# LEGACY MEMORANDUM

**TO:** Senator Rockefeller
**FROM:** Courtney Scarbin and Mark Libell
**DATE:** October 31, 2014
**RE:** Your Legacy Fighting Inequality and Excess

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Senator, this memo highlights some of your efforts to combat corporate greed, and other excess, that has led to a growing divide between rich and poor in this country. This memo is shorter than other legacy memos, because much of your work is already covered in memos from the Commerce Committee and on health care, energy, veterans' affairs and child welfare. Instead, this memo will highlight your efforts in a few areas, untouched by those memos, which will give readers a picture of your unwavering commitment to speaking out against excess where you have seen it. The topics in this memo include your work in:

- The tax arena;
- In response to corporate scandal;
- On the minimum wage; and
- Unemployment benefits.

## TAXES

As the highest ranking West Virginian ever to serve on the Senate Finance Committee, you have had a seat at the table for every major tax discussion over the last three decades. During this time, you have seen wealthy individuals and corporations (who can afford lawyers and accountants) use the tax code as a tool for expanding their wealth.

Many high-income Americans are paying less in taxes than middle-class Americans pay in taxes.  Nearly one-quarter of all millionaires (about 55,000 taxpayers) face a tax rate that is lower than millions of middle-income taxpayers.  This is fundamentally unfair.  The wealthiest 1-in-1,000 taxpayers pay barely a quarter of their income in federal income and payroll taxes today—half of what they would have contributed in 1960.  The country prospered after World War II in an era with rates much higher than those paid today.  Of millionaires in 2009, a full 22,000 households making more than $1 million annually paid less than 15 percent of their income in income taxes — and 1,470 managed to paid no federal income taxes on their million-plus-dollar incomes.

Corporate taxes are no different.  Corporate taxes paid as a share of corporate profits are at their lowest level in at least 40 years. Total corporate federal taxes paid fell to 12.1 percent of profits earned from activities within the U.S. in FY 2011, according to the CBO.  That's the lowest level since at least 1972.  And well below the 25.6 percent companies paid on average from 1987 to 2008.

Most countries with lower corporate tax rates than the U.S. make up for this with higher taxes elsewhere.  Great Britain, for example, recently lowered corporate rates, but more than offset for the revenue loss by raising taxes on upper income earners and raising its Value Added Tax (VAT).

The last major overhaul of the tax code came in 1986. You said at that time that "we have … a system that is a plaything for tax lawyers and accountants, and a nightmare for everyone else; and a system that is inordinately concerned about easing the tax burden on the wealthy few."

While the 1986 tax reform law was designed to close loopholes, the following 28 years have seen more loopholes put in place, leading to renewed inequality in the tax code today.

**Clinton-Era Budgets**

The election of Bill Clinton in 1992 saw the Democratic Congress try to perform a balancing act of funding Democratic priorities while working to balance the budget. Every year between 1970 and 1997 had a budget deficit. President Clinton's final four years in office all brought with them budget surpluses. Getting to a surplus was not easy, and you were vocal in the budget fights of the Clinton years.

Democrats had their work cut out for them in 1993. President Clinton inherited a $300 billion budget deficit that year, and the country was facing an unemployment rate that was as high as 7.5 percent in 1992. According to the Center for American Progress:

> *While labor productivity increased 17 percent in the 1980s, real average hourly earnings in December 1992 were less than they were when President Ronald Reagan took office in 1981. At the same time the cost of health care was up more*

*than 20 percent and the cost of housing had risen by 10 percent overall.*

Inequality was growing in our society.  In 1993, you were proud to support a budget plan that sought to rewind the Reagan-era policy of cutting programs for low-income Americans while at the same time lowering taxes on the wealthy.  In supporting President Clinton's budget, you said:

> *"This budget plan lives up to principles that we share with the President.  It is fair and equitable, and it offers encouraging news for those Americans hit hardest by our economic slump.  This package offers nearly $500 billion in deficit reduction—the largest in history.  It relies on $255 billion in real spending cuts and asks the wealthiest one percent of Americans to shoulder 80 percent of the burden. In short, the President's plan is founded upon turning the myth of trickle-down economics upside-down, restoring fairness and protecting the middle class."*

The 1993 budget process was an expectedly lengthy one, given politically sensitive components such as an increase in the gas tax and new taxes on the wealthiest Americans.  In the end, Vice President Gore was called on to cast the tiebreaking vote in the Senate and the budget narrowly passed the House with a 218-216 vote.  Republicans then used components of the 1993 budget plan as key ammunition in their successful effort to take both chambers of Congress in the 1994 elections.

With their new majorities in 1995, Republicans pushed to reinstate President Reagan’s failed budget policies.  In opposing their budget you said:

> *“The budget before us is the equivalent of a stick-up.  It may as well carry a script that says `put your hands up, and hand it over.'  This is a budget that robs you of your tax credit if you are a family working, not on welfare, and struggling to make ends meet and raise your children.  It will steal your plans to get a student loan if you are a middle-class family or high school student counting on college to get ahead.  It raids $270 billion from the Medicare trust fund and beats up Medicaid.  It will slash spending for veterans programs and lead to closings of VA hospitals and clinics.  Once again, we're told that trickle-down economics will do its magic, and to wait for the jobs to grow and the prosperity to spring up. As Governor of West Virginia, I did that already.  I watched the country sit on its hands as our foreign competitors took over industries and took our jobs.  I watched the tax breaks feed a mania for mergers and junk bonds, leaving our people high and dry.”*

As part of that 1995 budget debate, you offered an amendment to reduce tax cuts for the wealthiest one percent, and instead put those savings into health care programs that millions of Americans rely on.  In pushing your amendment you stated:

> *“The amendment I will offer tomorrow […] will take $100 billion out of the $170 billion the Republicans have reserved for tax cuts for upper-income Americans and shift it to*

*Medicare and Medicaid--very simple.  It is a simple amendment.*

*"What is it about?  It is about setting priorities.  It says we are not going to balance the budget by whacking health benefits that seniors depend upon.  It says we are not going to increase what seniors have to pay out of their own pockets ad nauseam for health care so we can put more money into the pockets of the rich.  It is simple--clear.*

*"The difference between the two parties:  the Republicans have argued--will argue that the $170 billion they have reserved for tax cuts is their special dividend, their own pot of gold.  I find that a particularly offensive statement.  It is not their money to spend.  It is the money of the taxpayers. They want to spend taxpayer money on more breaks for the rich."*

While those efforts were unsuccessful, they helped frame for your colleagues the stark difference between Democratic and Republican funding priorities.  The budget process in these years was a contentious one, with the government twice being forced to shut down over the fall and winter of 1995 and 1996.  Democrats came out ahead in popular opinion and many believe the shutdowns were a catalyst leading to President Clinton's reelection in 1996.

Before the 1995 shutdown you said:

*"The Members on the other side of the aisle told Americans they should be in the majority of Congress.  They won the*

*elections last November to do that.  But Mr. President, being in charge also means being responsible.  Being in charge means making sure that on Tuesday, the federal government can open national parks, enforce law and order, answer the phones when veterans are calling about their benefits or try to visit a VA hospital, process student loans and passport requests, and perform thousands of other responsibilities that Members of Congress are supposed to be here watching over.  Being in charge does not mean throwing the kitchen sink onto the basic piece of legislation to fund the government.  And it sure does not mean throwing in a Medicare price increase for senior citizens, hoping it just slips through."*

Two weeks later, as Medicare was still in the cross-hairs, you would say on the Senate floor:

*"The budget plan on the Senate floor this very minute aims its fire at Medicare for $270 billion in cuts over the seven years.  Guess what also survived the conference?  A kitty of $245 billion of new tax breaks, new tax cuts, new tax relief that go to the wealthiest Americans and all kinds of corporations.*

*"That is right.  To the 30 million senior citizens counting on Medicare, to the disabled citizens counting on Medicare, it is still the piggy bank for a whole lot of things that have nothing to do with Medicare and much more to do with tax breaks for the wealthy, tax increases for working families, cuts in education, and the other features of this budget plan now on*

*the Senate for a final vote… Of course, none will admit that Medicare is being raided to pay for tax breaks for the rich. Who in their right mind would make that kind of confession? "But we do not need a confession. The mountain of evidence is right here in this stack of paper that is the Republican budget plan called reconciliation. Medicare cuts of $270 billion or even more. Tax breaks of $245 billion. Case closed.*

*"This $270 billion sounds like a huge cut because it is a huge cut. You don't get $270 billion out of Medicare with a few nips here and a few tucks there. Squeezing that much money out of Medicare means increasing expenses for senior citizens, shrinking payments for hospitals and other providers, weakening Medicare's role in protecting against shoddy health care, and resorting to cheaper ways to pretend seniors will still get reliable health insurance. Make no mistake about it, $270 billion in Medicare cuts will hurt and will be noticed."*

Though President Clinton was reelected in 1996, Republicans still controlled Congress and maintained the same priorities they had advocated in years prior. In 1997, you would fight efforts to reduce taxes on estates and gifts saying that "The long-term costs of providing such generous reductions in tax rates for estates and gifts, capital gains, and the expansion of individual retirement accounts [IRA's] may prove too expensive to sustain." You were proven correct, as a series of reductions in Estate Taxes as part of the Bush Tax Cuts helped fuel growing deficits in the first decade of the 2000s.

## Bush Tax Cuts

Despite the acrimony between the parties, real governing was done in the Clinton years and the country was better off when he left office in 2001 than it had been eight years before. Congress and the President negotiated, and while neither side got everything it wanted, the system worked better than it would in years to come. The Center for American Progress summed up the accomplishments of the Clinton years writing that:

> *"By the end of his term, 22.7 million new jobs had been created, unemployment dropped to a 30-year low, and gross domestic product grew by 35 percent overall through the longest period of sustained growth in U.S. history. What's more, the growth was broadly shared and unemployment plummeted across the board, including those groups for whom the economy never worked very well. Average hourly wages increased by six percent after accounting for inflation, and median household income grew by 14 percent, the highest increase for a two-term president.*
>
> *"The median income of African-American families increased by a third and Hispanic families saw their median incomes rise by almost $7,000. Poverty rates dropped to near record lows. And of course the federal budget went from enormous deficits to enormous surpluses, with the federal government on track to becoming effectively debt free by 2009—for the first time since Andrew Jackson was president."*

Sadly, these gains would not hold as Texas Governor George W. Bush beat Vice President Al Gore in the 2000 election, and upon taking office, immediately began a return to the policies that had failed the country in the 1980s. At the heart of the fiscal decline was a series of tax cuts that squandered the surpluses of the late Clinton years.

According to the Urban Institute and Brookings Institution:

> *The Bush tax cuts contributed, along with underlying economic conditions, to a historic decline in federal tax revenue. In 2000, total federal tax revenue was as high in proportion to the U.S. economy as it had ever been. By 2004, federal tax revenue in proportion to the economy had fallen to its lowest level in almost 50 years. The congressional Joint Committee on Taxation calculated a score, or revenue change, for each of the seven major tax cut bills passed during the Bush Administration: their combined cost sums to more than $2 trillion from 2001-17.*

As the Senate first debated tax cuts in early 2001, you argued for caution in how tax cuts were targeted, so that the help would go to those who needed it most. You said:

> *"Tax cuts should be shared by all Americans, especially working families. Under the Bush tax plan, the wealthiest people – those who earn over $900,000 per year and pay 21 percent of all income taxes – get 43 percent of the benefit. By my rough calculation, that's got to be at least twice their fair share. It's just not right for working families, who pay the*

> *majority of the taxes, not to get the majority of the tax cut. I want a tax cut that gives West Virginia families their fair share."*

The 2001 debate was an interesting one. The Senate was 50/50 at the time, and the tax cuts were only able to move forward because Senator Baucus, the top Democrat at the Finance Committee, agreed to work with Senator Grassley, the top-ranking committee Republican, on a deal. Given the precarious balance in the Senate, the Senate passed a slightly more progressive bill than the more partisan House would pass. As the debate in Washington continued, you would say:

> *"I am baffled, also, by what the fairness concept is… when they talk about the rich, this is sort of a mantra: If the rich make a lot of money, then they should get a tax credit because they did make a lot of money."*

As debate neared its conclusion that spring, you spoke on the floor in opposition to the wasteful cuts:

> *"I rise today in strong opposition to this fiscally irresponsible conference report. Today, this tax cut perpetrates a fraud on the American people. Their hard work created this surplus and this opportunity to sustain our economy and strengthen Social Security and Medicare. But no one should be fooled that this conference report is anything but an irresponsible, unfair, and politically motivated giveaway to the wealthiest in our society.*

> *"I deeply regret that we have failed to take this historic opportunity to provide a meaningful tax cut to all Americans… What's even worse, this bill is just not fair to hardworking Americans who created the surplus."*

There were several times when it looked like the process might fall apart. Vermont Senator Jeffords announced that he would switch parties, giving Democrats control of the Senate, but he pledged not to do so until the tax cuts were passed. Despite your efforts and your vote against the package, the 2001 Bush tax cuts were signed into law, thanks in part to the budget reconciliation process that allowed Republicans to avoid a 60-vote threshold. Top tax rates were slashed and the Estate Tax was phased out over 10 years. The savings that Congress and the Clinton Administration had worked so hard to create in the late 1990s were wiped out.

A second round of tax cuts would follow in 2003 as the economy stalled in the wake of the September 11th attacks. By 2004, the economy was still sluggish, and Republicans were adding to the deficit and plotting more tax cuts for the wealthy in their budget proposal. You opposed the Senate Republican budget arguing that:

> *"Some of the tax cuts called for in this budget resolution are ones that I look forward to supporting. The increase in the child tax credit, relief from the marriage penalty, expansion of the lowest tax bracket—these are tax cuts for hard-working Americans. I cannot support this budget. I refuse to believe that this is the best that Congress can do, and I will*

> *not try to explain to West Virginians that there is room for additional tax cuts, but not enough money for education, child care, health care, infrastructure improvements, homeland security, and other important domestic initiatives.”*

President Bush’s popularity plummeted as his second term continued, and in 2006, Democrats retook the Senate with a slim majority. This majority was greatly expanded in the wave election of 2008 that gave Democrats 59 Senate seats and the Presidency. Unfortunately, Democrats were unable to focus on many of their core priorities or undo the damage of the Bush Administration, including the 2001 and 2003 tax cuts, because the country was mired deep in a recession and economists advised against raising taxes.

Much of the President’s political capital was used on the 2009 stimulus bill (the Recovery Act), which was written in an attempt to win Republican votes, but ultimately passed as a partisan bill. On the tax side, the bill included the Making Work Pay Tax Credit. In 2009 and 2010, the Making Work Pay provision provided a refundable tax credit of up to $400 for working individuals and up to $800 for married taxpayers filing joint returns. For lower-income families, this money, coupled with their Earned Income and Child Tax Credits, helped them make ends meet.

By the time the Recovery Act was signed into law, Republicans has coalesced against the President and any semblance of a honeymoon was over. As the economy slowly recovered, the narrative in Washington became consumed by talk of deficits.

The rise of the Tea Party combined with lingering unemployment and disenchantment with the Affordable Care Act enabled Republicans retaking the House in 2010 and cutting into the Democrat's Senate majority. Congressional Republicans spent the coming years threatening financial stability through government shutdowns and games of chicken related to the debt limit, all in the name of reducing spending.

## Your 2011 Tax Plan

In 2011, in response to pressure from the Republican-controlled House to cut deficits, you released a revenue plan that could have raised as much as $1 trillion over the next decade. Republicans continued to focus on spending cuts despite the fact that domestic discretionary spending represents a small portion of our nation's overall fiscal picture. You, on the other hand, recognized that closing loopholes in the tax code was the only way to find achievable savings with minimal pain. In announcing your plan, you said:

> *"There's lots of talk about reducing the deficit and cutting spending, but we have seen very few specific ideas, especially when it comes to revenues. The American people are willing to make some sacrifices to help secure a better future by reducing the deficit, but those who are already struggling cannot shoulder the bulk of that burden themselves and it's shameful to suggest otherwise.*
>
> *Big corporations and the very wealthy must start paying their fair share. It's time to call out those who have been skirting*

*the system and taking advantage of excessive tax breaks and loopholes. And it's time to get specific – let's debate and vote on fair and sensible proposals that ask everyone to give a little and those who can most afford it to give the most."*

While your plan was not acted on by Congress, it did allow you to challenge the notion that Republicans were the only ones in Congress attempting to offer solutions on deficits. Below is the brief description of the items that were in your plan that you shared with the public:

- **Fight tax abuse by corporations that ship jobs overseas:** Big corporations have made large profits in recent years by offshoring jobs and hiding American profits in low-tax countries. The International Tax Competitiveness Act (H.R. 62) would crack down on this bad behavior and **save $30 billion over 10 years.**

- **Replace the Corporate Alternative Minimum Tax (AMT) with a baseline 10 percent tax on profits over $25 million a year:** The corporate AMT has hurt U.S. manufacturers and still allowed some of the biggest companies in America to skirt the system and pay nothing – zero – in taxes each year. We must demand that highly profitable companies share in the responsibility of reducing our deficit by paying at least 10 percent in taxes annually on profits over $25 million.

- **Eliminate tax breaks for Big Oil:** Now is the time to end tax breaks for the big oil companies that are making record profits and charging consumers high gas prices at the pump, **saving $35 billion over 10 years.**

- **End special treatment for corporate executives with private jets:** Corporate executives flying in private jets currently get to deduct the amount they paid for a plane over five years, while airline companies in the business of transporting passengers across the country have to deduct the costs of the planes they buy over seven years. We eliminate this inexcusable tax advantage for corporate executives, **saving roughly $2 billion over 10 years.**

- **Eliminate tax loophole for yachts:** Some buyers of big yachts have been claiming them as second homes for tax purposes. We should stop allowing yachts to be used to take advantage of the home mortgage interest deduction.

- **Eliminate ethanol subsidies:** The artificially inflated demand for ethanol has done little to reduce our dependence on foreign oil and had dubious environmental benefits. We should eliminate the Volumetric Ethanol Excise Tax Credit, **saving $2.4 billion right away.**

- **Provide fair and equitable treatment for racehorse owners – in line with owners of livestock:** Racehorse owners currently receive accelerated depreciation for two-year-old racehorses. Thanks to this giveaway, owners can deduct the full purchase price of a racehorse over three years. We should treat racehorses for the wealthy the same as horses for farmers, and eliminate this special deal, **saving $20 million over three years.**

- **Close the “Reverse Morris Trust” corporate tax loophole:** This tax shelter has been used by corporations seeking to sell unwanted assets without paying taxes on the money they make. Rockefeller’s bill to fix this has been introduced in past years. It would close this corporate tax loophole, **saving taxpayers $260 million over 10 years.**

- **Stop tax inequity among states:** State income taxes are deductible from federal tax returns to prevent double taxation. But in nine states (like Alaska, Florida, and Texas) where there are no state income taxes, residents have lobbied for a special carve-out that allows them to deduct sales taxes instead. This tax unfairness forces many West Virginians to foot the bill for the lifestyles of people in other states and we should repeal it, **saving $5.5 billion this year.**

- **Crack down on illegal Internet gambling:** Establishing online gambling regulations will protect consumers, state’s rights and state sovereignty, and eliminate a huge illegal market that today benefits only countries and companies overseas, **saving an estimated $41.8 billion over 10 years,** and an estimated additional $30 billion for states.

- **End Bush tax cuts for the wealthy:** The Bush tax cuts for those making more than $250,000 per year have not helped create jobs or stimulate the economy. They are scheduled to expire at the end of 2012, but if we move that date up by just one year – to 2011 – we can **save $41 billion right away.**

- **No new tax cuts for the very wealthy until the deficit is gone:** We face huge deficits even with wealthy families' Bush tax cuts set to expire in 2012. Yet congressional Republicans are insisting on making those giveaways permanent, at a cost of $400 billion. We should effectively **save that $400 billion** by pledging not to extend or create any new tax breaks for millionaires until the deficit has been eliminated.

- **Early return to pre-Bush estate tax levels:** Under the Bush Administration, millionaires and billionaires were given a huge increase in tax-free income. Estate taxes are already scheduled to return to more fair, pre-Bush levels in 2013. If we move that date up by just two years – but still grant a $1 million exemption and apply the long-standing 55 percent rate to estate wealth above that threshold – we can **save $32 billion right away.**

- **Require that millionaires and billionaires pay their fair share:** Too often, millionaires and billionaires avoid a fair share of tax liability by winning special tax breaks on income from their investments. What this means is that the very wealthy pay far less of their total income in taxes than middle-class Americans. To achieve tax fairness, we should create a new tax bracket for millionaires and billionaires that is just three percent higher than existing levels, **saving $200 billion over 10 years.**

- **Level the playing field between income for the wealthy and income for workers by restoring the pre-Bush capital gains rate:** Today, a steelworker pays the full tax rate on his income (a salary or wage), but a Wall Street trader pays only 15 percent on his income (from investments). This is why billionaire Warren Buffett points out the unfairness in his paying a lower tax rate than his secretary does. We should align income taxes for the wealthy more closely with income taxes for workers by re-establishing the capital gains tax at the pre-Bush level of 28 percent, **saving an estimated $125 billion over 10 years.**

- **Cap itemized deductions at 28 percent:** Wealthy people also get an unfair advantage by deducting a higher percentage of contributions to charities and other payments. We should level the tax playing field by capping itemized deductions for the wealthy at the same 28 percent that applies to middle class families, **saving $300 billion over 10 years.**

- **Repeal tax perks for wealthy families' health savings accounts (HSAs):** HSAs and high-deductible health plans have been proven to increase consumers' out-of-pocket health care costs and benefit mostly wealthy people. We should eliminate the tax advantage given to HSAs, **saving $16 billion over 10 years.**

- **Talk to middle-class Americans about a temporary soda tax for deficit reduction:** Adding just three cents to a 12-ounce soda would generate $24 billion in savings over four years. Lower and middle-income families I talk to have said that if the wealthy and big businesses start paying their fair share, and critical programs like Medicare, Medicaid, Children's Health Insurance Program, and Social Security are protected, then they are also willing to help reduce the deficit. A three-cent soda tax is just one idea – it could end when the deficit is eliminated, and studies show it would have the added benefit of reducing consumption of sugary drinks that increase health care costs for families down the road, **saving $60 billion over ten years.**

We have heard from current and former Finance Committee staff and leadership staff about how much they have always appreciated your willingness to say what needed to be said on the tax front. Other members often shied away from asking wealthy individuals and corporations to pay their fare share out of a fear of being labeled as a "tax and spend liberal." You made it a priority to focus not on the wealthy and not even the middle class, but on the poorest Americans, those who had no voice in Congress.

**Miscellaneous Taxes**

When Senator Inouye took over the Appropriations Committee in 2009, you moved from Chairing the Intelligence Committee to taking over the gavel of the Commerce Committee. One area where your role as Commerce Committee Chairman allowed you to combat corporate tax abuse was in your oversight of the cruise industry.  You introduced legislation to close loopholes that allowed the industry to make billions in profits while paying a fraction of a percent in taxes, stating that:

> *"A string of recent incidents has demonstrated that when cruise ships get into trouble, the companies rely on the resources and assistance of the U.S. Navy and Coast Guard.  For too long, the cruise industry has been able to use taxpayer provided services without actually paying for them.  It is time the cruise industry begins to pay for the services it uses."*

You also led an effort in 2010 to close the so-called "Reverse Morris Trust" tax loophole.  Reverse Morris Trust refers to a tax loophole that allows the tax-free merger of two companies.  Frequently, this type of transaction enables the larger company in the merger to avoid paying taxes, while the smaller company in the merger is loaded with high amounts of debt leading to decreased services to its customers and diminished resources to support employment.

This loophole was used by Verizon in 2010 in the Verizon – Frontier merger.  On May 14, 2009, Verizon and Frontier announced that Verizon planned to sell a series of its telephone exchanges to Frontier in 14 states.  These are telephone properties that are chiefly in rural areas, involving 4.8 million phone lines.  Post-transaction, Frontier was poised to serve 99 percent of the residential lines in West Virginia.

The Communication Workers of America (CWA) contacted to you to voice their concerns with this loophole, and you and Senator Kerry subsequently introduced legislation to close it. In particular, CWA was worried that by loading Frontier with debt, it would leave the company ill-equipped to upgrade its network and provide quality jobs and benefits to CWA members. Your legislation was included in the tax extenders package debated in the Senate, but was not signed into law. You also included this proposal as part of your 2011 trillion-dollar revenue raising plan.

In May 2011, you participated in efforts to repeal tax subsidies that allowed enormously profitable oil companies to make even more money. These efforts included sponsoring and voting for legislation, and attending a Finance Committee hearing where you grilled several of the CEOs in person about their preferential tax treatment.

You stated that:

> *"This industry loves to argue that without these tax credits they'd be forced to raise gas prices. Baloney. The truth is that each of these companies have made $950 billion in profits over the past decade, more than enough to easily cover the costs of a lost taxpayer-provided subsidy without raising prices for consumers. We must not go down the dangerous path of reducing out national deficit on the backs of hard working American families, but should instead focus on the most effective and efficient ways to reduce the deficit, such as eliminating tax giveaways for big corporations that*

> *send American jobs overseas and asking big oil companies to step up and pay their fair share."*

After the hearing, you expressed your disappointment with the CEOS, when you said:

> *"They were eager only to defend the way Big Oil does business, defend the enormous salaries, defend the business model that puts control of gas supply in the hands of a few… [p]ut simply, these men are all completely out of touch—deeply, profoundly out of touch—with what the rest of the country is going through.  Again, that is what it is about, fairness.  Do you know what other people are suffering?  Their situation is this:  very profitable."*

While Congress has yet to act on repealing these wasteful subsidies, the Finance Committee has discussed acting on oil and gas subsidies as part of tax reform, and Chairman Baucus' tax reform white papers, which were released in late 2013, included (thanks in part to your urging) reforming the oil and gas portion of the code as an option.  Many of the committee's Democrats were on board with these changes and even some Republicans had privately conceded that reform is needed here.

You have also been a proponent of leveling the playing field between brick and mortar retailers who create jobs in small communities, and online companies who are able to undercut prices charged by physical establishments.  In addition to cosponsoring and voting for the Marketplace Fairness Act, legislation that would close this loophole, you also chaired a hearing in the Commerce Committee in August 2012. You have said of this issue:

> *"Our small businesses are the lifeline of our communities – they employ local workers, they boost local economies, and West Virginians are proud to support them. But these businesses are losing out every day to large online retail companies that are able to sell their goods without paying any state sales taxes. It just isn't fair. This bill means online companies must compete fairly with our mom and pop shops."*

In 2012 and 2013, the Finance Committee had a number of discussions at the member level about tax reform. Committee staff went so far as to prepare white papers with options for reform based on ideas from members of the committee. You contributed a number of ideas to this debate, including repealing marketing deductions for advertising junk food to kids and prescription drugs directly to consumers. You suggested increasing the Estate Tax and capital gains and dividends rates to reduce the bridge between earned and "unearned" income, one of the key drivers of inequality in the tax code.

Throughout the process, you were adamant that revenues from tax reform should be used for deficit reduction and to ease the strain caused by budget cuts on the working poor. Though tax reform has yet to happen, the ideas you advocated during these discussions will continue to be a part of the dialogue at the Finance Committee in the years to come.

## CORPORATE ACCOUNTABILITY

During your time in the Senate, you have led efforts to hold corporations accountable for their actions. Your role as Chairman of the Commerce Committee in particular has given you a prominent forum for this activity. Because your Commerce legacy memo covers those actions, this memo instead will briefly focus on your reactions to some other corporate scandals.

### S and L Crisis

The early 1980s saw a rise in savings and loan institutions (S&L). A federally chartered savings and loan is a banking institution that functions in a very similar fashion to retail banks and credit unions, with some slight limitations on the type of services it can offer. Historically, the primary purpose of these institutions was to allow members to deposit savings and borrow money at rates that were slightly more competitive than commercial banks.

The competitive difference in interest and loan rates came from the fact that a savings and loan was "mutually owned" by its members, with no need to pass profits on to a third party. S&Ls saw great gains early in the 1980s due to excessive risk and low capital reserve requirements. Later in the decade, hundreds of these institutions were wiped out due to the risks they had taken, and Congress was forced to step in and use taxpayer money to foot the bill for the cleanup.

The FDIC has offered one history of the crisis that is instructive in explaining one of the most significant issues facing the country during your first term in the Senate:[1]

> *Legislative actions in the early 1980s were designed to aid the S&L industry but in fact increased the eventual cost of the crisis. The Reagan administration was more directly involved with the regulation of S&Ls than with the regulation of the banking industry. Firm believers in Reaganomics, [supervisors] crafted the policies of deregulation and forbearance and adamantly opposed any governmental cash expenditures to resolve the S&L problem.*
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> *The free-market philosophy of the Reagan Administration also called for a reduction in the size of the federal government and less public intervention in the private sector. As a result, during the first half of the 1980s the federal banking and thrift agencies were encouraged to reduce examination staff, even though these agencies were funded by the institutions they regulated and not by the taxpayers.*
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> *The savings and loan industry changed swiftly and dramatically after the deregulation. The period from year-end 1982 to year-end 1985 was characterized by extremely rapid growth. Total S&L assets increased from $686 billion to $1,068 billion, or by 56 percent (more than twice the growth rate at savings banks and commercial banks of 24 percent). With money flowing so plentifully, risk takers gravitated toward the S&L industry, altering ownership*

[1] https://www.fdic.gov/bank/historical/history/167_188.pdf

*characteristics. Little capital was required to purchase or start an S&L, and the growth potential was great. A variety of non-bankers entered the S&L industry, ranging from dentists, with no experience in owning financial institutions, to real estate developers, who had serious conflicts of interest. S&L investment portfolios rapidly shifted away from traditional home mortgage financing and into new activities.*

*S&Ls invested in everything from casinos to fast-food franchises, ski resorts, and windmill farms. Other new investments included junk bonds, arbitrage schemes, and derivative instruments. Throughout the decade, losses in the S&L industry continued to mount as the decline in real estate values deepened and affected various regions of the country.*

*222 S&Ls, with assets of $116 billion, were wound down in 1988. But despite these resolutions, at year-end 1988 there were still 250 S&Ls—with $80.8 billion in assets—that were insolvent based on regulatory accounting principles. Resolution of the S&L crisis did not really begin until February 6, 1989, when newly inaugurated President George Bush announced his proposed program, whose basic components were enacted later that year in FIRREA.*

*The final cost of resolving failed S&Ls is estimated at just over $160 billion, $132 billion of which comes from federal taxpayers. However, much of this cost could have been avoided if the government had had the political will to recognize its obligation to depositors in the early 1980s,* *rather than viewing the situation as an industry bailout. Believing that the marketplace would provide its own discipline, the government used rapid deregulation and forbearance instead of taking steps to protect depositors. The government guarantee of insured deposits nonetheless exposed U.S. taxpayers to the risk of loss while the profits made possible by deregulation and forbearance was accrued by the owners and managers of the savings and loans.*

On November 29, 1990, the President signed into law the Crime Control Act of 1990. Title XXV of this legislation is known as the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990. You were a strong supporter and cosponsored the bank fraud prevention legislation, which gave the federal government new tools of enforcement in dealing with the banking industry. You were a cosponsor and helped lead efforts to ultimately include the legislation in the larger crime bill as an amendment.

In August 1990, you spoke in response to the ballooning crisis. The text of that speech could well have been written about the financial panic of 2008 and 2009. Your speech showed that sadly, little had been learned by both regulators and the financial sector from the S&L crisis.

Below is the partial text of your August 2, 1990 speech:

*"Mr. President, I rise today to once again express my outrage over the savings and loan crisis--a crisis that has*

*been aptly called the greatest financial scandal in our nation's history. It is a crisis that is the direct result of the persistent effort of the past administration throughout the 1980's to ease and eliminate safeguards designed to protect our savings system.*

*"And unfortunately, some states followed the administration's lead by easing up on their role as watchdog and by putting on blinders to the risk-taking and speculation exploding around them. Deregulation swept through, accountability vanished, and countless forms of mismanagement, fraud, and greed rushed in to gamble away depositors' money and threaten the very existence of our savings and loans system. This debacle has threatened the economic future and human vitality of our country.*

*"The cost of this saga of speculation and misconduct is already painfully evident. We are told that the taxpayers of this country may have to foot a bill of $500 billion over the next three decades to recover from this calamity. The immediate costs have pushed the federal deficit back beyond $200 billion again, robbing us of the ability to make desperately needed investment in children, health care, infrastructure, rural America, and our nation's competitiveness.*

*"Mr. President, I know I speak for the people of my own State, West Virginia, and the entire country, when I say the punishment had better fit the crime. I challenge the President and his administration to take every conceivable*

*action possible to ensure that justice is done. In the recent weeks, Congress has spoken loudly and clearly, urging a crackdown on the people and institutions responsible for the massive losses, and mammoth effort to recover every last retrievable dollar, and concerted action to prevent this kind of fraud and crime from ever occurring again.*

*"I recently joined a number of my colleagues in cosponsoring tough legislation to pursue these critical goals. Shortly thereafter, the Senate attached this legislation, the Comprehensive Thrift and Bank Fraud Prosecution Act of 1990, as an amendment to the omnibus crime bill which we subsequently passed and now waits for expected House action. Our amendment is aimed squarely at strengthening and expanding the efforts of the Federal Government to prosecute those who are responsible for the savings and loan crisis.*

*"Our legislation will allow the Department of Justice to more effectively prosecute the criminals who have essentially stolen more than $2,000 from the pocketbooks of each and every American. It provides for the creation of a special division within the Department of Justice to facilitate the development of criminal cases. It creates local strike forces to expand and toughen prosecution efforts. It increases penalties for fraud and embezzlement cases. It widens investigative powers for the FBI and Secret Service agents and allocates $203 million for three years to accomplish these goals.*

*“Mr. President, I am angry.  I'm angry for West Virginians and I'm angry for all Americans.  I am angry that savings and loan executives who thought they were above the law recklessly spent the hard-earned savings of our citizens on airplanes, fancy cars, expensive homes, and lavish vacations, knowing all the while that their companies were in financial trouble.  These bank executives and directors committed crimes as surely as any, common thief.  We must prove to the people of the United States--the victims of this crime--that these greedy corporate executives are not above the law.*

*“My constituents are as angry as I am.  I have received hundreds of letters from West Virginians demanding action. One man in Jefferson County wrote that the least we can do is ‘make sure that the crooks don’t go sailing off on their yachts.’  Mr. President, I agree.*

*“My constituents not only are angry about the criminals who are getting away, but also are worried about what the $500 billion price tag means for the economic future of our country.  I share this concern.  One Marion County woman wrote, ‘My husband and I are more concerned about the S&L scandal than anything that has happened since World War II, especially since we know it will cost as much.’*

*“That $500 billion cost is a tragedy and disgrace.  We could have used that money to complete the Appalachian corridor system, which is vital to the economic development of the entire 13-State region.  We could have financed a long-term*

*health insurance plan for every American.  We could have funded the WIC Program to guarantee decent nutrition to every pregnant woman, mother, and infant in America.  We could have done all of this and still had tens of billions of dollars left.  This money should be used to create jobs, shelter and feed our people, build roads and bridges, not to buy empty office buildings and underutilized country clubs in Dallas and Houston.*

*"Mr. President, in West Virginia, our savings and loan institutions are generally stable--fortunately.  They are healthy.  The managers of the thrifts in my state avoided risky, speculative loans in the past decade and stuck to their original purpose--single family housing mortgages.  Only two West Virginia savings and loans were seized by the Resolution Trust Corporation, representing 0.2 of 1 percent of all bad assets in the country.  During 1989, our thrifts posted the second best percent increase in net income in the country, 35.2 percent, while the national average was a decrease of 53 percent.*

*"In other words, West Virginia is one of the states where caution was not thrown to the wind by the people responsible for our savings system--the people who make up the chain of accountability, including government officials, independent appraisers, outside directors, and savings and loan officials.  Because of the self-restraint exercised in my state, our savings system is intact and is not piling bills onto the shoulders of taxpayers and future taxpayers.  This is why the people of my state are so appalled.  They may not be the*

*source of this crisis, but they are definitely expected to be part of the solution.*

*"West Virginians were not responsible for this crisis. If, however, we are forced to share the burden of cleaning up the S&L scandal, we demand that the criminals who are responsible be put in jail and be required to forfeit the profits they illegally reaped. West Virginians and I have no doubt all Americans want to see swift action. They deserve it. In this case, the victims are paying for the crime.*

*"Mr. President, outrage over the cost of this debacle, and its cost to my constituents, led me to vote against the S&L bailout bill last year. I believe it is entirely understandable that the people of my state object to the administration's approach to cleaning up after the failed S&Ls that rests on burden-sharing--when the same administration virulently fought a cost-sharing approach to cleaning up acid rain. How do I explain this to my state? To the state that lost more federal aid during the Reagan-Bush years than any other state but one in proportion to population. To the state that was excluded from desperately needed housing aid that went instead to the political cronies and friends of HUD officials?*

*"There is no good answer. And there is no way to wipe out the past. For the past decade, I have been bothered and appalled, quite frankly, by the effects of an administration that seemed to promote greed. To me, it is not the Iran-Contra crisis, as bad as that was, that epitomized that*

*administration's tenure. It was Ivan Boesky and Mike Milliken, who promoted and symbolized greed. What an awful message was sent to the young people of this Nation about what is important.*

*"There is, Mr. President, plenty that can be done in the future to prove that crime does not pay, fraud does not go unpunished, and irresponsibility is not forgotten. In the near-term, we must commit the funds needed for the toughest, most effective law enforcement system possible to prosecute the S&L criminals.*

*"As of February 1990, the FBI reports that it has had 21,000 referrals involving fraud in the financial services industry, but because of staffing shortages it has been unable to examine these complaints. The Department of Justice is receiving 8,000 referrals a month of the same nature and currently has 80,000 cases pending.*

*"The FBI and U.S. attorneys' offices have requested 224 more FBI agents, 113 more assistant U.S. attorneys, and 142 more support staff. The Bush administration's budget allows for only 42 new agents and 26 more support staff positions. These extra positions are necessary in order for us to establish a more aggressive prosecution effort.*

*"A recent study found that so far, only two percent of the cost of the bailout has been recovered in legal penalties. We need to increase the fines against financial services criminals in an attempt to recover at least some of the*

*billions of dollars used to finance the bailout. We also must increase the jail sentences for these criminals.*

*"The legislation we attached to the crime bill will allow prosecutors to go after those assets which S&L executives illegally acquired. It will add over 1,000 new employees to help develop and prosecute criminal cases. The Comprehensive Thrift and Bank Fraud Prosecution Act of 1990 will require those responsible for the S&L scandal, the country's largest financial disaster ever, to pay for their illegal activities, as well as help taxpayers recoup some of their losses.*

*"I am proud to have played a part in moving this important legislation forward. And I renew my pledge to the people of my state and the country to make sure that justice is served.*"

## Enron

The later part of President Clinton's second term saw the economy boom. This boom was fueled in part by excessive speculation and risk taking. As has always been the case, this risk taking could not go unchecked forever and it was only a matter of time before the dominos began to fall. The first major domino in this instance came in the form of Enron, a Texas-based energy conglomerate that was seen as untouchable just months before its collapse.

CRS wrote of the Enron scandal that:

*The sudden and unexpected collapse of Enron Corp. was the first in a series of major corporate accounting scandals early in the 2000s that shook confidence in corporate governance and the stock market. Only months before Enron's bankruptcy filing in December 2001, the firm was widely regarded as one of the most innovative, fastest growing, and best managed businesses in the United States. With the swift collapse, shareholders, including thousands of Enron workers who held company stock in their 401(k) retirement accounts, lost tens of billions of dollars. It now appears that Enron was in terrible financial shape as early as 2000, burdened with debt and money-losing businesses, but manipulated its accounting statements to hide these problems.*

You said of the Enron collapse:

*"The practice of locking out the little guy while officers and directors liquidate their company stock is not limited to Enron. There is an obvious need for reform of the system. What Enron officials did to company shareholders may well turn out to have been legal, but it was most certainly wrong. I am interested in some of the proposals I have heard regarding 401(k) reform. These accounts are not only valuable investment tools for employees of American corporations, they are also fully legal and valuable tax avoidance devices for the corporations themselves. Congress should ensure that corporations do not impose rules on employees and retirees that unduly restrict the ability of 401(k) participants to manage their portfolios while*

*executives are free to exercise lucrative stock options and liquidate en masse while the company goes under."*

Sadly, Enron would not be the last example of corporate greed having a negative effect on larger society. In the fall of 2008, the economy cratered as one large financial institution after another faced insolvency in the wake of the mortgage market's collapse. Congress was forced to step in and pass TARP.

## Dodd-Frank

The first two years of the Obama Administration saw three major pieces of legislation signed into law. When Arlen Specter switched parties in early 2009, that gave the Democrats 60 votes in the Senate, a majority that would allow them to avoid all procedural roadblocks Senate Republicans could offer so long as the party stayed unified. The first major piece of legislation passed was the Recovery Act, designed to stimulate a lagging economy. The second was the Affordable Care Act, the culmination of more than 15 years of effort by Democrats in Congress to pass comprehensive health reform. The third was the Dodd-Frank Act, which was designed to respond to flaws in our financial regulatory system that had led to a recession and a near depression. CRS described the run-up to the Dodd-Frank Act as follows:

*Beginning in 2007, U.S. financial conditions deteriorated, leading to the near collapse of the U.S. financial system in September 2008. Major banks, insurers, government-sponsored enterprises, and investment banks either failed or* *required hundreds of billions in federal support to continue functioning. Households were hit hard by drops in the prices of real estate and financial assets, and by a sharp rise in unemployment. Congress responded to the crisis by enacting the most comprehensive financial reform legislation since the 1930s.*

By the time the Dodd-Frank legislation was debated, Democrats no longer had their 60 seat super-majority in the Senate, and had to coax one Senate Republican into supporting this landmark regulatory reform bill. Scott Brown of Massachusetts ultimately gave Democrats their 60$^{th}$ vote allowing the bill to move forward.

The bill first passed the Senate in April, and you actively participated in the process by including language related to mine safety and language to protect the Federal Trade Commission from an erosion of its powers. You said of the FTC provision:

*"For nearly 100 years, the FTC has been on the forefront of protecting West Virginians from unfair and deceptive practices. Its enforcers have invaluable experience cracking down on companies that try to swindle people out of their hard-earned money. This amendment is important because it will preserve the FTC's existing authority, and ensure that there are no gaps in consumer protection – and that is a must."*

After Senate passage, the bill went to a conference committee, and then came back to the Senate for final passage in July 2010. Upon the bill's passage you said:

*"Only two short years ago, West Virginia and the entire nation faced an economy resembling that of the Great Depression – largely because of irresponsible actions on Wall Street. It was clear at that time that financial reform would be essential. While our economy is not out of the woods yet, passing this legislation is an important step toward recovery. I was also very proud to secure an important mine safety measure in the bill – holding mining companies accountable for their safety records by demanding that they disclose safety violations not just to regulators but also to the public and their own shareholders. Senator Byrd and I fought for this measure because safe mines are good for business, and that makes a real difference to families who see their loved ones go to work every day in our nation's coal mines."*

While Dodd-Frank was meant to prevent future financial catastrophes, you were still interested in making sure that those involved in the last crisis did not continue to profit excessively from their bad actions. You and Senator McCain successfully led an effort in 2012 to prevent Fannie Mae and Freddie Mac executives from receiving exorbitant bonuses. In asking your colleagues for support, you said:

*"It's indefensible that two organizations that accepted billions in taxpayer dollars to keep them afloat, are now giving extreme bonuses using that same taxpayer money. And, they are still failing to help many homeowners in need. Too many families are still facing foreclosure and struggling to*

*make ends meet, and it’s just unacceptable that their money is supporting unnecessary bonuses.”*

**Freedom Industries Chemical Spill**

Corporate excess does not always lead to financial damage. Sometimes it leads to physical harm as well. This was the case with the Freedom Industries Chemical spill in January 2014. The spill began at Freedom Industries on the Elk River in Charleston on January 9, 2014. The site of the leak was 1.5 miles upstream from West Virginia-American Water’s intake. The leak of “Crude MCHM”, which is mainly 4-methylcyclohexane methanol, has affected 300,000 people in nine counties (Kanawha, Boone, Logan, Lincoln, Cabell, Putnam, Jackson, Roane, and Clay). MCHM is used to wash coal – it separates the burnable fossil fuel from unburnable rock and dirt. Twelve days after the chemical leak, and three days after the “Do Not Use” ban was lifted, Freedom Industries revealed that a second chemical, PPH, had also leaked from the compromised tank. PPH represented a relatively small percentage (approximately five percent of the total volume in the tank.

Subsequently, Freedom Industries declared bankruptcy and is currently under investigation by the U.S. Attorney, the FBI and the EPA’s Criminal Investigation Division. On April 3, 2014, the Environment and Public Works Committee passed the Chemical Safety and Drinking Water Protection Act by voice vote. You introduced this legislation with Senators Boxer and Manchin.

The following is a more comprehensive list of the actions you took in response to the spill in 2014:

**Friday, January 10:** Released a statement in response to the spill less than 24 hours after it was reported—you are the first federal official to do so.

**Friday, January 10:** Requested the Chemical Safety Board (CSB) to investigate the chemical leak. The CSB agrees to your request the following day and announces members will arrive on Monday, January 13th.

**Sunday, January 12:** Sent a letter to the Appropriations Committee asking for more resources for CSB, which is notoriously under-staffed and over-worked.

**Monday, January 13:** A joint committee working on a FY 2014 funding package agrees to your request for a higher funding level for the CSB, from the $8.5 million requested by the House to $11 million, the same day the CSB members arrive in West Virginia at your request.

**Tuesday, January 14:** Sent a letter to the CDC and EPA requesting a joint study into the long-term health effects of MCHM.

**Wednesday, January 15:** Released a statement expressing concern over the lack of government oversight where you committed to working with your colleagues to identify ways to improve the federal government's role in this area.

**<u>Thursday, January 16</u>:** Issued positive statement on the passage of the FY 2014 government spending plan that includes your requested increase for the CSB.

**<u>Friday, January 17</u>:** Announced legislation with Senator Schatz to hold companies responsible for chemical spills, and to boost available money for cleanup efforts.

**<u>Friday, January 17</u>:** Sent a letter to West Virginia-American Water President Jeff McIntyre seeking clarity on the company's ongoing efforts to remove MCHM from its customer's drinking water.

**<u>Monday, January 20</u>:** Released a statement calling Governor Tomblin's efforts to address regulatory gaps in state law a "first step."

**<u>Wednesday, January 22</u>:** After receiving a response from West Virginia-American Water, you sent a second letter with additional concerns and points of clarification in light of reported spikes in chemical levels, and asked for a proposed timeline from the company about replacing compromised filters or improving ongoing testing along distribution systems.

**<u>Friday, January 24</u>:** Sent a letter to the directors of the CDC and National Institute of Environment Health Sciences urging timely, accurate and relevant information be released to the public as they had not yet evaluated the second chemical, PPH.

**<u>Monday, January 27</u>:** Joined Senators Manchin and Boxer in introducing the Chemical Safety and Drinking Water Protection Act to provide oversight of chemical facilities, including regular inspections of above-ground chemical storage facilities.

**<u>Tuesday, January 28</u>:** Along with members of the West Virginia congressional delegation, you wrote a letter to the Federal Emergency Management Agency (FEMA) requesting the agency approve Governor Tomblin's request for additional federal resources, specifically relating to water distribution and reimbursement for state expenses.

**<u>Wednesday, January 29</u>:** On your behalf, you sent a representative from your Senate office to a town hall meeting in Charleston to address participants and released a press statement.

**<u>Tuesday, February 4</u>:** Attended and offered testimony at a hearing of the Environment and Public Works Subcommittee on Waters and Wildlife. The hearing was entitled "Examination of the Safety and Security of Drinking Water Supplies Following the Central West Virginia Drinking Water Crisis."

**<u>Wednesday, February 5</u>:** Released a statement on the CDC and EPA's ongoing work to monitor the drinking water. In your remarks, you ask the CDC, EPA and others to increase transparency and arm West Virginians with as much information as possible.

**Monday, February 10:** Offered a statement for the record at a House of Representatives Committee on Transportation and Infrastructure field hearing in Charleston related to the response to the chemical leak.

**Friday, February 21:** Sent a letter to the EPA and CDC again asking for a long-term study and also seeking additional information relating to any adverse effects inhalation of MCHM and PPH might cause.

**Thursday, February 27:** You sent a private letter to Governor Tomblin concerning his request for ideas to continue funding for WV TAP. You expressed that federal funding is difficult to come by, suggesting he look into the $5 million in increased ARC funds and the $915 million in the state's Rainy Day fund.

**Wednesday, March 12:** Along with members of the West Virginia congressional delegation, you wrote a second letter to FEMA requesting the agency reconsider their recent decision to deny additional federal resources requested by Governor Tomblin to help with recovery costs.

**Friday, March 28:** You sent a third letter to Jeff McIntyre, President of West Virginia American Water, regarding the company's intentions to change the water filters at the Charleston plant. You urged him to expedite the process, and keep you informed of his progress. You also wrote that if the changeover of filters does not eliminate all detectable traces of MCHM, the company has an obligation to inform the public.

**<u>Tuesday, July 1</u>:** You sent a letter to the CDC and the National Institute of Environmental Health Science (NIEHS) requesting they review additional data collected by state health officials. You asked the CDC and NIEHS to review the data and consider again if a longitudinal study would create a better understanding of the consequences of exposure to MCHM and PPH.

At a January EPW Committee hearing on the spill, you testified on the impact of the spill on West Virginia and on the need for stricter scrutiny of chemical companies moving forward. Below is an excerpt from your testimony:

> *"I want to note that this could have happened in any community across this country. The challenge of how to manufacture, transport, and store chemicals safely is something that this Committee has taken on in the past. I think it is a matter that policymakers need to address at all levels of government. This terrible incident has been thrust upon 300,000 plus West Virginians through no fault of their own, and many are rightly wondering when they'll ever be able to trust their water again. Across nine counties, West Virginians were told for 10 days not to use their water for drinking, cooking, cleaning, bathing or washing. Schools and commerce were shut down. Families had to scramble for bottled water. This was an incredible burden on our families and businesses.*
>
> *"…But this disaster is far from over. Just last week, 12 days after the spill, Freedom Industries revealed that a second chemical called PPH also leaked into the Elk River.*

*“Hundreds have been treated by area hospitals, even days after the “do not use” ban had been lifted. We learned that initial estimates of 7,500 gallons leaked were inaccurate when Freedom Industries revealed – over two and a half weeks later – that, in fact, about 10,000 gallons of crude MCHM and PPH were leaked. This is an outrage and totally unfair to the people whose lives continue to be impacted by the spill.*

*“I know that agencies across both state and federal governments are working hard to find answers, but the gaps in our regulatory structure and the lack of adequate funding resources for federal agencies have made their jobs infinitely more difficult. We also need to make sure that new findings, or outside data, be shared among the many federal and state agencies working to address this spill, as well as with the public. That needs to happen as fully and quickly as possible.*

*“I believe that we will get the answers we need to make sure people have confidence to drink and use the water. But, it should not have to take this long. I understand that this Committee is looking at our existing chemical safety laws. In my judgment, there is no doubt that they are inadequate. This disaster has revealed major deficiencies and gaps in our regulatory structure. And I genuinely fear that this crisis could be repeated on an equally terrible scale in the not too distant future in a community near you in Oklahoma City or Baton Rouge. It’s past time to act to make sure that doesn’t happen.*

*“A lax regulatory environment or culture makes faster money for bad actors in big industries, whether coal or rail, or chemical, and the public pays in the harshest possible way after corporations have made their money.  Sometimes with costs to public health, sometimes with costs to safety of their workforce, and sometimes it’s the environment that pays the prices — hurting the public interest in so many ways. Senator Manchin and I, along with Senator Boxer, have introduced a bill that would require regular state inspections of chemical storage facilities located in watersheds and make sure those facilities are held accountable for developing an emergency response plan in the event an incident like a leak occurs.*

*“I also cosponsored two bills with Senator Schatz that would hold companies like Freedom Industries accountable when spills of non-hazardous substances occur.  But, these are targeted fixes to discrete problems.  Chemicals are a part of almost every facet of our lives.  They are fundamental to countless products we depend upon for almost every aspect of our lives.  As the Chair knows well, we know virtually nothing about countless thousands of them.  That is beyond frightening.  That is unacceptable.*

*“I know that industry will resist any new regulations.  It’s an isolated incident in West Virginia, they will argue.  The agencies in charge of oversight do not need more resources, some will claim.  In fact, Republicans have purposely sought to starve certain agencies of funding so they cannot do their*

*job adequately.  We continue to pay a price for this cynical strategy.  Over 30 years, I have heard it all too often -- and from too many industries to count.  We can no longer trade the public's health and welfare for industry profits.  As we have seen in West Virginia, when you cannot drink the water, not much else matters.  Not much business gets done.  The long-term economic damage from this crisis is almost immeasurable.  The public's trust is shaken.  I am committed to working with the Members of the Committee on ways to strengthen our regulations and to improve funding for our oversight agencies.  West Virginia is a special place.  It's one that I love dearly.  And so I thank the Committee for focusing its attention on taking another step in helping us understand what happened—and what we can do to make sure it never happens again."*

## **MINIMUM WAGE**

Since its inception in 1938, a national minimum wage has been among the most contentious political issues facing the Congress.  Minimum wage opponents often insist that the minimum wage has harmful effects on the labor market and job security.  Supporters, like yourself, are equally passionate in their belief that it is an indispensable tool for protecting the working poor.  Many of these workers represent marginalized groups who lack the bargaining power to fight for a minimum living wage without government intervention.  You have always recognized the importance of wages, and have sought the protection our nation's workers and their families.

Your strong support for increasing the minimum wage and creating opportunities for working families became evident in the earliest stages of your career. In 1988, when the minimum wage was only $3.35 an hour, you argued that it was too low for people trying to advance their lot in life. Speaking on the floor in support of an increase you said:

> *"Mr. President, every year we pass increase after increase in programs that provide income security to farmers, veterans, and older Americans. I am a member of the Finance Committee, which oversees Social Security, and of the Veterans' Affairs Committee, and I strongly support these increases, as do most of my colleagues in this body, because we have agreed that these are segments of our society that both need and deserve the extra income protection that these increases provide. But I have to ask, are the low- and middle-income wage earners -- who have taken the brunt of Reagan era cuts -- less entitled to some protection of their incomes? And what we are talking about here would mean absolutely no cost to the Treasury.*
>
> *"Mr. President, in the final analysis, this debate is not about statistics. It is about people, people who are trying to get a leg up, but cannot realistically be expected to succeed in doing so at $3.35 an hour, people who deserve the same commitment to a basic minimum wage rate that most Members of this body enjoyed when they were first entering the job market. In my estimation, $4.55 an hour is not too much to ask, especially when you consider that most of*

*these hourly employers are already paying close to or even more than that amount."*

In 1989, you and your colleagues were successful in passing the Fair Labor Standards Act Amendments, which increased the $3.35 minimum wage for the first time in eight years. The amendments increased the minimum wage in two equal installments of 45 cents an hour to $3.80 an hour on April 1, 1990, and to $4.25 an hour on April 1, 1991.

In 1996, your rejoined the fight to increase the minimum wage and put families first. When partisanship threatened to delay minimum wage provisions of the Small Business Job Protection Act of 1996, you emphasized the importance of these provisions for working families when you said:

*"On our side, we talk about putting families first. These are three good words. It is clear. It is what we mean. It means enacting the minimum wage increase."*

Despite efforts to delay its passage, you and your colleagues successfully increased the $4.25 minimum wage for the first time in five years. The minimum wage was increased in two equal installments of 90 cents an hour to $4.75 an hour on October 1, 1996, and to $5.15 an hour on September 1, 1997.

In addition to cosponsoring minimum wage increases in the 105$^{th}$, 106$^{th}$, 107$^{th}$, 108$^{th}$, 109$^{th}$, and 110$^{th}$ Congresses, you made a concerted effort to expose the decreasing value of the minimum wage and the increasing income inequality in the U.S. In 2001, you said *“the minimum wage standard has been allowed to slowly erode”* to the point that it no longer provided an adequate means of income. Currently, the minimum wage would need to be increased from $7.25 to $10.55 per hour to make up the value lost to inflation. As a result, full-time workers earning the minimum wage currently live very near, or below, the poverty line. In addition to raising working families out of poverty and making certain that wages keep pace with the cost of living, you said increasing the minimum wage would *“reinforce the fundamental American values of hard work and self-sufficiency.”*

In 2004, you challenged the inaccuracies used by opponents of the minimum wage. In their attempt to win over public opinion, they claimed that subsequent increases in the minimum wage would hurt the economy and job creation; however, you showed evidence to the contrary. As opposed to negatively impacting the employment of minimum wage workers, the years following the 1996 and 1997 minimum wage increases experienced significant job growth in the amount of 11 million new jobs between 1997 and 2001. Thus, the weight of evidence shows that increasing the minimum wage has had little or no negative effect on the employment of minimum wage workers.

In 2006, you also challenged the legislative priorities of Republicans. Despite Republicans’ claims that they would finally support an increase in the minimum wage, their willingness to do so hinged on certain demands being met by Democrats. Before they would agree to help working families, Republicans insisted on a $753 billion estate tax repeal for the very wealthy, which had already been reduced nine times since the last minimum wage increase. As you pointed out to your colleagues, *"we're ultimately great because of the dedication of our workers,"* and *"we must ensure that they have a wage that is fair, just, and equitable."*

In 2007, you drew attention to the plight of workers and their families at the gas pump and beyond. You said that for these workers, *"many of whom are the primary breadwinners in their families, raising the minimum wage means so much."* Ultimately, this *"boost in income means they could better pay their bills, put food on the table, and take care of their children."* As you pointed out your colleagues, *"these are the fundamental reasons people go to work each and every day – and they're the reasons Congress simply has to take action."*

In the same year, you and your colleagues were successful in passing the Fair Minimum Wage Act of 2007, which increased the $5.15 minimum wage for the first time in 10 years. The minimum wage was increased in three equal installments of 70 cents to $5.85 per hour on July 24, 2007, $6.55 per hour on July 24, 2008, and $7.25 per hour on July 24, 2009.

Along with increasing the minimum wage, you recognized the importance of considering its potential impact on small businesses. For this reason, you and your colleagues also included an incentives package in the Fair Minimum Wage Act of 2007, to ensure that small businesses, *"the economic engines that drive our communities, are supported by our tax policies."* By taking a comprehensive approach, you simultaneously strengthened the job security of minimum wage workers and economic viability of these small businesses.

Most recently, you joined your colleagues in sponsoring the Fair Minimum Wage Act of 2013. In addition to being consistent with your longstanding support for increasing the minimum wage and creating opportunities for working families, the Fair Minimum Wage Act seeks to remedy existing shortcomings. First, the bill would increase the minimum wage in three stages so that it reaches $10.10 per hour within 27 months of enactment. Second, it would automatically increase the minimum wage in the future based on the rate of inflation to ensure that the employees' purchasing power does not decrease over time. Lastly, it would increase the minimum wage for tip earners to ensure that their wages remain comparable to other employees. Unfortunately, the bill remains stuck in partisan gridlock, barring any meaningful action.

## UNEMPLOYMENT INSURANCE

In addition to recognizing the importance of fair wages, you have also recognized the importance of protecting dislocated workers' access to benefits packages that provide them with income support, increased opportunities for job training, and health care benefits in their times of need. Without access to these benefits, dislocated workers, without a job and without a source of income, find themselves struggling to pay their bills and support their families. For this reason, you have always considered it *"essential to help hard-working Americans get back on their feet after a devastating layoff"* by providing them and their families with the assistance they need.

Although you have always been a vocal advocate for expanding and extending unemployment insurance, your support for dislocated workers was unmistakable in the years following the financial crisis of 2007-2008. During what many economists have considered to have been the worst financial crisis since the Great Depression of the 1930s, large financial institutions were on the brink of collapse, stock markets dropped worldwide, and the housing market suffered from subprime investments. In addition to massive mortgage delinquencies and foreclosures, prolonged unemployment resulted in workers losing their benefits before they could find new jobs.

In February 2009, with business and plant closings and layoffs running rampant across our state, you emphasized the importance of creating jobs and supporting the unemployed. Because *"being out of work is devastating for West Virginians trying to make ends meet and care for their families,"* you implored your colleagues to join you by doing *"everything we can to directly give those who have lost their jobs the support they need."* In addition to supporting the American Recovery and Reinvestment Act of 2009, designed to boost the struggling economy and create or save millions of much-needed jobs, you pushed for provisions in the bill's final passage that would provide direct help to those facing unemployment.

To help West Virginia families, the economic recovery bill lowered health care costs under COBRA by 65 percent, thereby making COBRA beneficiaries responsible for only 35 percent of their costs. Next, the bill provided up to 20 weeks of extended unemployment benefits, raised the weekly benefit by $25, temporarily suspended federal income taxes on the first $2,400 of unemployment assistance, and increased federal funding for job training assistance programs and employment services programs. Finally, the bill helped displaced workers impacted by unfair trade practices by extending the Trade Adjustment Assistance (TAA) Program for two years. The American Recovery and Reinvestment Act of 2009, which included these provisions, was signed into law on February 17, 2009.

When unemployment benefits neared expiration in October 2009, you cosponsored the Worker, Homeownership, and Business Assistance Act of 2009 and urged your colleagues to support its extension of these benefits. As you pointed out, unemployment insurance offers a critical lifeline for people who are out of work who *"need the peace of mind unemployment insurance provides […] so that those who do not currently have a job, through no fault of their own, aren't worrying, questioning, and wondering whether this support will expire."* The bill built on the provisions you successfully pushed for in the American Recovery and Reinvestment Act by extending benefits for an additional 14 weeks for all states, with an additional six weeks for states with high unemployment. The Worker, Homeownership, and Business Assistance Act of 2009, which included this provision, was signed into law on November 11, 2009.

As part of the end-of-year defense appropriations legislation under COBRA, these benefits were extended until February 28, 2010. Unfortunately, delaying tactics stalled subsequent attempts to extend expiring provisions via the Temporary Extension Act of 2010. In response to these disruptive displays of partisanship, you called *“attempts to stop these benefits from getting into the hands of those in need…just shameful,”* and reiterated that *“West Virginians have no time or patience for…these obstructionist tactics.”* Ultimately, the Temporary Extension Act of 2010, which extended expiring provisions for another 30 days, was signed into law on March 2, 2010, as was the Continuing Extension Act of 2010, which extended expiring provisions until June 2, 2010, on April 15, 2010.

After these short-term extensions expired, out of-work Americans went without unemployment insurance for nearly two months. Once again, subsequent attempts to extend expiring provisions were met with resistance, and once again, you took the opportunity to chastise your colleagues for withholding critical support from the unemployed. Whereas *“helping the unemployed was always something that united us…it angers me this has been held up at the expense of Americans in need.”* Moreover, you reiterated that their *“highest priorities must be to create jobs, rebuild our economy, and extend a helping hand to those who are without work through no fault of their own.”* It was not until the Senate passed the Unemployment Extension Compensation Act of 2010, in July 2010, that unemployment insurance was extended until the end of the year, and Americans were finally given the help that they needed and deserved.

By December 2010, out-of-work Americans and their families were again faced with the possibility of losing their benefits. With the holidays fast approaching, you emphasized the importance of extending vital support to families in West Virginia and across the country. Despite early signs of economic recovery, you urged your colleagues against *"turn[ing] a blind eye to the fact that millions of Americans are still hurting…are looking for work and are worried sick this holiday season about how they will continue to put food on the table and heat their home."* Moreover, you pointed out that these benefits are a direct way of infusing money into the economy. Since every $1 of UI benefits generates $1.61 in economic activities, unemployment insurance acts as a real and immediate stimulus. Ultimately, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act, which extended expiring provisions until January 2012, was signed into law on December 17, 2010.

In June 2011, you were instrumental in obtaining $160,000 worth of funding for existing career centers in West Virginia, which were used to further develop in-person assessments of the unemployed. By tailoring their reviews to each person's situation and needs, career centers were better able to assist unemployed workers with finding suitable job training. Thus, these targeted investments increased their access to resources intended to help West Virginians get back on the job. In addition, your vote in favor of the Trade Adjustment Assistance Extension Act of 2011 extended expiring provisions for workers adversely affected by unfair trade practices, including renewed funding for training and job search/relocation allowances.

In December 2011, your vote in favor of the Temporary Payroll Tax Cut Continuation Act of 2011 extended unemployment insurance until February 29, 2012. Without the continuation of these benefits, displaced workers would have been forced to forgo valuable training programs and settle for a low wage jobs just to pay the bills. Because they were able to continue receiving these benefits, they had the opportunity to finish training and apply for higher-paying jobs with their newly acquired skills. Despite this victory, you vowed to seek long term extension of benefits, when you said: *"I will fight to continue this critical relief for families for a full year. We are not done here."*

Before benefits could expire in February 2012, you and your colleagues passed The Middle Class Tax Relief and Job Creation Act of 2012, which extended them until January 2, 2013, followed by a year-long extension per the American Taxpayer Relief Act of 2012, which extended them until January 1, 2014. Unfortunately, attempts to extend benefits beyond January 1, 2014 were met with resistance, leaving more than one million Americans, including nearly 7,000 West Virginians, without unemployment insurance. Deeply disappointed by numerous unsuccessful attempts to extend benefits into the new year, you urged your colleagues to remember that supporting the unemployed *"while they are actively looking for work is a moral obligation and Congress never should have let emergency unemployment insurance expire."*

As you pointed out to your colleagues:

> *"The loss of these benefits threatens the ability of people who are unemployed to look for work because people who are unemployed don't have the resources to get to job interviews; to keep their phones turned on so potential employers can reach them; or pay for extra training that might make them stand out in a crowded job market."*

Moreover, it puts families at risk, who without this safety net *"are now having to make even more impossible choices, like deciding how to heat their homes, put food on the table and pay for a doctor's visit."* Unfortunately, because politics has been put ahead of our nation's workers, these are precisely the choices many are facing today.