

opinion, this is not the creation of a bigger government. This is called getting smart and getting it right at a time when our country demands it.

This proposal, however, which I think the President offers is the direct opposite of what some might call big government. Our Founding Fathers said it clearly when they stated within the Constitution the responsibility of the Federal Government to provide for the security of the citizens of this country. That was the foremost charge of a Federal Government's responsibility under the Constitution.

I think our President has recognized that oh so well ever since 9-11 and now brings to us an opportunity and a challenge to create this new department that, in my opinion, will not bloat government. Personnel and offices will remain relatively at current levels. In fact, due to consolidation, it is possible we might even see over time a slight reduction. The challenge is now ourselves. The challenge is to set aside that which is mine or that which is yours—it is called turf here on Capitol Hill—and to recognize that this is a time to act and to act promptly.

I was extremely pleased to see the bipartisan character and feeling of the meeting at the White House yesterday with TOM DASCHLE, TRENT LOTT, DICK GEPHARDT, and DENNY HASTERT—all of these leaders talking in a bipartisan mode about a timeline of importance. I think we all recognize that Leader GEPHARDT said: Why not 9-11-02? Why not on the anniversary of this tragic time in America when we began to rethink and realign our efforts that we should make available to the American people a new department, a new government, a new shaping of government. Well, I hope we can do 9-11-02. But if we are to do it, it means we have to burn the midnight oil a bit. It clearly means we have to roll up our sleeves and go to work. And it also means that the Senate and the House operate differently than they are historically at least expected to operate. We have done it in the past, and we can do it again. And we should do it now.

I hope Leader DASCHLE and Leader LOTT, in recognizing this, can bring the Senate together in a way unprecedented at least in modern times to get the job done—to get it done in a quick but thorough fashion, to do the necessary and proper reviews that bring about for this country a new shaping of government that we hope in the end will make us a safer, more secure place, and in that process not infringe upon or in any way lessen the rights and the freedoms of the citizens of this great country.

NUCLEAR WASTE POLICY

Mr. CRAIG. Mr. President, I want to speak about a need of this Senate to act and act soon. I am speaking about a provision within the Nuclear Waste Policy Act of 1982 that required a procedure by which this country would ul-

timately step forward in determining a permanent storage site for high-level nuclear waste. It is known here as Yucca Mountain in the State of Nevada. It has been a high-profile issue, one that has been given a great deal of debate over the last good number of years, but one that has come again to the floor of the Senate in which we must make a decision to make one step forward in a review and licensing process to determine whether the site of Yucca Mountain in the State of Nevada is capable of handling and effectively storing for 10,000 years the high-level nuclear waste of this country.

In the Nuclear Waste Policy Act of 1982, we established what is known as an expedited procedure for consideration of the resolution approving the President's selection of the nuclear waste site. Now the President has selected, because the NEPA process through the Department of Energy has determined that it is now time to go to the Nuclear Regulatory Commission for their review and their determination as to whether the site ought to be licensed. So the time is at hand, as was seen in 1982 under this act.

The expedited procedure under the Nuclear Waste Policy Act, as amended, specifically provides that once an approval resolution is on the calendar—and that means the authorizing committee has acted and sent it forward, as it has—the law says very specifically that any Senator may move to proceed to its consideration. And the motion to proceed is privileged and nondebatable.

Under current practices, measures normally reach this floor through agreement to a unanimous consent request by the majority leader. It is critically important for the operation and the procedure of this Senate on a daily basis that the majority leader of the Senate set the agenda. But there is always the provision, because we are all equal in the Senate under the Constitution, that sometimes the majority leader may not set the agenda the way the majority of the Senate would want it set. And, of course, that can be objected to and a vote to proceed.

But what we are talking about here is recognition of a special procedure—unprecedented, or at least certainly one that does not establish the precedent of the normal decorum of the Senate. If unanimous consent cannot be obtained, as we know now, the Senate has taken care of that procedure by simply allowing the rule or the decision to be tested.

The Nuclear Waste Policy Act provides special statutory authority to make exceptions to the contemporary practice to which I have just spoken.

Let me say that again. The Nuclear Waste Policy Act provides a special statutory authority to make exception to contemporary practice. In other words, it is not to establish a precedent. It is not to override the majority leader, as some would like to have it thought today and are certainly argu-

ing. It is in fact the law of the country and not the rules of the Senate to which we are speaking. It is one of four statutes adopted since the 100th Congress that expressly allow any Senator to offer a motion to proceed to an item of approval or disapproval. Those statutes are not redundant to Senate rules and do not upset contemporary practice regarding motions to proceed to other legislation on the Senate calendar.

Exercising a Senator's right under the statutory authority in the Nuclear Waste Policy Act should be considered extraordinary, and not a general assault on the normal prerogatives of the majority leader.

When the Senate passed the Nuclear Waste Policy Act, it envisioned a circumstance in which a leader might be unwilling to propound a motion to proceed. It appears that may be what is happening on the floor of the Senate. Thus, the law expressly permits someone else to act so Congress can work its will before a statutory deadline passes.

Finally, let me say this: If a leader will not propound a motion to proceed, he cannot contend his leadership prerogatives will be violated if someone else moves the procedure. You can't contend that you have been violated if in fact that is the law of the land. And that is the law of the land.

The very procedure I have outlined is expressly stated in the Nuclear Waste Policy Act. Agreement with such a position gives the leader absolute and unilateral authority to veto power over consideration of any legislation, if in fact that can be argued. But at times, when TRENT LOTT was majority leader of the Senate, that was challenged, and a majority of the Senate stayed with the leader when it dealt with contemporary legislation of the moment and the setting of the calendar outside the statutes of the Federal Government within the rules of the Senate.

I wanted to speak about that briefly this morning because I know that is now being talked about amongst us Senators as we ultimately come to a time, prior to late July, when we must address this issue for the sake of the country, for the sake of ratepayers, certainly for the sake of the future of the energy sources of our country, and especially for nuclear-generated energy.

It is important to understand, and I will be to the Chamber speaking out about this issue more as we develop it. I would hope that the majority leader or the authorizing committee chairman who brought the resolution forward would act as they should under the rules to establish a time and a date certain when this Senate can debate and act responsibly on this most critical national environmental issue.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I compliment the Senator from Idaho for

making this last point. He is absolutely right. Under the law that we passed, we have to consider what we are going to do with nuclear waste before the middle of July. And there is only one procedure under which it can be done. If the majority leader does not bring it up, then the statute provides anybody else can. That is what will happen.

The Senator from Idaho is exactly correct. I compliment him on his leadership on this issue.

PERMANENT REPEAL OF THE DEATH TAX

Mr. KYL. Mr. President, I rise this morning to talk about the issue that will be before us as soon as we resume business, and that is the permanent repeal of the death tax. This Senate has already repealed the death tax. The President has already signed it into law. But most Americans are now realizing there was a catch.

Under the special procedures that the Senate operates, that bill came before the Senate with a 10-year sunset. So all we could do was pass a law that was in effect for 10 years and in the 11th year, we are right back to where we were in the year 2001, meaning that while we repealed the death tax, it is back in the year 2010. That is not something we intended when we voted to repeal it.

I don't think anybody could argue that they intended only that it be repealed for 1 year. That is extraordinarily bad tax policy and a cruel hoax on the American people, who thought we were repealing it permanently. Obviously, we need to repeal it permanently, and that is what the Gramm-Kyl amendment will do.

I want to speak this morning about why this is so important, to bring it down to simple, personal terms.

In the Mansfield Room, just a few feet from the Senate Chamber in which we are right now, Mr. President, there is a small businessman, the owner of a lumber company. Actually, his dad owns the lumber company. He is helping to run it now. His name is Brad Eiffert, from Columbia, MO. And it is the Boone County Lumber Company.

His problem is this. When his father dies, the U.S. Government says: We want half of the value of everything you own with this lumber company. Let's explore what that means. They have been paying income tax on their corporate income. They have been paying individual income tax on the salary they take out of the company. They pay the payroll tax. They pay the Social Security tax. They generate a lot of taxes for Boone County and for the State of Missouri. And they have created 30 jobs.

This has been a successful, now second-generation company. The children of the father who owns the company now pay \$58,000 a year in insurance premiums so that when their father dies, they will be able to inherit the business and have the money to run the

business. Think of an insurance premium of \$58,000 a year.

What does the Government do right now? The policy before we repealed the death tax was, the day he dies, his estate—that is to say, the people who would inherit the money the father owns and would inherit the business—has to pay half of that to Uncle Sam—half, 50 percent.

There is an exemption of a few hundred thousand dollars. I don't know how much this lumber company is worth, but let's say it is worth \$5 million, just to pick a figure. I could be way off. About \$4.5 million is now subject to the estate tax when the father dies.

So how do people pay the estate tax? This is the perversity of this tax. This lumber company has an inventory of lumber. They buy lumber from different companies that chop down trees and make it for them. So they have a bunch of warehouses full of lumber. And they have trucks that deliver the lumber. They have forklifts that enable them to move that lumber around. They have a little office. They have some other things; I am sure they sell hammers and nails and things such as that.

When this business is valued at, let's say, \$5 million, they don't have a drawer that says: If you need \$2.5 million to pay Uncle Sam, here is \$2.5 million. No business has that. What they have is a value in the inventory, the lumber, the trucks, the forklifts, the warehouses, and so on. That is what is worth \$5 million.

So, in effect, Uncle Sam wants to come in and say: We want half of that value. If you have 10 forklifts, we want 5 of them. If you have 10 lumber trucks, we want 5 of them. We want half of the inventory. In effect, just put it on a railroad car and send it to Washington. We want half of your warehouses.

There isn't money to pay Uncle Sam. We are talking about the value of the business. Remember, they have paid their income taxes. We are now talking about the value of the estate. It is called an estate tax.

What is the estate? The estate is the Boone County Lumber Company, with its forklifts and trucks and lumber. If that is worth \$5 million, Uncle Sam says: I want half of it. How do you keep the business going by sending Uncle Sam half of the forklifts and half the trucks and half the lumber? That is obviously not what happens. You have to sell it to generate cash to write a check to Uncle Sam. You cannot just sell half your business. You end up selling the whole business.

Somebody said maybe they could get a loan to pay the taxes. Wrong. Anybody who knows anything about small business knows two things: One, you have financed the purchase of your equipment. You have financed the purchase of the land. Who buys a house for cash? You go get a home mortgage loan.

Well, businesses are the same. They don't pay cash for the land and the buildings; they get a loan from the bank so they can buy the property. They get a loan from the bank to buy their trucks, just as you buy a car on time, and you pay a Ford or GMC creditor or whoever it might be. The same with lumber, you get a bank loan to buy the lumber. Then you sell it and pay back the bank.

So these small businesses are highly leveraged in the sense they have already gotten all the credit they could get out of the bank. They can't go to the bank and borrow \$2.5 million to pay the estate tax.

There is another reason, too, and that is there is an exemption. Today you get a \$1 million exemption—and some people are proposing the exemption be more than that—but you can't qualify for the exemption.

The National Federation of Independent Businesses, which knows a lot about this because it represents a lot of these businesses, has testified, as have other experts, before the House Ways and Means Committee, which considered this, that the provision under which you can theoretically get an exemption is way too complicated and does not work.

The ABA, as a matter of fact—the American Bar Association—has advised its lawyers of being very careful of trying to help anybody to qualify for this exemption because they likely will be committing malpractice. So it does not work either.

So the bottom line is, hundreds of thousands of small businesses around this country face what Brad Eiffert faces. When his dad dies and Uncle Sam says pay us half of the value of everything in this business, he does not have the cash. He is not going to be able to borrow the cash. He has one choice: Sell the Boone County Lumber Company.

I will give you another company. The idea of the death tax was to prevent the accumulation of wealth. I had a good friend in Arizona. His name was Jerry Witosky. He died. He created a printing company, Imperial Lithograph. He started with one employee, himself. He gradually built it up. He had about 150 employees, somewhere in that neighborhood when he died. It was a very successful business in Phoenix.

He contributed more money to charities in Phoenix than anybody I have ever known—a wonderful man. He died. His family could not pay half the value of that printing company to Uncle Sam, and they eventually had to sell the business.

Who did they sell it to? They sold it to a great big corporation. So much for preventing the accumulation of wealth. Here you had a family business, a going concern, a wonderful contributor to the community, and it had to be sold to a big corporation just to generate the cash to pay the estate tax.

Is this right? No. It is bad tax policy. It is unfair. It destroys all of the incentive. We talk about the American