

Pollution Act of 1990, OPA 90, as well as the mechanism for providing funding for the cleanup of oil spills.

That mechanism, known as the Oil Spill Liability Trust Fund, is now in danger. In a recent report to Congress, the United States Coast Guard predicted that the Fund will run out of money before 2009. Given the recent spate of costly spills around the country, it may run out sooner. We simply cannot allow this to happen. The fund provides a critically important safety net. It aids the cleanup of oil spills and provides compensation to those harmed, particularly where no responsible party is identified or the responsible parties have insufficient resources.

Since the passage of OPA 90, we have significantly reduced the number and volume of oil spills in the U.S. Unfortunately, thousands of gallons of oil continue to be spilled into our waters every year, and the cost of cleanup has increased substantially. The amount of oil carried by tank vessels to and within the U.S. is predicted to increase. While we pray that we will never have another major oil spill, we must be ready to respond if necessary.

The bill introduced today would reinstate an expired fee on oil companies of 5 cents per barrel of oil. The fee, which ceased January 1, 1995, would increase the maximum principal amount of the fund from \$1 billion to \$3 billion, and if the fund drops below \$2 billion, the fee would automatically be reinstated without the need for additional legislative action. Five cents a barrel translates to approximately \$0.0011 per gallon of gas—or one eighth of one cent—and is worth about 3 cents per barrel in 1990 dollars. This is substantially less than the original rate of 5 cents.

I urge my Senate colleagues to take up this issue and pass this legislation without delay.

#### TAIWAN AND CHINA

Mr. CRAIG. Mr. President, in recent weeks Lien Chan of Taiwan undertook the task of meeting with key leaders in the People's Republic of China. This was no small task as the gulf between the two sides is much wider than the Strait of Formosa.

The substantive accomplishments of Chairman Lien's recent mission to mainland China surely put to rest any accusations that the event was little more than a symbolic gesture. In fact, the practical results should have a very positive impact on cross-strait trade, tourism, and culture if momentum can be maintained.

First and foremost, an essential mechanism of dialogue has been established, overcoming obstacles of politics and history. The precedent has been set. Further talks between mainland China and Taiwan should follow as a matter of course, to address a range of issues of mutual concern, provided there is enough goodwill on both sides. However, I think it is important to

note that these meetings did not include elected officials of the Government of Taiwan. Although these initial talks were an important step, it is essential that future talks between Taiwan and China include the rightly elected leaders of Taiwan for there to be any real substance and hope for change.

Second, it seems that certain basic principles have been addressed that should help Taipei and Beijing re-open negotiations on an equal footing, even though they still disagree on the meaning of "one China" and what Taiwan's international status is. The basic concept of ending hostility and promoting cooperation has been embraced. Both sides believe it is a mistake to let small details create a deadlock forever, and that is a key principle for progress.

Third, even people who insist that all talk is meaningless unless it leads to policy changes should be able to admit that eliminating and/or reducing trade barriers on farm products, like fruit, is a concrete achievement. Both sides gain from such actions, and it sets a good example for further progress later on down the road.

Fourth, it is to be commended by any free society when a tightly controlled country like mainland China agrees to negotiate to allow its people to tour a democracy like Taiwan. Who knows what the long-term implications may be, when those who know few liberties are one day allowed to visit and see for themselves what real freedom feels and looks like.

Finally, even the most humorless critics surely must admit that "panda bear diplomacy" still trumps political stalemate and hostility. Critics can call it symbolism, but even symbolism has definite practical value when it lifts spirits and relaxes tensions.

History will record that this mission was blessed with genuine substance as well as great potential in building bridges where none existed before.

#### PRESS COLUMNS ON JUDICIAL NOMINATIONS

Mr. KYL. Mr. President, a column published recently by Lino A. Graglia in the Wall Street Journal, and another by Charles Krauthammer in the Washington Post, frame particularly well the debate we are having in the Senate on judicial nominations. I ask unanimous consent that these columns be printed in the RECORD.

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

[From the Wall Street Journal, May 24, 2005]

OUR CONSTITUTION FACES DEATH BY DUE  
"PROCESS"

(By Lino A. Graglia)

The battles in Congress over the appointment of even lower court federal judges reveal a recognition that federal judges are now, to a large extent, our real lawmakers. Proposals to amend the Constitution to remove lifetime tenure for Supreme Court justices, or to require that rulings of unconsti-

tutionality be by more than a majority (5-4) vote, do not address the source of the problem. The Constitution is very difficult to amend—probably the most difficult of any supposedly democratic government. If opponents of rule by judges secure the political power to obtain an amendment, it should be one that addresses the problem at its source, which is that contemporary constitutional law has very little to do with the Constitution.

Judge-made constitutional law is the product of judicial review—the power of judges to disallow policy choices made by other officials of government, supposedly on the ground that they are prohibited by the Constitution. Thomas Jefferson warned that judges, always eager to expand their own jurisdiction, would "twist and shape" the Constitution "as an artist shapes a ball of wax." This is exactly what has happened.

The Constitution is a very short document, easily printed on a dozen pages. The Framers wisely meant to preclude very few policy choices that legislators, at least as committed to American principles of government as judges, would have occasion to make.

The essential irrelevance of the Constitution to contemporary constitutional law should be clear enough from the fact that the great majority of Supreme Court rulings of unconstitutionality involve state, not federal, law; and nearly all of them purport to be based on a single constitutional provision, the 14th Amendment—in fact, on only four words in one sentence of the Amendment, "due process" and "equal protection." The 14th Amendment has to a large extent become a second constitution, replacing the original.

It does not require jurisprudential sophistication to realize that the justices do not decide controversial issues of social policy by studying those four words. No question of interpretation is involved in any of the Court's controversial constitutional rulings, because there is nothing to interpret. The states did not lose the power to regulate abortion in 1973 in *Roe v. Wade* because Justice Harry Blackmun discovered in the due process clause of the 14th Amendment, adopted in 1868, the purported basis of the decision, something no one noticed before. The problem is that the Supreme Court justices have made the due process and equal protection clauses empty vessels into which they can pour any meaning. This converts the clauses into simple transferences of policy-making power from elected legislators to the justices, authorizing a Court majority to remove any policy issue from the ordinary political process and assign it to themselves for decision. This fundamentally changes the system of government created by the Constitution.

The basic principles of the Constitution are representative democracy, federalism and the separation of powers, which places all lawmaking power in an elected legislature with the judiciary merely applying the law to individual cases. Undemocratic and centralized lawmaking by the judiciary is the antithesis of the constitutional system.

The only justification for permitting judges to invalidate a policy choice made in the ordinary political process is that the choice is clearly prohibited by the Constitution—"clearly," because in a democracy the judgment of elected legislators should prevail in cases of doubt. Judicially enforced constitutionalism raises the issue, as Jefferson also pointed out, of rule of the living by the dead. But our problem is not constitutionalism but judicial activism—the invalidation by judges of policy choices not clearly (and rarely even arguably) prohibited by the Constitution. We are being ruled not by the dead but by judges all too much alive.