

bill, and not being in the Chamber debating and offering amendments I do not think is going to take away from our ability to do the bill or not do the bill. We already have pending—I do not know the exact number—probably 20 amendments we have not disposed of.

Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak for up to 10 minutes each, until 12:30 p.m. when we recess for our party conferences.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, at this time, I tell my friend and colleague, I will not object because I have a great deal of respect for him. We are ready to proceed with a lot of amendments on the stimulus bill. My colleague from Arizona has an amendment to make the estate tax elimination permanent. As people know, it is effective for 1 year and goes off the books; it sunsets. It should be made permanent. We have other amendments dealing with net offset carryback for 5 years. We would like to have a vote on that amendment. We have amendments that we believe will help stimulate the economy. We would like to have votes on them.

I guess we can go into a period for morning business, have the caucuses, and people can strategize. Democrats and Republicans do have several amendments pending. Frankly, a lot of us would like to vote on those amendments to improve the package the majority leader introduced, which we believe comes up a little short.

I am not going to object to his request for a period for morning business. My understanding is we can debate the stimulus package through that period. But I hope we will have a chance for Democrats and Republicans to offer their amendments later today and tomorrow. So I mention to my colleague, who is my very good friend, that we want to have some votes to improve this package today, but I shall not object to his request.

Mr. KYL. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I have a question for the Senator from Nevada. We are going back on the bill immediately after our respective caucuses; is that correct?

Mr. REID. That is the regular order.

Mr. KYL. I do not object.

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

The PRESIDING OFFICER. The Senator from Arizona.

#### REPEAL OF THE DEATH TAX

Mr. KYL. Mr. President, given the fact we are in morning business, I wish to speak to the question of the repeal

of the death tax to which the Senator from Oklahoma just referred. As my colleagues will remember, of course, the repeal of the death tax was part of the tax package that was passed earlier in the year, but because of the unique procedures of the Senate and the rules under which we operate, we could only look to a 10-year period, as a result of which, perversely, we phase down the death tax and end up repealing it in the ninth year, so it is only effective for 1 year before the whole thing sunsets and we go right back to the current situation with respect to the application of the death tax.

I do not think most Americans realize that is what has happened, but people who have to plan for their estates do realize it has happened. This is why a permanent repeal of the death tax now would be so helpful as a stimulus to the economy because all of the estate tax planning, the insurance, and all the other activities people have to do to provide against the possibility of paying the death tax must continue, as it has in the last many years, with the uncertainty of knowing whether or not, if ever, it is going to be permanently repealed and the expenses of all that have to continue to be incurred, expenses that could be put into investments so we could create jobs for our economy, precisely what the President has talked about doing with his stimulus package.

It is time for us to complete the job we began and see to it that the repeal of the death tax is, in fact, permanent and, therefore, meaningful.

Let me note some of the uncertainty that the lack of total repeal causes our family businesses, our farms, and individuals.

As I said, the business owners are going to continue to have to do the estate planning that is costly, cumbersome, and time consuming. If we repeal permanently the death tax, then these resources can be reinvested directly into these businesses, thus creating new job opportunities and providing a much needed boost to local economies.

In June 2001, a bipartisan majority of Congress did, in fact, act responsibly and provided this repeal of the death tax, much needed relief to our American families, with that historic tax package. But if we do not finish the job, we are going to be held in limbo with respect to the death tax because it comes right back into play after the end of the 10-year period.

The amendment I have offered will not be voted on until perhaps this afternoon. It will repeal the death tax forever so that our children and grandchildren will not have to worry about it or plan to have to pay for it.

Actually, last year's tax legislation has had the perverse result that more planning is necessary to deal with the death tax than currently is the case. Accountants, lawyers, and insurance companies are having a field day, frankly, with the uncertainty that is

encapsulated in the current state of the death tax legislation.

More planning is needed now because nobody knows for sure if and when it will ever be fully repealed.

The sunset provision adds to the complexity of future death tax planning, increasing wasteful costs that are an unproductive drag on our economy. Until permanent repeal is certain, family businesses, farms, and ranches must continue to pay the high cost of life insurance policies, death tax planners, and tax attorneys. These expenses total more than \$12 billion a year according to CONSAD Research Corporation in a study, "The Federal Estate Tax: An Analysis of Three Prominent Issues." That is money that could be saved, could be reinvested in these businesses to create the kinds of job opportunities the President is talking about in urging us to move on with an economic stimulus and job creation package.

Clearly, burying the death tax will enable family businesses, farms, and ranches to begin investing those billions and start providing more stimulus. A more efficient utilization of these resources will result in an immediate stimulus for the economy. More workers will be hired, more capital assets purchased, and more productive goods produced if we eliminate the confusion over the death tax's repeal.

I think we all understand why we repealed the death tax in the first instance. In addition to the fact that a huge amount of money is spent on estate tax planning, studies indicate we spend about the same amount each year on the estate tax planning as is paid in estate taxes altogether. So it is really a double taxation. We are paying an amount of money to deal with the eventuality of paying an estate tax, and that is paid by a lot of people who do not end up paying the tax but end up having to pay the expenses of dealing with the existence of a death tax, and then an equal amount of money is spent in the estate tax itself.

In 2009, families, frankly, who are grieving their lost ones will be faced with a potentially high 45-percent death tax rate. Fortunately, they are going to be able to utilize a \$3.5 million death tax exemption which was enacted into law last year, but in 2010 families grieving for lost ones will avoid the death tax entirely. They will only have a total of \$5.6 million of stepped-up basis, but that will effectively exempt them from all future capital gains tax, a tax in any event of which they would control the timing.

Then in 2011, families grieving their lost ones will feel the wrath of a resurrected death tax returned to its 2001 rate potency. Rates will be as high as 60 percent with a paltry \$675,000 death tax exemption. That is the way our repeal, at midpoint of last year, worked. So it is a very unfair and arbitrary treatment for the death of family members, as well as, as I said before, creating perverse economic incentives.

One can only imagine the extremes to which a family will go to keep fatally ill family members alive in 2009. Nobody wants to predict or argue for anyone to die in any particular year, and that is exactly the perverse nature of the code that we have created now. Unless one dies in the year 2010, they have a big problem. And for heaven's sake, do not wait to die until the year 2011. Now what kind of tax policy is that, where we say if one dies in the year 2010 they get full benefits of repeal but if they hang on to life and die a year later they are right back to where they were a year ago with a 60-percent tax rate and an exemption that does not cover most of the family farmers and businesses that we are talking about? That is horrible moral policy. It is horrible economic policy. It cannot be the policy of the U.S. Government and yet that is exactly what our repeal last year resulted in, the reinstitution of the tax in the year 2010. It is an outrage that our Tax Code would incorporate such arbitrary and immoral incentives.

Of course that is not what we intended when we repealed the tax. It is not what we intended when a bipartisan majority voted on that repeal and passed it. We really wanted it to be forever, but again it was the rules of the Senate that limited us to a 10-year program. So the best solution would be to finish the job and permanently repeal the death tax effective January 1, 2002. By making the tax repeal permanent in 2010, Congress can keep the promise it made last year. I think this is the only moral way we can respond to this very immoral tax.

I will have more to say when we actually debate the amendment, but I close by asking my colleagues to allow us to present this amendment and have an up-or-down vote on it without playing parliamentary games. It is possible that somebody could second degree this amendment. We could play the game by second degreeing it. We could second degree somebody else's amendment with this amendment. We can do all of those things, but I think the American people would like for us not to be playing games.

When I go home, that is what I hear all the time: Why do you guys go back to Washington and play all of these, as they say, partisan games?

The repeal of the death tax and the passage of the tax bill was a successful bipartisan effort. So I think it is important the majority of us who approved that tax package, including the death tax provisions, be given an opportunity to vote up-or-down on this amendment, which finishes the job we started, and enable us to vote to repeal the death tax permanently. If we cannot get that kind of a vote, then all we are doing is hiding from the American people our views with respect to this issue and allow a lot of people to say, oh, sure, yes, I voted for repealing the death tax knowing full well that it was not an effective appeal because it only existed for 1 year.

One better not wait to die the following year if they want to get the advantage of what we did. That is a perverse policy. So I urge my colleagues to allow this vote, up or down, on the death tax amendment. We will be bringing it up this afternoon.

I am looking forward to a spirited debate on it. At the conclusion of that debate, we need to stand up for what is right and true and vote yes or no. If my colleagues do not want to make it permanent, then stand up and say so and let everybody know exactly where they stand.

I think the majority of us are going to want to finish the job we started, make this tax cut permanent, allow the people who otherwise would have to spend \$12 billion a year or more on estate planning to put that money into more productive enterprises, to create jobs and help us get out of the economic doldrums our country is in today.

It is good policy for the economy but, more importantly, it is good policy for small businesses, farms, and the American people.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Is there a time limit on morning business?

The PRESIDING OFFICER. Up to 10 minutes.

Mr. GRASSLEY. I ask unanimous consent to have 15 minutes.

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

#### BENEFITS OF THE 2001 TAX RELIEF BILL

Mr. GRASSLEY. Mr. President, I refer to an article on page 6 of the Washington Post this morning where there is a quote from colleagues in this body and in the other body about the President's budget. I refer to this comment from the ranking Democrat on the House Budget Committee, Congressman SPRATT:

When it comes to waging a war on terrorism, the President has our total support, but national security and homeland security need not come at the expense of Social Security.

Philosophically, that is a good argument. It is an accurate argument for us to be using, but the inference is that with the President's new budget there is some sort of a new game in town, that because we do not have a general fund surplus, because we have to spend more money because of the war on terrorism, as well as the domestic aspect of the war on terrorism, we are going to take Social Security money to finance that because there is otherwise a debt. The implication is this is some new policy.

The point I make is that this kind of talk is misleading because seniors become frightened that they might not receive their Social Security payments. Conservatives may feel as if there is not any fiscal discipline in Washington. Compared to the last 4

years, we have paid down on the national debt in the last 4 years on a relative basis. But conservatives might be concerned that there is no concern about fiscal discipline when it comes to Social Security. But, in fact, there is no new policy in town.

The point I make is since Social Security was started in 1936, except for about 18 months in the years 1982 and 1983, it has had a positive cashflow, more money coming in from the Social Security payroll tax than has been paid out in benefits. As we anticipate that for the future, that will be true for another 14 years, or so.

So for people who read this statement by Congressman SPRATT—and I quote: When it comes to waging war on terrorism, the President has our total support, but national security and homeland security need not come at the expense of Social Security—I say it is not coming at the expense of Social Security. Nothing has changed on Social Security since 1936. We have a positive cashflow today. We have had a positive cashflow every year except for 18 months in 1982 and 1983, and we will have a positive cashflow in Social Security for at least another 13 or 14 years. National security and homeland security are not coming at the expense of Social Security, I say to the distinguished Congressman in the other body.

Since we still have a positive cashflow in the year 2002, and we had a positive cashflow starting when the tax was first implemented, except for those 2 years, what happens with Social Security money? The disposition of Social Security money is the same today, last year, and years we have been running a surplus in the unified budget, and for a long time back. The surplus is invested in Treasury bonds because those are considered the safest investment for retirees. They draw interest. The interest accrues to the benefit of Social Security. That positive cashflow invested in Treasury bonds, plus the interest that is accrued, is going to be used to pay Social Security benefits when there is a negative cashflow in some future year. That is the way Social Security was set up. That is the way it has been operated since it was implemented in 1936. That is the way I believe it will be for a long time into the future.

National security and homeland security is not coming at the expense of Social Security. Let me give a parallel analysis. I will use the highway trust fund. In my State, it is the road use tax fund. At the Federal level it is the highway trust fund. All of the gas tax money goes into the highway trust fund. It is paid out of that highway trust fund for transportation, mostly for highways. It is not used for anything else. There are times, though, that the Federal Government decided they did not want to spend all the highway trust fund money. It was invested in Treasury bonds, as well. And it was not used to buy bombs and guns