

I voted to support this bailout, as did most of my colleagues, as we were assured, not only by members of the administration, but also with a great deal of hesitation by members of our own party in the Senate, that this was an essential act to avert an international calamity in the financial markets. We were told by the Secretary of the Treasury that we needed to reinforce the good will and the concerns people had by allowing him to take certain actions. We ensured oversight over the Secretary of the Treasury, but he still retained the total discretion that has been used over the past several weeks.

At the same time, we all know now—it has been said several times already this afternoon—the decisions that were made, as to where this money has been going, were not in line with the reassurances that were given this body when the legislation was brought forward. There has been a great deal of inconsistency coming from the Secretary of Treasury, and it has created a mood of unpredictability that we have seen reflected in the markets and in the confidence of investors.

I would agree with the concept that was recently put forward by the Senator from Oklahoma about slowing down the amount of money that is available to be spent under this bailout. I also would propose, in examining legislation to that effect, that we as a body revisit the whole idea of giving this kind of power to one individual in the executive branch.

There are plenty of precedents in history which create a small body of honest brokers, perhaps three individuals who collectively can make decisions for the good of the country and who would not be burdened by conflict of interests because of their own background, either real or imagined, or the burden that goes with the discretion of one individual. I hope to place something to that effect before this body relatively soon. I hope other Members of the Congress will consider that idea as well.

The second issue with respect to the abrogation of power by the legislative branch to the executive branch concerns the relationship that we are now about to finalize with Iraq. We have seen it reported in the media today that the Iraqi Cabinet has given a near unanimous agreement to a strategic framework agreement—which is very little discussed, and a status of forces agreement—which has been much debated, that ostensibly would define the future relationship between the United States and Iraq.

I find it more than ironic, and I have mentioned it several times on this floor, that the Congress has not been invited to participate in this process. The Iraqi Cabinet is going to present this agreement to the Iraqi Parliament for a vote. The Congress of the United States is hardly even getting a look.

If you turn to article II, section 2 of the U.S. Constitution, it says the President:

... shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur. . . .

The question is, Is this a treaty? It is going to define the long-term relationship between the United States and Iraq in a situation where we are going to have military bases of some sort in Iraq and a security relationship with Iraq. That sounds quite a bit like a treaty to me.

The administration has been claiming this is simply an executive agreement and, as a result, the Secretary of State can sign this; the Congress can be consulted but does not have to have a vote. But let us remember, at the end of this year, on December 31, the legal authority for the United States to be operating in Iraq ends under international law with the expiration of the U.N. mandate. So under what authority, legal authority, will we be operating in Iraq? An executive agreement is only constitutional when it is implementing a law. So what law or constitutional authority will this executive agreement be implementing?

The members of the administration, when I raised this issue nearly 8 months ago, claimed that the 2002 authorization to go to war in Iraq was their legal authorization to negotiate an executive agreement looking to the future relationships in Iraq. I have strong questions about that. First, if the 2002 authorization to go to war would be good in terms of an executive agreement to define our future relationship, then why did we even need the U.N. mandate in the first place? The second is, the 2002 authorization to go to war in Iraq took place at a time when the present Government of Iraq did not even exist.

So I would state my strong belief, again, that the Congress needs to assert its constitutional authority on this matter. The Congress needs to concur with the strategic framework agreement in order for us as a nation under the Constitution to properly define our relationship with a government and a country where we are going to have military forces in place, and where we are going to have security guarantees.

In that regard, I conclude by stating my strong hope that the incoming administration, under President-elect Obama, will, early on, take a comprehensive diplomatic approach to all the issues that affect the United States in that particularly troublesome spot in the world. We should be fostering the right kind of diplomatic environment with other countries such as Russia and China that have interests in this region. We should be exploring ways to formally and aggressively explore our relationships with countries such as Iran. We need to put the whole issue of Afghanistan, Pakistan, Iraq, and other countries in the Middle East on the table early on and forcibly. Reality indicates and history proves that the longer the new administration

waits, the more strongly they are going to be embedded in the policies that have preceded them, and the more difficult it is going to be to put a comprehensive approach to the future into place. I strongly hope this administration, at an early time, will take a comprehensive approach to this region.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### AUTOMAKER BAILOUT

Mr. KYL. Mr. President, I wish to address a matter that is supposedly before us, although to my knowledge there is not yet a bill on the floor that we can read and, therefore, debate. But I think the general concept of some kind of a so-called bailout for the auto companies is the reason why we have come back to Washington in this so-called lameduck session. I wish to address that and talk about the best way forward to assist the companies involved as opposed to what I understand the concept of this punitive legislation to be.

Let me begin by saying that ordinarily in the Congress we have hearings. We develop legislation on big matters. We try to do it in a bipartisan way. We then mark up the bill in committee by discussing it, amending it, rewriting it. Then it comes to the floor of the Senate where we debate it and can amend it again and ultimately pass it to the other body.

That is not what is happening today. We are told there is going to be legislation presented at some point to provide \$25 billion to the three U.S. automakers. Beyond that, we know nothing. What I want to do is talk about the concept of it, and later we can talk about how the bill will actually get here, whether we can seek to amend it, and whatever else might be appropriate to try to conclude work on this matter.

Obviously, everyone is hurting these days. The car companies aren't the only folks who are hurting. Every family is hurting, especially as we have leveraged our debts. We have home mortgage debt, credit card debt, perhaps car loan debt. All of us are tightening our belts, because we appreciate the fact we have to get that debt down. That is happening in the business sector as well. One of the reasons Congress passed the so-called TARP legislation, the stabilization package that was designed to assist financial institutions, was because in some respects the financial institutions are the blood that courses through the entire economy. They provide the cash; in many cases, the credit. Unfortunately, our country runs on credit. You don't buy anything

these days without a credit card. You certainly don't buy anything big, such as a car or refrigerator, without a credit card. As a result, the question was whether banks were going to stop lending to consumers and businesses because the assets on their books were of such dubious value that they had to keep all the cash they could accumulate just to meet the law's requirements for their reserves.

What the administration decided originally was that the \$700 billion could be used to buy these troubled assets, get them off of the banks' balance sheets and, by giving them money to buy them, the banks would then have money to loan to a car dealer or the car dealer to loan to the car purchaser and the like. Ultimately, it was decided that the economy was in such a sorry state that we had to get the money infused directly into the banks and didn't have time to set up the rather complicated procedure of buying these assets. Instead, the loans currently being made are going directly to the banks and other financial institutions. Of course, the hope is that money will then be lent out to us and to businesses so that the blood which keeps the economy going, called cash, can continue to enable us to buy things.

There is some indication that is beginning to happen, although the process takes a while. There are many folks in the economy who get hurt when people don't buy as much, whether it is from lack of credit or trying to tighten their belts. I think of one company that laid off 10,000 people in one small town in Ohio. The company is called DHL. I think of Circuit City which went bankrupt recently. A lot of folks are worried about Christmas season and consumers not buying. There are all kinds of folks who are in trouble economically, businesses and families. The question is whether we should respond to those with the largest voice in Washington, DC. Certainly the three big automakers have a big voice here and a constituency that would like to make their case that they should be bailed out and that is where we should draw the line.

I have a hard time with that. Not because I don't like the car companies. I readily buy cars from them. I think it is great that they build the kind of cars I like to buy. I am not faulting them for the decisions they have been making in what they manufacture. The fact is, they are in trouble pretty much for reasons that relate to their own decisions rather than a lot of consumers out there who have gotten caught up in this credit crunch, in effect through no fault of their own, except perhaps going into debt more than they should have. The car companies have made some contracts with the United Auto Workers labor union that are literally dragging them down. It is like asking somebody to swim with a 50-pound weight around their neck. It is no wonder they can't meet their obligations under the contracts and need taxpayer

assistance. But the question is whether an average family or small business should be asked to cough up the money to transfer to an auto company that has made these deals with the union or whether the car company should find an alternative way of dealing with it.

Here is the order of magnitude I am talking about. According to the Bureau of Labor Statistics, the average hourly wage cost for the big three auto manufacturers is \$73 an hour. The average for the Japanese automakers building cars in the United States is between \$45 and \$48—substantially less. For the average manufacturing company in the country or average company, it is about \$28.48. So you can see that these legacy costs of the big auto companies are like the 50-pound weight dragging them under. It does no good for taxpayers to pour \$25 billion into the car companies and find a year later that money has been spent and yet nothing has changed to diminish their obligations. Where are they going to get the next \$25 billion and then \$25 billion after that?

The reality is, they have to change the way they are doing business in order to warrant asking taxpayers for anything. This is where the alternatives come into play. There is already a law on the books that permits companies in financial straits such as this to reorganize their business, get rid of much of their debt obligation and start over again. You are required to slim down, to be sure, in order to be more competitive. It is called reorganization under chapter 11, sometimes chapter 11 protection. It falls under the Bankruptcy Code. When this is accomplished, the contracts that the car companies have made are renegotiated in such a way that the company can show it has the ability to emerge and make money, that the contracts are not going to continue to weigh them down. That would be the benefit of taking this reorganization.

Some are more intent on preserving the status quo than being able to compete because they say things such as: Well, restructuring the business might mean there would be fewer employees. There might well be. It might be 10 percent or maybe even 20 percent fewer employees, if that is what it takes to compete successfully. There may be a number of dealerships cut. Maybe 10 or 15 percent of the dealerships will have to go away. If that is what it takes for them to compete with the Japanese automakers, then that is what should be done. We should not say those legacy costs or those built-in costs of operation should be retained and then ask the taxpayers to throw in \$25 billion to maintain something that isn't working. It is true that these costs represent future obligations as well as current and so they are going to continue unless they are wiped out by the reorganization that is provided by chapter 11.

Some people say: Well, what they need is better management, and we

here in Washington know how to manage them better. That is the last thing we want, for Congress or folks in Washington to tell them how to do their business. Under reorganization, a committee of experts assists them in designing a business plan. They have 18 months to develop a plan to move forward. They have breathing room. Basically all of the obligations are stayed. They have the opportunity to fix what is wrong, plan for the future, and then implement that plan. We wouldn't have any of that if we simply gave them the \$25 billion. They wouldn't be protected at all from any of the obligations that they have either on an ongoing basis or their future obligations.

In all chapter 11 reorganizations, pre-filing debts become unenforceable except to the extent that they are incorporated into the reorganization plan. GM has \$40 billion in long-term debt; Ford about \$136 billion. A reorganization plan, a business plan would be set forth that provides how each of those obligations is treated and, if they are too much to enable the company to go forward, then they are reduced accordingly.

A taxpayer bailout would provide none of that protection. Protecting the workers would still require negotiation with the labor unions, but some of the amount of those legacy costs could be reduced in the process. I mentioned the fact that there might be fewer dealerships. They might decide to reduce the number of brands. They would be doing so under the protection of chapter 11 rather than the current situation. A taxpayer bailout wouldn't give them any protection from State franchising laws that make it very costly to reduce the number of brands and dealerships. I have some information that when GM eliminated the Oldsmobile brand, it reportedly cost \$1 billion, and there are still litigation proceedings about whether they can do that with their dealerships.

Some are concerned about whether they could receive financing if they took chapter 11, the so-called debtor in possession financing. This is an area where the Federal Government might provide some assistance. The administration, as a matter of fact, has been talking about such assistance. But a pure taxpayer bailout wouldn't guarantee any structural reforms or provide the possibility of debtor-in-protection kind of financing. It would, in fact, through the reorganization, at least provide taxpayers with the assurance that they could get repaid if they did provide some of this money as opposed to the current proposed bailout which has absolutely no guarantee that taxpayers would receive any of their money back.

A final two quick points I wish to make. There is an argument by the car companies of who would buy a car from a company that is in chapter 11 protection. The answer is, probably the same people who are buying cars today. If I

drive down Camelback Road in Phoenix, where we have a lot of car dealerships, 6 months from now and some of those companies have asked for chapter 11 protection, I guarantee you, I will not know which ones. They will all have the same bright lights, the same eager salesmen ready to sell me something. With reorganization, you don't go out of business.

One of the myths is that this would put you out of business. If you take bankruptcy under chapter 7, you do go out of business. That is not what chapter 11 protection is at all. In fact, you are able to reorganize, and that is precisely why people would continue to buy the cars.

Not everybody is going to lose their job through reorganization. I doubt that it would be more than a fraction of the people who would lose their jobs. Doug Baird, a bankruptcy professor at the University of Chicago, recently said, in response to the number 3 million which people have been bandying about:

This three million figure is laughable . . . modern bankruptcy law is designed to protect against that.

The bottom line is, there is a law that provides protection, breathing room, and an ability to get rid of the kind of debts burdening these companies. If all we do instead is throw \$25 billion at the problem, none of this protection comes into play. None of the ability to renegotiate what is dragging them down now would occur. It would simply literally be throwing good money after bad without a justification of why these companies, as opposed to many other companies in the country, were to receive that help.

The money has to come from somewhere. It has to come from people who are working hard to make a go of it themselves. So we have to ask the kind of hard questions like this before we ask our fellow citizens to cough up the money for this kind of a bailout. I hope we will be able to do that during the debate on this legislation, which I hope we will see soon, assuming we are going to be deciding whether to vote on it this week.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

#### AMERICA: A WORK IN PROGRESS

Mr. SALAZAR. Mr. President, I rise today to celebrate this historic time in the history of the United States of America.

I give my accolades to President-elect Obama and to Vice President-elect BIDEN for their transformative and historic campaign and election.

I also recognize Senator JOHN MCCAIN as a friend and for his extraordinary contributions to our Nation. I am certain Senator MCCAIN will continue to serve as a force for good on the floor of this Chamber, as he has for so many years. I look forward to working with him.

Just a few short years ago, President-elect Barack Obama arrived in the Senate in the 109th Congress as an unlikely occupant from the Illinois State Senate.

President-elect Obama's story is an American story. The son of a mother from Kansas and a father from Kenya, he learned the values of hard work and service to others. He studied at some of our Nation's finest schools but chose to apply his immeasurable talents to serving the people: a community organizer, an Illinois State senator, a U.S. Senator, and soon to be the President of these United States of America.

President-elect Obama is, in fact, the personification of the American dream and the idea of what it is to be an American. His election is also a reminder of just how far our country has come.

America has always been a work in progress—an idea that generation after generation has worked to perfect. We must never forget that for over 250 years on this continent, and through the first century of this Nation, we lived in a society where slavery was allowed.

It took the bloodiest war of our country's history—the Civil War—where over a half million Americans were killed on our own soil, to bring about an end to slavery and to usher in the 13th, 14th, and 15th amendments of our Constitution. These three amendments, in my view, are a significant part of the bedrock proposition that all constitutional liberties are endowed upon all Americans without exception.

Unfortunately, neither the Civil War nor these amendments brought an end to the division or discrimination that were a part of our Nation's past.

In 1896, in *Plessy v. Ferguson*, our U.S. Supreme Court sanctioned a system of segregation under the law. The Court upheld an 1890 Louisiana law which mandated racially segregated but equal railroad carriages. It was a dark period in our Nation's history.

"Jim Crow" laws extended across the South. In the Southwest, Mexican Americans were also systematically denied access to "White Only" restrooms and other public places. In the South, the signs read: "No Blacks Allowed." In the Southwest in many places the signs read: "No Mexicans Allowed."

There were, however, many voices who knew that an America divided by race was an America which could not stand. In the now infamous *Plessy* case, Justice Harlan, in the dissent to that case that sanctioned segregation under the laws, said the following:

The destinies of the races, in this country, are indissolubly linked together and the interests of both require that the common government law shall not permit the seeds of race hate to be planted under the sanction of law.

It took more than a half century of an America in progress to revisit its decision in *Plessy v. Ferguson* and to begin achieving the vision of Justice

Harlan. It was not until 1920 that our Constitution guaranteed the right to vote to women. In fact, for the first several hundred years women were not entitled to vote in the United States of America. It was not until 1954, in *Brown v. Board of Education*, that the Supreme Court, under the able leadership of Chief Justice Earl Warren, struck down the "separate but equal" doctrine as unconstitutional under the 14th amendment. Thurgood Marshall, another American hero of ours who gave his life for equal opportunity for all Americans, argued that case before the U.S. Supreme Court.

But even after the 1954 decision in *Brown v. Board of Education*, there was much more work to do. The 15th amendment, ratified in 1870, guaranteed all citizens the right to vote regardless of race. But almost a century later—in 1965—only a very small percentage of African Americans were registered to vote in States such as Mississippi and Alabama.

In 1965, for example, in Mississippi, only 6.7 percent—6.7 percent—of African Americans were registered to vote. In Alabama, less than 20 percent of African Americans were registered to vote.

To prevent people from voting, there were literacy tests, poll taxes, and language barriers, not to mention voter intimidation and harassment, which occurred in those days in the 1960s.

But the 1960s also brought change to America and ensured that we continued as an America in progress. In 1964, President Lyndon Johnson signed the Civil Rights Act. In signing that law, he said:

We believe that all men are created equal, yet many are denied equal treatment. We believe that all men have certain unalienable rights, yet many Americans do not enjoy those rights. We believe that all men are entitled to the blessings of liberty, yet millions are being deprived of those blessings, not because of their own failures, but because of color of the skin.

Our work, President Johnson said that day, was not done. He was right.

In early 1965, Jimmy Lee Jackson was shot by a State trooper during a civil rights demonstration.

On March 7, in Selma, AL, more than 500 nonviolent civil rights marchers attempting a 54-mile march to the State capital to call for voting rights were confronted by an aggressive assault by authorities. That day, still known and remembered as Bloody Sunday, stirred a nation to do what it knew was right.

President Johnson, in those days, called for the country to summon its better angels. He said:

At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama.

President Johnson continued:

This time, on this issue, there must be no delay, no hesitation and no compromise with our purpose. We cannot, we must not, refuse to protect the right of every American to