently maintaining carbon neutrality across our entire enterprise.”

Las Vegas Sands was named to the CDP’s “A list” in 2015 for its efforts to address and disclose corporate climate change information.

Ryder received the EPA SmartWay Excellence Award in 2013 and 2014 in recognition of its efforts to address carbon pollution and emissions.

Sanofi “strives to reduce [its] environmental impact, so that [it] can contribute to decreasing the effects of climate change. This includes a two-pronged approach to reduce [its] carbon footprint and to combat diseases directly correlated with climate change.” Sanofi says that it has reduced its carbon emissions by 60 times, cut transport costs by 50 percent, and has set a goal of reducing its water consumption by 25 percent between 2010 and 2020.

3M is a founding member of the National Climate Coalition. In its 2015 Sustainability Report, 3M touted its “history of proactive leadership in addressing both the challenges and opportunities presented by climate change and energy conservation.”

UPS stated it was “pleased to join 12 other firms at the White House on July 27, 2015, in launching the American Business Act on Climate Change . . . [W]e pledged first to reduce our carbon intensity by 20% by 2020, from a 2007 baseline. Second, we plan for our alternative fuel and technology fleet, which will number about 8,000 trucks by the end of the year, to have driven a cumulative 1 billion miles by 2017.”

No Chamber Board members that responded to the Senate letter explicitly supported the Chamber’s lobbying actions on climate policy. Seven respondents to the Climate Letter indicated that they do not agree with every action taken by trade associations of which they are a member, and three companies declined to express a position. Two of the eleven companies that responded to the Climate Letter (Citadel and HCSC) indicated that they were not involved in the Chamber’s climate-related activities, and the other nine did not indicate whether they were involved in the Chamber’s climate policy decision-making process.

Despite the fact that nearly half of Chamber Board members have acknowledged the risk of climate change or are actively working to address the risks of climate change, the Chamber has opposed executive action on climate and lobbied heavily in support of legislation undermining climate action, assembling a “vast network of lawyers and lobbyists ranging from state capitols to Capitol Hill, aided by Republican governors and congressional leaders,” to oppose President Obama’s climate change regulations.

VI. CONCLUSION

The Chamber claims that it “reflects the grassroots views of the entire business community when the organization testifies before Congress or regulatory agencies, disseminates reports or statements to the media, or sends comments or letters to Capitol Hill and to policymakers.” It states that “everyone involved in the process must help develop positions that benefit the entire business community, rather than any given narrow interest . . . The process must be open and above board.”

But this investigation finds these claims to be plainly untrue. Despite its claims of a representative policy-making process, the Chamber does not speak for many of its Board members on two of the most pressing public health issues of our time. The discrepancy between how the Chamber and its Board members act on tobacco and climate is stark. Bloomberg columnist Barry Ritholtz contends that it is easy for the Chamber to ignore its numerous member companies that oppose its stance because one third of its revenue comes from just 19 companies, many of them in the energy industry.

Indeed, based on the responses of Chamber Board member companies, the Chamber

seems to act at will, without broadly consulting its leading members about fundamental policy positions on which it spends millions of dollars in collected dues.

Some American business icons have demonstrated leadership by disaffiliating themselves from the Chamber over fundamental policy disagreements. Apple, Exelon, and Pacific Gas and Electric (PG&E), have left the Chamber over its destructive climate policies. Nike left the Board for similar reasons, and other members—Intel, Johnson & Johnson, and Microsoft—publicly disagree with and distance themselves from the Chamber’s climate position. And CVS Health withdrew its membership from the Chamber last year due to the group’s tobacco lobbying.

Many Chamber members do good work to address the risks of tobacco and climate change. But too many of these members quietly disapprove of the Chamber’s positions without taking action. As long as these Board members lend their tacit support to an organization that spearheads systematic efforts against policies to limit tobacco and climate change, it is difficult to accept their claims that they are anti-tobacco or good on climate.

We encourage Chamber Board members to stop looking the other way where there is disagreement, and defending their Chamber membership as supporting free speech. This positioning makes it appear as though they’re trying to have it both ways and damages their credibility and efforts in support of positive action. These companies should take responsibility for the positions and actions of the Chamber, and use their leverage as an opportunity to shift the tenor of a powerful lobbying force away from harming public health and towards positions that help reduce tobacco use and address the risks of climate change.

Mr. WHITEHOUSE. When President Trump announced his withdrawal from the Paris Agreement, he used these alternative facts from that chamber-commissioned NERA report. Here is what Trump said:

Compliance with the terms of the Paris Accord and the onerous energy restrictions it has placed on the United States could cost America as much as 2.7 million lost jobs by 2025. . . . This includes 440,000 fewer manufacturing jobs.

End of alternative facts quote.

This was another assertion:

By 2040, compliance with the commitments put into place by the previous administration would cut production for the following sectors: paper down 12 percent; cement down 23 percent; iron and steel down 38 percent; coal—and I happen to love the coal miners—down 86 percent; natural gas down 31 percent. The cost to the economy at this time would be close to \$3 trillion in lost GDP and 6.5 million industrial jobs, while households would have \$7,000 less income and, in many cases, much worse than that.

End quote of his alternative facts.

Countless reviewers, including PolitiFact, Scientific American—that known crazy, phony, liberal publication, Scientific American—CNBC, and Fortune magazine, fact-checked the President’s speech. It did not fare well. PolitiFact warned us to “take these statistics with a grain of salt.” An analysis of the underlying report was done by Kenneth Gillingham, an economics professor at Yale University. He pointed out that the NERA study made up a hypothetical set of policy actions to reach those goals. Those policy actions may well never have been

taken by anyone to comply with the Paris Agreement, but that was what they used. Second, NERA only modeled the cost side.

You have heard the phrase “cost-benefit equation.” They only looked at the costs. They didn’t ever look at the benefit side. This is phony accounting when you only look at one side of the ledger.

NERA, of course, has a history of producing misleading reports for its industry sponsors. In 2015, it released a report for the National Association of Manufacturers on the proposed ozone standard, claiming it would cost as much as \$140 billion per year. On the cost side, EPA estimated it would cost a fraction of what NERA estimated, less than 12 percent. The economic consulting firm Synapse analyzed the NAM report and found it “grossly overstates compliance costs, due to major flaws, math errors, and unfounded assumptions . . . these assumptions and other flaws led NERA to overstate compliance costs by more than 700 percent.”

That is just on the cost side. Once again, they didn’t even bother to look at the benefits. It is a one-side-of-the-ledger-phony analysis. Of course, the chamber commissioned NERA to do the same thing for it on climate: overestimate the costs and ignore the benefits. In this world of climate denial, this is a classic maneuver.

Senator TED CRUZ cited the NERA report in his CNN op-ed urging President Trump to pull the United States out of the Paris Agreement a day before President Trump cited these stats in his withdrawal speech.

CRUZ, Trump, and the chamber ignored more than 1,000 companies that supported the United States remaining in the Paris Agreement, including several chamber member companies. Some of these have publicly distanced themselves from the chamber as a result of the President’s decision. A recent Bloomberg news article was headlined, “Paris Pullout Pits Chamber Against Some of Its Biggest Members.”

Citigroup said: “We have been outspoken in our support for the Paris agreement and have had a dialogue with the Chamber about how its views and advocacy on climate policy are inconsistent with Citi’s position.” Similar distancing came from Dow and Ford.

Over the weekend, the Washington Post ran a piece, “Is the most powerful lobbyist in Washington”—that is the so-called U.S. Chamber of Commerce—“losing its grip,” exploring this tension around climate in more detail. The article said: “[P]erhaps the most nettlesome issue for the Chamber has been climate change.” It calls out the chamber’s claims to be neutral on the Paris Agreement, while actually providing “ammunition for foes of the agreement.”

The article highlights the chamber’s climate denial efforts, including its 2009 proposal to hold a public trial on

climate science—what it dubbed “the Scopes monkey trial of the 21st century.” New Mexico-based utility PNM Resources actually quit the chamber because that idea was so preposterous.

The Washington Post identified 8 of the 25 companies that signed an ad in the New York Times supporting the Paris Agreement as chamber members, including GE, Microsoft, and Walt Disney. The CEOs of these companies publicly criticized President Trump’s decision.

Microsoft’s Brad Smith said:

We’re disappointed with the decision to exit the Paris Agreement. Microsoft remains committed to doing our part to achieve its goals.

GE’s Jeff Immelt said:

Disappointed with today’s decision on the Paris Agreement. Climate change is real. Industry must now lead and not depend on government.

Walt Disney’s Bob Iger said:

As a matter of principle, I’ve resigned from the President’s Council over the #Paris Agreement withdrawal.

The chamber is out of step with its own members on climate change, maintaining a scientifically untenable position as every one of our State universities knows. Who is pulling the chamber’s chain? It is hard to tell since the chamber hides from the public who its donors are, but I suspect the answer is the same as to why the Republicans continue to revive the hated, zombie healthcare bill despite huge public distaste for it.

Mr. President, that brings me to the nomination of John Bush to the U.S. Court of Appeals for the Sixth Circuit. The chamber’s rigid anti-climate stance is part of a fossil fuel political program that holds this Chamber in a state of intimidation and inaction on climate change. As Congress cowers before this fossil fuel political presence, we are now advancing the nomination of a climate denier to the Federal bench.

John Bush was not nominated because of any track record of distinguished performance or demonstrated commitment to public service. To the contrary, his most notable achievements seem to be a series of wildly offensive blog postings and public statements, denying that climate change is real and mocking it, comparing a woman’s right to choose to the evil of slavery, casually using vile slurs against gay people. On and on goes the list.

Bush has written a number of posts dealing with environmental issues in which he insists on placing the terms “global warming” and “climate change” in quotation marks, insinuating that they do not really exist. Tell that to your home State universities.

With this appalling track record, why was he nominated? It is not hard to figure that out. He is here because through those offensive blog posts and by flagging himself as a loyal climate denier, he signals himself as a willing foot soldier of the big special interests. These big special interests are intent

on capturing our courts, just as they have captured so much of Congress.

Judicial nominees like Mr. Bush are exactly what these special interests want, to make sure they can, first, maintain their dark money influence. That is their most particular key. That is the mother ship off of which all the other special interest mischief they perform comes from and of course to see to it that these big interests are never held accountable to the American people. That is the signal he sends.

Bush has flagged that he will rule the right way for the big special interests that fund the Republican Party, and the special interests’ big reward is his nomination and confirmation. He has shown that he is familiar with the recipes when it comes time to cook the decisions.

My Democratic colleagues and I respect any President’s desire and prerogative to fill the vacancies in the executive and judicial branches. Even though I understand we will not see eye to eye with our colleagues across the aisle on every nominee, Senate Democrats have given the President’s nominees a very fair shake. This is no normal nominee. This is a freak who lowers the bar on judicial nominees forever.

If Mr. Bush wants to exercise his First Amendment right to spout offensive, ignorant, and hateful nonsense as some kind of nutty Breitbart blogger, he is free to do so, but that is not the measure—or has not until today been the measure of a Federal judge for the U.S. Court of Appeals.

Mr. Bush is patently unqualified for this position, well outside any version of the mainstream, and his appointment can reasonably be predicted to bring dishonor and preordained partiality to the judiciary. I regret we are at this point.

I yield the floor.

The PRESIDING OFFICER (Mrs. FISCHER). Under the previous order, all postcloture time has expired.

The question is, Will the Senate advise and consent to the Bush nomination?

Mr. SASSE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Michigan (Ms. STABENOW) is necessarily absent.

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

The result was announced—yeas 51, nays 47, as follows:

(Rollcall Vote No. 164 Ex.)

YEAS—51

Alexander	Fischer	Paul
Barrasso	Flake	Perdue
Blunt	Gardner	Portman
Boozman	Graham	Risch
Burr	Grassley	Roberts
Capito	Hatch	Rounds
Cassidy	Heller	Rubio
Cochran	Hoeven	Sasse
Collins	Inhofe	Scott
Corker	Isakson	Shelby
Cornyn	Johnson	Strange
Cotton	Kennedy	Sullivan
Crapo	Lankford	Thune
Cruz	Lee	Tillis
Daines	McConnell	Toomey
Enzi	Moran	Wicker
Ernst	Murkowski	Young

NAYS—47

Baldwin	Gillibrand	Murray
Bennet	Harris	Nelson
Blumenthal	Hassan	Peters
Booker	Heinrich	Reed
Brown	Heitkamp	Sanders
Cantwell	Hirono	Schatz
Cardin	Kaine	Schumer
Carper	King	Shaheen
Casey	Klobuchar	Tester
Coons	Leahy	Udall
Cortez Masto	Manchin	Van Hollen
Donnelly	Markey	Warner
Duckworth	McCaskey	Warren
Durbin	Menendez	Whitehouse
Feinstein	Merkley	Wyden
Franken	Murphy	

NOT VOTING—2

McCain Stabenow

The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I ask unanimous consent that the motion to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate's action.

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

EXECUTIVE CALENDAR

Mr. ENZI. Madam President, I ask unanimous consent that the Senate resume consideration of the Bernhardt nomination.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of David Bernhardt, of Virginia, to be Deputy Secretary of the Interior.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON. Madam President, I want to discuss this nomination.

I am here to add my voice to those of my colleagues who oppose the nomination of David Bernhardt to be Deputy Secretary of the Interior. There are a host of reasons—from his history of censoring scientists to his denial of climate change—but I am going to limit my remarks to his allegiance to the oil industry and, specifically, his disregard for the importance of a moratorium on any drilling in the eastern Gulf of Mexico.

During his confirmation process, he gave some very troubling responses to questions about the moratorium from

the ranking member, Senator CANTWELL. She asked: “Do you support the current moratorium in relation to offshore drilling in the Eastern Gulf of Mexico?”

He responded:

I am aware that, in response to the President's recent Executive Order on the Outer Continental Shelf, Secretary Zinke issued a Secretarial Order 3350 directing the Bureau of Ocean Energy Management to review and develop a new five-year plan. I support the President's and the Secretary's actions to examine new leasing opportunities within the OCS in order to advance the Administration's energy agenda.

Then Senator CANTWELL asked him: “Do you support extending this moratorium?”

He responded: “I support the President's and the Secretary's actions aimed at increasing offshore production while balancing conservation objectives.”

First of all, when it comes to the eastern gulf, there is no good way to increase offshore production while balancing environmental concerns. The gulf—the eastern gulf is still recovering from the horrific 2010 *Deepwater Horizon* explosion, which fouled the gulf all the way east into most of the Panhandle of Florida.

Secondly, as I have explained time and again, it makes no sense to drill in an area that is critically important to the U.S. military and is the largest testing and training area for the U.S. military in the world, where we are testing our most sophisticated weapons systems and where we are sending our fighter pilots who need the open space to train. That is why they have the F-22 training at Tyndall Air Force Base. That is why they have training for pilots on the F-35 at Eglin Air Force Base. That is also why the Chief of Staff of the Air Force wrote in a letter just recently, “The moratorium is essential for developing and sustaining the Air Force's future combat capabilities.”

I ask unanimous consent to have the two letters printed in the RECORD.

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

OFFICE OF THE UNDER SECRETARY
OF DEFENSE,

Washington, DC, April 26, 2017.

Hon. MATT GAETZ,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE GAETZ: Thank you for your letter dated March 24, 2017, regarding maintaining the moratorium on oil and gas activities in the Gulf of Mexico beyond 2022. Since military readiness falls under my purview, I have been asked to respond to your letter on behalf of the Secretary of Defense. The Department of Defense (DoD) cannot overstate the vital importance of maintaining this moratorium.

National security and energy security are inextricably linked and the DoD fully supports the development of our nation's domestic energy resources in a manner that is compatible with military testing, training, and operations. As mentioned in your letter, the complex of eastern Gulf of Mexico operating areas and warning areas provides crit-

ical opportunities for advanced weapons testing and joint training exercises. The moratorium on oil and gas “leasing, pre-leasing, and other related activities” ensures that these vital military readiness activities may be conducted without interference and is critical to their continuation. Emerging technologies such as hypersonics, autonomous systems, and advanced sub-surface systems will require enlarged testing and training footprints, and increased DoD reliance on the Gulf of Mexico Energy Security Act's moratorium beyond 2022. The moratorium is essential for developing and sustaining our nation's future combat capabilities.

Since signing the 1983 “Memorandum of Agreement Between the Department of Defense and the Department of the Interior on Mutual Concerns on the Outer Continental Shelf,” the two departments have worked cooperatively to ensure offshore resource development is compatible with military readiness activities. During recent discussions between the DoD and the Department of the Interior's Bureau of Ocean Energy Management, a question arose concerning whether Congress intended the moratorium to prohibit even geological and geophysical survey activities in the eastern Gulf. We would welcome clarification from Congress concerning this matter.

On behalf of the Secretary, I appreciate your interest in sustaining our testing and training activities in the eastern Gulf of Mexico.

Sincerely,

A.M. KURTA,

Performing the Duties of the Under Secretary of Defense for Personnel and Readiness.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE CHIEF OF STAFF,
Washington, DC, June 27, 2017.

Hon. BILL NELSON,
United States Senate,
Washington, DC.

DEAR SENATOR NELSON: I write this letter in whole-hearted support of a proposal seeking to extend the moratorium on leasing, preleasing, or any other related activity in any area east of the Military Mission Line in the Gulf of Mexico. I understand this provision is being considered for inclusion in the National Defense Authorization Act for Fiscal Year 2018.

The Air Force fully supports the development of our nation's domestic energy resources in a manner that is compatible with the military testing, training, and operations. The complex of eastern Gulf of Mexico operating areas and warning areas provides critical opportunities for advanced weapons testing and joint training exercises. The moratorium on oil and gas leasing, preleasing, and other related activities ensures that these vital military readiness activities may be conducted without interference and is critical to their continuation. Of course, we are always willing to work with the appropriate agencies to see if there are ways to explore for energy without hampering air operations.

The moratorium is essential for developing and sustaining the Air Force's future combat capabilities. Although the Gulf of Mexico Energy Security Act's moratorium does not expire until 2022, the Air Force needs the certainty of the proposed extension to guarantee long-term capabilities for future tests. Emerging technologies such as hypersonics, 5th generation fighters, and advanced sub-surface systems will require enlarged testing and training footprints, and increased Air Force reliance on the moratorium far beyond 2022.