

Mr. President, the Miguel Estrada nomination was submitted by President Bush in May 2001—almost 2 years ago. We know that he has not only the support of the majority party, but he has support from a majority of the Members—more than 51 Senators—in this body. And that was demonstrated in a letter that was sent by Senator MCCONNELL and 51 other colleagues to the President, dated February 25, 2003.

Yet my colleagues on the other side of the aisle continue to practice justice delayed, which, incidentally, is increasingly being called, by the American people, justice denied, because that delay is denying the majority will of this body.

My objective, since February 5—since this nomination came to the floor of the Senate—has been to provide all of our Senators with a forum for informed deliberation, for tempered deliberation, for thorough consideration. I have been very clear from the beginning that my intention was to have a vote—an up-or-down vote—and to move this nomination to the constitutionally mandated question: Will the Senate advise and consent to this nomination—yes or no, yea or nay, up or down? That is all that we ask.

It is the majority leader's job, after consultation with the minority leader, to schedule this yea or nay vote. I have asked, on numerous occasions, for a time certain for this vote. Again and again, each of my requests has been rejected.

The nomination has been pending now for 3 weeks—or more than 3 weeks—and I do believe there has been ample time for Members to deliberate on this nominee. There is no doubt about the outcome if we are allowed to vote on it. The sheer number of signatures on that February 25 letter reflects that the confirmation would occur. Yet Democrats continue to refuse to set a time for this dispositive vote.

So, once again, I say: Let's vote. I hope that Members do come to the floor during today's proceedings to discuss this important nomination.

With respect to rollcall votes—because I know a number of our colleagues are very interested in what the plans will be for both today, tomorrow, and on Monday—I will be discussing the schedule with the Democratic assistant leader or the Democratic leader today in relation to the schedule so that very shortly we can determine when these votes will be scheduled.

The Judiciary Committee is still meeting as we speak. But I hope to have some information here within the next hour or hour and a half so we can set up votes over the next couple days.

The ACTING PRESIDENT pro tempore. The Democratic whip.

Mr. REID. Mr. President, the two leaders have met several times in the last 12 hours. That is fair. And there is progress being made as to what the majority leader is going to do next week. We will be happy to cooperate in any

way we can. We have this little dust-up here. We have to work around that.

As I indicated—the leader was not on the floor at the time yesterday—we know we have a problem with the Estrada nomination.

But we are not trying to delay. We have allowed the committees to go forward. We have tried to cooperate with the majority leader anytime he has had other legislation to bring forward. We will continue to do that. We just need to figure out some way to get through the parliamentary problem we have now with the Estrada nomination. We will continue to be advocates for our position in that regard, but we stand ready, as the majority leader has been told by Senator DASCHLE, to work with him in any way we can to help move legislation.

Mr. FRIST. Mr. President, we will continue to work aggressively. I think everybody in this body understands our goal. I appreciate the good nature. We will continue to push forward for a vote. I did have the opportunity to talk to the leader on the other side of the aisle. The Democratic leader and I discussed plans over the next several weeks. That discussion is very important. I believe we are making progress there. Again, in terms of votes, either later today or tomorrow morning, hopefully within an hour or hour and a half, we can make decisions. In all likelihood, we will be voting Monday afternoon and throughout Tuesday.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF MIGUEL ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 21, which the clerk will report.

The assistant legislative clerk read the nomination of Miguel Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey.

Mr. CORZINE. Mr. President, for the past several weeks, as we have heard this morning, this body has done very little beyond the debate on the nomination of Miguel Estrada. Hour upon hour, day upon day, week upon week, the debate has continued. We have heard every argument there is to make on both sides of the issue. We have heard them from just about every Senator, and we have heard them over and over. It has been pretty repetitious.

I don't mean to diminish the importance of this debate about a single, very important job. After all, it goes to the heart of the Senate's role under the constitutional system of government. The question is whether this constitutionally responsible body will be diminished to such an extent that we just become a rubberstamp for White House judicial nominations; that is, whether we will agree to automatically confirm nominees even if they refuse to answer publicly the most basic of our questions on their jurisprudential perspectives. It is hard to understand how we can give a lifetime appointment to a job without having a job interview.

This is an important debate. All of us believe that. That is why we have had 3 weeks of consideration. It is one that reaches well beyond the specifics of the individual candidate. It deserves our careful consideration. The Constitution charges the Senate with the responsibility to provide advice and consent on judicial nominations. Those of us on this side will attend to that responsibility.

Of all the issues facing our Nation at this most challenging time in our history, there are other—certainly in my view and I suspect the view of most of my colleagues—issues that are of a higher priority. It is a profound mistake on the part of the majority to insist on staying on this nomination indefinitely while Mr. Estrada and the administration, with all due respect, continue what some would term “stonewalling” while there are so many vital issues our Congress should be addressing.

THE ECONOMY

Today, I will focus in particular on the problem, along with the drastic, dramatic threat of terrorism we face daily and the prospect of war with Iraq, which we heard the President talked about last evening, that is probably uppermost in the minds of my constituents in New Jersey and, I suspect, across the country, and that is the state of our economy. It is in serious need of attention.

I have been listening to New Jerseyans from around the State, from all walks of life, all ethnic, religious, racial backgrounds, the long-term unemployed, to manual laborers, to mid-level managers, to CEOs, to retirees and soccer moms. For just about all of them, there is a tremendous sense of anxiety with respect to the state of our economy and their families' economic security. People are concerned about whether they will have a job, whether their savings will be there when they retire, whether they will be able to pay for their college educations, whether they will be able to have health care. There are serious concerns, flat-out kitchen table concerns for all Americans. I know that is the case in my home State.

An anecdotal perspective on this country's anxiousness has now been backed up by hard statistics from the conference board released this week.

Sometimes we divorce these statistics from the reality. I certainly see it in people's faces and the words, but we saw it actually monitored in a statistic released by the conference board this week. We saw consumer confidence drop from 78, almost 79 percent, of the population last month to 64 percent. That is the lowest level since October of 1993. That is probably one of the sharpest drops in history; I did not check the actual number, but far greater than post-September 11, and it is reflective of a dramatic undermining of the strength of well-being felt by most Americans.

Americans around the country are deeply concerned about our Nation's economy. They have a good reason to be. After all, since January 2001, the number of unemployed has increased by nearly 40 percent—almost 8.5 million people. About 2.5 million private sector jobs have been lost in that period, and there are now about 2.5 job seekers for every job opening in America. Think about that, 2.5 people applying for every job now available.

Not only have the number of unemployed Americans increased, those out of work are now jobless for longer periods of time. Over the past year, the average number of weeks individuals have spent unsuccessfully seeking work has increased by about a month, and 20 percent of the unemployed have been looking for work more than 6 months. There are 1 million of these long-term unemployed workers in America and almost 100,000 falling off the rolls for unemployment insurance benefits each month. Just slightly fewer than 100,000 each month are dropping off the benefits because they can't find jobs.

While there are no great and solid statistics on it, there are a lot of people dropping out of the job market. The job market is not growing, and it is one of the reasons—the statistics show the unemployment rate certainly up dramatically and skyrocketing—a lot of people have just stopped looking. The lack of jobs has also slowed wage growth. Recently, only those workers with the very highest of incomes have experienced any wage increases in the economy, any wage increases at least that have outpaced inflation. For lower wage earners, that growth has absolutely stalled to zero. That is not, obviously, helping create the demand that will drive our economy and make a real difference in people's lives.

The Bush administration's record on job creation is on track to be the worst in 58 years. In fact, to just equal what transpired during the Eisenhower administration, which currently has the worst record, you would have to create 96,000 new jobs each month starting today and continuing each month for the remainder of this President's term; 96,000 is a lot of jobs to create, particularly when we have been losing jobs at a rate almost that fast each month.

It is extraordinary what we have to do to turn the economy around. With-

out a significant increase in job creation, we will have the worst 4-year record in the history of any President.

Unfortunately, there is little evidence to suggest that it will turn around. For instance, according to the employment outlook survey conducted by Manpower, Inc., which came out this week, which is the private sector's best gauge of what is going on in the employment market, only 22 percent of America's employers are going to increase the number of jobs in the upcoming two quarters. The rest of them are either going to reduce jobs or stay the same.

Mr. President, 22 percent is a very low number by any historical measure. I don't understand why we are debating one job on the floor of the Senate when we are failing to address the fundamental needs and requirements for all American families, their jobs, and their well-being.

Of course, the problems with the economy are much deeper than just reflected in what is probably the most important place—the job market. But there is a lack of confidence in a whole host of sectors in the American economy. Our businesses are now operating at only about 75 percent of capacity. That is well below any of the averages we have had historically, which is about 81 percent. Our States are suffering with some of the most severe fiscal crises they faced in decades, forcing Governors and State legislators to approve steep tax increases. In my State, the average increase in property taxes was 7.1 percent. New York City increased property taxes 18.5 percent, and they are trying to put a commuter tax on so everybody who surrounds the city is helping to bail it out with lots of legitimate needs on homeland defense and first responders. We are putting unbelievable pressure on those individuals who are responsible for State and local governments.

In the upcoming fiscal year, estimates of the total State deficits are roughly \$90 billion cumulatively. And we are talking about a \$36 billion tax cut to be administered this year. That is way overblown by what is happening at our State and local levels.

Briefly, I will mention that investors are in a state of shock. The stock market has declined dramatically in the last 2 years and couple of months, losing almost \$5 trillion in value in that period of time. Those are unbelievable numbers, but when you translate that into 401(k)s and IRAs of individuals—at least in my State—I think that is about a 40 percent decline in value, on average. It is a huge loss of the retirement security that many families have seen happen in their financial well-being. When the President's program was announced in early January, actually the Dow Jones Industrial Average was supposed to be benefited by that program, but it dropped by over 10 percent.

Our Federal budget, which 2 years ago was projected to enjoy a 10-year

surplus at \$5.6 trillion, now looks at record deficits for absolutely years to come—as far as the eye can see, some would say—and will be increasing the public debt over the same horizon as we projected that \$5.6 billion surplus to \$2 trillion worth of public debt. That is a fiscal reversal in this country of \$8 trillion. It is an \$8 trillion negative cash swing in the country's cashflow.

I don't want to tell you what I would do if I were back running a company and we had an \$8 trillion negative cashflow, but it would probably be grounds for change in policies and programs—maybe even a change in CEOs.

When you add all these concerns together, it is clear that the economic record of the Bush administration is bordering on abject failure. Now the administration's response to the problem is, let's do more of the same. Having based its economic policy on large tax breaks for the most fortunate among us, the President's response to that failed policy is let's stay the course, let's have more tax breaks targeted for those with the highest income, and let's run larger budget deficits and increase our national debt even more, and let's reduce national savings—which is the way we create growth in this country—even more.

Whatever happened to the simple view that I think there has been a bipartisan sense of, which is that rising tides lift all boats? Are we not thinking about the economy in its totality? Why don't we have everybody participating? I don't understand why we are sticking with policies that look to be not serving the country well.

As I have suggested, there used to be a business leader who said, "If it's broke, fix it." It is really nothing more than common sense. If things are not working, I think you have to adjust policies; you have to think about doing something differently if you are stuck in a rut. This administration is doing just the reverse. It has dug itself into a hole, and its response is to dig deeper. If we don't challenge these policies, the long-term implications could reduce our Nation's standard of living not just in the near term but for decades to come.

At a time when we are challenged with domestic security and international security, when we are asking for sacrifice from our men and women in uniform, for all of the country to understand we have serious challenges to our national security, why we are not understanding that this is a time for us to pull together and have shared sacrifice is hard for me to understand.

Frankly, if one projects the cost of the President's tax cut package beyond 10 years—if you put that structure in place while the demographic bubble of the baby boomers comes into play, frankly—I don't care about dynamic scoring—we will end up running, by almost all objective analyses, catastrophic deficits, as Chairman Alan Greenspan testified just this morning at a House hearing on aging. It will be

a real challenge to be able to maintain Social Security and Medicare at anything similar to today's programs for the future seniors of America.

We are putting those programs at risk, we are putting our fiscal position at risk, if we stay the course with the policies we have today. Considering all these facts, unfortunately, it is difficult for the administration to provide effective leadership, in my view, on the economy because its credibility has been badly eroded. There is a tremendous credibility gap, and it results from the repeated use of figures and claims that are just badly misleading in many ways. As a matter of fact, starting to come out are regular analyses by economists, people in the press, and I think one needs to honestly look at and challenge what some of these predictions and analyses point to and compare them with the facts.

Let me provide a few examples. The President's rhetoric would lead one to believe that his tax plan will provide a meaningful economic stimulus, get jobs growing, and it is all about jobs. When you dig into the numbers, it turns out that the reality is very different. In fact, only \$36 billion of the President's planned \$675 billion on the table would kick in this year—\$36 billion in a \$10 trillion economy. It is just an absolute drop in the bucket relative to what would be needed to actually drive this economy forward, by anybody's measure, any objective measure of what it takes to get an economy moving.

There is virtually no one in Congress I have been able to find who would argue that this is a program that will stimulate or revitalize this economy, nor does it make sense to argue that the President's dividend exclusion somehow is going to stimulate the economy, when its real effect will be to shift cash off the corporate balance sheet. If corporations are going to invest in jobs and research and development, and if they are going to put money to work in building, plant, and equipment, they need cash. You cannot go to a bank unless you have margin to put down. You need to invest in those things to drive our economy.

By definition, dividend exclusion is going to take money off the balance sheets of companies, and the capacity to invest and retain and create jobs is going to be diminished. That is why there is this argument about whether, if you are going to have a dividend exclusion, you ought to at least do it at the corporate side of the income statement as opposed to through an exclusion.

We have heard that from Chairman Greenspan. We see that from almost any reasonable economic analysis. Cash on the balance sheets is how you get business done, as far as investment and creating jobs. It is almost a truism. Instead of driving economic growth, it is actually antigrowth, and I think we will end up with less economic stimulus by the nature of the

structure, even if we thought it was an appropriate time for that reform on something other than a revenue-neutral basis. In other words, the President's claims about the stimulative impact of his proposal, in my view, and I think a vast majority of independent analysts, is little more than rhetoric. The reality is quite different.

There are other elements with which people can deal with regard to the credibility of the proposals of the administration claiming benefits of this tax cut are going to go—I think this is the quote—'92 million Americans receive an average tax cut of \$1,083.' That is the claim.

As we are hearing over and over, that is pretty misleading because the average tax cut is inflated by the huge breaks going to a very narrow set of folks, while a lot of other people are getting very small tax cuts. In fact, a half of all taxpayers would get a tax cut not of \$1,083, but less than \$100. This is a difference between mean and average, and 78 percent of Americans would get reductions of less than \$1,000.

When I went to business school, our required reading included the book "How to Lie with Statistics." There are some spinmeisters who must have reviewed this work and learned it well, as far as I can tell. I am sure Americans understand how averages are put together, and they can cover great sins.

Similarly, the White House likes to claim the amount of income tax paid by high-income Americans would actually rise under this proposal. We hear this under the arguments of class warfare. When you consider the real measure of who benefits in terms of increases in something that is simple for people to understand, aftertax take-home pay—the stuff people can actually buy groceries with or pay the bills with—it turns out that—no surprise—it is the most fortunate who do best under the Bush plan.

The tax reduction for those making \$45,000 would amount to less than 1 percent of their aftertax take-home pay. Those making more than \$525,000 would see an increase of more than three times that rate, and in real dollars those are substantial numbers. But with the aftertax, what people can actually use in their everyday lives, the opposite is being promoted from what the reality is. Again, there is a credibility gap.

I also argue the credibility gap applies to the administration's claims that their plan will help seniors. In fact, over half of all dividends paid to the elderly go to seniors with incomes over \$100,000. I think it is great they planned and saved, but the number of seniors out of the roughly 40 million seniors who have incomes over \$100,000 is about 3.5 million. That is where over half of this dividend exclusion benefit would go. By the way, only about a quarter of all seniors would receive any benefit.

To say this is going to somehow vastly improve the position of seniors in

America is just a gross overstatement. I wish to revert back to comments I made earlier. The vast majority of seniors depend on Social Security and Medicare as the basis for protecting their economic security and their well-being over a period of time, and we are doing just the opposite of what is necessary to protect Social Security and Medicare in the future years. It is depressing. That is what Chairman Greenspan talked about an hour ago in a hearing of the House Committee on Aging: the risks to Social Security and Medicare if we do not change our economic policies and do something to straighten out our fiscal policies in this country.

Let's consider the administration's claims about how cutting taxes on dividends will benefit millions of Americans. The truth is, only 22 percent of those with incomes under \$100,000—this is the vast majority of income-tax-paying Americans—reported any dividends in the year 2000, and the average tax cut from the dividend exclusion for those with modest incomes of between \$30,000 and \$40,000—by the way, the average income for individuals in America is something close to \$40,000—those people are going to get a \$29 tax cut associated with this dividend exclusion.

There is a real credibility gap. We are exaggerating and distorting the claims about the power of this tax cut. We are talking in terms that really do not relate to the vast majority of Americans. I think the word is starting to get out. There are serious questions in the minds of Americans that at a time when we have the potential for war offshore, and we certainly have threats of terrorism at home, why are we focusing so much of our benefits of what we are doing with regard to tax proposals on such a narrow segment when the broad economy, that rising tide that would help everyone, is suffering and there is no stimulus going to it?

This is not the only area, by the way, where some of these claims, relative to reality, are setting up a real pattern of a credibility gap for the administration. The Secretary of Defense, on a number of occasions, argued the cost of war in Iraq might be \$50 billion to \$60 billion, something in that neighborhood. But when the President's top economic adviser last December—maybe it was in November—to his credit suggested this figure was far too low and the actual cost could be as high as \$200 billion, what happened? He got fired.

The dissidence between what is talked about in the public relative to what the analysis is by a lot of people who are trying to look at this in a serious-minded way so we understand what our needs are as a nation is troubling to a lot of folks and accentuates this credibility gap.

It is time for the administration to be more forthcoming about the real costs of the impending war. The American people have a right to know. I am glad this week we started to see a little

of that discussion, but even in that context, we need to consider the ongoing costs of rebuilding Iraq in the aftermath of a war, presuming that war goes the way we expect, presuming that it is relatively short in nature.

Even yesterday's estimate of \$60 billion to \$95 billion that we read about in the papers included only 1 year of reconstruction costs—1 year—when almost every expert I have heard come before the Foreign Relations Committee has talked about a decade, maybe a little bit more, but a very long-term program. By the way, all we have to do is think about Korea. We are still in Korea 53 years after a war on that peninsula.

The administration should play it straight with everyone about the costs we are going to face, just as we ought to play it straight with regard to our budget, with regard to tax cuts. In my view, we need to talk straight so we can build up the trust of the American people and those who watch us around the world. Trust does matter. It is important. That is what we are asking corporate America to do, to clean up its act. That is why we want accounting statements that are true. I think people expect to truly understand what the nature of the current situation is as we go forward.

Actually there is a serious credibility problem that is causing us problems abroad as well. I think whether or not we are believed by some of the populations abroad is reflected in how much opposition we have seen from a lot of countries, not just in their political establishment but by literally millions of people who have shown up, probably most clearly in Great Britain, which has been our strongest supporter with regard to the Iraqi situation. The population is someplace else. Why is it we are not able to make our case clear?

I think part of this comes from credibility in how we frame these issues, how the information has been brought forward. All one has to do is look at what is going on in the economy to bring about some credibility questions, when we get on to some of these issues of national security.

In this context, let me return to the issue of the nomination of Miguel Estrada. As with many of the claims about the Bush budget, too many of the claims from the other side on this issue simply lack credibility. One of those—probably the most irritating—is the claim that somehow those who oppose the Estrada nomination, or at least would like to have information to prepare ourselves for a vote, are somehow anti-Hispanic.

Does that suggest that groups such as the Congressional Hispanic Caucus, the National Association of Latino Elected and Appointed Officials, the Mexican American Legal Defense and Education Fund, the National Puerto Rican Coalition are anti-Hispanic? I do not get it.

We are making a judgment about how the constitutional process is sup-

posed to work, not talking about whether or not someone is qualified or disqualified because of ethnic background. As far as I am concerned, these kinds of demagogic attacks on Hispanic groups and those who show common cause with them lack credibility. The facts do not meet the circumstance, and they are part of an attempt to intimidate opponents of Mr. Estrada's nomination to stay silent in fulfilling our rightful and responsible position of advice and consent in selecting judges for lifetime appointments to the courts of our country.

It is not going to work, and one reason it is not going to work is the American people expect us to do our job—it is very simple—just as they expect us to pay attention to the economy and do those things that will get us flat off our back and get the economy moving. These things really are common sense, in my view. We are spending weeks upon weeks debating whether one individual is appropriate for a job because many of us do not understand what his views are, and he is unwilling to answer questions, unwilling to have a job interview, and we are forgetting about the 2½ million private sector jobs that we have lost and the 8 million-plus people who are searching for a job. One job versus 8 million.

I have a very hard time understanding where those priorities come out. What is more important to the American people?

A couple of days ago, I asked the distinguished Democratic leader about some conversations he had with the Governors who have been around town from both sides of the aisle. We have all met with them. We have sympathized with some of their needs. I asked if one single Governor lobbied the leader about the Estrada nomination, either to move it on or take it off, or what is happening. Not a single one spoke to the distinguished leader about that nomination.

It should not surprise anyone that our Nation's Governors are more concerned about the economy and the terrible fiscal crisis they face, and here we are talking about this one individual who has been nominated for this one seat on the Court of Appeals for the District of Columbia.

I know from my conversations with people in New Jersey that they feel the same way, and I am sure Americans across America agree. Why is the Senate spending all this time worrying about this one job—I do not get it—while we ignore the millions of Americans who have lost their jobs? We see the consumer confidence falling off the charts. We see our stock market reeling. We see the dollar declining. We are not paying attention to the real things that people are concerned about that make a difference to their lives, their kids' lives, their families' lives. This Estrada nomination is not the priority of the American people, and I do not think it is the priority of my Democratic colleagues.

In a moment, I am going to make a unanimous consent request that we at long last make the economy our top priority. I am going to ask that at least for now we move off the Estrada nomination, as we have done for other concerns—we have passed the omnibus appropriations bill. We were able to take up the child pornography issue this week. We ought to focus on our economy.

The bill for which I will ask unanimous consent was proposed by the distinguished Democratic leader. It includes, among other things, middle-class tax cuts, aid to the States, an expansion of benefits for unemployed Americans, those 100,000 people a week who are dropping off the unemployment rolls right now, and establish rules to restore long-term fiscal discipline and health in our economy.

I recognize my colleagues on the other side of the aisle are not likely to agree to this proposal, but as Democrats continue to emphasize the importance of dealing with our economy, I hope someone on the other side will begin to question the decision to spend days upon days and weeks upon weeks on the nomination of this one individual. I hope they will come to appreciate that there is little time to waste when it comes to boosting our economy and taking care of America's families and getting on to the priority of creating jobs for Americans. I hope they will adapt their priorities, the priorities of the Senate, to those of the American people, which is jobs and economic security.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the pending nomination be set aside and that the Senate take up and begin debate on Calendar No. 21, S. 414, a bill to provide an immediate stimulus to our Nation's economy.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from Nevada.

Mr. ENSIGN. Reserving the right to object, the way to resolve the nomination is to schedule an up-or-down vote.

I object.

The ACTING PRESIDENT pro tempore. The objection is heard.

The Senator from New Jersey has the floor.

Mr. CORZINE. With full expectation and understanding of the position, I am disappointed with the objection that has been raised, but I am not surprised. We have a critical need to get focused on our economy in this country. The needs of the American people are not being addressed. It is not because we are having this debate. We could move off this debate and move to the economy today, then come back to it like we did with regard to the omnibus appropriations.

The American people should know there are proposals on the table that would stimulate this economy and get it moving, instead of seeing unemployment rates skyrocket, instead of seeing deficits as far as the eye can see being