

what Democrats want in this area, but in areas where Republicans want to add some things there is not bipartisan agreement on the other side for those things.

That brings us to the bad news as a result of that situation. We are, in fact, stuck in a procedural quagmire. Yesterday the distinguished majority leader claimed that Republicans were slowing down the stimulus bill through filing of many amendments. I think it is a bit ironic today that we have amendments pending on which the majority leader seemingly does not want to vote. If he wanted to move this process to conclusion with a bill that the President has said he would sign, that could be done very easily. We could have a vote on that. There is bipartisan support for it. That bill would be down to the White House I believe faster than you could say Jack Robinson. Instead, the only votes that it seems we are going to be able to get are votes on dueling cloture motions. One vote will be on the majority leader's amendment. That vote is a take-it-or-leave-it vote, I believe.

I call upon all of my colleagues, Democrats and Republicans, to pay close attention. A vote for cloture tomorrow means all amendments offered or filed that have not received a vote will not get a vote. That is a very important point. A vote for cloture on the underlying amendment filed by the majority leader means all of the following amendments will not receive a vote. I will go through those.

Senator BUNNING, a foster care amendment; Senator BAUCUS, emergency agriculture funding; a second-degree amendment to that amendment by Senator KYL for permanent repeal of estate tax; Senator HATCH's amendment for a longer net operating loss carryback provision; Senator REID's amendment on travel and tourism; a second-degree amendment to that by Senator DORGAN on travel industry stabilization; and Senator DOMENICI on a payroll tax holiday, which is probably the most stimulative idea that has been presented to the Senate. We will not have an opportunity to vote on that. Senator DURBIN has an unemployment insurance amendment; Senator ALLARD, a research and development amendment, what we call permanent R&D; Senator LINCOLN, Medicaid Upper Payment Limit payments to hospitals; Senator SMITH of New Hampshire, an active duty waiver of IRA withdrawal penalty; Senator SMITH again, ban on interstate commuter taxes; Senator SMITH again, income tax waiver on tip income; Senator SMITH again, above-the-line deduction for real property taxes; Senator SESSIONS, tax incentives in regard to unemployment compensation; Senator MCCAIN, sale of principal residence for uniformed services, something our military people would benefit from very much; Senator KYL again, a repeat of his second-degree amendment which would be a permanent repeal of the estate tax; Senator THOMAS, small

issue bond provisions; and an amendment I have offered which will also have a cloture vote for the bipartisan White House-centrist package, the bill that I said has bipartisan support in the Senate. If we could get it up for a vote, we would have a bill down to the President and signed. It would be an enacted economic stimulus package faster than you can say Jack Robinson.

All of those amendments will not come to a vote if the cloture vote tomorrow on the Senate majority leader's motion carries.

We are in the mode of a lot of Senators trying to put together a bill that can get a majority vote in the Senate and go to conference. Some of these amendments have to be agreed to to get that kind of bipartisan support. If you do not get a chance to vote on them, how do you ever get to a bipartisan bill? It takes that sort of bipartisanship to get anything done in the Senate.

Let me make very clear that Members who vote for the cloture on that cloture motion, if they want to vote on these amendments, they will be foreclosed.

I said there is going to be another cloture vote tomorrow. It arose out of necessity—not a necessity that I like. But the majority leader forced a vote on the White House-centrist bipartisan amendment that I offered because of his own cloture motion.

The other cloture vote—in relation to the cloture motion I filed—will be on the White House-centrist agreement on stimulus. If cloture is invoked and that amendment passes, the President says that bill will be signed. The bill has already passed the House of Representatives.

That means, bottom line, the following things will happen when the President signs the bill—and there is little disagreement that these things ought to happen—workers will get unemployment checks. Low-income people, qualifying for rebates, will get rebates to spend money. Spending that money will create jobs. Middle-income taxpayers will get more income tax relief. Those who are unemployed for the first time will get help with their health care insurance. And business will get accelerated depreciation. By doing that—investing more, increasing productivity—it will increase the number of jobs.

That is what a stimulus package is all about—two things—one, responding to the needs and the anxiety of the unemployed workers through improved unemployment benefits and for the first time, health care benefits. Currently there are 800,000 of more workers who are unemployed because of September 11; and there is probably more unemployment to come. We are all encouraged that during January unemployment was flat, there was no increase in the rate—and helping those dislocated workers with additional unemployment benefits and with health insurance is greatly needed. The second

thing objective of the economic stimulus bill, in various ways, is to stimulate the economy to create jobs.

For those who say, "Maybe the economy is turning around; we don't need it," we at least have an insurance policy against the usual downtick that comes after you have been a few quarters into a recovery.

But if we want a strong economy, and a certainty of that strong economy, we are going to have to get a stimulus bill passed. So I hope tomorrow we have an opportunity not to have cloture on the underlying Daschle amendment and that we are able to then move towards a vote on the White House-centrist bipartisan package that has passed the House, has bipartisan support in the Senate, and the President has said he will sign.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

PASSING A STIMULUS PACKAGE

Mr. NICKLES. Madam President, I regret to state to my colleagues it is pretty obvious the Democratic majority leader does not want to pass a stimulus package. We needed to amend the package. We have a lot of amendments that were pending and we have not had a vote all day. We had amendments this morning on which we were willing to vote, amendments this afternoon on which we were willing to vote. That was how we would work our way through and have a bill that would pass and go to conference.

Obviously, for some reason, the majority leader decided, no, he would file cloture, have cloture on his underlying proposal, which many Members believe falls far short of providing any stimulus. It provides a lot of spending. The majority leader's underlying proposal has spending for rebate, \$14 billion for people who did not pay taxes. They certainly did not pay any income tax or they would have gotten a tax cut last year. They may have paid payroll taxes, but likely they are available for an earned-income tax credit, and in many cases three or four times the payroll tax they paid. So basically, \$14 billion in welfare reform payments that many were trying to call a tax cut or rebate, but it was not a rebate.

There is another \$5 billion for an entitlement program for States, supposedly to help pay for health care costs, but it was in the form of an entitlement. So it would not be \$5 billion for 1 year, although it was sunsetted in 1 year, but in all likelihood will be continued indefinitely and probably cost more like \$50 or \$60 billion over 10 years.

He had unemployment compensation extension at about \$8 billion. And I notice our colleagues on the Democratic side said: That is not good enough. We need to expand that and have that apply to temporary workers.

The Federal Government has never paid unemployment compensation for temporary workers. Some people, perhaps, want to take advantage of the fact there is a recession, so just expand Federal entitlements. That was going to cost about \$16 billion.

Then the majority leader introduced the only stimulus piece, accelerated depreciation. That was 30 percent. Most people said for a year. We found out the commitment had to be made by September 10 of this year. That is not 12 months; that is more like 8 months from now.

So the stimulative side of his proposal is very small. The spending side was very big. I thought, well, I don't like starting with that. I would have preferred starting with the bipartisan bill on which Senator BREAU and Senator COLLINS and Senator SNOWE and Senator GRASSLEY and others worked. That was a bill that most, if you count both sides, thought there was a majority vote for. That should be underlying, but we did not get that.

So we thought: We will amend the majority leader's proposal and improve it and come up with a bill worthy of passing to conference. We had several amendments. Some amendments that were adopted made the bill better. Some on our side would actually have stimulus impact. We had an expensing amendment that Senator BOND and Senator HUTCHINSON and Senator COLLINS passed. That would allow small business to expense immediately items up to \$40,000. Right now the level is \$24,000. That would have created jobs. That was a positive amendment.

Senator GORDON SMITH had an amendment dealing with accelerated depreciation, 30 percent for 3 years. The point of order was made and it was not successful. He came back with one that was 2 years at 30 percent. That passed and would have created jobs.

We had an amendment by Senator KYL to make the death tax repeal that we passed last year permanent. That would have been positive. You say: How could that make a difference? It makes a difference because there are farms and ranches in Missouri, Oklahoma, and all across the country that would not have to be broken up to pay the death tax. Maybe some small businesses would decide not to be so small because they could agree and know they could grow without the Federal Government getting half of it. A lot of businesses almost suffocate. Owners know if they grow the business any more, the Government will get so much, so why grow it? Why work and expand and build and create more jobs if Uncle Sam will come in and get half?

So if we passed the death tax repeal proposed by the Senator from Arizona, it would have had a positive stimulative impact on the economy.

Unfortunately, our colleagues on the Democratic side do not want to vote on that amendment. They wanted to have other amendments. They wanted amendments to increase agricultural emergency spending. Senator BAUCUS had that amendment. We defeated that amendment sometime last week. It was offered again. Senator KYL offered a second-degree amendment in addition to that to provide death tax repeal, permanent repeal. To me, that would have been positive for agriculture.

Unfortunately, our colleagues on the Democratic side did not want to vote on that amendment. They have not allowed a vote on the amendment. In other words, they are saying: We will vote on what we think is stimulative, but we don't want you to vote on your amendments. We will vote on spending increases.

They had an amendment to increase the Medicaid Federal share. I don't know what is stimulative about that, but it certainly increases Federal Government costs. Medicaid is a Federal-State program, presumably the idea of 50/50. But in many cases the Federal ratio is 70 percent, not 50 percent, and this amendment would increase the Federal ratio by another 3 percent and cost \$10 billion for a couple years and in all likelihood be extended indefinitely. It would have cost \$50 billion or \$60 billion. That was an amendment by our colleagues on the Democratic side: Increase the Federal share on Medicaid, and instead of 70 percent, make it 73 percent; or 60 percent, make it 63 percent. The State would pay the balance.

Then they had an amendment to increase unemployment compensation, including temporary workers, and make that an entitlement. Maybe my daughter, who works part-time while she is a college student, if she changes jobs, could draw unemployment compensation. She might be appreciative, but that is an enormously expensive amendment. Every State has determined unemployment eligibility. Now we will say: States, you do or we will do it for you. And decide to do temporary workers. Some States do temporary workers; most States do not. Most States do not for a reason. But, no, we will do that.

I look at the amendments of our colleagues on the Democratic side, and I don't see anything stimulative. I see a lot of spending—agriculture, Medicaid, unemployment compensation, extend and expand entitlement programs, and do nothing to stimulate the economy, do nothing that would help create jobs.

On the other hand, on the Republican side we have more amendments that we want to offer to stimulate the economy. I mentioned Senator KYL's amendment. Senator DOMENICI has an amendment calling for a payroll tax holiday. Some Democrats say they like it. They are cosponsors of it. Guess what. We are not going to get a vote on it. The amendment offered by Senator DOMENICI might be a substitute for the

entire package, it may well have a majority vote, but we are not going to get a vote on it. Why? Because cloture was filed. If we invoke cloture, this amendment falls.

There is an amendment Senator ALLARD has making R&D tax credits permanent to encourage investment in research and development. We are not going to get a vote on it.

There is a bipartisan package on which many Senators have worked. I mentioned earlier that Senator BREAU and Senator COLLINS and Senator SNOWE and Senator GRASSLEY—several Senators worked on it, Democrats and Republicans. We are not going to get a vote on it, even though we had a majority vote in December, probably still have a majority vote for it, the President said he would sign it, it would become law, could become law this week if we pass the bill the House passed.

The House has actually passed a couple of stimulus packages. Let's pass the last one and let it become law.

No, some people do not want to pass that one either. So we are not even going to get a vote on it.

I think it is very disappointing, to use a word my colleague from South Dakota uses on occasion, to see that cloture was being called up so early. I can just see the plan. We will have a cloture vote on the Daschle underlying bill. It will not pass. It should not pass. I certainly hope it does not pass because I do not think the underlying bill is worth passing. And I do not think all these amendments I mentioned which would have a stimulative impact on our economy should be closed out. I do not think this side of the aisle should be foreclosed from offering amendments.

We did not object to having an amendment on the emergency agriculture bill of Senator BAUCUS—emergency spending. It was not really relevant to the underlying bill, but we did it. We made a point of order. They can make a point of order on Senator KYL's amendment.

I would much prefer to have an up-or-down vote but no, "We don't want to vote on his amendment, we don't want to vote on Senator DOMENICI's amendment; we don't want a vote on the bipartisan stimulus package. No, we are going to file cloture and pull the whole bill down. If we don't get cloture, we are still going to pull the bill down. We'll give a cloture vote on the bipartisan substitute"—because we filed cloture on it just so we can get a vote. The idea being, we will vote on cloture twice, and if we don't get cloture, we will just pull the bill down.

I hope that is not the case.

I think our economy needs a little shot in the arm. It is not in great shape. We have a lot of people who are still hurting, and if we could craft a positive stimulus bill that would create jobs, we would do something positive for America.

I think what we have instead, we have the majority leader and unfortunately most Democrats—we will find

out tomorrow—who are going to say we want to have our own little package. We want to have it our way. We can't consider other amendments. We will have it our way or we will pull the bill down.

Tomorrow, when we vote on this—and I expect we will be voting on it at maybe 10:30 or 11:30 tomorrow—I urge our colleagues to vote no on the cloture vote and let us consider these amendments.

We are more than willing on this side to have a limitation on amendments. For anybody on the other side of the aisle to say Republicans are filibustering this bill is totally false. People are entitled to their own opinions, but they are not entitled to their own facts. We are willing to consider these amendments. We are willing to enter into time limits on these amendments. We are willing to pass this bill tomorrow night—tomorrow night. We are willing to finish this package. Let's just allow our colleagues to have votes on their amendments that they believe would stimulate the economy, and we will vote on amendments, as our Democrat friends have offered, to spend more money.

Let's vote on both. Let's vote on these amendments. Let's see how the votes come out and let's pass a bill. Let's pass a bill that would help the economy. Let's pass a bill that would create jobs. I hope we will.

I urge my colleagues to vote no on the cloture vote. Let's allow these amendments to have their fair day in the Senate. People worked hard on these amendments. They may well do some good.

I looked at several of these that were offered on the Republican side, some of which—several of which have Democrat cosponsors—that I think could help the economy. So I would love for our colleagues to get a chance to vote on these amendments.

We will be very cooperative working with the majority leader and others on the Democrat side to limit amendments, to try to see if we cannot get a stimulus bill that would actually help the economy.

I yield the floor.

JUDICIAL CONFIRMATIONS

Mr. HATCH. Madam President, earlier today I spoke with praise for the way in which the Chairman of the Judiciary Committee and the Democratic Leader have been handling judicial nominations in the past few weeks. One of the reasons I did so was that I detected, in a speech 11 days ago, the possibility that the Judiciary Committee may be headed in a new direction as we begin a new Session of Congress. I sensed a chance that, after eight months of Democratic control, the leaders were growing beyond their previous role of critics focused on the past. I perceived that the leaders might now understand the value of looking forward through the windshield rather

than steering a course with their eyes glued to the rear-view mirror.

I have not given up this hope; it is still early enough to start this Session out on the right foot. But I now have some reason to question my optimism. Comments were made here on the floor earlier today that have put me in the position, once again, of having to set the record straight on a number of events that occurred between 84 and 14 months ago. I do not regard this recurring debate over the past as germane to the present or important to our course for the future. Nevertheless, I am compelled to make sure that the historical record is correct.

One comment that particularly surprised me was the attempt to blame the previous, Republican-controlled Senate for the creation of the current number of judicial vacancies. The fact is that the Republican Senate confirmed essentially the same number of judges for President Clinton, 377, as the Republican Senate did for President Reagan, 382, so there is simply no basis for the Democrat's allegations. Interestingly, the Democrats who controlled the Senate during the first President Bush's Administration left more judicial vacancies and allowed more nominees to go without Senate action when the first President Bush left office than the Republicans did when President Clinton left office. The bottom line is that, at the close of the 106th Congress, there were only 67 vacancies in the Federal judiciary. In the space of one Democratic-controlled congressional session, that number had shot up to nearly 100.

How did this happen? The answer is simple: The pace of hearings and confirmations under the Democratic-controlled Senate last year did not keep up with the pace of vacancies. We were moving so slowly that we were actually falling behind. When our friends across the aisle took control of the Senate on June 5 of last year, President Bush had already sent 18 judicial nominees to the Senate. All told for the year, President Bush nominated 66 highly qualified individuals to fill vacancies in the federal judiciary. But rather than focusing on the work ahead, our Democratic colleagues looked back at the year 1993 to mimic the old route taken then. After delaying their first nominations hearing by over a month, during which time they held numerous hearings on other matters, our Democratic colleagues confirmed precisely 28 judges, exactly one more federal judge than President Clinton saw confirmed during his first year in office. This transparent tit-for-tat exchange of confirmations is rear-view-mirror driving at its worst.

In the first 4 months of Democratic control of the Senate last year, only 6 federal judges were confirmed. At several hearings, the Judiciary Committee considered only one or two judges at a time. The Committee voted on only 6 of 29 Circuit Court nominees in 2001, a rate of 21 percent, leaving 23 of them

without any action at all. Eight of the first eleven judges that President Bush nominated on May 9 of last year have still not even had a hearing. In contrast, there were only 2 Circuit Court nominees at the end of President Clinton's first year left in Committee.

If the Democratic leaders can take their eyes off the rear-view-mirror and take a look at what is ahead, they will see the rather obvious need to speed up the pace of hearings and votes on judicial nominees. We have lots of work to do. There are 98 vacancies in the federal judiciary, a vacancy rate of nearly 12 percent. We have 58 nominees pending in the Senate. Twenty-three of those nominees are slated to fill positions which have been declared judicial emergencies by the Administrative Office of the Courts. Of those, 13 are court of appeals nominees. Particularly important are those areas with a high concentration of judicial emergencies, such as the 4th Circuit Court of Appeals with 2 nominees; 5th Circuit Court of Appeals, where 2 nominees are pending; the 6th Circuit Court of Appeals with 7 nominees pending; and the District of Arizona, where 2 nominees are pending. Let's roll up our sleeves and get to work on these.

Another issue that was raised today was the role of the White House in this process. The fact is that the Bush administration has worked more closely with home State senators than any other administration since I have been in the Senate. Now, I know there were a couple of instances very early last year where communication could have been better, but that is bound to happen with a brand new administration. Since that time, the Bush White House has been making unusually great efforts to consult with home State senators prior to making nominations. I do not know exactly from where the complaints, if any, are coming, but I have a suspicion that some of my colleagues are forgetting the difference between the President's power to make nominations, and the Senate's role to provide advice and consent. Some Senators may wish they could exercise the President's constitutional role instead of their own, but there is no reason to blame the White House for sticking with the allocation of power established by the Framers. If there are any real problems, I invite my colleagues to let me know about them, and I pledge to do my utmost to assist in working through them.

Today's comments concerning the need for more "consensus nominees" from the White House are ironic in light of my colleague's discussion of several specific Clinton nominees for the districts in Texas. My colleague rhetorically asked why those nominees did not get a hearing, but he knows full well that at least a couple of the situations he mentioned were caused by serious problems created by the Clinton Administration's lack of consultation with, and failure to obtain the support of, home State senators.