was wrongly procured and any Article of Impeachment based upon that testimony must be dismissed.

FIFTH AFFIRMATIVE DEFENSE TO ARTICLE III

The allegations in Article III do not rise to the level of ''high Crimes and Misdemeanors'' because they address purely personal conduct that is not criminal. Prior impeachment precedent has never before sought to convict and remove a judge from office based upon personal non-criminal conduct. The very nature of the impeachment process is focused first and foremost upon the official actions of judges. Where allegations in the Articles of Impeachment address non-official personal acts by judges, longstanding precedent has limited ''high Crimes and Misdemeanors'' to those personal acts that are also indictable offenses. Article III ignores this precedent in seeking to convict and remove Judge Porteous from office for non-official, non-criminal acts. While it is possible that the House of Representatives would claim that the actions taken in relation to the personal bankruptcy were indictable offenses, this claim would conflict with the multi-year investigation of the United States Department of Justice which concluded that prosecution was not warranted in light of the concern that the issues related to the bankruptcy were not material. It would also conflict with the criminal bankruptcy statutes, which require that any alleged false statement not be made simply knowingly or willfully, but fraudulently, before criminal liability may attach to such conduct. In framing Article III, the House of Representatives is seeking to convict and remove a sitting United States District Judge based upon a lowered standard, one that does not constitute ''high Crimes and Misdemeanors,'' and one that has never before provided a basis for impeachment, much less conviction and removal from office. Article III of the Articles of Impeachment should be dismissed.

ARTICLE IV

ANSWER TO ARTICLE IV

Without waiving his affirmative defenses, Judge Porteous denies that he knowingly made material false statements in order to obtain the office of United States District Court Judge.

FIRST AFFIRMATIVE DEFENSE TO ARTICLE IV

Article IV does not allege an offense that supports the conviction and removal of a sitting Article III United States District Judge under the impeachment clause of the Constitution. Article II, Section 4 of the Constitution provides that the civil officers shall be removed from office only upon ''Impeachment for, and Conviction of, Treason, Bribery or other high Crimes and Misdemeanors.'' The charges in the articles against Judge Porteous do not rise to the constitutionally required level of ''high Crimes and Misdemeanors.'' Because Article IV does not meet the rigorous constitutional standard for conviction and removal, it should be dismissed.

SECOND AFFIRMATIVE DEFENSE TO ARTICLE IV

Article IV is unconstitutionally vague. No reasonable person could know what specific charges are being leveled against Judge Porteous or what allegations rise to the level of ''high Crimes and Misdemeanors'' as required by the Constitution. In essence, Article IV alleges that Judge Porteous gave false answers on various forms that were presented in connection with the background investigation that was used to evaluate his appointment and confirmation as a United States District Judge. However, it is not clear whether Article IV contends that simply providing a single one of the alleged false statements is a ''high Crime or Misdemeanor'' or whether the ''high Crime or Misdemeanor'' is based upon all of the acts alleged, i.e., several alleged false statements and other conduct alleged. Moreover, the nature of the questions on the forms that are the focus of this Article themselves add to the vagueness problem.

As we set forth in the SECOND AFFIRMATIVE DEFENSE TO ARTICLE I, it is a fundamental principle of our law and the Constitution that a person has a right to know what specific charges he is facing. Without such notice, no one can prepare the defense to which every person is entitled. The law and the Constitution also require that the charges provide adequate notice to jurors so they may know the basis for the vote they must make. Without a definite and specific identification of specific ''high Crime and Misdemeanor'' upon which the Article of Impeachment is grounded, a trial becomes a moving target for the accused.

Article IV fails to provide the required definite and specific identification. As an article of impeachment, it is constitutionally defective and should be dismissed.

THIRD AFFIRMATIVE DEFENSE TO ARTICLE IV

For the reasons set forth in the THIRD AFFIRMATIVE DEFENSE TO ARTICLE I, Article IV is constitutionally defective because it charges multiple instances of alleged acts of making false statements in one article, which makes it impossible for the Senate to comply with the Constitutional mandate that any conviction be by the concurrence of the two-thirds of the members. Accordingly, Article IV should fail.

FOURTH AFFIRMATIVE DEFENSE TO ARTICLE IV

Article IV cannot support the conviction and removal of an Article III United States District Judge because the alleged conduct preceded Judge Porteous' service as a United States District Judge. The constitutional impeachment mechanism provides a procedure to remove a judge for the commission of ''high Crimes and Misdemeanors'' while in federal office. The impeachment precedents do not provide a single example of an Article of Impeachment that has ever been based upon conduct that allegedly occurred prior to the impeached officer's entry into federal office. In contrast, the precedents suggest that while the House of Representatives may have investigated such allegations, that such conduct has never provided the basis for an impeachment and, significantly, the House has, on occasion, refused to take action because the allegations preceded the officer's entry into federal service. Moreover, while Judge Porteous contends that any attempt to use Article III's ''good behaviour'' clause to lower the standard necessary to impeach a federal judge is unsupported by the Constitution's impeachment clause, the House has clearly applied that lower standard in returning the four Articles of Impeachment. To the extent that the House has relied on the ''good behaviour'' clause, that clause states that judges ''shall hold their offices during good behaviour'' and clearly relates to a judge's conduct while in federal judicial office. Because the allegations of Article IV relate to a period prior to Judge Porteous taking the federal bench, Article IV must be dismissed.

Respectfully submitted,

RICHARD W. WESTLING,
CHELSEA S. RICE,
JACKSON B. BOYD,
ANTHONY J BURBA,
Ober, Kaler, Grimes & Shriver, P.C.
SAMUEL S. DALTON,
Attorney at Law.
RÉMY VOISIN STARNS,
Attorney At Law PLLC.

Counsel for G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana.

Submitted: April 7, 2010.

The ACTING PRESIDENT pro tempore. The Court of Impeachment is adjourned.

SCHEDULE

Mr. REID. Mr. President, today, the Senate convened at 2 p.m. and will be in a period of morning business until 3 p.m., with the time equally divided and controlled between the two leaders or their designees.

At 3 p.m., the Senate will resume the motion to proceed to H.R. 4851. The Republican leader will control the time between 5 p.m. and 5:15 p.m. and the majority leader will control the time from 5:15 p.m. until 5:30 p.m.

At 5:30 p.m., the Senate will proceed to a rollcall vote on the motion to invoke cloture on the motion to proceed to H.R. 4851. That will be the first vote of the day.

At 3:30 p.m., we will interrupt debate for a moment of silence to honor the coal miners killed in last week's explosion at Upper Big Branch Mine in West Virginia.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we proceed to morning business as previously outlined and that Senators be permitted to speak for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR MOMENT OF SILENCE

Mr. REID. Mr. President, I ask unanimous consent that at 3:30 p.m., the Senate observe a moment of silence in solidarity with the people of West Virginia regarding the mining accident.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECENT TRAGEDIES

Mr. REID. Mr. President, I wish to extend my personal condolences to those who suffered the two tragedies while we were back home—one here in America and one halfway around the world.

The mining tragedy in West Virginia hit home for me. It brought back a lot of memories. When I was less than 1 week old, my dad was working in a mine in a place called Chloride, AZ, which was just over the Colorado River from Searchlight. He and another man were sinking a shaft, and in those days you didn't have all the protections you have today. They had drilled some holes—seven to be exact—and always, when the holes are lit, both miners

don't stay there. They leave and one remains to light the hole. So Carl Myers, who was working with my dad, went to the next level, as a matter of fact, and waited until the holes were lit, and then my dad would come up and meet him and the holes would go off.

What happened was that one of the pieces of fuse was defective, and it set off one of the holes prematurely. It blew my dad's light out and blew one of the soles off his shoe. He was hurt and in a state of shock. What the miners did in those days, in a shaft, is they would have a sinking ladder about 10 feet long and they would take it up before the holes went off and then they would climb out on that ladder. My dad, even though he was hurt, knew he had to get out of that mine because he knew there were six other holes burning. They were covered with muck. He had to get out of there, so he put the ladder down and tried to climb out, but it kept falling over. His mind wasn't working well and he couldn't understand why that was, but the blast had blown one of the legs off the ladder, so it kept tipping over.

The man that was on the next level, knowing how many holes had been drilled and knowing only one had gone off and that there were six more to go, in spite of that, came down and helped carry my dad, who was much bigger than he was, out of that mine. He got a medal for heroism, and the incident was written up by the great journalist Lowell Thomas.

I can remember as a boy my mother still picking rocks out of my dad's back as a result of that blast. In a book I wrote about Searchlight, I talk about a number of the deaths in the mines at Searchlight. My dad worked quite a bit at Blossom, and the dad of one of my friends I grew up with was killed in that mine. My dad carried him out of that hole. So I have some knowledge about how people feel when these mining accidents occur.

As I said, this tragedy brought back a lot of memories, and I extend my condolences to all the people of West Virginia, through Governor Manchin, Senator BYRD, and Senator ROCKEFELLER. I sympathize with the people of West Virginia for their loss.

I also extend my condolences to the people of Poland. That plane carried 96 souls—parents, husbands, wives, and friends. It carried that nation's President, its First Lady, its Deputy Foreign Minister, lawmakers, their military chief of staff, and so many other military and civilian leaders. The tragic loss is unthinkable, and America grieves alongside our friends in Poland, especially when you understand where they were going and why they were going there—20,000 Poles had been killed by the Russians even before war on Germany was declared by us.

EXPRESSION OF APPRECIATION TO CHAPLAIN BLACK

Mr. REID. Mr. President, I wish to welcome back my colleagues. I know each of us cherishes the time we get to spend at home and the face-to-face conversations we have with our neighbors and constituents.

Prior to beginning my remarks, because he is in the Chamber, I wish to extend my appreciation to our Chaplain, Admiral Black. He has been so concerned about my family as a result of the accident that occurred in the Presiding Officer's State. He has communicated with my wife personally, he has prayed for her personally and publicly and in different groups, and it just indicates what a family we are in the Senate. I personally appreciate the thoughts and more than one personal conversation with Chaplain Black about Landra.

HEALTH CARE REFORM

Mr. REID. Mr. President, last December, just minutes before the Senate passed the health care reform bill that President Obama signed into law last month, my friend, the Republican leader, predicted we would get an earful when we got home, and he was right. Everywhere I went in Nevada, from the two big cities of Reno and Las Vegas, to Elko and Carson City and my hometown of Searchlight, Nevadans, young and old—people, in general—came up to me and said: Thank you—numerous people, without any exaggeration.

One mother told me how grateful she was she could finally cover her child's health care. Her child has juvenile diabetes. Parents such as she told me how grateful they were that they would be able to keep their kids on their insurance until they are 26 years old. Out-of-work Nevadans—and there is more than one I would like to acknowledge—explained to me how grateful they were that finally they will be able to afford their own health care while they try to find a full-time job.

Seniors, individually and in groups, told me how grateful they are now that they will not have to worry about whether they are going to have to split a pill or take a pill because the doughnut hole has been filled. Everyone—every senior citizen in America, every Social Security recipient—understands what the doughnut hole was and isn't anymore.

Many small businesses told me that because of the tax cuts this Congress passed and our President signed into law because of the health care bill this year, they will be able to afford health insurance for the first time in their lives for their employees—24,000 of those small businesses in Nevada.

These people haven't been fooled by the opposition's strategy of myths and misinformation. They aren't frightened by the campaign of fear and false cries of socialism.

I know I am not the only one who got an earful of thanks from constituents whose lives are changing for the better because of this historic reform. I also heard one other thing everywhere I went: This law should not be repealed.

A week ago this Sunday, I returned from Salt Lake City to Las Vegas, and the front page of the Salt Lake Tribune had a story, which I will paraphrase, but basically it said that those people in Utah are no longer talking about repealing the bill; they are talking about trying to improve the bill.

It is hard for people to talk about repealing this bill which gives such immediate benefits to the American people. It is difficult to try to have someone say I would like this bill repealed because I do not agree with the $1.3 trillion by which this legislation is going to reduce the debt of this country in the second 10 years—$142 billion in the first 10 years.

I explained to people at home, if you have a fight in a ring, you have a referee, a referee there to be as fair as they can to make sure it is a fair fight. In this health care debate, we had such an entity in the ring with us as we battled, Democrats and Republicans. It was set up many years ago, this referee; it was called the Congressional Budget Office. It is not run by Republicans or Democrats. It is there to be fair. It is their determination this legislation over the first 10 years would save $142 billion, the second 10 years would reduce the debt by a further $1.3 trillion.

People all over America, and Nevadans, now have more control than ever over their health, more protection from insurance companies, and more opportunity than ever before to have a healthy life.

As it relates to the economy, Nevadans know that health reform is economic reform. It will save families money in the short run and save our country money in the long run. But they also know we have to do more. We have to make more investments today to help our economy run better tomorrow. One of the best ways to do that is by creating green jobs, and that has worked so well, jobs right here at home that can never be outsourced, jobs that strengthen our Nation's economic, environmental and national safety and security.

Boulder City is a city in Nevada. It was built because of the Boulder Dam, now Hoover Dam. It is a great and beautiful little city. It is the only city in Nevada that has a growth ordinance. But they have also been very farsighted. I extend my appreciation to Mayor Tobler and all the city council. They have set up a zone where they are creating green jobs, and lots of green jobs. I went there. It is between Railroad Pass and Searchlight and part of it is Boulder City. It was amazing what we saw there. For acre after acre, workers, men and women in their hard hats and their orange vests, were placing 1 million solar panels in place—1 million in the desert to produce enough electricity for about 45,000 homes. It is