

commitment to public service, and an understanding of and respect for the limited role the judiciary plays in our constitutional system.

The Senate Judiciary Committee apparently shares my confidence in Cheryl Krause. They unanimously reported her out of committee, unambiguously supporting her confirmation.

So I am pleased to speak on behalf of this highly qualified nominee, and I urge my colleagues to support her confirmation.

Thank you, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

#### RECESS APPOINTMENTS

Mr. GRASSLEY. Mr. President, I rise today to praise the Supreme Court's decision to strike down President Obama's illegal recess appointments. Article II, section 2 of the Constitution provides for only two ways in which Presidents may appoint certain officers:

First, it provides that the President nominates and, by and with the advice of the Senate, appoints various officers.

Second, it permits the President to make temporary appointments when a vacancy in one of those offices happens when the Senate is in recess.

On January 4, 2012, the President made four appointments. They were purportedly based on the recess appointments clause. He took this action even though they were not made, in the words of the Constitution, "during the recess of the Senate." These appointments were blatantly unconstitutional. They were not made with the advice and consent of the Senate, and they were not made "during the recess of the Senate." In December and January of 2011 and 2012, the Senate held sessions every 3 days. It did so precisely to prevent the President from making recess appointments. It followed the very same procedure as it had during the term of President Bush, and that was done at the insistence of Majority Leader REID. President Bush then declined to make recess appointments during these periods, thus respecting the desire of the Senate and the Constitution that we were in session. But President Obama chose to attempt to make recess appointments despite the existence of the Senate being in session.

The Supreme Court said today:

[F]or purposes of the Recess Appointments Clause, the Senate is in session when it says it is, provided that, under its own rules, it retains the capacity to transact Senate business.

That is a quote from the decision.

No President in history had ever attempted to make recess appointments when the Senate said it was in session. And I am a little surprised, since President Obama had served in the Senate, that he would not know how this had been respected in the past by Presidents.

President Obama failed to act "consistent with the Constitution's broad delegation of authority to the Senate to 'determine the Rules of its Proceedings,'" as the Constitution states.

These illegal appointments represent just one of the many important areas where President Obama has disregarded the laws with his philosophy of the ends justify the means.

We should all be thankful the Supreme Court has reined in this kind of lawlessness on the part of this administration, and it should also bring some confidence that at least from time to time—maybe not as often as our constituents think—the checks and balances of government do work.

The Supreme Court was called upon to decide whether President Obama could make recess appointments even when the Senate was in pro forma session. Fortunately for the sake of the Constitution and the protection of individual liberty, the Supreme Court said he could not. This is a very significant decision. It is the Supreme Court's biggest rebuke of any President—because this was a unanimous decision—since 1974 when it ordered President Nixon to produce the Watergate tapes. The unanimous decision included both Justices whom even this President appointed to the Supreme Court.

That shows the disregard in which the President held this body and the Constitution when he made these appointments. Remember, as I just said, I am a little surprised because at one time he was Senator Barack Obama.

Thanks to the Supreme Court, the use of recess appointments will now be made only in accordance with the views of the writers of the Constitution, our Founding Fathers.

It is worth keeping in mind what the President, the Justice Department, and the Senate said at the time of these appointments. The President said his nominees were pending and he would not wait for the Senate to take action if that meant important business would be done. So the President stated in another way that "I have a pen and a phone, and if Congress won't, I will." But the Supreme Court has made clear that failure to confirm does not create Presidential appointment power.

The appointments were so blatantly unconstitutional that originally there was speculation that the Justice Department had not approved their legality. But, in fact, the Department's Office of Legal Counsel had provided a legal opinion that claimed to justify the appointments—in other words, justify the unconstitutional action of the President. The Department's Office of Legal Counsel's reasoning was preposterous, and this unanimous decision backs that up. That office defined the same word—"recess"—that appears in the Constitution in two different places differently and without justification. It claimed that the Senate was not available to do business, so that it was in recess when the President signed legisla-

tion that the Congress passed during those pro forma sessions. The Department allowed the President, rather than the Congress, to decide whether the Senate was in session.

As today's Supreme Court unanimous decision makes clear, the Office of Legal Counsel opinion was an embarrassment, reflecting very poorly on its author. She had told us in her confirmation hearing that she would not let her loyalty to the President overcome her loyalty to the law. This Office of Legal Counsel opinion proved otherwise. It said the President had a power he did not have. He did not have that power, as expressed today by that unanimous decision of the Supreme Court.

Those partisans in that office who defended that opinion and its author should be humbled and should take back their misplaced praise—not that I expect them to do so.

The Office of Legal Counsel opinion furthered a trend for that office from one which gave the President objective advice about his authority to one which provided legal justification for whatever action he had already decided he wanted to take. Perhaps now that the office has been so thoroughly humiliated, it will hopefully conclude that the Department and the President will be better served by returning to the former role of that office as a servant of the law and not a servant of the President.

The other statements to keep in mind were from Senators. No Senator of the President's party criticized President Obama for making these clearly unconstitutional appointments, even though they felt we ought to protect against President Bush doing that. Rather than protect the constitutional powers of the Senate and the separation of powers, they protected their party's President.

Those were not the Senate's best moments. This underscores again the need to change the operation of the Senate. Appointment powers and the separation of powers are not simply constitutional concepts, they are the rule for how the American people are protected from abuse by government officials. They exist not so much to protect the branches of government but to safeguard individual liberty.

I often quote from Federalist Papers, this time from 51. Madison wrote that the "separate and distinct exercise of different powers of government" is "essential to the preservation of liberty."

President Obama's unconstitutional recess appointments are part of a pattern in which he thinks that if he cannot otherwise advance his agenda, he can unilaterally thwart the law. That is a pretty authoritarian approach to governing. Whether it is with respect to drugs, immigration, recess appointments, health care, and a number of other areas, President Obama has concluded he can take unilateral action regardless of the law. And, of course, as

we see in the case of these appointments, the Justice Department has aided and abetted him.

Praise today to the Supreme Court for forcing the President to confront the errors of his ways, for enforcing the constitutional structure that protects our freedom, and maybe cause him to modify that statement he made earlier this year that:

“When Congress won’t, I will, because I’ve got a pen . . . and I’ve got a telephone . . .”

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

#### VETERANS AFFAIRS

Mr. VITTER. Mr. President, as we all know, the Department of Veterans Affairs, the VA, is in shambles. Two national reports this week have highlighted the fact that bureaucratic ineptitude and incompetence seem to be the norm there. Unfortunately, reports that surfaced out of Phoenix which led to the resignation of Secretary Shinseki do not seem limited to Arizona.

I wish to talk about where we are nationally with this scandal, and also specific instances that have come out of Louisiana I have learned about working directly with whistleblowers and working directly with families of veterans whom I am very concerned about who are examples of this same sort of abuse.

On Monday, the head of the agency that investigates whistleblower complaints in the Federal Government, Carolyn Lerner, sent a blistering letter to President Obama stating that the VA Office of the Medical Inspector has repeatedly undermined legitimate whistleblowers by confirming their allegations of wrongdoing but dismissing them as having no impact on patient care.

Lerner’s letter lists numerous cases where whistleblowers reported numerous failings at the VA, including examples where drinking water at the VA facility at Grand Junction, CO, was tainted with elevated levels of Legionella bacteria, which can cause a form of pneumonia, and standard maintenance and cleaning procedures not being performed at the facility.

Also, in Montgomery, AL, a VA pulmonologist portrayed past test readings as current results in more than 1,200 patient files, “likely resulting in inaccurate patient health information being recorded.”

In these cases, among many others, VA whistleblowers brought the information to the special counsel, an independent Federal entity charged with enforcing whistleblower protection laws. The special counsel passed it along to the Office of the Medical Inspector, but that VA medical inspector concluded the hospital’s failings, while accurately reported by the whistleblowers, didn’t threaten veterans health or safety, even when the VA in-

spector general had concluded that similar faults compromised care in other cases.

This is deeply troubling and severely cripples any belief that the VA is in any way capable of fixing its deep-seated problems on its own.

My colleague, Senator COBURN of Oklahoma, whom I have worked with closely in dealing with many of these VA problems, also released his oversight report on the Department entitled “Friendly Fire: Death, Delay, and Dismay at the VA.” To say his report is troubling is quite an understatement. Some of the key findings I found most troubling in the report were these: the fact that there seems to be a perverse culture, his report said, within the Department where veterans are not always the priority and data and employees are manipulated to maintain an appearance that all is well.

In many cases it also seems bad employees are rewarded with bonuses and paid leave, while whistleblowers, health care providers, even veterans and their families are subjected to bullying, sexual harassment, abuse, and neglect.

Senator COBURN’s report also highlights criminal activity by VA employees, vast amounts of waste at the VA, the fact that the VA actually made waiting lists worse, and the VA Committee, led by BERNIE SANDERS, largely ignored these warnings and delay. That committee, under Senator SANDERS, has only held two oversight hearings in the last 4 years.

As I said, this is a national scandal. These are national problems. The two reports I alluded to are national reports. But I know from my work in Louisiana that they have consequences, and that similar cases exist in Louisiana. I have been deeply involved in a couple that I wish to highlight.

First, the Overton Brooks scandal in Shreveport, LA. A whistleblower came forward to my office with very troubling information regarding the VA hospital in Shreveport called Overton Brooks. The whistleblower is a licensed clinical social worker there, and he accused that VA facility of the following: maintaining a secret wait list and manipulating the official electronic wait list; using gaming strategies to manipulate reported wait times—for example, holding appointments without scheduling them until capacity opens or entering into the system that the patient requested an out-of-date appointment when that just wasn’t true; providing group therapy appointments to mental health patients, and counting these group sessions as an appointment with a primary care provider, which they were clearly not.

These aren’t just allegations. I have also personally seen emails the whistleblower provided, and that has shown that this secret list could contain up to 2,700 veterans. It also seems to confirm that, while waiting for appointments, 37 of those veterans died.

Since hearing these allegations, I have sent a letter demanding a full investigation into Overton Brooks to the inspector general of the VA, and I have confirmed that that is happening. That absolutely is moving forward.

No veteran who served this country should be put on any secret waiting list. At a time when we are learning more and more about rampant mismanagement at the VA across the country, any internal allegations such as that should be taken very seriously and clearly investigated.

That brings me to the second case I have personally dealt with and learned about in Louisiana, this case out of the New Orleans area.

Gwen Moity Nolan was the daughter of a distinguished veteran. She came to one of my recent townhall meetings in New Orleans, and she explained to me personally that her dad passed away in 2011 while a patient at the VA hospital in New Orleans, allegedly in part due to delayed and poor care at the facility.

She described the medical treatment there as poor, and that her father’s doctor had a terrible attitude and regularly refused to show up at the hospital in key situations.

She requested that information from the VA, including information regarding a supposed investigation into the case of her father, be given to her.

Her dad had passed. What she most wanted was to be sure the VA got it—to be sure the VA in New Orleans took some remedial action to correct the situation. Her case was done. Her case was done in two ways: First of all, tragically, her father was dead. Her father was passed. Secondly, she brought a legal action against the VA, and that was settled for a substantial sum of money which she received, and she is not disputing that or reopening that. That is done. But she wanted to know that these problems have been addressed.

On June 3 I sent a letter to the Acting Secretary of the VA, Sloan Gibson, demanding this information and the steps the VA has taken to correct what went wrong.

After the New Orleans VA responded by saying “patient privacy laws prohibit us from discussing specific patient information,” I sent another letter with the pertinent constituent’s privacy release form. The patient is dead. The daughter will sign any release form they want. This was clearly stonewalling to avoid giving us appropriate information.

Unfortunately, the VA responded that they cannot share this information with my office unless very specific criteria are met. Guess what. They didn’t think it was relevant to list the specific criteria we need to meet. Again, more pure stonewalling.

This information is extremely important, and I am continuing to fight to get my constituents and myself this information about if and how the New Orleans VA fixed these problems. I will