

April 7, 2009

Senator Michael Bennett
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Senator Bennett:

I am a CPA with auditing experience spanning 30+ years. The majority of what I have seen in my career is legitimate attempts by people to be straightforward. Occasionally I have observed deceptive activities. Through it all I have learned the value of reasonable oversight, a point you and I share. Concerning the need for reasonable oversight of the United States Senate, the following letter leads to three questions for you to answer.

- 1) Do you think it is a violation of the Code of Ethics for Government Service (see Code attached) for anyone in Government Service to intentionally use a well know tactic of deception with a projection, a deception tactic understood by the accounting profession and illegal in parts of the private sector?
- 2) *(For background, the expressed purpose of the Democratic Policy Committee (DPC) is to serve "Senate Democrats by developing new policy proposals, providing research and legislative support, publishing reports on important legislation and policy issues...and promoting Caucus unity and cohesion." [\(b\)](#))*

On [February 7, 2003](#)^(a) (attached) Senator Byron Dorgan (D-ND), Chairman of the DPC made the following statement: “**Huge deficits for years to come:** Two years ago, the President inherited a healthy budget surplus, a budget circumstance that predicted \$5.6 Trillion in surpluses over the next 10 years. Now, we face large deficits as far as the eye can see - deficits that will total more than \$2 Trillion over that same time period.”

As I will explain in this letter, Senator Dorgan’s statement is not supported by the 2001 CBO budget projection he uses as the basis for the above claim. Furthermore, the use of a projection for deception is a well understood tactic. Upon completing your analysis of the events in this letter, please

answer this question. Do you think Chairman Dorgan's February 7, 2003 statement is a violation of the Code of Ethics for Government Service?

- 3) I will provide a specific quote from a June 9, 2008 [\(k\)](#) speech when then Senator Obama did not include any cautionary statements about the uncertainties of a projected budget surplus of \$5.6 trillion. In the private sector there is no need to prove intent to deceive to establish the existence of deception with a projection. Is the proof of "intent to deceive" with a projection necessary to establish a violation of the Code of Ethics for Government Service?

Deception with a Projection

For the background on the tactic of deception with a projection I offer two points.

First, the American Institute of Certified Public Accountants (AICPA) highlights the potential to mislead a reader of financial forecasts, also known as projections.

[The AICPA Audit and Accounting Guide](#) (c): Guide for Prospective Financial Information, ©, American Institute of Certified Public Accountants, Inc., Updated as of May 1, 2007

Financial forecasts should be prepared in good faith.

6.09 The potential to mislead a third-party reader of financial forecasts is greater than that for historical financial statements... Good faith also includes exercising care not to mislead a third-party reader.

Second, prior to the stock market collapse of 1929 there was a practice of deceiving potential securities investors through the use of projections. In fact, the practice was so prevalent the tactic became illegal in the private sector by passage of [The Securities Act of 1933](#) (d). The penalty for violation of the Act (Sec. 24) includes prison. To avoid deception The Securities Act of 1933 (Sec. 27A) requires the use of a projection to include meaningful cautionary statements identifying important factors that could cause actual results to differ materially from the projection. Therefore, when providing projection results to the public the inclusion of meaningful cautionary statements identifying important factors that could cause actual results to differ materially from the projection is the underlining principle necessary to avoid deception, regardless of whether the projection is

prepared internally or externally, publicly or privately, or by a partisan or non-partisan group.

“...a budget circumstance that predicted \$5.6 Trillion...”

The basis for the budget surplus Chairman Dorgan references on February 7, 2003, occurred on January 31, 2001 when the Congressional Budget Office (CBO) issued [The Budget and Economic Outlook: Fiscal Years 2002-2011](#) (e). This document begins with the following statement:

“In the absence of significant legislative changes and assuming that the economy follows the path described in this report, the Congressional Budget Office (CBO) projects that the total surplus will reach \$281 billion in 2001. Such surpluses are projected to rise in the future, approaching \$889 billion in 2011 and accumulating to \$5.6 trillion over the 2002-2011 period.”

As pointed out by the CBO, and also in conformity with the preparation of every projection, the projected surpluses were based on a series of assumptions. With the CBO document being available online I will only state, based on my reading, a few CBO assumptions associated with the surplus budget projection. The assumptions include the continuation of the Dotcom/Tech Boom, continued reductions in Defense spending and continuation of the disproportionately higher earnings gains by high income earners. Having said this, there is no need to reference any specific assumption to prove the existence of deception by Chairman Dorgan. The pertinent issues associated with the assumptions are that they exist, they are critical in determining the projected results, they are subject to error, a lay person does not necessarily understand their importance in the preparation of a projection and their uncertainty must be disclosed to avoid misleading third-parties.

CBO Includes 11 Pages of Uncertainties

To minimize the potential for deception with the 2001 surplus budget projection the CBO considered it necessary to include 11 pages of uncertainties associated with the 2001 projection. Deception by Chairman Dorgan occurs because he did not reference any uncertainties with his reference to the projected results.

To highlight the potential to deceive with a projection, an opportunity seized by Chairman Dorgan, and the effort put forth by the CBO to reduce the potential for

deception; I will draw attention to [a few CBO comments included in the 2001 surplus budget projection](#) (f):

“(T)he U.S. economy and the federal budget are highly complex and are affected by many economic and technical factors that are difficult to predict. As a result, actual budgetary outcomes will almost certainly differ from CBO’s (\$5.6 Trillion surplus) baseline projections.”

“Moreover, projections that are quite different from the (\$5.6 T) baseline also have a significant probability of coming to pass.”

“Thus, the short-term outlook for the economy, and hence for the budget, is particularly uncertain when the business cycle may be approaching a turning point.”

“The longer-term outlook is also unusually hard to discern at present.”

“Figure 5-1 is intentionally somewhat fuzzy because the uncertainties are themselves estimates.”

“For example, the figure (5-1) suggests some probability, albeit small, that the budget might fall into deficit in 2006, even without policy changes.”

“Since the Deficit Control Act requires CBO to use those inflation factors and to assume that current policies remain in place, the baseline projection is not a prediction of future outcomes.” – Emphasis added

From these few sentences the CBO believed the USA economy was difficult to predict; the final outcome would almost certainly differ from the \$5.6 trillion surplus projection; the short-term outlook for the 2001 economy, and hence the \$5.6 trillion surplus projection, was uncertain; the longer-term economic outlook was hard to discern; the uncertainties associated with the projection were themselves estimates, the budget might return to deficits without any policy changes from President Bush and the CBO was not making a prediction.

The above identifies the uncertainty of the budget projection, but the following is an explicit statement by the CBO about the future of the USA budget surpluses.

“[The primary negative risk](#) (g) (to the \$5.6 T surplus budget projection) is that the current (2000) slowdown might turn into a recession. Although

forecasters widely anticipated that economic activity would slow, the deceleration has been surprisingly rapid. ... Although those developments must be watched carefully, they do not as yet constitute a strong reason to expect a recession.”

Because the primary negative risk in January 2001 to the \$5.6 trillion projected budget surplus was the economy going into recession, a risk that became a reality in March 2001, that single primary negative risk realization eliminated the possibility of the \$5.6 trillion surplus budget projection becoming a reality, based on my reading of the assumptions contained in the 2001 CBO report, which were uncertain.

The CBO as stated above concluded there was also a possibility the budget would return to deficits without any policy changes.

A cursory reading of the five page Summary Section of the 190 page 2001 CBO projection will provide an understanding of the uncertainty associated with the \$5.6 trillion projected surplus without reading the explicit statement by the CBO in the Outlays Section the baseline (\$5.6 trillion surplus) is not a prediction by the CBO of future outcomes.

Chairman Dorgan, February 7, 2003, Intentional Deception

As stated earlier, on February 7, 2003 Chairman Dorgan stated: “**Huge deficits for years to come:** Two years ago, the President inherited a healthy budget surplus, a budget circumstance that **predicted** \$5.6 Trillion in surpluses over the next 10 years. Now, we face large deficits as far as the eye can see - deficits that will total more than \$2 Trillion over that same time period.” – **Emphasis added**

As a side note, as an auditor involved in oversight I am constantly looking for inconsistencies. Therefore, I found the usage of the words “predicted \$5.6 Trillion in surpluses” by the DPC that explicitly states one of its purposes is “providing research” to be most insightful. How much research was performed when the CBO explicitly stated the \$5.6 trillion surplus was “not a prediction?” How much research was required to eliminate the highly relevant fact the \$5.6 trillion was a “projection?” How much research was required to miss 11 pages of uncertainties?

The above statement by Chairman Dorgan is contradictory to the CBO’s statement the \$5.6 trillion was a projection and was “not a prediction of future outcomes.”

Furthermore, Chairman Dorgan did not include any reference to the fact that the actual results of the CBO 2001 projection could differ materially from those projected in the forward-looking statement or projection, as stated by the CBO in the report.

The above February 7, 2003 statement is not an innocent oversight because Chairman Dorgan essentially made the same point on [May 22, 2003](#) (j). Here is the statement:

“The \$5.6 trillion 10-year surplus that President Bush inherited is now a deficit of more than \$2 trillion, for a total fiscal reversal of well over \$7 trillion.” – Chairman Dorgan, DPC, May 22, 2003.

Looking to a 2001 statement by Senator Dorgan provides the necessary evidence to conclude the attempt at deception by Chairman Dorgan on February 7, 2003 was intentional.

The following are [March 20, 2001](#) (h) statements by Senator Dorgan.

“The projected 10 year budget surpluses are just that, projections, and are not at all certain” and “The President’s plan assumes we will have budget surpluses for the next 10 years. I hope that is the case, but with the current slowdown in our economy, we ought to be cautious. Economic forecasts are no more reliable than weather forecasts.” – Senator Dorgan, March 20, 2001

Note on March 20, 2001 Senator Dorgan stresses the deceleration of the economy, the same point made by the CBO in 2001. This is contradictory to Chairman Dorgan’s February 7, 2003 statement “...the President inherited a healthy budget surplus, a budget circumstance that predicted \$5.6 Trillion in surplus over the next 10 years.” Also note in 2001 Senator Dorgan included the necessary cautionary statements about a projection. The statements by Senator Dorgan in 2001 are straightforward and did not include any element of deception with a projection.

Based on my experience in the area of financial deception and considering statements made by Senator Dorgan 23 months earlier, I believe the above is sufficient to prove on February 7, 2003 Chairman Dorgan intended to deceive Americans with a tactic of deception. A tactic of deception well understood in the accounting profession and a tactic illegal in some areas of the private sector with possible punishment for offenders in the private sector to include prison. Chairman Dorgan is not in the private sector.

DPC Provides Exceptional Opportunity to Deceive

With the stated purpose of the DPC being to provide research, publishing reports on policy issues, and to promote Caucus unity and cohesion, Chairman Dorgan possesses increased opportunity to perpetrate a deception. The DPC's stated purpose of "research" implies credibility to the final results of the DPC. Couple the implied credibility that comes from the presumption of research along with the purpose of promoting Caucus unity and the result is an exceptional opportunity to advance a deception through the entire Democratic Caucus.

Again, the DPC concluded on February 7, 2003 that "President (Bush) inherited a healthy budget surplus, a budget circumstance that predicted \$5.6 Trillion in surpluses over the next 10 years." How much research was performed by the DPC when the CBO explicitly stated the \$5.6 trillion surplus was "not a prediction?" How much research was required by the DPC to eliminate the highly relevant fact the \$5.6 trillion was a "projection?" How much research was required by the DPC to miss 11 pages of uncertainties?

Was the DPC successful in promoting through the Caucus the intentional tactic of deception with a projection?

Deception Tactic Displayed by Senator Obama and Others

In a campaign speech in North Carolina on [June 9, 2008](#) (k), Senator Obama did not include any cautionary statements about the uncertainty of projected results when he said the following:

"George Bush's policies have taken us from a projected \$5.6 trillion dollar surplus at the end of the Clinton Administration to massive deficits and nearly four trillion dollars in new debt today. We were promised a fiscal conservative. Instead, we got the most fiscally irresponsible administration in history. And now John McCain wants to give us another. Well we've been there once, and we're not going back. It's time to move this country forward." – Senator Obama (k)

Please be aware it is my assertion the following Senators have also used the tactic of deception described above on at least one occasion: [Senator Biden on October 15, 2008](#); [Senator Harry Reid \(NV\) on June 14, 2006](#); [Senator Hillary Clinton on April 16, 2008](#), [Senator Robert Byrd on Feb 22, 2003](#); [Senator Feinstein on March](#)

[16, 2006](#) and [Senator Conrad on July 11, 2007](#). Links to the above can be located at my website [\(i\)](#). The above list is not considered exhaustive by me.

Three Questions

- 1) Do you think it is a violation of the Code of Ethics for Government Service (see Code attached) for anyone in Government Service to intentionally use a well know tactic of deception with a projection, a deception tactic understood by the accounting profession and illegal in parts of the private sector?
- 2) On [February 7, 2003](#) (a) (attached) Senator Byron Dorgan (D-ND), Chairman of the DPC made the following statement: “**Huge deficits for years to come:** Two years ago, the President inherited a healthy budget surplus, a budget circumstance that predicted \$5.6 Trillion in surpluses over the next 10 years. Now, we face large deficits as far as the eye can see - deficits that will total more than \$2 Trillion over that same time period.”

Considering Senator Dorgan’s exceptional opportunity to perpetuate a deception tactic as Chairman of the DPC, do you think Chairman Dorgan’s above statement is a violation of the Code of Ethics for Government Service?

- 3) With reference to Senator Obama’s June 9, 2008 speech [\(k\)](#) that did not include any meaningful cautionary statements about the uncertainty of a projected result, is the proof of “intent to deceive” with a projection necessary to establish a violation of the Code of Ethics for Government Service?

Additional details on the deception tactic are on my non-commercial website ([1](#)).

I look forward to your timely response.

Regards,

Signed April 7, 2009

Gregory R. Brice, CPA
Denver, CO 80210

References

- a) <http://democrats.senate.gov/dpc/hearings/hearing2/dorgan.pdf>
- b) <http://dpc.senate.gov/dpcabout.cfm>
- c) <http://www.reportcard2000.com/aaf-cover-and-mislead.pdf>
- d) <http://www.sec.gov/about/laws/sa33.pdf>
- e) <http://www.cbo.gov/ftpdocs/27xx/doc2727/entire-report.pdf>
- f) <http://www.reportcard2000.com/MajorPoints2001.htm>
- g) http://www.reportcard2000.com/Economic_outlook2001.htm#primaryneg
- h) <http://www.reportcard2000.com/dorgan-2001.htm>
- i) <http://www.reportcard2000.com/deception-log.htm>
- j) http://democrats.senate.gov/dpc/dpc-pf.cfm?doc_name=fs-108-1-205
- k) http://www.barackobama.com/2008/06/09/remarks_of_senator_barack_obama_76.php
- l) <http://democraticdeception.com>



Democratic Policy Committee
United States Senate
Washington, D.C. 20510-7050
Senator Byron L. Dorgan, Chairman

DEMOCRATIC POLICY COMMITTEE NEWS RELEASE

FOR IMMEDIATE RELEASE
Friday
February 7, 2003

FOR MORE INFORMATION:
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OPENING STATEMENT OF DPC CHAIRMAN SENATOR BYRON DORGAN DEMOCRATIC POLICY COMMITTEE HEARING February 7, 2003

(WASHINGTON, D.C.) Following is the text of the opening statement by U.S. Senator Byron Dorgan (D-ND), Chairman of the Senate Democratic Policy Committee, at the committee's hearing Friday to examine the Bush 2004 budget:

TEXT

A budget - any budget - represents choices and reflects priorities. This is true of a family budget, a budget for a small business or a large corporation, and it is certainly true of the Federal budget.

The budget that President Bush proposed this week makes clear what his priorities are, and while I agree with some of the decisions that he has made in his proposal, there are many choices that I don't agree with.

Unbalanced, unwise tax cuts: The President has proposed a massive \$694 Billion "economic growth package" that would do little to stimulate the economy and would direct nearly all of the benefits of the tax cut to just the top 20 percent of taxpayers. Nationwide, more than 42 million taxpayers would get no benefit at all from this proposal. In my home state of North Dakota, 96,500 taxpayers would get no relief and forty nine-percent of North Dakotans would get \$100 or less. Only a nickel of every dollar of this proposal would be spent this fiscal year. This is not a good choice if we are trying to stimulate economic recovery.

Over the next 10 years, the tax cuts would cost \$1.46 Trillion. The priority placed on these enormous tax cut proposals seems misplaced during a time when we are facing spiraling deficits and deep spending cuts.

Dangerous spending reductions that hurt families and communities: The President is proud that he has held overall spending to just 4 percent growth in 2004. But with an aging population that is expanding and increasingly reliant on Social Security and Medicare; with sharp increases in defense spending even without including costs of a war with Iraq; and with states facing dramatic fiscal crises, that number becomes irresponsible and wholly unrealistic.

- ✓ The budget dramatically underfunds education programs, including the President's own signature bill *No Child Left Behind*.
- ✓ Funding for environmental and natural resources programs is slashed by nearly 9 percent.
- ✓ Highway funding is cut by \$3.6 Billion.
- ✓ The COPS program - hugely successful in its effort to boost community policing - is reduced by over \$1 Billion.

-- MORE --

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- ✓ And job training programs which are so essential - especially when we are experiencing sharp increases in unemployment - are slated to be cut by 11 percent.
- ✓ In my home state of North Dakota, our communities will be devastated by the dramatic reductions in the Essential Air Service program which helps small cities to have air service;
- ✓ by the sharp cuts to Amtrak;
- ✓ by the proposals to slash agricultural research;
- ✓ and by his proposal to leave important flood control projects languishing for lack of funding.

These are not the choices that we ought to make. The President claims that these reductions are being made on behalf of the American people, but in fact these reductions are being made as a disservice to the American people.

Huge deficits for years to come: Two years ago, the President inherited a healthy budget surplus, a budget circumstance that predicted \$5.6 Trillion in surpluses over the next 10 years. Now, we face large deficits as far as the eye can see - deficits that will total more than \$2 Trillion over that same time period.

What is even more troubling is that the \$300 billion deficits that are forecast for the next two years are optimistic numbers. These estimates don't include any of the costs of a war with Iraq or a real Medicare prescription drug benefit; they factor in no emergency or disaster spending; and they assume a rapid return to positive economic growth, despite the fact that the President's stimulus package would do little to spur our economy.

In addition, if you don't include Social Security surpluses those deficits soar over \$460 Billion this year and \$482 Billion next year - nearly half a trillion dollars!

And while some officials have argued that "deficits don't matter," most economists agree that long term, structural deficits raise interest rates and slow economic growth.

Conclusion:

Developing a budget - any budget - is difficult because tough choices have to be made and competing priorities have to be resolved. This is true of a family budget, a budget for a small business or a large corporation, and it is certainly true of the Federal budget.

But it seems to me that this budget proposal misses the mark when it comes to rejuvenating our economy, putting our fiscal house in order, and fulfilling our responsibilities to families and communities across the country.

-- END --

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principals (sic) and to country above loyalty to Government persons, party, or department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

[Source: [U.S. House of Representatives Ethics Committee](#)]

The Securities Act of 1933

Excerpt

SEC. 27A. [77z-2] APPLICATION OF SAFE HARBOR FOR FORWARDLOOKING STATEMENTS.

(C) Safe Harbor - (2) ORAL FORWARD-LOOKING STATEMENTS.—In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, or by a person acting on behalf of such issuer, the requirement set forth in paragraph (1)(A) shall be deemed to be satisfied—

(A) if the oral forward-looking statement is accompanied by a cautionary statement—

(i) that the particular oral statement is a forward-looking statement; and

(ii) that the actual results could differ materially from those projected in the forward-looking statement;

and

(B) if—

(i) the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document, or portion thereof;

(ii) the accompanying oral statement referred to in clause (i) identifies the document, or portion thereof, that contains the additional information about those factors relating to the forward-looking statement; and

(iii) the information contained in that written document is a cautionary statement that satisfies the standard established in paragraph (1)(A).

SEC. 24. [77x] Any person who willfully violates any of the provisions of this title, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both. ²