

all of which never passed the House or the Senate, and would be subject to rule XXVIII if the rule was invoked.

I bring this to my colleagues' attention, knowing this rule is there and that at least this Senator, for one, realizes we have an opportunity and an obligation to legislate correctly. This Senate is becoming more and more willing to bypass committees, bypass legislative process, report bills, take up bills directly to the floor without ever going through committee, not giving committee Members the opportunity to have amendments, to have discussion, to have vetting, offer alternatives, or come up with bipartisan approaches.

I found this year very frustrating in both the Energy and Natural Resources Committees on which I serve. We had the most significant piece of legislation in the energy bill since I have been a Member, and it was not even marked up in committee. Yet we spent 7 weeks on the floor of the Senate marking it up. Not a good way to legislate. That bill is in conference. I hope we can come up with a conference report that is a good piece of legislation. That remains questionable.

We had prescription drugs many wanted to mark up in the Finance Committee. We did not do that. We bypassed the Finance Committee. The Finance Committee never had a markup on the most expensive expansion of Medicare since its creation in 1965. We had a debate on prescription drugs with several alternatives, some of which, in my opinion, were fatally flawed. Part of that is because they were not vetted. We did not have a thorough discussion in committee. If some of the obvious flaws were introduced on the floor, they would have been exposed and probably corrected, and we probably would have passed a bipartisan bill that would have had enough momentum to not only get through the Senate but be a strong force in conference, and thereby provide prescription benefits for Seniors. We did not do that because we did not go through the committee. We are breaking the process.

I did homework on the Finance Committee. In every major expansion in Medicare for the last 22 years, almost every one except one went through the committee process and ended up with a bipartisan majority on the floor of the Senate and helped become law. Usually, the Senate markup vehicle that came out of committee was strongly supported on the floor and strongly supported in conference, and was close to being the vehicle to become law. Sometimes it is adjusted with our friends and colleagues in the House.

When you take a bill directly to the floor, and I note now there are a couple of other packages that some say, rule XIV—in other words, take directly to the Calendar a provision dealing with give-backs, additional money for Medicare, some for rural hospitals, some for doctors, some for other providers. Let's bypass the committee and go directly

to the floor and, yes, we will spend \$40 or \$50 billion in doing so, most of which will be spent the first year or two.

What happened to the committee process? Shouldn't every member of the Finance Committee have a chance to say, I think we can do a better job? Maybe we can do it more efficiently or better. No, we bypass the committee and take it directly to the floor.

Now I understand we are going to bypass the Finance Committee on a small business package. I used to be a small businessman. I have ideas what should be in that package. I would like a say-so in the amendment. We will not get a vote. No Finance Committee Member—maybe one or two that are putting the package together, but the rest of us on that committee do not get to vote. We did not get to offer an amendment. We did not get to say, we do not think that should be in, maybe something else should be in.

Should we have "pay-fors"? What should they be? Do we have tax cuts and tax increases? What should they be? How can we best stimulate the economy? Some of us think we have something to offer in that debate, not if you bypass the committee and go straight to the floor. I object to that process. That is a process at least this Senator is going to be very reluctant to support. I don't like bypassing the committee process. I don't like introducing things that are totally extraneous to the House bill or the Senate bill and putting them in conference. I may support those provisions, but I don't think that is a good way to legislate.

I am bothered by the fact the Senate is not working. I am bothered by the fact we did not pass a budget this year for the first time since 1974. I am bothered by the fact that we are yet to pass and send to the President any appropriations bills other than a 1-week continuing resolution. I am bothered by the fact we didn't do the energy bill right. We didn't do prescription drugs right. We didn't get it done. And I am bothered by the fact I look at two-thirds of this bill and I say: Wait a minute, where did this come from, even though they may be perfectly acceptable provisions.

Some might say we have done it before. That is true. But we also have rules against doing it. I believe the rule would be upheld. I believe these were extraneous to the conference. So I think rule XXVIII would be upheld. We may find out. I haven't decided to make that point of order. I am letting my colleagues know the rule is on there for a purpose. We should follow legislative procedure. We should abide by the rules. Unfortunately, we have not done so.

I see we are going to create 20 new judgeships. I guess I am all for that, but I look at several outstanding judges, 47 of whom are yet to be voted on, 7 of whom—I just mention 7—have waited for a year and haven't even had a hearing, 2 of whom have had a hear-

ing, Miguel Estrada and Michael McConnell, and we don't know if they are going to get a vote in the committee or not.

I think every one of the 12, I believe—or the 11 that were nominated on May 9 are entitled to a vote. People can vote up or they can vote down, they have that right. But I think to deny them even a hearing after 510 days is not fair, especially when you look at the qualifications of somebody like John Roberts, who has argued 37 cases before the Supreme Court, and he is yet to have a hearing; or Miguel Estrada, who has argued 15 cases before the Supreme Court, yet to have a hearing. Michael McConnell argued 10 cases—I take it back. Miguel Estrada has had a hearing, so has McConnell. They just have not been voted on in the committee. It is not too late. We may only have a week and a half left in the session, so I urge the Judiciary Committee to move forward on Mr. McConnell and Mr. Estrada and give these fine individuals, who have very distinguished reputations, distinguished legal careers, give them a vote in the Judiciary Committee and on the floor of the Senate.

I am confident both would be confirmed, both would be confirmed overwhelmingly and would make outstanding jurists for many years to come. I urge the Judiciary Committee to do that. I hope it will happen in the next few days.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

THE NEW JERSEY ELECTION

Mr. SANTORUM. Mr. President, I rise briefly to express my disappointment and dismay at what is going on in the neighboring State to Pennsylvania—New Jersey. What we are seeing play out in New Jersey is not something that, as an elected official, I find particularly ennobling for public officials. This is not something that gives people a whole lot of confidence in the political process in which we are engaged.

It is obvious some are trying to change the rules right at the end of the game, and in a way to advantage one political party. I find that very disconcerting. I find it potentially—as the New Jersey Supreme Court contemplates what they are going to do in this case, seeing the precedent that could result, it could result in a lot of ridiculous things happening at the end of a lot of elections. If you find a candidate behind, you simply change horses right at the end. Instead of having the people decide, you have the courts decide.

Remember just 2 years ago a lot of people were gnashing their teeth saying elections should not be decided in the courts. They should be decided by the people on the ballot. Here we have a situation where there are people on the ballot, and now we are having people go to court to change that ballot.

That is very disconcerting. But I guess one of the things that bothers me the most is that there is a connection here in Washington, DC, to what is going on in New Jersey. The connection here in Washington, DC, as the Senator from New Jersey announced, is that it is his intention, by trying to get his name removed from the ballot, to save the Senate for the Democrats. It was not to give the people of New Jersey a choice, as many of the pundits are arguing and many of the politicians are arguing, that the people of New Jersey deserve a choice. No, this was about potentially having a candidate who was going to lose the election and that could result in the Democrats losing control of the Senate.

So from the press reports, we see lots of pressure being brought to bear on the Senator from New Jersey, from a variety of different quarters, to take one for the party and step aside so the Democrats can continue to control the Senate. That is what this is about. This is not about giving the people of New Jersey a choice. It is about trying to keep power, whether breaking the rules or not, trying to keep power.

There are a lot of discussions in this Chamber about the rule of law, that we have to respect the rule of law. We preach all over the world about the importance of the rule of law. Yet we have a statute that is in place under the Constitution because the Constitution says the legislature shall set the laws of elections within the States, not the courts. The legislature clearly acted in New Jersey.

So what are people here trying to save the Democratic majority trying to do? Well, they are trying to change the law through the courts so they have a better chance of winning the election.

Again, the disturbing part is from press reports that some of that is being orchestrated out of Washington, DC. We have a report from the Washington Post that says:

Senate majority leader Tom Daschle warned McGreevey, the Governor of New Jersey, that substantial national party funding for the race would be in jeopardy. "It was basically, 'Not with my money,'" Democratic officials said.

—unless they picked a particular candidate to substitute for Senator TORRICELLI.

Again, I am hearing a lot of talk that the people of New Jersey deserve a choice. Yet it sounds like the choice is being dictated here in Washington, DC.

Another quote from the Newark Star-Ledger:

In what may be the strangest twist yet in a bizarre election year, New Jersey Democratic leaders last night chose Lautenberg as their standard bearer on the insistence of Senate majority leader Tom Daschle.

They quote a Democratic source saying:

"Lautenberg or nothing." The nothing in this case was a threat by the national Democrats to abandon New Jersey in order to put stronger campaigns for incumbent Democrats in other states where they stood a better chance of winning. . . .

So let's put this in context, the high-brow comments that "the people of New Jersey deserve a choice." Let the people of New Jersey understand whose choice it was. It was not their choice. It was a choice dictated by the political operation here in Washington, DC, and according to these reports, by the Senate majority leader, as to who that choice would be for New Jerseyans to choose from.

That is deeply disturbing. That is deeply disturbing that we see this kind of interplay, in an attempt to change the outcome of an election that did not seem to be going in a positive direction.

I find it very interesting we have another case that just occurred on the unfortunate death of a Representative in Congress from Hawaii, someone who served this country through a long and distinguished career, a very popular Member of the House, and very popular in her district. What I understand is that the Democratic Party in Hawaii is not going to remove her name—is not going to remove her name from the election ballot. Why? Because she is a very popular Member and there is the suggestion that has been reported in the press that even though she is deceased, that she would probably still win the election.

Yet we have in New Jersey someone who is alive and well who they are insisting must be removed from the ballot. This is the kind of crass political calculation that undermines people's faith in the electoral and political process in this country. The sad part is, in part, some of this is being orchestrated out of Washington, DC. This is a crude attempt by those who took power in the Senate, not through the electoral process, to regain power in the Senate through the court process, not through the electoral process that has been established by the State of New Jersey.

How far do we go to keep power? How important is power? What rules must be broken? What principles must be set aside to keep power?

That is what is going on here. That is why the public is outraged and deeply disturbed at what they are seeing in New Jersey.

I find it very troubling that we have Members from this body who are participating in orchestrating those developments. It is not something that reflects positively on the Senate. It certainly does not reflect positively on the electoral system in this country.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

BLOCKING THE WORK OF THE SENATE

Mr. REID. Mr. President, I want to comment on two subject matters today. The first is some of the statements made by my friend, my counterpart, the distinguished Senator from Oklahoma, when he said he was disturbed we were not doing anything in the Senate. He talked about we had not passed any appropriations bills, and went through a list of things we had not done.

But I say, with all due respect to my good friend, the Senator from Oklahoma, we have not done these things because the minority won't let us do them. We have been here reporting for duty. Senator BYRD and Senator STEVENS, on the appropriations bills, reported every one of them out of committee before the August recess. But a decision has been made by the minority not to let us move on any.

That is why we have been on the Interior appropriations bill. This has been the fifth week. So I appreciate the efforts by the minority to make this fact, that we have done nothing in the Senate, our fault, but the American public knows.

We have stated here many times that we are willing to do terrorism insurance, election reform, Patients' Bill of Rights, generic drugs, bankruptcy—all these things that are stuck in conference. We are willing to do every one of the appropriations bills. But they won't let us.

Now, people say: What do you mean, "they won't let us"? That is the way it is in the Senate, a simple majority does not do the trick in the Senate. You need 60 votes. They have 49. We cannot get up to 60. So you can clearly see what the next 5 weeks are going to be like in the States where there are serious Senate races. What you are going to see there is: The Democrats control the Senate, and they have not been able to get anything accomplished.

But the American people know we may not have been able to accomplish a lot because they would not let us, but we have been able to stop a lot of things that would have occurred had we not been here. And I think when those chapters of history are written about this Congress, that is what the big headlines will be: The stuff we were able to stop. We were a check and balance on a ramrod, and we were able to stop things from happening.

THE NEW JERSEY SENATE RACE

Mr. REID. Mr. President, there is another thing I want to talk about. The Senator from Pennsylvania talked about the terrible situation in New Jersey. It is a very unique situation in New Jersey. A sitting Senator had a procedure before the Ethics Committee. It took a lot of time, and the only focus of the election for the Senate seat in New Jersey was that ethics procedure.