

of the United States. This is a duty and a responsibility that does not discriminate based on our party ideology. Still, it is our mutual love for and defense of the Constitution that often provokes our most vigorous debates in this chamber. This spirited debate is vital to liberty and the continued survival of our Nation.

If you read Madison's notes from the Constitutional Convention, you will see that the delegates themselves engaged in a lively debate about how to best implement the principles of liberty, equality, and justice established in the Declaration of Independence. Years later, during the jubilee celebration of the Constitution, John Quincy Adams said, "The Declaration of Independence and the Constitution of the United States are parts of one consistent whole, founded upon one and the same theory of government."

With population growth, increasing diversity, agricultural and economic development and massive technological advancement, our Nation has changed tremendously in the 221 years since the Constitution was signed. Yet, despite these changes, there remains a fundamental consistency in human nature.

James Madison expressed it best in the *Federalist Papers*, Number 51: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

You see, we are indebted to the Founding Fathers for their wisdom and foresight. They understood that human nature would be unlikely to change, and that 18th century and contemporary American policymakers would be pressured to promote policy solutions that may not serve the public interest.

According to Madison, "Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. . . . These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations."

Madison was concerned about the effect of special interest groups on the policy process. In *Federalist 10* he wrote, "The latent causes of faction

are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. . . ."

"So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government."

In a pure democracy, Madison argues, "A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. . . . Such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions."

Since it is impossible to force everyone to share the same opinion and intensity of opinion, Madison seeks to control the effects of factions by creating a republican form of government.

"The two great points of difference between a democracy and a republic are," he writes, "First, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended".

"The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.

Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people".

Madison was skeptical that elected representatives would always act in the public interest. "Enlightened statesmen will not always be at the helm," he wrote in *Federalist 10*.

Today, we have only to see the parade of huge spending bills that find their way to the floor to know that it is a herculean task to whet, much less control the appetites of the hundreds of organized interest groups who want their piece of the federal pie made with tax dollars collected from hard working American families.

The entitlement mentality of many of these organized groups, many of which cannot lay claim to a substantial number of members, has pressured an all too receptive Congress to grow the size of government, increase spending to new heights, while we ignore insolvency of large entitlement programs like Medicare and Social Security, and hope that our children and grandchildren will bail us out for our bad decisions.

In their wisdom, the Founding Fathers wrote a Constitution that establishes a system of separate institutions that share policymaking and political power. This was a clear effort to control the effects of factions and to guard against despotic rulers.

The public elections established by the Constitution encourage the electorate to select their representatives wisely.

For those of us privileged to be elected by the people, we have a sworn obligation to protect and defend the Constitution and to show ourselves worthy of this great trust.

On any given day, not just anniversary dates like today, it is something we ought to think more about.

I see my colleague from Louisiana here. I am going to yield the rest of our time that we have in morning business to him.

THE PRESIDING OFFICER (MR. NELSON of Nebraska.) The Senator from Louisiana is recognized.

---

#### ENERGY

MR. VITTER. Mr. President, I stand to join with all other Senators, in fact, to join with all the American people, in offering our strong support for all of the hurricane victims Senator CORNYN talked about.

In fact, there is enormous devastation, enormous loss and continuing suffering in those parts of the country,

particularly in southeast Texas, hit hard by Ike, following right on the heels of Hurricane Gustav. Our hearts go out to all of those folks. Our best wishes, our prayers are with them and our intent and focus here in Congress to meet their basic needs, their key needs, is here as well.

Representing Louisiana, of course, I have spent most of the last 3 weeks touring Louisiana and looking at hurricane damage there. Of course we were first hit by Hurricane Gustav, which had enormous winds, caused major power outages, significant wind damage in many parts of the State. And then right on the heels of that came Hurricane Ike. While Hurricane Ike slammed into southeast Texas, it pushed floodwaters in the Gulf all through coastal Louisiana, from the western edge at the Texas border all the way to the eastern edge, Plaquemines Parish, where Louisiana meets Mississippi.

We are still struggling with those challenges. But again, I want to acknowledge the even greater suffering, the even greater devastation that others face from Hurricane Ike, particularly folks in Galveston and southeast Texas. Our hearts and prayers go out to them and our commitment to help in every reasonable way possible goes out to them as well. I trust Congress will act on that key priority as those folks face a true moment of crisis and extreme need.

As we act in that regard in the next couple of weeks, I also hope we notice something Senator CORNYN mentioned, that part of our country, the gulf coast, the Gulf of Mexico, particularly the western gulf, is enormously vital in terms of meeting our nation's energy needs. We are proud to offer that service to the Nation. We have a long, storied tradition in terms of that. We are very proud of that tradition. We want it to continue. But, quite frankly, we do not want to continue to be the only part of the country that meets our Nation's energy needs right here at home. We need to expand that activity. We need to bring that same activity to other parts of the country, diversify, if you will, have more activity and more places so we are not so singularly vulnerable to gulf hurricanes and storms as we are now, as we have lived through with the experiences of Katrina and then Rita, and now Gustav and now Ike.

So as this Congress responds to the immediate needs of hurricane victims in southeast Texas in the gulf coast, including Louisiana, I hope we also continue to focus and start acting on energy, and what remains a top priority for all of America.

I know there is a great rush to get out of here for the elections. I know the leadership is pushing to adjourn for the elections as early as the end of next week. But before we do that, we need to address the Nation's business. We need to pass immediate relief for suffering hurricane victims, and we

need to act, not just talk, not just debate, certainly not fight or finger-point, but act on energy. Even in that limited time period, I believe we can do all of those things in a substantial way.

With regard to developing an aggressive national energy plan, I have four key priorities, and all of those priorities, I believe, are absolutely achievable, even in that very tight timeframe.

No. 1, we must lift the current moratorium on offshore oil and gas production. The American people have spoken in a clear and resounding way. They think that current moratorium is crazy. They think we are nuts to take 85 percent or more of our domestic energy resources off the table, not allow energy companies and producers to access or touch them.

The way you change that is lifting the current moratorium under Federal law. Now, as we all know, that does not take action by Congress, it simply takes inaction by Congress. We need to make sure that that moratorium, which expires on its own October 1, is not renewed.

I urge all of my colleagues, Democratic and Republican, to listen to the clear, crystal clear, clarion call of the American people: Do not extend that moratorium. We cannot put that moratorium in any continuing law such as a continuing resolution. We must lift that moratorium and allow the American people to access their own energy resources right here at home.

No. 2, I think we should match aggressive action in that regard with aggressive action with regard to new forms of energy, including renewables. And the most significant, quickest thing we can do with regard to that is pass the major tax incentives that virtually all of us support with regard to new technology, new forms of energy, renewables.

As we all know, that robust package of tax incentives is a major component of the so-called tax extenders bill. We need to come together around a bipartisan version of that tax package, including those important incentives for new technology and renewable energy and pass that into law.

Again, even in this very tight timeframe in which we operate, we can do that. We must do that. We must act for the American people.

Third, I believe we should pass revenue sharing for offshore production to create an incentive for more States to get into that business. As we lift the moratorium, as we open up all of our offshore to potential energy production, we should give participating States an incentive. And that powerful incentive would be royalty sharing, revenue sharing, so they get 37.5 percent of the royalties produced from offshore production.

We set that policy, we set that precedent 2 years ago, with regard to new production in the Gulf of Mexico. We should expand that precedent. We

should expand that policy as we allow and encourage offshore production in all parts of the country: the western gulf, the east coast, the west coast, and elsewhere.

Finally, let me end with a fourth key point. My fourth key priority is something that is very important. It is not something we should do, it is something we should not do. If we are serious about domestic energy production, if we are serious about energy independence, getting away from our reliance on foreign sources, we should not raise taxes on domestic energy production.

The first rule of economics is that if you want more of something, you do not tax it. Because when you tax something, you get less of it, not more. I urge my colleagues, Democrats and Republicans, not to increase taxes in a significant way on domestic energy production. We want more domestic energy production, we do not want less. So it is simple economics that we do not tax what we want more of in a more onerous way because that will produce less of it.

This is not an economics theory, this is history and practice. This is our experience. President Jimmy Carter passed a windfall profits tax during his tenure as President. What did that produce? It produced exactly what one might expect, less domestic production, less energy.

The proposals that are being floated now with regard to section 199 and other energy tax provisions are a windfall profits tax by another name. They will have precisely the same effect. They will drive down domestic energy production when we want to drive it up. They will discourage activity at home in the energy sector when we want to encourage and expand it. It simply does not make any sense.

So I urge us not just to talk, not just to debate, certainly not to argue and finger-point and play partisan politics. I urge us to act. I urge us to come together in a bipartisan, responsible way and act as the American people want us to act.

They support hurricane victims in East Texas and elsewhere who are devastated by these storms, and we should support those victims too through concrete, responsible action. The American people support energy independence. They support doing more for ourselves right here in this country with regard to energy. We should reflect their wisdom and act in that regard as well.

Specifically with regard to the four points I mentioned, No. 1, we must ensure that the current moratorium on offshore production is lifted, that it is not renewed. All we have to do there is let the moratorium expire and not renew it.

No. 2, we need to encourage new technology, renewables, through a robust set of tax incentives in the tax bill. We need to pass that and do it now. We need to act.

No. 3, we must create an incentive for more States to get into the business of offshore oil and gas production through revenue sharing. We must expand that policy which we started 2 years ago in new production in the gulf.

No. 4, the last thing we should do if we want to increase domestic energy production is tax it at higher and higher rates. Let us not pass a new windfall profits tax by another name. Let us not discourage the domestic energy sector and discourage domestic energy production, when we all profess that we want to do the opposite.

I will be fighting for these four key priorities. We can accomplish all of them in the next 10 days. Let us show the American people we do get it, that we are responsible, that we can come together and work together, and that we can act in positive ways for their benefit.

I yield the floor and 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. NELSON of Florida. 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. NELSON of Florida. Mr. President, I ask unanimous consent to speak in morning business.

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

Mr. NELSON of Florida. Mr. President, I want to bring to the attention of the Senate a little known fact, as the clock continues to tick for us to take up drilling legislation off the Outer Continental Shelf, in particular, the proposal that has been cast by the so-called Gang of 10 as a compromise, which is looking at a comprehensive approach, which I applaud, that includes revenues. But it also includes tax incentives for alternative fuels and so forth.

The part the two Senators from Florida extremely object to is the fact of intruding in the military mission, the only testing and training area that is the largest for our U.S. Department of Defense, and all other agencies, including for classified and black programs that go on for testing and evaluation in this training range.

But what is particularly egregious is that in opening up all of that area that is now closed pursuant to the statute we passed 2 years ago, the 2006 statute—that we closed all of that area to drilling because of the military—in the opening of that area, and in the so-called giving of revenue to the adjacent State—in this case Florida—well, lo and behold, all the revenue allocated to the State does not go to the State of Florida, even though it is the waters of the Gulf of Mexico off of the State of Florida.

What happens in the complicated formula that is there is that 10 percent of

all the revenues from the leasing of Federal lands for oil and gas production goes to each State on the gulf. That would include Texas, Louisiana, Mississippi, and Alabama. In other words, the revenue does not go to the State of Florida, even though it is off the coast of Florida. Forty percent of that State revenue due to the State would go to the other States instead of Florida.

That is simply not fair. When I explain that to Senators, they are surprised, and in some cases aghast, because common sense would tell you it is not fair. That is another reason this Senator has put his foot down that we are not going to let Florida, nor the Department of Defense, be the sacrificial lamb for some kind of proposal so people can say we are drilling out there.

I want to drill. I want to drill offshore. But I want to drill where it makes sense. The formula that has been concocted certainly does not make sense.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to speak as in morning business.

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

#### HURRICANE IKE

Mrs. HUTCHISON. Mr. President, I rise today to speak about the devastation inflicted by Hurricane Ike. It is the worst hurricane to hit Texas in almost 50 years and probably the fourth costliest hurricane of all time.

Last week, when Hurricane Ike entered the Gulf of Mexico and started moving toward Texas, State, local, and Federal officials came together and moved into action. We had reason to fear the worst. In the year 1900, the island of Galveston was destroyed by a hurricane that claimed over 6,000 lives, the deadliest natural disaster in U.S. history. I was born on Galveston Island. I was raised in Galveston County. When I was growing up, I heard stories about 1900. There have been books written about that hurricane of 1900. And we also faced on a yearly basis hurricane warnings. Of course, some of them hit.

While preparing for this storm, the people of Texas had fresh memories from Hurricane Rita, another violent hurricane that came ashore around Sabine Pass in 2005. While Hurricane Rita only caused seven direct fatalities, the evacuation and recovery efforts along the gulf coast were not without difficulties, and for that rea-

son, everyone who could possibly be helpful in this wanted to improve the emergency preparedness in advance of the next storm.

So in the days leading up to Hurricane Ike, Texas was prepared. Over 1 million Texans successfully evacuated from their homes. However, when the skies cleared on Saturday afternoon, it was clear that Hurricane Ike had caused an appalling amount of property damage. From the early estimates, the cost of Hurricane Ike could reach almost \$30 billion. Forty-nine people are now confirmed dead. That number will surely rise. Thousands are homeless. Many communities remain under water and are completely inaccessible due to the significant amount of debris. Yesterday, 2.2 million Texans still lacked electricity. Emergency workers are struggling to distribute food, water, and ice. Offshore oil platforms are damaged and many refineries are without electricity. So it is likely that before the region's oil and gas industry return to capacity, we will see some shortages in gasoline and, therefore, some higher prices.

Gulf refineries and ports are the source of 50 percent of the fuel and crude used in the eastern half of the United States. Disruption of that infrastructure underscores the urgent need for us to expand refinery capacity. Indeed, we need to expand our entire energy supply so that America's economy is never undermined by acts of nature or foreign adversaries.

On Sunday, I joined with Senator JOHN CORNYN, my colleague, and the Secretary of Homeland Security, Michael Chertoff, and many members of our congressional delegation to survey the hardest-hit regions. We came to listen to the concerns raised by the mayors and the county judges, after we had been on the telephone with them for the 4 days before, trying to determine that people were as prepared as they could be in an instance such as this and, of course, we wanted to try to correct any concerns that had been raised. Some were raised. I will say that the mayors of our cities and the county judges have done a terrific job of representing their constituents at the local level. I met with Mayor Bill White of Houston, Mayor Lyda Ann Thomas from Galveston, Harris County Judge Ed Emmett, I talked on the phone with the mayor of Port Arthur, Beaumont, the county judge of Orange County, trying to help in every way we could from the Federal level.

Yesterday, I joined with the members of the Texas delegation who were here. Many were still in Houston touring with the President to see the damage and determine what more could be done. I talked to Senator LANDRIEU and Senator VITTER yesterday about their concerns about Hurricane Ike which hit them very hard. We all know Louisiana has suffered so much in the last few years with Hurricanes Katrina and Rita. Texas joined them in suffering from the evacuees in Katrina and then