Yet there is one group of energy producers that are not being prosecuted for killing birds: wind-power companies. And wind-powered turbines are killing a vast number of birds every year.

A July 2008 study of the wind farm at Altamont Pass, Calif., estimated that its turbines kill an average of 80 golden eagles per year. The study, funded by the Alameda County Community Development Agency, also estimated that about 10,000 birds—nearly all protected by the migratory bird act—are being whacked every year at Altamont.

Altamont's turbines, located about 30 miles east of Oakland, Calif., kill more than 100 times as many birds as Exxon's tanks, and they do so every year. But the Altamont Pass wind farm does not face the same threat of prosecution, even though the bird kills at Altamont have been repeatedly documented by biologists since the mid-1990s.

The number of birds killed by wind turbines is highly variable. And biologists believe Altamont, which uses older turbine technology, may be the worst example. But that said, the carnage there likely represents only a fraction of the number of birds killed by windmills. Michael Fry of the American Bird Conservancy estimates that U.S. wind turbines kill between 75,000 and 275,000 birds per year. Yet the Justice Department is not bringing cases against wind companies.

''Somebody has given the wind industry a get-out-of-jail-free card,'' Mr. Fry told me. ''If there were even one prosecution,'' he added, the wind industry would be forced to take the issue seriously.

According to the American Wind Energy Association, the industry's trade association, each megawatt of installed wind-power results in the killing of between one and six birds per year. At the end of 2008, the U.S. had about 25,000 megawatts of wind turbines.

By 2030, environmental and lobby groups are pushing for the U.S. to be producing 20% of its electricity from wind. Meeting that goal, according to the Department of Energy, will require the U.S. to have about 300,000 megawatts of wind capacity, a 12-fold increase over 2008 levels. If that target is achieved, we can expect some 300,000 birds, at the least, to be killed by wind turbines each year.

On its Web site, the Wind Energy Association says that bird kills by wind turbines are a ''very small fraction of those caused by other commonly accepted human activities and structures—house cats kill an estimated one billion birds annually.'' That may be true, but it is not much of a defense. When cats kill birds, federal law doesn't require marching them to our courthouses to hold them responsible.

During the late 1980s and early '90s, Rob Lee was one of the Fish and Wildlife Service's lead law-enforcement investigators on the problem of bird kills in Western oil fields. Now retired and living in Lubbock, Texas, Mr. Lee tells me that solving the problem in the oil fields ''was easy and cheap.'' The oil companies only had to put netting over their tanks and waste facilities.

Why aren't wind companies prosecuted for killing eagles and other birds? ''The fix here is not easy or cheap,'' Mr. Lee told me. He added that he doesn't expect to see any prosecutions of the politically correct wind industry.

This is a double standard that more people—and not just bird lovers—should be paying attention to. In protecting America's wildlife, federal law-enforcement officials are turning a blind eye to the harm done by ''green'' energy.

RECESS APPOINTMENTS

Mr. ALEXANDER. Madam President, last Friday, a three-judge panel of the U.S. Court of Appeals for the District of Columbia issued a decision that basically said the era of recess appointments is over. The three-judge court unanimously ruled that President Obama, on January 4, 2012, made three recess appointments which were unconstitutional, and, therefore, said the court, these three individuals—one who is already gone from the NLRB—so two NLRB individuals who were in the case that was before this court hold their seats unconstitutionally.

The Chairman of the National Labor Relations Board nevertheless said, in effect, that the NLRB is open for business. I respectfully suggest that a different sign should go up—''help wanted; nominations needed''—and that the two NLRB members whose recess appointments were unconstitutional should leave the NLRB because the decisions in which they participated—and there were 219 of them—cannot be valid if they are challenged, just as this 1 decision was vacated, because since they were unconstitutionally there, the NLRB did not have a quorum, and therefore, when those decisions are challenged, under the ruling of this court, those decisions cannot stand. They are important decisions. As the Senator from Wyoming undoubtedly will mention more about, they involved some controversial issues.

Several observers have said the court's decision is broad. In fact, it is a breathtaking decision. It is a bold decision. But by all standards, it seems to be the correct decision. This is why I say that if you take an American history book in one hand and the U.S. Constitution in the other and you read them both at the same time, you see that the Constitution, which was ratified a long time ago—before 1800—has in it article II, section 2, which says that the President may make nominations of a number of people, such as soon-to-be Secretary of State KERRY, who was confirmed yesterday—a number of people—but that those nominations require the advice and consent of the Senate.

We have done some work here in the Senate over the last 2 years, and we have improved the nomination process. We have eliminated a number of the nominations that are subject to advice and consent. We have made it easier for people to move through, and we have expedited a large number of those. For example, 273 of the 1,100 nominations that require advice and consent can be sent right to the desk by the President, and if a single Senator does not want it to go through the entire process, after the relevant committee gets all the relevant information, the majority leader can just move, after 10 days, to confirm that person. But if it is a Secretary of State or if it is a Secretary of Defense or if it is a member of the National Labor Relations Board, the Senate has a constitutional responsibility to consider those nominees.

I would suspect that the advice and consent role of the Senate is probably our best known power. It is the title of a book that Allen Drury wrote that came out, I think, in the late 1950s. Most Americans know about the advice and consent role of the Senate, and they know why we have it. We have it because our Founders put their necks on the line in a revolution against a King, and they did not want an imperial Presidency. So they put into place a system of checks and balances, which is being exercised this very moment because of the courts saying that the President's use of the—I ask unanimous consent for another 3 minutes, please.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. ALEXANDER. Madam President, I believe we have 30 minutes for this discussion; is that right?

The ACTING PRESIDENT pro tempore. Twenty-three minutes remains.

Mr. ALEXANDER. Yes. I thank the Chair.

So as we look back over the history of checks and balances and the imperial Presidency and the importance of making certain we do not have an imperial Presidency, we are reminded the reason we did that was a single word: liberty—the revulsion by the Founders who created this system and who then made sure our President was a President, not a King. And George Washington, who exercised great modesty and restraint, impressed into the American character his own modesty and restraint when he asked that he be called ''Mr. President,'' not something more grand, when he retired to Mount Vernon after two terms, when he could have been President of the United States for life.

So that is what the Constitution talked about. It said that for these important positions, the President may nominate, but if the Senate does not confirm them, they cannot serve.

There is also a provision toward the end of article II, section 2 about recess appointments. Here is what the court said when it got out its American history book and began to compare that with the Constitution: This was written for a time when it took Senator Houston of Texas—I ask, Madam President, that I have time to speak in morning business.

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

Mr. ALEXANDER. So this was written at a time when Senator Sam Houston of Texas had to ride a horse, get on a steamboat, get in a stagecoach, and make his way to Washington over a period of 5 or 6 or 7 weeks, and the same to go home; and when President Polk had a vacancy in 1846 in the Attorney General's Office and wrote a letter to someone in New Hampshire and invited him to take the position and that took 2 or 3 weeks to get the letter, and then in 2 or 3 weeks back came the answer: No.

Communication was a little different back then, so it was necessary, for the

government to operate, to put into the Constitution that when the Congress, the Senate was home—which meant all over this big, grand country, before the days of communication and travel—that during a 4- or 5- or 6-month period, the President could appoint someone to that position during the recess, the Constitution says.

The Constitution says, according to the court, that when a vacancy occurs during the recess, the President may make an appointment during that recess. So the court was talking about only one recess, and that is the one between the annual sessions of Congress—the one between when we end in 2012 and start in 2013.

Since that time, starting right after the Civil War, the President and Congress have been inventing these various ideas about other recesses. We even got down to the idea where we created having a recess for 3 days and then having a pro forma session to prevent the President from making any, quote, recess appointment during that time. But what the court has said is that all that does not really matter, that the only recess during which a President may make an appointment is between the end of an annual session and the beginning of the next.

I believe the ruling is correct. I believe it will be affirmed. I have no idea whether the Supreme Court will affirm it in whole, but surely they will at least say that the Senate itself—not the President—will decide when the Senate is in session and when the Senate is in recess, and if they do that, the era of the recess appointment is likely over. There is no need for a recess appointment in a modern era where the Senate is in session almost all the time. And the recess appointment has become used by Presidents to get around the checks and balances that are in article II, section 2 of the Constitution that provide liberty for the citizens of this country by avoiding an imperial Presidency.

So I call on the NLRB to take down the ''open for business'' sign and put up one that says ''help wanted; nominations accepted.'' The NLRB can do a number of things, but the Board cannot as long as it does not have a quorum. And the two members who are there unconstitutionally should leave their positions immediately, and accept no more pay.

Madam President, the Senator from Wyoming has been a leader on this issue, and I would like to now yield the floor and listen to his remarks.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. BARRASSO. Madam President, I agree completely with my colleague, who has really shown significant leadership in this area, worked closely on it. He has been a Governor for two terms, knows about appointments, knows about advice and consent.

What we have seen from this President of the United States, just last January, is a flagrant disregard for the Constitution and the laws of this land by bypassing the Senate and appointing three members to the National Labor Relations Board, claiming—claiming—the Senate was in recess, even though the Senate was meeting regularly in pro forma sessions. So last week the U.S. Court of Appeals for the District of Columbia ruled unanimously—unanimously—that those unilateral appointments were unconstitutional.

It is interesting because I saw the whip of the Senate Democrats on one of the television shows this weekend, and he said: Well, we need to make sure people have plenty of time for hearings. They did not have hearings.

Madam President, the Democrats are in control of the Senate. They could have called hearings but chose not to. The President let these vacancies sit for long periods of time, and only in the middle of December of 2011 did he even put names up and then summarily, just a few weeks later, went and unilaterally appointed them. The Senate was really never consulted. The Senate did not have an opportunity to advise and consent. That is why I use the word ''flagrant'' in terms of the President's bypassing of the Senate in making these alleged recess appointments.

Well, over the weekend, newspapers across this country reported on this consequential ruling by the court and what it will mean for the administration going forward.

The Wall Street Journal called it ''Obama's Abuse of Power''—abuse—abuse of power.

Politico said: ''President Obama's Recess Appointment Bet Sours.''

Investor's Business Daily reported: ''Court Finally Reins in Obama's Imperial Presidency.''

The Washington Post explained: ''Court Says Obama Exceeded Authority in Making Appointments.''

The Los Angeles Times reported: ''Court Rules Obama's Recess [Appointments] Are Illegal''—illegal.

After we go on reading through all of this, after this court ruling, the White House should finally realize—finally realize—that the President's power to use recess appointments is not unlimited.

The court's decision reaffirms that America's Founding Fathers provided the Senate—the Senate—a responsibility, a duty to advise and consent, and they did it with the strong, coequal responsibility on important nominations.

Well, let's take a look at what the U.S. Court of Appeals for the District of Columbia actually ruled when they talked about the President's so-called recess appointments.

The court said:

> An interpretation of ''the Recess'' that permits the President to decide when the Senate is in recess would demolish—

''Demolish,'' the court said—

> the checks and balances inherent in the advice-and-consent requirement, giving the President free rein to appoint his desired nominees at any time he pleases, whether that time be a weekend, lunch, or even when the Senate is in session and he is merely displeased with its inaction.

The court went on to say: ''This cannot be the law.''

I agree completely with the court, which is why I am here on the floor of the Senate with my colleagues. Senator JOHANNS, also a former Governor, is with us today. These are individuals who understand the importance of advice and consent. And again, as to Senator JOHANNS, he has been a Cabinet member. He has been subjected to the process of advice and consent, and he knows how important that is in the balance of power, in how Washington and our Nation are supposed to work by the Constitution.

As the court wrote, ''Allowing the President to define the scope of his own appointments power would eviscerate the Constitution's separation of powers.''

The court added, ''It would make little sense to extend [the recess appointment authority] to any intrasession break'' because the ability to make recess appointments would swallow the advice-and-consent role of the Senate.

Because of the President's illegitimate appointments, the NLRB is now operating under a cloud of uncertainty all across the country in all of their regulations and rules. That is why shortly after the appointments, the President's appointees to the NLRB—Sharon Block, Terence Flynn, and Richard Griffin—began issuing orders and opinions in labor disputes. So they have been doing that now for over a year.

All of those decisions that the Board issued by a quorum made up by those members—there were over 200 of those rulings coming out in the past year—are subject to challenge and to invalidation. We have heard from Senator ALEXANDER on one of those having to do with micro unions. Another had to do with collection of union dues even after the contracts had expired. On and on and on, numbers of rulings, over 200 have been made. They are all subject to challenge and invalidation because there was no legitimate quorum for the National Labor Relations Board. At this moment it is practically impossible for anyone to know which NLRB decisions are valid and which are not. It is my opinion that none of them should be valid. But it is time to stop this regulatory train wreck from getting any worse. That is why this week I am introducing a bill that will freeze any decisions, any regulations, any rulings made by this unconstitutionally appointed and invalid quorum of the National Labor Relations Board. Until we have final resolution from the courts, the NLRB should not be able to move forward and create even more uncertainty across this country.

We would not be in this position if the President of the United States had done what legally he is mandated to

do, which is work with Congress and follow the Constitution. I hope that court ruling serves as a wakeup call for President Obama and for his entire administration. Instead of going around Congress, instead of going around the Constitution, it is time for the Obama administration to work with us on nominations.

I see the Senator from Nebraska is here, the former Governor, former Cabinet member. I look forward to hearing his comments as well.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. JOHANNS. Madam President, I rise today, first of all, to say thank you to Senator BARRASSO and Senator ALEXANDER for speaking so forcefully on this issue. All of us in this body are elected officials and we take an oath. In that oath, we raise our right hand and we promise our Nation that we will uphold the Constitution of the United States, this very sacred document that has so soundly guided our great country from one decade to another, one century to another, one generation to another.

In fact, many of my colleagues in Congress took that oath earlier this month. Just 10 days ago, President Obama took the Presidential oath of office with great pomp and circumstance. We were all on the platform with him. He promised the Nation that he would preserve and defend the Constitution of the United States. But I fear that now what we are seeing is a flaunting of that very document.

You see, the DC Court of Appeals ruled that the President violated the Constitution with his appointment of three members to the National Labor Relations Board. I read the opinion. I saw no other solution than to ask these individuals to leave. The truth of the matter is they are not constitutionally there and need to leave.

This request was not about a personal preference or an attitude about any one individual. It was not about their qualifications. It was about the oath of office we take. And that oath of office says we will uphold the Constitution. The NLRB appointments were unconstitutional because the President only has the power to bypass our advice-and-consent role here in the Senate under the language of the Constitution. The court unequivocally found that the appointments were made last January while the Senate was not in recess, and were therefore void. Therefore, the President could not use the recess appointments clause of the Constitution to appoint these individuals. The ruling correctly concludes: ''Allowing the President to define the scope of his own appointments power would eviscerate the Constitution's separation of powers.''

The separation of powers is a critical safeguard to ensure that one branch of government does not overstep the other. The court goes on to say that allowing these nominations to stand ''would wholly defeat the purpose of the Framers in the careful separation of powers.''

Additionally, because these appointments were unconstitutional, the board lacked the quorum necessary to make decisions over the past year. This calls into question over 200 rulings of the board since last January. I personally believe that there is no doubt, if they are not constitutionally there, if they are there violating the Constitution, then all of their rulings, all of their regulations, all of their actions as a board are invalid and void.

That is why I wrote last Friday to the Government Accountability Office asking them to report to us every single decision they had made that was in excess of their powers to be there. You would think it would be common sense that the board would suspend all further action. You know, as a former member of the Cabinet, it never occurred to me that I had the right to ignore court decisions. I cannot imagine. The Chairman of the NLRB said this, ''The board respectfully disagrees with the decision.'' The Chairman indicates they will continue to conduct business as usual, even though a unanimous appeals court has deemed the appointments of all but one member of the board to be unconstitutional. I find their action absolutely appalling. Decisions by the NLRB are felt across the country.

It is not fair for the Board to say to the court: Go pound sand, which is exactly what they are telling this court. It is already awful that 200 litigants now have to go through the time and expense to appeal their rulings. Instead of continuing business as usual and issuing more bogus rulings, the Board should recognize that it is time to leave and to honor the Constitution.

I will wrap up with this. The D.C. appeals court ruling was a victory for our system of government. I believe it was a victory for the Constitution. It ensures that no one, including the President of the United States, is above the Constitution. I simply ask the NLRB, its members who were unconstitutionally appointed, to recognize the sanctity of our Constitution and vacate their offices immediately. Leave. Let us in the Senate have the powers granted to us by the U.S. Constitution to offer advice and consent to the President of the United States.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

(The remarks of Mrs. GILLIBRAND pertaining to the introduction of S. 179 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

EXTENSION OF MORNING BUSINESS

Mrs. GILLIBRAND. Madam President, I ask unanimous consent that the period of morning business be extended until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each.

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

Mrs. GILLIBRAND. I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. BALDWIN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Missouri is recognized.

(The remarks of Mr. BLUNT pertaining to the introduction of S. 188 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BLUNT. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HEINRICH). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

FAREWELL TO THE SENATE

Mr. KERRY. Mr. President, I want to begin by thanking my colleagues—all of them—for their unbelievably generous comments to me personally, in the committee, on the floor, and in the halls and at meetings over the course of the last weeks. I will always be grateful for our friendships.

I thank my wife Teresa, who is here with us, and my entire family for their unbelievable support through this journey.

Five times Massachusetts has voted to send me to the U.S. Senate. Yesterday, nearly three decades after the people of Massachusetts first voted me into this office, the people with whom I work in the Senate voted me out of it. As always, I accept the Senate's sound judgment.

Eight years ago, I admit that I had a slightly different plan to leave the Senate, but 61 million Americans voted that they wanted me to stay here with you. So staying here I learned about humility, and I learned that sometimes the greatest lesson in life comes not from victory but from dusting oneself off after defeat and starting over when you get knocked down.

I was reminded throughout this journey of something that is often said but not always fully appreciated: All of us Senators are only as good as our staff—a staff that gives up their late nights and weekends, postpones vacations, doesn't get home in time to tuck children into bed, and all of those lost moments because they are here helping us serve. They are not elected. They didn't get into public service to get