

## THE BUDGET

Mr. REID. Mr. President, I think it is important to note, with the President having submitted to us his budget, that we have had a \$5 trillion surplus disappear in the last 8 months.

Earlier this month, the Congressional Budget Office confirmed that since passage of the tax cut in May, the surplus projected for the period of 2002 to 2011 declined by \$4 trillion. The President's new tax-and-spend proposals would consume another \$1.3 trillion or more over this period.

I acknowledge that some of this is as a result of the war being conducted, but that is just some of it. As all political scientists and economists have reported in the last few months, the majority of the problem is other economic problems that have developed since this administration took office. It is clear that the Republican fiscal management forces a \$1.5 trillion raid of the Social Security trust funds. There is also a raid on the Medicare trust funds of some \$300 billion.

So I think we must acknowledge we have some serious problems that are going to have to be talked about in the next month or so as we get ready to do a budget for this Congress.

We have what should be called deceptive bookkeeping. We have broken the bipartisan commitment to save Social Security trust fund surpluses. The administration has submitted to us an unbalanced budget. Clearly it is unbalanced. And they have used the Social Security surpluses to mask the unprecedented fiscal reversal seen in the last 8 months and to pay for exploding tax cuts that primarily benefit a wealthy few while jeopardizing retirement security for all Americans.

In addition to this deceptive accounting practice, the administration's budget breaks with a decade-long tradition by only providing details for the next 5 years, even as the administration offers new tax-and-spend proposals with enormous costs that are not felt until later years. The reason they are not doing the 10-year forecast is that the deficits explode in those outyears. This gimmick hides the full budgetary impact and irresponsibility of the administration's fiscal proposals.

The budget also resorts to other—for lack of a better description—gimmicks. Examples include unrealistic restraints on future nondefense discretionary spending, unspecified future Medicare cuts, and proposing budget cuts that have been repeatedly rejected.

Mr. President, I reserve the remainder of the majority's time.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I would like to make some comments in relation to the remarks the Senator from Nevada just made—not in disagreement with anything he said, but to supplement them and to put them in proper perspective.

In regard to tax cuts and the war on terrorism and their impact on the def-

icit, even after the tax cuts of last year, we are still going to have a level of taxation that is as high as we had in World War II. The war on terrorism is taking our resources because, obviously, we have to put every resource we can into winning the war or it might not be won. And we are still going to have a level of taxation that was similar to the times of other wars. The benchmark we use is World War II, when taxes were at about 20.6 percent of gross national product.

I ought to correct myself. At the end of 10 years, we would probably still have taxes a bit less than they were in World War II. But right now, they are at that level, even considering the tax cuts we passed.

The war on terrorism has been one of the reasons we are in deficit. Also, the tax cuts are a reason there will be deficits. There are deficits because of the recession we are in right now, most of which was caused by the war acts of September 11, but also remember that the downturn in the economy, as far as manufacturing is concerned, started 19 months ago, in March of the last year of President Clinton's administration. Also remember that 50 percent of the loss of the Nasdaq took place in the last year of the Clinton administration. As far as the economy is concerned, the downturn started before President Bush ever took office, before we ever knew that the dastardly acts which occurred on September 11 would ever happen to us.

I want to comment on a fact that is true, that this does affect Social Security. In a unified budget, Social Security is considered part of the deficit or part of the surplus, but it is wrong to refer to a situation for Social Security different now than a year ago when we anticipated a \$5.8 trillion surplus.

This is a historical fact about Social Security that has never changed since 1936: Whether we have a unified budget, which we have had since 1967 when President Johnson instituted it, or whether we have separate pots of money—some for Social Security, some for Medicare, some for disability, some for highways, some for airports—our different trust funds, the way Social Security has been accounted for has not changed since 1936. It is this simple: Since 1936, the Social Security payroll money has been paid into a trust fund. That trust fund has had some sort of a surplus since 1936 except for the years 1982 and 1983. My colleagues will remember, at that particular time when we did not have a surplus, we borrowed money from Medicare to keep Social Security checks going until we bailed it out.

Since 1936, Social Security moneys have always been handled the same way. They have been put in the Social Security trust fund and the surplus has been invested in non-marketable Government securities. That has not changed since 1936, whether we have had unified accounting or whatever the situation has been.

I yield the floor.

Mr. THOMAS. Mr. President, has the time for morning business expired?

The ACTING PRESIDENT pro tempore. Under morning business, the time for the minority has expired.

Mr. THOMAS. I thank the Chair.

Mrs. HUTCHISON. Mr. President, is it in order now to talk about Judge Phil Martinez?

## EXECUTIVE SESSION

## NOMINATION OF PHILIP R. MARTINEZ TO BE UNITED STATES DISTRICT JUDGE

The ACTING PRESIDENT pro tempore. The Senate will now proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Philip R. Martinez, of Texas, to be United States District Judge for the Western District of Texas.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 15 minutes evenly divided between the chairman and ranking member of the Judiciary Committee.

Who yields time?

The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I am sure the distinguished chairman of the committee will be here shortly. I am very pleased that I am the first person to speak on behalf of Judge Phil Martinez to be a United States District Judge for the Western District of Texas.

Of all the courts in the country that are desperate for judges, those on the United States-Mexico border have the most critical need. According to statistics from 2000, the Western District of Texas handles the most criminal cases in the country, 4,434 per year, while the Southern District of Texas, for which Randy Crane awaits confirmation, has the third highest level after California's Southern District.

Currently, the Western District of Texas is facing a criminal caseload of 1,983 pending cases and 2,758 defendants waiting for trial because we do not have these judgeships filled.

In El Paso, 884 cases are pending overall, more than any other region in the district. Each day, more cases are added, overwhelming an already overburdened Western District. Relief is needed.

Our war against terrorism is heating up as well as our war on drugs. Therefore, it is more crucial that we have highly qualified judges and law enforcement officials in charge of our justice system along the United States-Mexico border. This is a decisive time for our Nation and our borders.

Senator DIANNE FEINSTEIN and I have introduced a bill to expand the number of Federal courts along the border. While I encourage Senators to support

that bill, I also urge my colleagues to expedite the confirmation of border prosecutors and other judges such as Judge Martinez and Randy Crane.

At the same time, certainly we must be very careful with the selection of U.S. district judges because, as we all know, they have lifetime appointments. That is why I am very pleased to recommend Judge Martinez.

Judge Martinez has presided over a State district court in El Paso since 1991. Previously, he was a judge of a county court at law, having been elected by the people of El Paso. He has also been a practicing lawyer with the firm of Kemp, Smith, an excellent firm in El Paso. He has more than 10 years of experience at the trial court level, presiding over felony, juvenile, and civil cases. In 1979, Judge Martinez graduated from the University of Texas-El Paso with highest honors, receiving his law degree in 1982 from Harvard University.

In addition, he has been a director of the El Paso Legal Assistance Society, the El Paso Holocaust Museum, the El Paso Cancer Treatment Center, and the Hispanic Leadership Institute. He was named the 1991-1992 El Paso Young Lawyers Association's "Outstanding Young Lawyer" after winning its 1990 Outstanding Achievement Award.

Judge Martinez is known in El Paso as a brilliant thinker and an effective and hard worker. He is known to make fair and thoughtful judgment based on principle. I cannot think of anyone to better fill the pending judicial vacancy in El Paso at a pivotal time for this court.

I am very pleased to recommend to my colleagues Judge Phil Martinez to be a United States district judge for the Western District in El Paso.

Thank you, Mr. President. I yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I join in the remarks of the distinguished Senator from Texas, and I rise also to express my enthusiastic support for Philip R. Martinez who has been nominated to be a U.S. District Court judge for the Western District of Texas.

Judge Martinez is an extremely well-qualified nominee who has distinguished himself with hard work, and he has a fine intellect. He will do great service for the citizens of our country.

Judge Martinez graduated from Harvard Law School in 1982 and thereafter developed a commercial litigation practice involving antitrust, securities fraud, deceptive trade practices, contract, and, of course, banking issues. He was elected to serve as a judge in El Paso County Court of Law No. 1 for a 4-year term beginning in January 1991, and he resigned this position in October 1991 to accept appointment by the Governor to the 327th Judicial District Court. He was subsequently elected to this position for a 2-year term beginning in January 1993 and reelected for

consecutive terms thereafter. Clearly, he has the experience and temperament required for this position.

While I am speaking about Judge Martinez's qualifications, I would be remiss not to make an observation or two about how Judge Martinez's nomination fits into the bigger picture of how the Senate is treating judicial nominees this year. As I mentioned 10 days ago, I think we started off the session with appropriate diligence. Chairman LEAHY scheduled a hearing the first week we were in session on one circuit court nominee and five district court nominees. That same week we voted on two district court nominees that had been held over from the end of the last session.

Yesterday we had a vote on Callie V. Granade, and after today there will be no more holdovers from last year. So I commend the chairman and the Democratic leader for getting off to a good start.

Judge Martinez's nomination also provides a useful example of how, contrary to some unsupported insinuations, the White House has worked with us, consulted appropriately, and reached across the aisle to find good bipartisan nominees. Judge Martinez, who belongs to the El Paso County Democratic Party, received strong support from both of his home State Senators. He is a highly qualified Hispanic of Mexican descent who will add an important point of view to the bench.

I sincerely hope that our record so far this year is not a false start. The Judiciary Committee in the Senate should continue to step up the pace of hearings and votes on judicial nominees. No one can dispute that we have plenty of work to do.

Taking account of today's vote, there are 98 vacancies on the Federal judiciary. We have received 24 new nominations already this year. Added to the 34 nominees after today who saw no committee action last session, we will now have a total of 59 nominees pending in the Senate. I am optimistic that we will confirm all of these and then some. Our yardstick for 2002, President Bush's second year in office, is 1994, the second year of President Clinton's first term. That year the Senate confirmed 100 judicial nominees. I am confident the Republicans and Democrats can work together to achieve and perhaps even hopefully exceed 100 confirmations in 2002.

So I look forward to working together with Chairman LEAHY and my colleagues on both sides of the aisle and on both sides of the committee to accomplish this goal. I appreciate the work of my colleagues on the other side in doing this work, because the Federal judiciary is in a crisis and we have to do something about it. The best we can do is take these nominees up and vote on them and hopefully get them confirmed so they can get on the bench and help us during this time of crisis where we do have an awful lot of pressure on the Federal judiciary.

I appreciate, Mr. President, that you are a member of Judiciary Committee, and I just want to remark on your fine work on the committee through the years.

With that, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. THOMAS. Mr. President, I ask we move forward with the vote.

The ACTING PRESIDENT pro tempore. All time having expired, the question is, Will the Senate advise and consent to the nomination of Philip R. Martinez, to be a U.S. District Judge for the Western District of Texas? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

Mr. NICKLES. I announce that the Senator from Tennessee (Mr. THOMPSON), the Senator from Arizona (Mr. MCCAIN), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Mississippi (Mr. LOTT), and the Senator from Mississippi (Mr. COCHRAN) are necessarily absent.

The result was announced—yeas 93, nays 0, as follows:

(Rollcall Vote No. 12 Ex.)

YEAS—93

Akaka	Domenici	Lieberman
Allard	Dorgan	Lincoln
Allen	Durbin	Lugar
Baucus	Edwards	McConnell
Bayh	Ensign	Mikulski
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham	Reed
Brownback	Gramm	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Byrd	Hagel	Santorum
Campbell	Harkin	Sarbanes
Cantwell	Hatch	Schumer
Carnahan	Helms	Sessions
Carper	Hollings	Shelby
Chafee	Hutchinson	Smith (NH)
Cleland	Hutchison	Smith (OR)
Clinton	Inhofe	Snowe
Collins	Inouye	Stabenow
Conrad	Jeffords	Stevens
Corzine	Johnson	Thomas
Craig	Kennedy	Thurmond
Crapo	Kohl	Torricelli
Daschle	Kyl	Voinovich
Dayton	Landrieu	Warner
DeWine	Leahy	Wellstone
Dodd	Levin	Wyden

NOT VOTING—7

Cochran	McCain	Thompson
Kerry	Miller	
Lott	Specter	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table. The President shall be immediately notified of the Senate's action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. Mr. President, I ask unanimous consent to speak in morning business for about 5 minutes.

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

#### CONSIDERATION OF THE ENERGY BILL

Mr. MURKOWSKI. Mr. President, as ranking member of the Energy and Natural Resources Committee, I bring to the attention of my colleagues a situation which I think bears some light.

We have a unique set of circumstances surrounding the manner in which the energy bill is likely to come up before the Senate. I understand that unofficially a date has been set for February 11.

What we have before us is a bill that has been proposed by the majority leader with the assistance of the chairman of the committee, Senator BINGAMAN. The problem with the process is that bill has not been referred to the committee of jurisdiction; that is, the Energy and Natural Resources Committee.

The question is, Why in the normal course of events would a bill under the jurisdiction of the committee not be referred to that committee? To suggest that there is an effort to obstruct the process by giving Members input on the bill through the normal process of amendments is a travesty of the process associated with the traditions of the Senate.

Let me outline where the inconsistencies are.

The Commerce Committee is holding markups on aspects of the energy bill concerning CAFE standards, as they should. Senator HOLLINGS, chairman of that committee, insisted that prior to any developed input on an energy bill CAFE standards be addressed in the committee of jurisdiction; namely, Commerce. I have no objection to that. That is quite appropriate. But it brings me back to the reality that the committee of jurisdiction on the underlying bill has not been given the opportunity. In fact, the majority leader has indicated to the chairman of the En-

ergy Committee that the matter not be taken up before the Energy Committee. One can only wonder why.

Obviously, there are portions of the energy bill with which the majority leader disagrees. I can understand that. But to circumvent the committee process is what I find unacceptable.

Let me give you another example of an inconsistency associated with the energy bill; that is, certain tax incentives that are proposed to expand our energy production, particularly in the area of renewables and new technology.

The Finance Committee, which Senator BAUCUS chairs, is in the process of holding markups, in detail, on portions of energy-related tax matters. So here we have two committees, neither of which have the underlying jurisdiction associated with the energy bill, and their chairmen are proceeding with hearings on their portions of the energy bill; namely, those associated with tax provisions in the Finance Committee and those associated with CAFE standards in the Commerce Committee.

So I would ask the majority leader why he refuses to allow the committee of jurisdiction to hold markups to encourage the participation of members of the committee to review, if you will, or have any input in the bill that is before the Senate as submitted by the majority leader.

This bill has had no referrals to the Energy Committee. It has had absolutely no input from the minority side—Republican members—of that committee. I fail to understand the rationale of the majority leader in refusing to allow the committee of jurisdiction to hold a markup. Perhaps there is a concern the majority leader has relative to how any votes would go outside of the parameters of the legislation which he and Senator BINGAMAN have introduced.

I think it is also a reflection on myself, as the ranking member, and Senator BINGAMAN, as the chairman of the committee, to have our committee circumvented by the dictate of the majority leader. Yet at the same time the majority leader, I assume, is knowledgeable and allows the Committee of Commerce and the Committee of Finance to address their portions of legislation that would be included in the underlying bill.

I bring this matter to the attention of other Members because I think it suggests that clearly the majority leader is attempting to obstruct the legislative process. This bill belongs in the Energy Committee. The Energy Committee has every right to proceed to discuss and consider aspects of this very important legislation. After all, this is one of the President's underlying priorities, along with trade legislation and stimulus. And now that the majority leader has given us an opportunity to have a date to take up energy—namely, the date of February 11—we find ourselves in the position where we have had absolutely no input in this legislation.

We have had a bill in since over a year ago, a comprehensive energy bill. We can look forward to the debate and proceed with amendments to the majority leader's bill. We can consider substitutions. But I want my colleagues to know that the committee of jurisdiction has been circumvented, with no reasonable explanation. Yet the other committees have been allowed to proceed.

I do not know whether to pursue this further, in the sense of asking my colleagues, collectively, if this is the way they believe the Senate should be run or whether we should proceed with a sense of the Senate relative to one committee, for all practical purposes, ostracized by the majority leader by not allowing the committee of jurisdiction to take up this matter. But I communicate to my colleagues that I believe this is a grave injustice. It is a reflection on myself and it is a reflection on the committee chairman, inasmuch as our responsibility has been circumvented. The majority leader has simply decided, without the input of the committee of jurisdiction, to proceed with this legislation coming up on the floor.

I encourage my colleagues to reflect on what is happening. I think it is a retreat from tradition. I find it very objectionable, and I cannot understand why the majority leader would obstruct the process associated with the responsibility of a committee of jurisdiction.

Mr. President, I am going to have more to say about this matter as time goes on, but I do appreciate the opportunity, in morning business, to bring this matter to the attention of my colleagues.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Will the Senator withhold for a unanimous consent request?

Mr. KYL. Certainly.

The PRESIDING OFFICER. The Senator from Nevada.

#### MORNING BUSINESS

Mr. REID. Mr. President, I have been speaking at some length this morning with Senator NICKLES. We also spent some time with Senator GRASSLEY and the majority leader. It would be in everyone's interest for the next hour to continue with discussions off the floor dealing with the stimulus package and also with the agriculture bill, which we hope can be brought up in the near future. Those discussions are ongoing.

I think the discussions have been conducted in good faith. We have spent a lot of time on this economic stimulus