

Since the early days of our Republic, the Marines have been at the forefront of America's defenses.

And in every subsequent conflict from the days of the Revolution to the wars in Iraq and Afghanistan these brave warriors have proven their mettle, and put their lives on the line to defend our freedom.

For their sacrifice, their bravery, and their heroism, they deserve the praise and thanks of a grateful nation.

So, to every man and woman who has worn the uniform of the U.S. Marines: we thank you. And we owe you our very best.

As a member of the Armed Services and Veterans Affairs Committees, I am inspired by stories of those who serve almost on a daily basis.

And I will work with my colleagues to make sure this country keeps its commitment to these fine individuals.

So this Veterans Day, as the Marines celebrate 234 years of distinguished service and brave sacrifice, let us all offer our utmost gratitude and support to all of those in uniform.

Mr. BENNETT. Madam President, as we approach the commemoration of Veterans Day, I rise to speak in recognition of veterans across the country, but particularly those in Utah. In doing this, I wish to be careful to not allow the regularity of this topic diminish its significance or make our veterans seem ordinary. Those who know them best know they are anything but.

When speaking of our veterans, perhaps we remember news clips of heroic jungle rescues, a frozen, rocket-blasted hill, or soldiers fighting bravely in the searing heat of the desert. We rightly celebrate them for what they did, but more than that—let us celebrate them for who they are.

As meaningful as words of praise may be, they often are all we give to our veterans. It is too rare when we can present our veterans with a gift—a concrete reminder that this Nation honors those individuals who fight to keep us free. Today, I am especially pleased to recognize the opening of the George E. Wahlen Veterans' Nursing Home in Ogden, UT. On November 19, officials and the public will gather to commemorate the opening of the nursing home and present this impressive facility to the veterans of northern Utah. As with any major accomplishment, the list of people to thank stretches long, including public officials from local, State, and Federal Government, particularly State Representative Brad Dee and State Senator Pete Knudson who sponsored the legislation that made this all possible. However, I would also like to recognize two Utah veterans, whose contributions made this project a reality.

Terry Schow is a Vietnam veteran and the director of the Utah Department of Veterans Affairs. His efforts to reach out to his fellow veterans are not confined to his professional obligations. Rather, his passion and unmis-

takable tenacity give power to his fundamental belief that kind words simply are not enough when it comes to caring for our veterans. Determined to make sure that all veterans receive the support they deserve, Terry was instrumental in seeing that no bureaucratic or logistical obstacle prevented the creation of the veterans' nursing home.

Finally, I wish to speak of the late George Wahlen. A World War II veteran and recipient of the Medal of Honor, George passed away on June 5, 2009, just 5 months before completion of the facility that he fought so hard to establish. Along with several of his colleagues, George made the repeated trek to the Capitol building in Salt Lake City, UT, to persuade legislators of the need to provide funding for a veterans' nursing home in northern Utah. It is noteworthy that in fighting for the needed funding, George never sought any personal benefit. He never knew the nursing home would be named in his honor. Instead, at a time when he could have retired and spent his life in comfort and quiet, he chose to take up this cause, a symbol of his dedication to the service of his fellow veterans. After numerous meetings, phone calls, and hearings, the persistence of George as well as dozens of other veterans paid off when on January 24, 2008, the State House, and later on February 29, 2008, the State Senate voted unanimously to advance all funding for the construction of the facility. This measure was then signed into law by Governor Jon Huntsman, Jr. on March 18, 2008.

For George Wahlen and Terry Schow, their work for their country and fellow servicemen did not end when they became veterans. These two men have inspired many of us in Utah by their integrity, character, and passion to ensure our country returns the favor for the many sacrifices made by our servicemen and women. You see, it is not that George or Terry or any number of veterans did this one single thing or that. What sets them apart is the character which leads them to do it again, and again. When honoring our veterans this Veterans Day, let us not forget their valiant acts of courage—but may we always remember their character.

As a Senator, I am acutely aware of the many issues that face veterans. I am sure each of us would like to give them more. But, while much remains to be done, let the George E. Wahlen Veterans' Nursing Home in Ogden, UT, stand as undeniable evidence that America is a nation that honors its veterans.

STATUS OF THE HIGHWAY PROGRAM

Mr. GREGG. Madam President, last month, efforts by Senate Democratic leaders to add roughly \$250 billion to the U.S. debt over the next 10 years by increasing Medicare payments to physicians were put off by arguments from other Democrats that the cost of the proposal should be offset so as not to

burden future generations with more debt. A series of press releases, editorials, and op-eds declared the proposal to be fiscally irresponsible and the Democratic leadership foolish for trying to take it up as a standalone bill. And yet, a Senate highway bill that would add roughly \$150 billion to the U.S. debt over the next 10 years remains below the radar and far more likely to be approved.

The last highway bill, SAFETEA-LU expired at the end of September 2009. But highway programs, like much of the rest of government, continue to operate by virtue of the continuing resolution, CR, now in place through December 18, 2009. Until the authorization committees can agree on how to underwrite the \$500 billion over 6 years that they desire in highway spending, a CR or another legislative vehicle will carry a highway programs extension. Meanwhile, the highway trust fund is already insolvent and cannot support baseline spending levels equal to the highway program levels in fiscal year 2009, much less an authorization bill amounting to half a trillion dollars.

The House and Senate authorizing committees advertise they are simply arguing over the length—3 months v. 6 months v. 18 months—of a “clean” extension. A clean extension, however, already exists in law in the CR and can be perpetuated indefinitely. The authorizers really want to combine a highway extension bill with an increase in highway spending authority above the fiscal year 2009 level for contract authority.

The various “clean” extension bills being advocated by the highway authorizers are anything but clean, and they are certainly not extensions. For example, the latest Senate version to be hotlined on October 26 is a massive highway expansion bill—it would increase spending authority by \$20.8 billion over the CBO baseline in 2010 and in every year after that.

Madam President, \$20.8 billion per year over the baseline is a lot of money. Why so much? Because authorizers set, back in 2005, the overall 5-year net level of highway spending in the last authorization bill, SAFETEA-LU, by rescinding \$8.7 billion on the day that bill expired—September 30, 2009. They had always planned to repeal that rescission before it occurred, but failed to do so. They are so irritated by the failure to avert the rescission that they propose to re-enact the funds—twice!

I will ask that a table showing the components of the \$20.8 billion above the CBO baseline be printed in the RECORD at the end of my statement.

CBO projects that limiting highway spending to the fiscal year 2009 program level, as the CR does, will exceed the gas tax revenue to the highway trust fund by \$87 billion over the next 10 years. If Congress continues to cover trust fund shortfalls as it has been—by transferring money from the Treasury's General Fund—then \$87 billion of

transfers and debt would be required to continue just this fiscal year 2009 level of spending. The general fund, however, is also broke—incurring a \$1.4 trillion deficit in fiscal year 2009, and the fiscal year 2010 deficit is likely to be about the same. Consequently, when Congress transfers money from the broke general fund to the broke highway trust fund, the debt of the U.S. Government goes up by exactly that amount and immediately counts against the debt limit.

Despite the unaffordability of the baseline, Congress adopted a 2010 budget resolution in May 2009 that allocated amounts to authorizing committees to write a highway bill that would spend more than current law revenues collected by the trust fund. The Senate highway expansion bill, which would restore the \$8.7 billion rescission twice, would not only enact the levels magically assumed by the 2010 budget resolution but would also increase outlays by another \$62 billion over 10 years, bringing the total draw on the general fund, the debt, and future generations to nearly \$150 billion, just from a so-called 6-month extension bill.

The authorizers brush off any deficit concerns by saying that, under the Byzantine system of split jurisdiction with the appropriators, they don't control outlays and so there is no "pay-go" problem with their expansion bill. But it's too late to raise any objection if you wait to measure highway program outlays for budget enforcement until they are triggered by an appropriations bill, since the outlays are already baked into the baseline and into the allocations of the appropriators. The only point where taxpayers or their watchdogs can measure whether proposed future spending is higher than current law is at the authorization stage. Extra special vigilance is required whenever authorizers claim they just want to enact a "simple clean extension."

When Republicans controlled Congress in 1998, they enacted a bipartisan highway bill dedicated to spending all gas tax revenues only on highways. When they enacted the next highway bill in 2005, it was also a bipartisan goal to spend every penny of gas tax revenue. They succeeded beyond their imaginations. And now that Democrats are responsible for writing the next highway bill, their proposal is to spend all the gas taxes plus an additional \$150 billion. This can only be done by increasing the Nation's debt, in other words—handing the bill to our children so today's politicians can take credit for highway projects.

I ask unanimous consent that the components to which I referred be printed in the RECORD.

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

COMPONENTS OF THE \$20.8 BILLION IN HIGHWAY SPENDING ABOVE THE CBO BASELINE

The \$20.8 billion consists of 4 pieces:

\$11.9 billion from the highway title of the bill, made up of \$8.7 billion from restoring

the funds lost due to the rescission enacted in SAFETEA-LU and \$3.2 billion from restoring the funds lost due to the rescission enacted in the FY09 Transportation/HUD appropriation bill;

Another \$8.7 billion in additional appropriations to again restore the amount that was rescinded on September 30, 2009, just to make sure;

\$0.1 billion for the safety title of the bill; and

\$0.1 billion for the transit title of the bill.

The \$8.7 billion appears twice in the bill:

In Section 101, which provides highway funding for FY10 and beyond at the FY09 level but defines the FY09 level as if no rescissions occurred in FY09, and

In Section 103, which adds another \$8.7 billion.

NOMINATION OF JUDGE ANDRE M. DAVIS

Mr. CARDIN. Madam President, I would like to address the concerns stated by the Senator from Oklahoma, Mr. COBURN, and the Senator from Alabama, Mr. SESSIONS, about Judge Davis's record when it comes to criminal cases. His concerns seem primarily rooted in six criminal case reversals that appear in Judge Davis's record. As a Federal judge over the past 14 years, Judge Davis has presided over approximately 5,300 cases. Of that number, Judge Davis has presided over approximately 4,300 cases that went to verdict or judgment based on a trial or decision he made. My colleagues are focusing on just a handful of cases to argue that Judge Davis should not be elevated to the Fourth Circuit.

While the number of reversals on criminal evidentiary matters appearing in Judge Davis's record that my colleague has mentioned is small, Judge Davis has directly addressed Senators' questions related to each of these reversals, expressing his commitment to applying the law to the facts impartially and fairly, while respecting the role of the appellate courts in our judicial system and their decisions in all cases. Following his confirmation hearing in the Judiciary Committee in April, which I chaired, our committee reported him out favorably with a strong bipartisan vote of 16 to 3. This overwhelming, bipartisan approval indicates that Judge Davis is well-qualified to be a U.S. Circuit Judge for the Fourth Circuit. Out of the 5,300 cases over which Judge Davis has presided, these six cases are hardly cause for the concern my colleagues have expressed. Later I want to also mention some criminal cases in which Judge Davis's stiff criminal sentences were upheld by the Fourth Circuit, along with convictions obtained after jury trials. However, to make the record clear, I will review in detail Judge Davis's responses to some of the half a dozen cases noted by my colleagues.

In *US v. Bradley*, Judge Davis accepted several plea agreements with the defendants, who ultimately pleaded guilty but later, on appeal, argued that their pleas were not voluntary because the court impermissibly participated

in plea negotiations. The Fourth Circuit did "not suggest that [Judge Davis] improperly intended to coerce involuntary guilty pleas," but found plain error and remanded the case for assignment to a different district judge. Upon questioning by the committee, Judge Davis said that he became involved with—but did not interfere with the plea process—at the invitation and encouragement of defense counsel. He ultimately concluded that he shouldn't have gotten involved with the process at all. He said he believed, with the benefit of hindsight, that his involvement in facilitating the guilty pleas in this case was inappropriate and that the Fourth Circuit was correct to say so.

In *US v. Custis*, Judge Davis granted the defendant's motion to suppress evidence discovered in a residential search on the grounds that the warrant was defective and insufficient. The Fourth Circuit reversed, holding that probable cause supported the warrant. While Judge Davis told the committee he does believe he read the affidavit in a common sense manner, he fully accepts the appellate court's ruling in this case.

In *US v. Kimbrough*, Judge Davis said he accepts the appellate court's ruling rejecting his legal conclusion that the police permitted the defendant's mother to question him under circumstances which the police couldn't have done so without first administering customary warnings. He agrees that warnings are required only when official interrogation takes place, but not when private interrogation takes place.

In *US v. McNeill*, Judge Davis granted a motion to suppress the defendant's confession on the grounds of an unlawful arrest. Judge Davis explained to the committee that the principal issue before him was whether, for a warrantless misdemeanor arrest, the fourth amendment required that the misdemeanor be committed in the officer's presence. He concluded that the answer was "yes" in this case, and that no misdemeanor had been committed in the officer's presence as of the moment of arrest. While Judge Davis explained that the Fourth Circuit's holding presented an argument and precedent that had not been presented to him, he fully accepted the appellate court's ultimate ruling in this case.

In *US v. Dickey-Bey*, Judge Davis also suppressed evidence arising out of the interception of cocaine by police for lack of probable cause to arrest the defendant. He has told us that he fully accepts the appellate court's rejection of his legal conclusion that the evidence presented at the hearing on the motion to suppress was insufficient, and remains committed to adhering to the fourth amendment requirement to make commonsense assessments of objective facts, taking into account the totality of the circumstances.

I found Judge Davis's responses to the Judiciary Committee's questions