

the tax plans that are in front of us, and what is happening now in the economy. As a member of the Budget Committee, when many of us bring up concerns about falling further into deficit through the tax plans that were passed last year giving tax cuts to the elite, another round that is being proposed this year, and we see that we have 450 economists across the country, including 10 Nobel laureates who say this will not create jobs, it will just add to weakening in the economy and, in fact, be devastating because of the red ink it will create—when we see that, when we ask, how can you possibly support this when the first big round of baby boomers are coming very soon, in the next 6 to 8 years, how do we do both?

How in the world can we afford to place ourselves in such jeopardy, trillions of dollars in debt, the result of a policy that says tax cuts should be given to the elite, while building up national debt. How can we afford that?

I am told by colleagues, you assume Medicare and Social Security will be there as you know it now. I do assume Medicare and Social Security will be there as we know it now. When I look at the numbers, I am deeply concerned. The Center of Budget and Policy Priorities released a report recently that basically said if we just took the tax cuts for the elite passed in 2001 and made those permanent and carried that out, it would cost about \$10 trillion—if we carried that out the way we usually estimate Social Security and Medicare; over 75 years, \$10 trillion in costs for that tax policy.

What is the combined Medicare and Social Security deficit projected during the same time? The \$10 trillion that we are putting into place if that passes in the House and the Senate and is signed by the President. We will voluntarily be setting ourselves on a course to \$10 trillion in debt right when we know Medicare and Social Security will need \$10 trillion.

If you add to that the current debates about adding to that with the new policies that have been proposed, we end up between \$12 trillion and \$14 trillion in costs exactly at the same time we have a need for \$10 trillion in Medicare and Social Security.

This is a conscious choice. For those who vote for the plan proposed by the President, you are putting in place great jeopardy to Social Security and Medicare. It is a conscious choice. I have to assume it comes based on what Mr. Skully was talking about, that people believe Medicare is a dumb system, an unbelievable disaster.

Medicare and Social Security are great American success stories. We need a short-term plan for jobs, opportunity, and prosperity, and that is what we are proposing. That really creates jobs. We can give tax cuts responsibly for taxpayers and small businesses and help States without jeopardizing Medicare and Social Security.

I am deeply concerned about this and urge colleagues to take another look at

what is proposed in the Senate and work together.

The PRESIDING OFFICER. The Senator from the Commonwealth of Kentucky.

ENERGY

Mr. BUNNING. Mr. President, I rise today to talk about the energy bill and need for a comprehensive energy policy.

Although we were unable to pass an energy bill in the 107th Congress, I am hopeful that in this Congress we will be able to get a good bill through the Senate, out of conference, and onto the President's desk.

We have had a department of energy for over 20 years. But we've never had a sound national energy policy.

Now is the time for Congress to get serious about addressing our energy supply and needs.

In order to make progress on the energy bill we need to figure out how to increase production while also doing more to encourage conservation.

In the past I think Congress has failed to make progress on energy policy because we have tried to make a choice between the two.

I hope most of us understand that a sensible energy policy must strike a balanced approach that includes a boost in domestic energy production as well as a promotion of conservation and smarter energy use.

The energy bill before us, under Chairman DOMENICI's leadership takes good steps towards striking this balance.

I look forward to the tax provisions coming from the finance committee that will further promote conservation and energy efficiency by encouraging the use of cleaner burning fuels.

As a member of both the energy committee and finance committee, I am pleased to have had the opportunity to help craft the bill before the Senate.

In the wake of September 11 and ongoing problems in the middle east, it is more and more obvious a sound energy policy is a crucial part of our national security.

We must have reliable sources of energy and we must cut our reliance on foreign oil.

Increasing our domestic production is critical in reducing our foreign dependence.

Right now we depend upon foreign nations—including the middle east—for nearly 60 percent of our Nation's oil supply.

Americans have experienced some difficult times recently when oil and gas prices shot up. They are starting to edge back down now. But during the winter and early spring consumers saw prices go up and up.

We all saw the rise in gas prices this winter and the crimp it put on the economy.

We are struggling to get out of a recession now, and while passing an energy bill might not help us in the short

term, it could make a difference the next time we hit an economic downturn or things flare up in the middle east.

The need to increase our own production of energy has never been more important than now.

While we appear to be moving away from combat in Iraq, there is still a lot of uncertainty in the middle east.

It is too important and there is too much instability in the world. We need to pass an energy policy now.

Mr. President, Congress has been playing political football with the issue for the past few years. I think it's time to end the game.

Our Nation and our National security continue to be at stake.

We must strengthen our energy independence to protect ourselves from any dangerous and unpredictable events in the middle east.

We don't want the United States beholden to other countries just to keep our engines running and lights turned on.

While I am disappointed that ANWR is not in the bill before us, the bill does provide a good starting point to help our Nation increase domestic production of energy and reduce our reliance on foreign sources.

It also provides important conservation provisions which will help protect the environment.

I am also glad that the Senate's energy bill contains the clean coal provisions I wrote to help increase domestic production while also improving environmental protection.

For my home State, this means more jobs and a cleaner place to live.

Clean coal technologies will result in a significant reduction of emissions and a sharp increase in efficiency of turning coal into electricity.

I'm proud to come from a coal state. For generations Kentuckians from Pike county in the east to Crittenden county in the west have made their living in the coal fields and coal mines.

For the last decade coal in Kentucky was on the downturn because of legislative and regulatory policies from the Federal Government.

Now I am glad to see that we have turned that around and are taking steps to make sure that coal continues to play a vital role in meeting our future energy needs.

This focus on clean coal is good for the environment. And it is certainly good for the economy and for putting folks back on the job.

The energy bill encourages research and development of clean coal technology by authorizing nearly \$2.6 billion in appropriations for the D.O.E. to conduct programs to advance new technology.

Almost \$2 billion will be used for the clean coal power initiative where D.O.E. will work with industry to advance efficiency, environmental performance, and cost competitiveness of new clean coal technologies.

The proposed energy tax package includes nearly \$2 billion in tax credits

for companies to implement clean coal technology.

Coal plays an important role in our economy. The 21st century economy is going to require increased amounts of reliable, clean, and affordable electricity to keep our Nation running.

Today, more than half of our Nation's electricity is generated from abundant low cost domestic coal.

We have over 275 billion tons of recoverable coal reserves. This is nearly 30 percent of the world's coal supply.

That is enough coal to supply us with energy for more than 250 years.

With research advances, we have the know-how to better balance conservation with the need for increased production. We should use our know-how to come up with a good energy bill.

I hope we can move it quickly and pass a bill to make our environment, economy, and National security stronger.

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

The PRESIDING OFFICER (Mr. CRAPO). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NOMINATIONS OF JUSTICE PRISCILLA OWEN AND MIGUEL ESTRADA

Mrs. HUTCHISON. Mr. President, I want to talk today about Justice Priscilla Owen. On Friday, it will be the 2-year anniversary of the nomination of Justice Priscilla Owen for the Fifth Circuit Court of Appeals and also for Miguel Estrada to the District of Columbia Court of Appeals.

These are two qualified nominees in every respect who are being filibustered to keep them from taking their seats. They have both received a majority vote of the Senate, but neither of them is confirmed because we are now being asked to have a 60-vote threshold for these qualified nominees. It is not right, and I think it goes against the Constitution and affects the balance of powers.

The balance of powers was very clearly and purposefully set out by our Founders so that each branch would be separate and equal. In the Constitution, it says the President will nominate Federal judges and the Senate will give its advice and consent. Historically, advice and consent under the Constitution has meant a majority vote for judicial nominees. It does not mean a 60-vote threshold. And it does not mean that the Senate can dictate to the President whom the President can nominate.

We should give the President's nominees an up-or-down vote when they get out of the committee. The committee is there to have hearings, to question these nominees. If a person gets out of

committee, that person deserves a vote on the floor.

When the Founding Fathers did think that a supermajority should be required, they clearly provided for it. For example, article II, section 2, gives the President the power to nominate "by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur." Immediately following this provision, the Constitution gives the President the power to make judicial nominations "by and with the Advice and Consent of the Senate," period.

By clear omission, the Constitution does not require a supermajority for judicial nominees as it does for treaties. Congress has no right—it has no power, as outlined by the Constitution—to assume a different role in the nomination and confirmation of judges. A filibuster requiring 60 votes on a judicial nominee is beyond the intent of the Constitution.

Furthermore, the 25th amendment to the U.S. Constitution, approved by the Senate in 1965, demonstrates, I think, the intent of the Founding Fathers in confirming a nominee. In this case, the Vice President "shall take office upon confirmation by a majority vote of both Houses of Congress." If we are required to approve the Vice President of the United States by a majority vote, how could we possibly require a 60-vote threshold for a Federal judge?

I understand that cloture votes are needed sometimes for procedural reasons, such as a time-management device, but with the nomination of Miguel Estrada this has not been the case; with the nomination of Priscilla Owen this has not been the case.

This kind of filibuster is unprecedented in Senate history. So I hope we can do one of three things: We can start talking about changing the Senate rules so that, in the case particularly of judicial nominations, we will not ever have a 60-vote threshold, which is not contemplated by the Constitution; or we can require a vote, ask for a vote, get a vote for these qualified nominees; or we can file a lawsuit, asking the courts to decide if the balance of powers in the Constitution is being violated by this 60-vote threshold.

I do hope we will get an up-or-down vote on these nominations. The fact that they have received over 51 votes—both of them—shows that they would be confirmed if they had their right to an up-or-down vote in the Senate.

Priscilla Owen, of course, is from Texas, so I know her and I know her reputation. She has the strongest bipartisan support you could possibly ask for. She is a person who graduated cum laude from Baylor Law School, made the highest grade on the State bar exam when she graduated. She has been elected to the supreme court by over 80 percent of the people in Texas. She is universally well regarded.

She is not a judicial activist. In fact, it is her strict adherence to the letter

of the law and Supreme Court rulings that has been one of the problems with this nomination because she didn't make law. She didn't try to put words in the mouth of a legislator. She just followed what the legislature said in the parental consent laws in the State of Texas, the law of the State. She followed the letter of the law and the Supreme Court rulings and tried not to be a judicial activist. For that she is being accused of being a judicial activist.

She was grilled twice by members of the Judiciary Committee. She had very tough hearings. I don't think I have ever seen a nominee do better. She knew every answer to every question asked, even the minutia of cases that had been heard by her court years ago. She knew what she had done and the reasoning for it. Her hearings alone would be enough to show her academic prowess and her qualifications for this bench.

Further than that, the hearings also showed her judicial temperament. She handled herself so well, and she has gone through 2 years of a grueling experience—not something she is used to. Judges are not usually in the political arena. Even when they are elected, they don't usually have strong opposition. They don't have these spirited races such as we see in legislatures and the Congress. It wasn't that she was attuned to the slings and arrows of politics. She has handled herself so beautifully, I don't think you could ever argue that she does not have the judicial temperament. When you put that together with her clear academic excellence, she is the kind of person we want on the bench.

I wonder if we turn down nominees like Miguel Estrada, who came to this country from South America when he was about 18 years old, didn't speak English, worked his way through Columbia, was Phi Beta Kappa, went to Harvard Law School and graduated magna cum laude, then had an outstanding record in the Solicitor General's Office, winning very complicated Supreme Court cases, and is known as one of the outstanding appellate lawyers in America—if people like Priscilla Owen and Miguel Estrada are not the kind of people we are going to put on the court, we are going to start having mediocre people on the court.

We will have people who never have said anything, people who don't have the stellar reputations. These scholars, Miguel Estrada and Priscilla Owen, are people who are willing to take pay cuts in order to serve, because they like the intellectual challenge. They like what they are doing. They like public service. They are willing to take huge pay cuts for serving, and they are willing to do it. And they are quality people. What are we doing? What are we doing holding up quality qualified people like this?

These nominations should not be controversial. They obviously are because they are not being passed, but