EMOLUMENTS PANEL

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MR. TOM FITTON: Good afternoon everyone. I'm Tom Fitton. I'm president of Judicial Watch. Judicial Watch is a conservative, non-partisan educational foundation dedicated to promoting transparency, accountability, integrity in government, politics and the law. Through our educational endeavors, we seek high standards of ethics and morality in our nation's public life and we seek to ensure that the political and judicial officials obey the law and do not abuse the powers entrusted to them by the American people.

We obviously don't endorse – maybe it's not obvious, but we don't endorse candidates for public office or we certainly don't oppose them as well.

Our topic this afternoon, which has already expanded over the last few days, is – the question is Hillary Clinton constitutionally ineligible to be secretary of state?

My remarks will be brief because I think our panelists here are far more expert than me on the subject, but from our perspective, according to the ineligibility clause of the United States Constitution, no member of Congress can be appointed to an office that has benefited from a salary increase during the time that senator or representative served in Congress.

A January 2008 executive order signed by President Bush, during Hillary Clinton's current Senate term, increased the salary for secretary of state, thereby rendering Senator Clinton ineligible for the position.

Specifically, Article I, section 2 – section 6, clause 2 of the U.S. Constitution provides "No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time." The provision is seen by most as designed by our Founding Fathers to protect against corruption.

There's interesting history to this clause. Former President Richard Nixon famously, or infamously, circumvented this constitutional provision after appointing former Ohio Senator William Saxbe to the position of attorney general. The Nixon administration managed to force legislation through Congress to reduce the salary for the position of attorney general to the level that existed prior to Senator Saxbe's appointment. This scheme, known thereafter as "The Saxbe Fix," was also used to allow Senator Lloyd Bentsen to assume the position of Treasury secretary under President Clinton. And I should add that was done with the help of President George H.W. Bush. President Ronald Reagan reportedly did not appoint Senator Orrin Hatch to the Supreme Court because of this provision.

In response to our announced concerns about Clinton's ineligibility, a Saxbe Fix to reduce the salary of secretary of state to previous levels was passed as a joint resolution by Congress on December 10th. Not one member of Congress seems to have stood for the Constitution and opposed this end run. I think it was passed by voice vote, which means – I don't think there was a recorded vote one way or another.

MR. ILYA SHAPIRO: I think there was one member at the floor at the time. The whole session lasted two minutes.

MR. FITTON: Yes, that's even more reassuring. Thanks, Ilya. (Laughter.) President Bush is also expected, if he hasn't already, to give his approval to the so-called fix. But in our view, this effort cannot change the fact that the salary has been increased while Senator Clinton served in Congress. Simply put, the Constitution does not provide for a legislative remedy for the ineligibility clause.

Barack Obama should select someone who is eligible for the position of secretary of state and save the country from a constitutional battle over Hillary Clinton's confirmation.

No public official who has taken the oath to support and defend the Constitution should support this appointment. We're considering a legal challenge to the Clinton appointment and have similar concerns about the announced election of Senator Salazar to be secretary of interior.

I had some concerns about Ray LaHood that have been put to rest, but supposedly, House members generally don't run into the problem that senators do with the ineligibility clause. But as Judicial Watch considers its next steps, I think is important to really flesh out the history here and the origins of the clause, the specifics of the various fixes, and why they may or may not be constitutionally suspect. And to that end, our panelists have really been instrumental in educating the public about the ineligibility clause. I think it was Ilya Shapiro in a post over at Cato that may have gotten the ball rolling in the blogosphere about it and Ilya is a senior –

MR. SHAPIRO: That credit goes to Eugene Volokh; I got beaten by a day.

MR. FITTON: Volokh got it first? Okay. Well, all the great minds were thinking around the same time about the issue. And Mr. Shapiro is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the *Cato Supreme Court Review*. Before joining Cato, he was special assistant/advisor to the Multi-National Force-Iraq on rule of law issues and he's practiced law at Patton Boggs and Cleary Gottlieb.

He's also an adjunct professor at the George Washington University Law School and lectures regularly on behalf of the Federalist Society, the Fund for American Studies, and other educational and professional groups. Before entering private practice, he

clerked for Judge E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit, having previously obtained his law degree from the University of Chicago.

We're also pleased to be joined by John O'Connor, who's a partner in the Washington office of Steptoe & Johnson, where he is a part of the Litigation Department. Mr. O'Connor focuses principally on civil litigation matters, in which he's represented clients in cases involving allegations of fraud, civil conspiracy, legal malpractice, unfair lending practices, and unfair competition, as well as in cases involving application of the RICO and the Alien Tort Claims Act.

And I guess you're going to be very busy over the next few months, given what's happening in the news these days, plus with the financial markets and some of the corruption scandals. But most importantly Mr. O'Connor is a writer and he's written a number of articles for legal publications of various areas of legal interest. And he had served as a judge advocate in the United States Marine Corps, where he was involved in over 200 court martial proceedings, I presume, and he obtained his law degree from the University of Maryland School of Law. And he's authored what many consider the most authoritative treatment of our subject, which is the *Law Review* article entitled "The Emoluments Clause: An Anti-Federalist Intruder in a Federalist Constitution." And that was published way back in 1995. And I'm sure, John, little did you know –

MR. JOHN O'CONNOR: Little did I know.

MR. FITTON: – that you'd be talking about it with respect to Hillary Clinton being appointed secretary of state in a future administration. But here we are and I try to lay it out without giving away the store, but there's a lot to be said here and I turn it over to you.

MR. O'CONNOR: Sure, thank you. As Mr. Fitton said, I assume I'm here because the universe of people who know much about the Emoluments Clause or the ineligibility clause is kind of small, and little did I know that 13 years ago, when I wrote my *Law Review* article on the subject that I'd be getting a lot of calls over the last month or so dealing with the Emoluments Clause and how it plays into Senator Clinton's likely nomination as secretary of state and now I guess Senator Salazar's likely nomination as Secretary of the Interior.

The Emoluments Clause essentially provides that when a federal office is created or the salary of a federal office is increased, the members of Congress at the time are ineligible to be appointed to that office during the current term. So for instance, with Senator Clinton, her current term began in January of 2007 and would end in January of 2013. And I don't think anybody would question that she's eligible to be secretary of state once the current term for which she was elected expires in January of 2013. The real question is whether in the meantime she's eligible for appointment as secretary of state. And I believe the answer to that is no.

Some would say that the so-called Saxbe Fix, which takes the salary of the secretary of state and reduces it back to the level it enjoyed prior to Senator Clinton's current term, eliminates the problem. The theory is that while the salary has not been increased, because it's exactly where it was when Senator Clinton's term in the Senate began, and I don't think that works for a few reasons, which I'll go through.

Probably the main argument making the rounds about why the Saxbe Fix will restore Senator Clinton's eligibility for appointment is, well, the emoluments of the office have not been increased during her current term because they're equal to what they were when her term began. There's a couple of problems with that theory, I think.

One, that's not what the Emoluments Clause says. It doesn't say that a senator is ineligible if the emoluments are higher or if the emoluments simply increase – that might be a closer call. The clause says a senator is ineligible if the emoluments have been increased, which they clearly have. They were clearly increased in January of 2008. While there are no judicial opinions construing the Emoluments Clause, we're not exactly working on an empty slate here.

There have been some Supreme Court decisions dealing with the treatment of federal salaries in connection with federal judges. Article 3 of the Constitution says that federal judges may not have their salary diminished while they're in office. If you buy into the Saxbe Fix theory, then what you need to do is look at the salary at the beginning of Senator Clinton's term and look at it today, or when she's appointed, and if they're the same or at least not any higher, then she's eligible.

Well, that was an argument that the United States made with some federal judges back in the 1930s. What happened was, a federal judge was appointed and his salary was $8,500. Congress increased the salary to $12,500 and then later reduced it back to about $10,000 a year. And the judge filed suit and said, "Hey, you've diminished my salary; it went from $12,500 to $10,000." And the United States made exactly the argument that we hear proponents of the Saxbe Fix making, and that is, "His salary didn't diminish. His salary went up. He got appointed at $8,500. He's making $10,000 a year now." And the Supreme Court unanimously said that was wrong, that it's not just looking at the beginning and look at the end. Any act that lowered the salary was a diminishment.

Well, the Saxbe fix argument is the flip-side of that. The argument that its proponents make is that the salary of secretary of state hasn't been increased because you look at the beginning and you look at the end and it's exactly the same. But if you accept that argument, then you'd have to argue that the Constitution uses one method of figuring out if a federal salary has been decreased, and a completely different and inconsistent method in trying to figure out if a salary has been increased. And it doesn't seem to me that we should construe the Constitution that way. So I think that the way that the Supreme Court has dealt with federal judges pretty much disposes of that argument that there's been no increase if the language of the Constitution didn't do it all by itself.

Another argument that you hear is there has been no increase in salary because the increase that occurred in January of this year was just a cost-of-living adjustment. So it really just keeps the salary the same. Inflation means that in real terms, the salary of the secretary of state had been going down, so this COLA just makes sure that it stays the same.

Again, the Supreme Court considered that argument in dealing with federal judges and rejected it. If you accept the argument that a COLA adjustment just keeps the salary the same, then I think you have to acknowledge that the absence of a COLA adjustment reduces the salary. And that was the argument that a series of federal judges made in 1980. They said, "We didn't get a COLA, so in real terms, our salary is diminishing." And the Supreme Court, again, unanimously rejected that and said that when you look at the salary what you're looking are the nominal dollars. Your salary was X; it stayed X. We don't need – you're not constitutionally required to get a cost-of-living adjustment because your salary's not diminished.

Well, if their salary's not diminished, I think then the fact that the increase this year was a cost-of-living adjustment is necessarily an increase in the salary. It's not just keeping it the same. It's increasing the salary.

Another argument that we hear is that the Emoluments Clause doesn't apply because the statute that created this whole regime whereby executive order salaries are increased was passed prior to Senator Clinton being in office. I think that's wrong on a couple of levels. One, the Emoluments Clause, I think everyone acknowledges is a no-fault provision. There's no requirement that a member of Congress had voted for the pay increase or the creation of an office. In fact, you can have voted against it. And more to the point, there is an attorney general opinion on the books that says that the member of Congress need not even be in Congress when the office is created or the salary is increased as long as they were elected for the term when it occurred.

What happened is a senator got elected, resigned a couple of years later. Then a year later, they created a – Congress created the Maritime Commission. The president wanted to appoint this former senator, not even in Congress when the office was created. The attorney general said, "You can't do it." And it's – you need not even be in Congress. All that really matters is that you're elected for a term and if there's an office created or a salary increase, you're just not eligible until your term ends.

We've heard some arguments in the blogosphere that, well, there's a long history behind the Emoluments Clause and Congress and the president have treated the Saxbe Fix, where you reduce the salary back to where it was, as satisfying the clause, and that ought to be good enough, that there's precedent now. And so the historical precedent is that this is okay, so that ought to be credited and it ought to remain okay.

The real problem with that argument, I think, is that the Emoluments Clause is a restriction on the power of Congress and the president. And in fact, it's a restriction that's focused on preventing collusion between Congress and the president. And it seems

to me that Congress and the president can't be the judges of the scope of a clause that's designed to restrict their powers. This for – gee, more than 200 years, it's been the law in this country that the courts ultimately decide what the Constitution says. So I don't think that there's any basis for saying, "Yes, this restricts Congress, but Congress decided that it doesn't really apply here." I think that they are not the ultimate arbiter of this issue.

Probably the most enduring argument and one that was made back in the Nixon administration with Senator Saxbe's nomination to be attorney general is, "Look, don't worry about what the words say. The purpose of the clause is to prevent corruption, to make sure that a senator or a congressman doesn't get to reap the benefit of the salary increase that happened on their watch." And the argument is well, gee, Senator Clinton – even if the salary of secretary of state went up while she was in office, it's gone back down or it's going to go back down presumably when the president signs the bill. She won't get the benefit of that salary increase, so no harm, no foul. The purpose preventing this sort of self-dealing is preserved.

But the problem with that argument is if you actually go back and look at what the framers said back in 1787, when they were putting the Constitution together, that wasn't their purpose behind the Emoluments Clause. There would be some discussion about the self-dealing elements of the clause, but that was by far a subservient purpose to what were larger purposes dealing with the proponents of the clause's concerns about the size of government.

What we had – if you actually go through and you look at what was said in the debates, virtually every framer who was supporting an emoluments clause, and what became the Emoluments Clause, was concerned not with self-dealing, but with the likelihood that the federal government was going to expand. And they saw the Emoluments Clause as a way to stop, or at least discourage, what they viewed would be a natural expansion of the federal government, by discouraging members of Congress from being involved in creating new offices that weren't needed or raising salaries of current offices beyond the levels that were really necessary.

And you had George Mason, who was one of the biggest proponents of an emoluments clause. He complained that the British Crown had increased its power by creating executive offices and said the Emoluments Clause would be the cornerstone on which our liberties depend by, quote, "removing the temptation to create new offices." Colonel Mason later said that the clause would help avoid the creation of a federal aristocracy, where members of Congress would come to Washington and then when their terms ended or when they wanted to leave Congress, they would just transition into other federal jobs here in Washington, like cabinet positions and alike.

MR. SHAPIRO: Too late. (Laughter.)

MR. O'CONNOR: Elbridge Gerry, another anti-federalist, who was very much behind the Emoluments Clause, said that the clause would reduce Congress' temptation to create new offices, and thus limit the power that the federal government would wield

as compared to the states. Framer James Wilson explained that the clause would discourage the government from, quote, "creating unnecessary offices or granting unnecessary salaries." James Madison, who ultimately crafted the compromise into what became the final version of the clause said that the unnecessary creation of offices and increase of salaries were the evils most experienced.

And the thing that's striking about all of these remarks from the debates at the Constitutional Convention is they're all focused on the front end. They're all focused on discouraging the creation of offices and discouraging the increase in salaries. Hardly at all were the framers who spoke on the clause concerned with the fact that at the back end, a member of Congress might get a salary increase that they had some role in causing or get appointed to an office that they helped create.

Now, I will grant that these views about the growth of the federal government and concerns about federal oppression might seem very outdated today, given the size of the federal government that we have today and the way that the United States government has changed. But what I would say about all that is the people who argue for looking at the purpose of the Emoluments Clause are ones who want to avoid what it says.

Well, what it says is that someone in Senator Clinton's situation is ineligible. And so if the argument is, "Let's ignore what it says because we can meet the purpose," then you've got to deal with the purpose that actually existed. And what you can't do is say, "Ignore the plain language because we're satisfying the purpose and then just create a purpose that was more convenient than when it actually existed."

In some ways, I think the best argument from forcing the Emoluments Clause is that it's just silly. Senator Clinton's – the secretary of state's salary has increased $5,000 in Senator Clinton's current term. I will completely grant that that has little bearing on Senator Clinton's aspiration to be secretary of state, but it seems to me that there are a lot of silly provisions, or arguably silly provisions, in the Constitution that we adhere to because they state a rule and you have to follow the rule. A particularly mature 33-year-old can't run for president because you've got to be 35. Arnold Schwarzenegger cannot run for president because he was a naturalized citizen. And those are just ironclad rules that you have to follow.

The Emoluments Clause is not stated as in vague terms or in aspirational terms. It's very concrete in what it allows and what it doesn't. And it's seems to me that what it doesn't allow is Senator Clinton to be appointed as secretary of state during – at least until 2013, or Senator Salazar to be appointed to secretary of interior until his current term ends.

Now, the history of the Emoluments Clause is that members raise – members tend to raise it as a bar to appointment only when they got some other axe to grind against either the nominee or the president. It came up as a big issue when Senator Black, Hugo Black, was going to be appointed to the Supreme Court. And the back story there was

that it came out that he may had been a member of the Ku Klux Klan, and so the Emoluments Clause was likely a convenient excuse for opposing his appointment.

The same thing with Senator Saxbe – his appointment as attorney general occurred right after the Saturday Night Massacre at the height of the Watergate scandal where President Nixon's attorney general and deputy attorney general resigned because they didn't want to fire the special prosecutor.

So at that point, you had a number of senators who said, "The Saxbe Fix doesn't work. It's unconstitutional." You had Justice Breyer, who at the time was a Harvard law professor, saying that's right, that the Saxbe Fix cannot remove an increase in emoluments that occurred, and yet other law professors saying the same thing.

So I would expect that President Bush is going to sign the bill that will reduce the secretary of state's salary and likely the president and Congress – likely, the Congress would confirm Senator Clinton as secretary of state because I don't see that there's a political axe to grind in Congress that's going to cause something else to happen.

I want to close by saying that I do not purport in any way to be an expert on foreign affairs. I have no view on Senator Clinton's fitness to be secretary of state on the merits. My view is solely on the constitutional issue, which I staked out 13 years ago. I think it's unconstitutional and I don't think reducing the salary restores her eligibility to office.

Thanks.

MR. FITTON: Thank you John, very, very elucidating. Ilya, as I said, you were – you and the other blogs were the first to kind of bring it up and to the attention of the media, and you posted an interesting blog yesterday, talking about how you kind of helped get it going and I thought if your remarks could cover that as well –

MR. SHAPIRO: Sure, sure. It just goes to show that I have even less of an interest in grinding axes or what-not. I haven't written a *Law Review* article on it. I have read both of the *Law Review* articles that cover this subject. It's a rich literature. John's, of course, is the seminal one, and then Michael Paulson wrote one called, "Is Lloyd Bentsen Unconstitutional?" And I think Professor Paulson, who's a law professor at St. Thomas University in Minnesota, couldn't be here, so I'll sort of step in his shoes a little bit with the analysis that he's brought to bear.

My interest in this is – not that I'm – well, these obscure little provisions of the Constitution – is that I love the Constitution in general. And Cato also always wants to promote people's reverence of the Constitution, not just as something that – some abstract thing that you cling to, but that you actually read the text and that we're governed by the law that's there and not by arbitrary caprice of various individuals.

That being said, I think I'll – I guess I'll start with how I got involved with all this and then go into some more tidbits of history and structure to fill in some of the gaps that John – certainly are in his article, but necessarily have to leave out of the short remarks here, and then talk about a little bit the bill that actually passed, the joint resolution and what potential challenges could be made.

I follow the Constitution in the Supreme Court for a living, so it's not like I hadn't heard of this clause or this issue, but I hadn't given it much thought until I was having conversation right about a month ago with Eugene Volokh, law professor at UCLA, and the founder of the Volokh Conspiracy blog at the Federalist Society Lawyers Convention. And he was saying how some of his commenters had been tipping him off that is this an issue? Is someone going to blog about this? What is this? And he and I and another law professor were – it's kind of like eggheads getting together in the corner of the room, talk about this Emoluments Clause.

Most people don't even know what an emolument is. I didn't fully know what it was until I read John's *Law Review* article. And then he – I guess the next – when he got back home, he blogged about it and then the next day, I cited him and piggy-backed and added some more stuff and it kind of went from there. As John says, I'm sure he's getting kind of laughs in the halls from his law partners, and I keep getting calls from media as well, and was commissioned to do a piece for *American Spectator* yesterday and all this other stuff. So there we are.

What's interesting is that it's not that this issue suddenly came to the fore under the Taft administration, the first time of the Saxbe Fix, or what would 70 years later become known as the Saxbe Fix, was employed. That was with, as Tom mentioned, the nomination of a gentleman named Philander Knox to be secretary of state in 1909, the first time the Saxbe Fix was implemented. The framers were aware of this, not just Madison and people when they were actually putting together the Constitution, but in the early republic. And I'll read from Professor Paulson's article to give you a bit of background on this.

"Early practice adhered to this rigorous reading of the Emoluments Clause," basically the reading that John has given you. "President George Washington withdrew the nomination of William Patterson of New Jersey to be an associate justice of the Supreme Court because Patterson had been a senator at the time the office was created and the term for which Patterson had been elected had not expired. Washington subsequently appointed Patterson to the court, but only after his term as senator had expired." So presumably, this is one of the first supreme courts. The court was created during the senator's term and Washington felt that was a disqualifying characteristic.

"Early attorney general opinions confirmed this rigor. The best example is an 1882 opinion holding that former Senator Kirkwood could not be appointed to a tariff commission established during the term for which he had been elected. The irony is that Kirkwood had resigned from the Senate in 1881 to become secretary of interior the and that congress had passed the act creating the office of tariffs commissioners in 1882, after

Kirkwood had left office," much as the case that John had mentioned with the congressman later on.

"If ever the policy thought to underlie the Emoluments Clause had no application, this was the case." You had Attorney General Benjamin Brewster – this is 1882 again – wrote the following. "It's unnecessary to consider the question of the policy which occasioned this constitutional prohibition. I must be controlled exclusively by the positive terms of the provision of the Constitution. The language is precisely clear, and in my opinion, disables him from receiving the appointment. The rule is absolute as expressed in the terms of the Constitution and behind that I cannot go. I must accept it as it is presented regarding its application in this case."

So again, until we have Secretary of State Knox, nobody seemed to doubt that this was how to apply the Emoluments Clause. I wonder whether – and John might know some of this history, how it plays in, but I wonder whether the circumvention of the Emoluments Clause under the Taft administration was kind of part of the unwinding of the Constitution generally in the progressive era, as it led into the Roosevelt New Deal "switch in time that saved nine" Constitutional Revolution of 1937 and so forth, into which story the nomination of Senator Black to become a justice plays in.

This is a far cry, in any event, what I just read to the change that was put in, well, first kind of without any fanfare in the Taft administration, and then under Nixon, as a result of the Saturday Night Massacre, at which point, of course, Robert Bork, who had been solicitor general, became the acting attorney general. And his opinion, in contrast to Benjamin Brewster's in the 1880s, talked about the purpose of the constitutional provision, the rationale of the constitutional provision – this I'm quoting from his opinion.

And it's ironic because, of course, Robert Bork is nothing if not the original originalist, the textualist of the textualist, and here he was trying to getting at intent and purpose and underlying rationale, rather than the actual text of the provision. It's doubly ironic because in the Reagan administration, Bork's reading – the rejection of Bork's reading by Ed Meece and the Reagan Office of Legal Counsel led directly to Robert Bork's nomination to the Supreme Court and ultimately, the poisonous hearings and ultimately, what our traditional nomination confirmation process has become, because under the Reagan administration – and I skipped the one other example under Carter of Edmund Muskie to be secretary of state – under the Reagan administration, Orrin Hatch, then as now, as senator from Utah, was the leading candidate to be a Supreme Court justice when a vacancy occurred in 1985.

And he was – it was better politically. He would have been much more easily confirmed than either Bork or Scalia, who had been appointed before Bork, because of senatorial privilege and collegiality. I doubt his – then, as now, he enjoys a very good reputation among his colleagues, while still being ideologically very sound from the perspective of the Reagan administration. So even though his jurisprudence might not have been that different from Bork's, he would have been much more confirmable.

So because of that decision by the Reagan administration, the only one, the only administration since Howard Taft, to reject the Saxbe Fix – Orrin Hatch is not on the Supreme Court and Robert Bork, we had that whole saga.

I should mention also with some more tidbits from the Saxbe nomination, Robert Byrd, then, as now, senator from West Virginia, then, as now the president pro tem of the Senate, led the charge against – such as it was – against William Saxbe becoming Nixon's attorney general, fourth attorney general. And he said, quote, "We should not delude the American people into thinking a way can be found around a constitutional obstacle." He and nine other Democratic senators voted against Saxbe's nomination. There were only 10 votes against, including Robert Byrd. There was not a peep out of Byrd or anyone else when Muskie was appointed seven years later, nor in Bentsen's case in 1993.

The structural points that I wanted to make is that, as John has alluded, there are no kind of accounting provisions in the Emoluments Clause Article 1, Section 6, Clause 2. It doesn't say that the emoluments whereof shall have been increased at the end of the term on net when you subtract out – there's none of these kind of accounting terminology and so forth. And indeed, one of the points that then Professor Breyer, now Justice Breyer, at the time of Saxbe's appointment, made in writing to Robert Bork – one of the points that he made – I'm sorry. I am confusing Breyer with Larry Tribe, their jurisprudence or their views on the Constitution are similar and they were colleagues at Harvard at the time actually.

Breyer made the point – we can take them in any order – Breyer made the point that part of the purpose of the Emoluments Clause wasn't just this anti-corruption provision. He didn't mentioned the broader anti-growth of the federal government argument that John raised, but he said that part of it was that clearly, after the particular person for whom the fix was put into place was no longer in that civil office, Congress would raise the salary again. And indeed, that has happened with every one of the appointments since the Taft example. So it's really not a deterrent to the increase in salary and it's – there's something fishy there.

What Larry Tribe has said, as recently as, I think, last week or the week before – he blogged about this – was unlike the escape hatches in – let's see – Article 1, Section 9, Clause 8 and the third section of the 14th Amendment, there are no escape hatches, no escape clauses to allow fixes here.

So here's Article 1, Section 9, Clause 8. It says that, quote, "No person holding any Office of Profit or Trust shall – under the United States – shall, without the consent of Congress, accept of any present, emolument, office, or title of any kind, from any king, prince or foreign state." So you can't take a lordship or a knighthood or one of these things without the consent of Congress. So Congress – if you manage to get that consent, then you can get that.

And Section 3 of the 14th Amendment prohibits office-holding by anyone who ever, quote, "engaged in insurrection or rebellion," unquote, against the United States, obviously referring to officers of the confederacy or who, quote, "gave aid or comfort to the enemies thereof." And this has its own escape clause, quote, "but Congress may by a vote of two-thirds of each house remove such disability."

So again, there is precedence that other disqualifying clauses of the Constitution have escape hatches. So if Congress – if the Constitutional Convention had wanted to put in a provision sharpening the point that this was purely an anti-self-dealing provision, they could have. They could have said "whose net pay shall not have been increased" in the language of the 18th century, or they could have said, "which increase shall not have been voted on by the particular member," or something to that effect. There could have been an escape hatch.

As Madison said, as John quoted, he was very concerned about the creation of offices and the increase in salaries. That was his greatest fear of corruption, not that one particular member of Senate or the House would collude with his colleagues to raise – create an office for him, although that was a worry as well.

Okay. Now, let's move to the bill itself, which might as well be called the Hillary Clinton Relief from the Constitution Act of 2008. (Laughter.) The emoluments – the practical effect of this is that the emoluments – and again, emoluments mean salary and other certain benefits generally tied to something financial. If you give the Supreme Court new comfier chairs to sit on the bench, I don't think that's a type of emolument. There's a question with Hugo Black in the '30s of whether a provision allowing Supreme Court justices to retire age 70 on full pay was a new emolument. But anyway, it's pretty clear that the increase in salary, if anything, is an emolument.

So this bill moves the emoluments of the secretary of state's office back to what they were on January 1st, 2007, which was two days before Senator Clinton assumed the current term that she's serving now.

The second provision of the bill – of the joint resolution, provides that for civil actions to challenge any actions by the secretary of state. So anyone who has had – the precise language is, "Any person aggrieved by an action of the secretary of state may bring a civil action." And the U.S. district court for the District of Columbia has exclusive jurisdiction over that.

So I don't think there's any way, either under this bill, or in general, that you can manufacture standing or some other way to challenge the appointment before Senator Clinton or Senator Salazar, in this latter case, actually assume the office. Once they do assume the office, however, who could be aggrieved by an action such as they could challenge it? Well, the simplest thing is probably a denial of a passport, say, one of these functions that the State Department does. Obviously, the secretary of state – herself or himself – isn't reviewing each passport application and stamping yes or no, but it's the only reason that that particular line officer in the consular office, in the passport office, is

doing that is because of delegated power directly from the secretary of state. So that could be probably the simplest thing. What other types of adverse actions? I don't know – certifications of a particular consul. You could think of different ones.

In any event, they could bring this suit, so Tom, if you're looking for a plaintiff for a possible challenge, I would look for someone who's been denied or not been – had the passport renewed or something like this for whatever ground. You can just – as lawyers, we can throw the kitchen sink in whatever claims we make. So even they were properly denied their passport because they're not a citizen or something, you could say also the action was improper because, even though under – in a real case, they should still be denied, but – and then just mechanically, it will be a three-judge district court of the district court of District Columbia with provision for a direct appeal to the Supreme Court.

And interestingly – and I didn't go back to look at the Lloyd Bentsen Relief from the Constitution Act of 1993 or any others, but interestingly, this says that the Supreme Court shall accept jurisdiction over the appeal, advance the appeal on the docket, and expedite the appeal. I'm not sure whether this means that they have to actually put it on their oral argument calendar. It might be that they just have to take the appeal and in a pro curium order, deny it. It's probably that, but it's interesting that they actually do have to consider the appeal and not just reject it for lack of jurisdiction or something like that.

I will note that I think the strongest argument against the position that I'm making that most kind of scholars that have studied this, her appointment and in Senator Salazar's appointment, mutatis mutandis, are unconstitutional is this one that not only did Hillary Clinton not vote on this particular pay increase, and not only was it a cost-of-living adjustment rather than some other type of increase, but the Congress that voted on this – it was in the early '90s. It was so far removed from anything from today. Indeed, nobody had to do anything for the cost-of-living adjustment to even go into effect.

Yes, President Bush signed an executive order in January of this year, kind of certifying or propounding – I guess emphasizing would be the word – that there was to be a COLA. But the words of the actual congressional statute that provided for it in the early '90s was that the only way that the COLA would not go into effect for cabinet offices was if the president certified that it not go into effect for whatever reason. So the president didn't have to do anything. It wasn't even that his executive – it wasn't even that he needed to have signed this executive order during Hillary Clinton's term, and that's what makes it that her salary has been increased under the terms of the clause.

So that's something that – some congress did 15 years ago disqualifies someone now from being a civil official of the United States. That seems kind of odd, but again, that's a policy argument and it's not a textual one. If we don't like the result, let's amend the Constitution.

I'll end by saying that it seems that there's not going to be opposition to Hillary Clinton on this, or Ken Salazar, which reinforces the point that the Constitution seems to

be able to be impugned, or ignored with impunity, when it's unlikely that a violation is going to be seen as just – (inaudible) – or when it seems to be a more political question or some obscure part of the Constitution, rather than a real part of the Constitution. I'm not sure what standard that is. It must be in some other footnote of *Carolene Products* maybe that devises the different types of constitutional rights that we have or powers or limits on government. But we see these types of obscure provisions of the Constitution coming up to bite us again and again. It's not just this nomination during a change of administration.

The Patent and Trademark Office, there's a case that's going up before the Supreme Court. Certain appointees to the Patent and Trademark Office weren't appointed correctly under the proper authority of the Department of Commerce and we have a serious issue with hundreds literally of decisions by these patent judges, which are being appealed under the justification that that patent judge didn't have duly constituted authority to make those rulings. And so Congress has rushed through a bill to make – to give them retroactive authority. Well, we don't tend to like retroactive authority in constitutional governments, so that's a case. That's a joint case that's winding its way through the courts.

The "Peekaboo," the Public Company Accounting Oversight Board, PCAOB, there's a case that was recently denied en banc review five-four by the D.C. Circuit in a challenge to the – PCAOB is the body that enforces Sarbanes-Oxley, among other things. An investment company and a public interest law form have sued the PCAOB because members of that commission are appointed by the SEC, not by the president, not by the chairman of the SEC, who's appointed by the president, but by the whole SEC as a body. And that body, of course, is not appointed by the president in clear violation of the appointments clause of the Constitution. That's another case that there's going to be a sur/petition and Cato is going to be filing an amicus brief on.

And closest in our news and in our minds, the TARP, the bailout, clearly, facially unconstitutional under both the non-delegation doctrine, because there's no intelligible principle which Henry Paulson and the TARP committee are supposed to go about their duties. We can see this now that the auto industry apparently is going to get some TARP money and who knows what it's going to be used for? And also, it's a violation of the interstate commerce clause and there's simply no power from Congress to buy distressed assets, it seems to me.

Whether or – the Constitution is not a suicide pact, was the bailout, or had it been constituted differently, in a different bailout necessary to preserve the republic or whatever, that's different. That's a prudential policy argument. And again, I'm not a financial expert. I'm even less of a financial expert than I am a foreign affairs expert, so I certainly am not going to talk about the policy wisdom of the bailout, but as a constitutional matter, it should have been addressed. The argument should have been made, yes, there are problems, but this is so important, et cetera.

I'll leave you with another quote from Professor Paulson's excellent and short article "Is Lloyd Bentsen Unconstitutional?" Oh, and before I read this quote, I'll mention that Professor Paulson had a sequel on the point of whether COLA is really pay increases or not, how the Constitution treats inflation. He wrote a sequel called "Is Bill Clinton Unconstitutional?" Because if we have kind of an act of liberty or a living constitution view, well then the 35-year-old, the mature 33-year-old, or even a 35-year-old, which it says in the Constitution is the requirement to be president, well, shouldn't we take into account that at the time of the founding, life expectancy was 50 or 55 and the maturity intent of – Thomas Jefferson was 32 when he wrote the Declaration of Independence.

Perhaps the founders had a different conception of these things. And by the time Bill Clinton took office, of course he was 46, I believe, when he was elected. Well, the limit was about 58 or 60, so in fact, Al Gore would have been too young. Newt Gingrich, speaker of the House, would have been too young. Clearly, Strom Thurmond was the lawful president in 1994 when Michael Paulson wrote this article.

Anyway, here's what Paulson said in the Lloyd Bentsen article. "There's a terrible tendency on the part of lawyers, including executive branch lawyers, to equate the absence of standing to challenge some government action with lawful authority to engage in such action. This tendency is bred from the bad habit inculcated in law school and reinforced by judges of thinking of law solely as the product of court decisions, rather than as an objective body of commands and prohibitions. Where there is, and can be, no decisional law, there is thought to be no law. Such an approach is as wrong as wrong can be. A constitutional violation is no less a constitutional violation simply because of the absence of a judicial ruling to that effect. The president takes an oath to uphold the Constitution. That duty exists whether the courts are able to act on a matter or not. The Constitution is binding law for the executive branch as well as for the courts. Even if one holds a Holmesian conception of law as nothing more than a prediction of what the courts will hold, one is still a Holmesian bad man in refusing to adhere to what courts would and should hold if an issue could properly be made the subject of a lawsuit. When elected officials regard the Constitution as not violated in fact, simply because of the absence of any litigation risk, they flout their oaths to uphold the Constitution. It is no different from a lawyer who advises a client that he has the legal right to commit a crime because there is little likelihood of his being caught and punished."

MR. FITTON: Thank you Ilya, very good. Appreciate it, and John, as well. (Applause.) This discussion only adds to my outrage over the way we've been treated for raising this issue because the Clinton attack machine comes out as soon as we make a noise about this and one pooh-poohs the concerns about this, but this is a substantive concern.

And as a non-lawyer, having read the histories here through the law reviews and listening to comments here, it seems to me this clause is as relevant as ever and that the Founding Fathers would be offended by this current situation that this office, the secretary of state, is being used in an arguably improper way, according to the intent of

the clause, and the language beside the point, but even going to the intent, to take care of a political problem for Barack Obama and the U.S. Senate.

And the clause was designed to prevent the offices of the executive branch from being used in that way. And there's no doubt that not only is the letter of the law not being followed, but the spirit of the law, and it's as relevant in this situation as it would have been when George Washington was considering some of his first Supreme Court appointments. Do you have an objection to that analysis or clarification, or –

MR. O'CONNOR: No. The purpose was to create disincentives on the front end when offices are created or their salaries are increased. And I think that at least the portion of the framers who were pushing the Emoluments Clause would likely have been hysterical about the idea of regularized increases in executive salaries because they were very, very concerned about the tyrannical nature of centralized power in a national government.

So they would have viewed the Emoluments Clause as being a very effective break on the tendency of Congress to create regular increases in salaries for federal offices. So I do think that the clause is directed at discouraging that sort of conduct and the outgrowth of that conduct is that senators and congressmen become temporarily ineligible for offices whenever the salary bumps up pursuant to this scheme for increasing executive salaries.

MR. FITTON: I also have a technical question. Maybe Ilya, you may want to address this and obviously, as litigator, John.

MR. SHAPIRO: I could see a judge saying because the reading could go either way, it's not 100 percent slam-dunk in my reading. I'm going to use the doctrine of constitutional avoidance to say, "Okay, with the fix, it'll be okay."

MR. FITTON: Do you think the courts, assuming the standing hurdle is overcome, will address the merits for the first time?

MR. O'CONNOR: Well, if the standing hurdle is overcome –

MR. FITTON: By merits, meaning they were to say it's not a political question. It's a question that we're going to decide.

MR. O'CONNOR: Well, in the 1990s, the court reached the merits of some appointment clause challenges where judges – there was challenge whether judges were properly appointed under the Constitution. And I suppose the court could have avoided that issue by saying, "Your claim was not meritorious anyway, so if we'd had a properly appointed judge there, then that would be – you'd have lost anyway, so no harm, no foul. We don't need to reach this constitutional issue."

So I have some hope that if standing is overcome, and that's a significant hurdle, then a court very well may, instead of just looking and saying, "Well, you wouldn't have been denied your passport anyway," confront the issue of whether the officer who did the denying was duly appointed. Will they necessarily? I have no idea and I don't think anybody does. They very well could say, "Well, judges are different from cabinet officials," and make a distinction on those grounds, but I don't think anybody knows.

MR. FITTON: Do you think this is limiting in terms of the challenges? It's limited to this – people supposedly aggrieved by the secretary of state or actions by the officer holding it, or are there other opportunities and challenges –

MR. SHAPIRO: Well, if the Saxbe Fix is unconstitutional, then this is a Saxbe – this is the Clinton fix, and so you could bring a challenge to this bill, not just to Senator Clinton's appointment.

MR. FITTON: And who would have standing to do that?

MR. O'CONNOR: I think it's someone who's aggrieved by an action of the secretary of the state.

MR. SHAPIRO: Yes, right. It's kind of a circular argument.

MR. FITTON: The – and we agree that the issue applies to Senator Salazar?

MR. O'CONNOR: I agree with that.

MR. FITTON: And the other issue that might pop up and – and we talked about it beforehand, that educated our audience here, Representative LaHood, who is in line for transportation secretary, a Republican who presumably was in office at the time – I'm assuming transportation secretary similarly had its salary raise.

MR. O'CONNOR: Tom tells me that Representative LaHood did not run for reelection in November. If that's right, then he's eligible. The Emoluments Clause is certainly no bar to his appointment because, yes, the salary of the transportation secretary would have increased during his term in Congress, but the ineligibility ends when the members of Congress terms ends. And his term will end, I guess, January 3rd, so he would be perfectly eligible for appointment as secretary of transportation.

Another issue that just came up – I saw yesterday that Senator Sununu was named by Senator McConnell as one of the appointees to the newly created TARP Commission. And if Senator Sununu were to be appointed and take that post this year before January 3rd, he would be ineligible for the same reason. That's an office – the TARP Commission is a federal office that's been created during Senator Sununu's term in Congress. So he would be ineligible until January 3rd. But I suspect he's either – he's probably going to take office after his term in Congress; otherwise he'd have to resign from the Senate first.

MR. SHAPIRO: I should note that the Obama administration has already reduced government even before taking office – although I fear this is the most that they will ever reduce the size of government – and creating four now Senate vacancies and two gubernatorial vacancies. That's commendable in one sense, I suppose.

MR. FITTON: Now, I'm going to throw a curve ball because we're dealing with it every day at the office and I'm sure in your day-to-day lives, if you're involved in the constitutional issues, you may have been asked questions about this. But we talk about the eligibility of Hillary Clinton and as you know, there's a great concern among some about the eligibility of Barack Obama and the enforceability and the courts' ability to discern whether someone is eligible to be the president of United States.

Now, without addressing the underlying merits of the claim, is there an interesting case to be made that there's really – is there any – the courts, to me, it seems to say that there's no enforcement mechanism and it's a political question. Do you think it is a political question and is there a vehicle at all for ever challenging the eligibility of a president in terms of citizenship status?

MR. O'CONNOR: I'm going to defer to Ilya. That's just way out of my ken.

MR. SHAPIRO: I haven't thought much about this, so like then Professor Breyer writing to Bork at the time, who said, "I haven't really studied this issue. I'm not an expert, but here is my opinion," I'm going to say – let's see, who could – as part of the Constitution, it's clear as clear can be. Let's say that I'm not yet 35 – well, I'm not a citizen either. So let's see – let's say I'm elected, right? Clearly, unconstitutional; clearly, I'm ineligible. Who would bring that challenge? A voter, probably a voter, because their vote – they've been disenfranchised or something like that could be a theory. I haven't really thought through the standing issue.

But if you can get around the standing issue, which I think it's even more significant in that case than it is in this one, I don't see how a court could avoid doing that because it's a facial violation. It's not some political dispute over one that we might have very shortly about whether the Senate seats, Norm Coleman or Al Franken, the result of the Minnesota senatorial election, the internal machinations of the Senate and how they censure their own members, things like these are clear political questions. Whether the secretary of state recognizes some new independent republic, even though that's an action of secretary of state – I'm not talking about some emoluments issue there – but there are certain things that are clearly political questions.

On the other hand, this issue of eligibility for the presidency is a constitutional question. It seems to be a legal one. So as long as – standing, I think, would be the most of the ball game there. And I think even yesterday, there was another sur/petition that was beat back, two more – now there are about six or seven – about Obama's eligibility. And that's not that the Supreme Court is saying that there's no standing or anything. It's just affirming the lower court's decision or letting rest the lower court's decision that for whatever reason the lower court threw those out, whether it's a 12(b)(6), failure to state a

claim or jurisdiction or standing. I haven't looked at those petitions. So it's not that the Supreme Court has ruled that this is a political question that can never be ruled on.

MR. FITTON: I don't bring it up to promote the cause. I bring it up because the courts are ruling in large number on an eligibility requirement as it's stated in the Constitution. And there are a lot of people trying to figure out well – whatever the underlying merits are or how is it we get the courts to rule on it? And no one's been able to figure it out yet.

And it's interesting – some of our research found that some states do certify the eligibility for some other candidates for federal office, Congress and the Senate, but they don't – they're silent on the eligibility of the office of the president, which is kind of a – it may not be an issue now, but as our country becomes more diverse and it may become an issue in –

MR. SHAPIRO: I got calls earlier this year about McCain's eligibility because he was born on a base in the Panama Canal Zone before there was some sort of piece of legislation that formally did something. It's – U.S. servicemen parents, it's kind of absurd, and I'm sure the campaign had to – his campaign had to spend time and resources researching that issue or they got pro bono counsel do that for them.

But everything I've seen, the biggest issue in the Obama case, I think was this Hawaii birth certificate, but I think I've read enough to at least satisfy myself that it seems to me that all these challenges are politically motivated sour grapes. That's the substance of it. We're talking about the mechanics of challenging and I don't think there's anything per se barring such a challenge.

MR. FITTON: Yes, certainly our lawyers have looked at it and decided to (fry?) the fish. I open the floor up to questions. I don't know if we have a microphone we're supposed to use. I think we do. Are there any questions or concerns that we haven't addressed yet?

Q: Just one question. When you were talking about the escape clauses that had been written into other amendments, those amendments though came after this – the Article 1 Emoluments Clause. Do you think that has any bearing on whether or not there – the lack of an escape clause being relevant?

MR. SHAPIRO: The first example I mentioned is actually a different part of Article 1. The second one is from the 14th Amendment, but I don't think that makes a difference. All of the Constitution is equally valid once it's ratified.

MR. FITTON: Any other questions? Jim?

Q: I have a question concerning whether maybe the Saxbe Fix is adequate. As I understand, the bill is reducing the salary to January 1, 2007, correct? And the provision – the Constitution limits eligibility to senators or representatives during the time for

which they were elected. Now, because Senator Clinton was elected before January 1, 2007, do you think an argument could be made that that's –

MR. SHAPIRO: It's for term for which they were elected. So the term starts January 3rd, 2007, her current term.

Q: Is it clearly that term though that's supported in the –

MR. O'CONNOR: The clause uses the word, "during the time for which he is elected." I think that the best reading of that it relates to the current term and is not a lifetime, as long as you've been in Congress situation.

MR. FITTON: Okay. Tell us a little bit more before we close. I'd like to learn a little bit more about the Reagan example. I first read about this clause, I'm ashamed to say, because I read about it in the *Washington Post*. And in researching it a little bit further, I talked to a reporter and we talked – I was enquiring about the Reagan issue. The reporter said, "Oh, yes, I've got that one next" because I guess there was an inquiry made to Orrin Hatch's office when his name came up about the Emoluments Clause. And this caught the attention of, I guess, the administration, or so the reporter would imply. Is the opinion out there publicly available or is it just received – is it just assumed that that's what happened, or what's the fact behind it in terms of the information that's available?

MR. O'CONNOR: My understanding is that the Office of Legal Counsel opinion at issue has not been released, or at least it wasn't when I wrote my article 13 years ago. It's – numerous people with first-hand acknowledge have confirmed that it exists and that it was issued regarding a potential nomination of Senator Hatch.

Interestingly, I guess a couple of years ago, there was a book written about the Supreme Court, where the premise was offered that the Emoluments Clause issue that put the kibosh on Senator Hatch was actually something that the Reagan administration cooked up because they didn't really want to nominate him. I don't know if that's true, but I do know that the position of the administration back at the time was, "We can't do it. That just doesn't really matter."

MR. FITTON: Do you have any thoughts on that?

MR. SHAPIRO: I've nothing to add to that.

MR. FITTON: Well, unless there are any other questions, we'll close. We do have another question.

Q: Yes, I want to follow-up on what you brought up, Tom, about the – we'll call it the Obama Relief from the Constitution Act, because some of this is quite amazing. As you said before, someone 33-years-old can't run for president, but if there's no mechanism to require him to prove that he's 35, and that's what apparently happening

here because this – I think this certificate of live birth that he posted on his website has really been shown to be a fraud, a fraudulent document, and he refuses to allow his birth certificate to be seen.

And so it's kind of odd that there is no mechanism in the Constitution that requires someone to prove that they are eligible, just the two measures of eligibility – age and being a natural born citizen. For instance, in one of the cases, this Donofrio in New Jersey basically went after all three to prove because the guy from the Green Party was born in Nicaragua and is a green-card holder, and is obviously not eligible, but there is – but he was allowed to be on the ballot because there really is no mechanism to keep him off. And so I'm –

MR. FITTON: Well, one of the courts ruled that this clause had no enforcement mechanism. So it was up to the political system to figure it out. And you're suggesting, assuming that they're standing, that that's probably not correct. I think the problem with the cases that have been brought forward is that they really haven't stated – from a non-legal perspective, I know enough of it – what you need to do to get into court and stay in court. They haven't done enough to stay in court, but the courts seemed to have taken the position, or at least one lower court took the position that it's not our ball. It's the political system's ball.

MR. O'CONNOR: I'll offer the caveat. As Ilya said earlier, I've not researched this issue and I don't claim to be an expert. I did read recently that back in – I think it was the '60s or it might have been – it was either '68 or '72 that at least some courts had intervened and struck – I think it was Eldridge Cleaver from ballot because he was not 35. So I think, again, without having seen the first-hand documents, I've read that there are instances where courts have intervened when someone is not eligible to remove them from the ballot.

MR. FITTON: Okay. One more question.

Q: Can you talk a little bit about the actual procedure, the mechanism of this joint resolution, why that device is used over others or – Ilya mentioned in general, I guess, the circumstances of a fast two-minute uncontested kind of voice vote to pass the resolution itself.

MR. SHAPIRO: That's in the House.

Q: Can you kind of put a little more framework around that, the actual technical procedure of the joint resolution itself, why that device and how it's being used?

MR. SHAPIRO: Well, you can look on THOMAS online and search S.J.RES.46, and here's what you'll get – on 12/10/2008, introduced in the Senate, read twice, considered, read the third time, and passed without amendment by unanimous consent; also 12/10/2008, message on senate action sent to the House; 12/10/2008, 8:45 PM, received in the House; 12/10/2008, 8:55 PM, Mr. Davis of Illinois asked unanimous

consent to take from the speaker's table and consider it; 8:56 PM, considered by unanimous consent; 8:58 PM, on passage, passed without objection; 8:58 PM, motion to reconsider laid on the table, agreed to without objection; 12/10/2008, without a time stamp, cleared for White House; 12/12/2008, presented to president.

MR. FITTON: And it doesn't indicate it's been signed yet?

MR. SHAPIRO: I have a feeling that he's waiting for Senator Clinton's confirmation hearings, or something like that because, as a favor to her or whatever else, or to the next secretary of state, whoever it is, if for some reason, she's voted down, I guess President Bush doesn't want whoever it would be to have that lower salary because in these times, the extra five grand really goes along way. (Laughter.)

MR. FITTON: Well, I appreciate it, John and Ilya. It's very educational and I just hope more people pay attention to this issue. Obviously, we're – it's no secret that we're figuring out ways to challenge this, and I'm going to be unapologetic. And I think there are other reasons that prevent it from being on the Supreme Court that go to the merits of her appointment, but this issue is not really about that. It goes to her eligibility in the first instance in terms of the Constitution and it's similar for Mr. Salazar as well. And Lord knows, we would have sued LaHood, or over LaHood if we could.

MR. O'CONNOR: Don't sue LaHood.

MR. FITTON: Right, over LaHood if we could, but it looks like we won't have to, given that he is eligible. So we appreciate it and again, I believe this video will be put up on the internet sometime. And then afterwards, for those of you watching on the internet, we'll have a summary document that will be certainly even more accessible than the video. So I appreciate your time this afternoon and everyone have a Merry Christmas and happy New Year. Thank you. (Applause.)

(END)