

think we should be thinking long and hard before we go with judges and give a license for them to be more expansive in their role in the legislating arena. That is wrong. It is not in the Constitution. It is not the division of powers. We should have judges who strictly interpret. That is what these nominees are about and much of the base of this fight is about.

I urge my colleagues on the other side of the aisle to think about what they will force in response by this tactic, and there will be a response to this tactic. I do not think it is wise for this body to move toward that route.

I thank the Chair for this time. I yield the floor and yield back the remainder of time.

The PRESIDING OFFICER. The majority time has expired.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 605, to provide a complete Substitute.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, the highway bill which is presently before us comes to us pursuant to a budget agreement that was passed last Friday morning. In fact, I guess it was passed about 1 a.m. Friday morning. That budget agreement had in it language that said there would be \$284 billion spent on highways under this highway agreement. It also had language in it referencing something which is called a reserve fund which essentially says if legitimate offsets could be found, and if they were determined to be legitimate by the chairman of the Budget Committee, then that number could be increased by the amount of those legitimate offsets.

Initially, when the bill was brought forward it was brought forward at \$284 billion. It was brought out of committee at \$284 billion. On Monday during the wrapup session, by unanimous consent, that bill, which had already been subject to a substitute, was hit with another substitute that had 1,300 pages in it. Within those 1,300 pages—and they are not absolutely sure of this number yet—somewhere in the vicinity of \$11.5 billion of new spending out of the highway trust fund. That in and of

itself was inconsistent with the budget resolution that had been passed last Friday in that it was \$11.5 billion over that resolution and was therefore out of kilter relative to the allocation given to the committee, the Public Works Committee.

In addition, within those 1,300 pages which were submitted by substitute, by unanimous consent, on Monday night, one legislative day after the budget had been passed, were representations that the offsets had been placed in to pay for the \$11.5 billion. There was no referral of those offsets to the Budget Committee as was required under the law that had just been passed on the prior legislative day in the reserve fund of that law. In fact, the offsets as represented first were offsets which would apply to the general fund, not to the highway fund, and therefore created a violation of the Budget Act. But second were offsets which do not pass what we might refer to as the “straight face” test. In other words, they were not legitimate offsets. In fact, one of the offsets which was referred to has been used 14 times in the last 2½ years—14 times. Yet it was referred to with a straight face, although I am sure there was a smile behind it, as a legitimate offset.

It would be humorous were it not for the fact that it adds a \$11.5 billion burden to the taxpayers, which on the prior Friday we had said we were not going to do to the taxpayers. So the bill as presently pending under the substitute, as put forward on Monday night, the 1,300 pages which are so extensive that CBO, which is the scorekeeper around here, has even had trouble figuring out what is in it, that bill is presently in violation, or that substitute is in violation of the Budget Act. It is quite simply unequivocally, unquestionably a budget buster.

One must ask the very obvious question that when the Senate passes a budget on Friday of the legislative week, if on the Monday of the next week, which amounts to the next legislative day, if that next Monday you are going to by unanimous consent, late in the afternoon, during wrapup, put forward a substitute which includes in it a budget-busting expansion of spending with a euphemistic and illusory statement of offsets—self-serving, also, by the way—if we are at all serious as a Congress about disciplining ourselves when it comes to protecting the American taxpayer relative to the rate of growth of the Federal Government and Government expenditures. It would appear that if this substitute is allowed to survive in its present form, with this additional money being spent, which exceeds significantly what was agreed to in a budget that was passed the day before, the answer to that question would have to be, regrettably, no, we are not.

In addition to that problem, there is the issue of the President. Now, rolling the Budget Committee around here is sort of good entertainment, and it hap-

pens, unfortunately, too regularly. But rolling the President of the United States, and especially when the party of the President of the United States decides to roll the President of the United States, is something a little more significant. The President has said 284 is the number, the President has said even if there are offsets, 284 is the number and we are not going above that number. Yet a bill is reported to the floor that met that number with the clear, obvious understanding now that it was going to be gamed, that 284 number was going to be ignored. And now we have a bill that is probably 295, 296, maybe 300. We are just not sure. We are talking billions, folks, just to put it in context. That is not \$296. That is \$296 billion, which is a lot of money.

So the President has made it very clear—he has made it clear in his press conference, his administration has made it clear, the director of OMB has made it clear, and in an agreement with the House leadership there was a clear understanding the highway bill would spend \$284 billion, not \$296 billion, whether it was offset or not. Yet that position of the President is being—well, it is being more than ignored. It is being run over by a bulldozer or maybe a cement mixer or maybe a paver. But in any event it is being run over. And that seems a little bit inappropriate, slightly inappropriate to me. Since the President has decided to try to exercise some fiscal discipline, it would seem that we as a party that allegedly is a party of fiscal discipline would follow his lead rather than try to run him over.

So you have two problems. You have the problem of a Republican Senate running over a Republican President because we want to spend more money—or at least some Members of the Senate do—and then you have the Republican Senate running over the Republican budget because some members want to spend more money. Then you have this gamesmanship, I guess would be the best term for it, which occurred on Monday night when you take 1,300 pages and throw it in under unanimous consent and put in it language which raises spending by \$11.5 billion and has these proposed offsets which do not pass the straight face test.

So you wonder about that and you have to ask yourself where are we really going if we can't even discipline ourselves on something like this. You have to remember this bill did not start out at 284. It started out 2 years ago at, I think it was 219, maybe it was 220, maybe it was 230. It was in that range. Then last year, through another sleight of hand dealing with the funding mechanism, we shifted—we didn't but some did—\$15 billion or \$18 billion—I do not recall exactly—out of the general account over to the highway account claiming that there was no revenue impact, that this was an offset, of course, putting an \$18 billion hole in the general fund in exchange for covering up with the extra spending