

and that money was removed by the President's policies.

The Bush administration has borrowed \$800 billion from the American public over the last 5 years—money that was paid to the Government for the Social Security trust fund, for their tax cuts, and to fund the war. Instead of paying it back, the Republicans have called the bonds on the Social Security trust fund “meaningless IOUs.” How is that for respect for the Social Security trust fund.

Now to draw attention away from the Republican idea of cutting benefits instead of paying the trust fund back, the Republican Policy Committee has come up with a document criticizing a Democratic plan on Social Security that doesn't exist. We talked about that earlier this morning. In their document, the Republican Policy Committee says the Democrats want to use the Social Security trust fund surpluses for the next 13 years for new Government programs.

We have been saying for years that we need to protect the Social Security trust fund. The Democratic position was well articulated by President Clinton in 1998. In his State of the Union Address, President Clinton said, “What should we do with the projected budget surplus? Save Social Security first.”

That has been the Democratic position—not the Republican position.

President Clinton went on to say, “I propose that we reserve 100 percent of the surplus—that's every penny of any surplus—until we have taken all the necessary measures to strengthen the Social Security system for the 21st Century.”

In his campaign to succeed President Clinton, former Vice President Gore—they kidded him about this—talked about a lockbox to protect the trust fund for Social Security. But since President Bush was elected in 2000, Democrats in Congress have been trying to preserve the Social Security trust fund. We have tried time after time to amend President Bush's reckless tax cuts and to protect the Social Security trust fund.

Here is a chart which goes through the variety of votes taken on the floor of the Senate since President Bush took office. Each one of these six votes was an effort by the Democrats to protect the Social Security trust fund from tax cuts and spending by President Bush.

Starting with the Bush tax cut in 2001, Senator BYRD, to forego tax cuts to extend Social Security, was defeated on a party-line vote—38 Democrats, yes; 48 Republicans, no.

The Harkin amendment to delay the tax cuts until we enact legislation that ensures the long-term solvency of Social Security and Medicare, party-line vote, defeated; 45 Democrats voted yes, Republicans voted no, 49.

The list goes on.

The point is that repeatedly we have said to the Bush administration, if you keep taking money out of the Social

Security trust fund, you are going to jeopardize the future. You have to protect it. Don't give a tax cut to the wealthiest people in America and endanger Social Security.

Six different times, the Republicans in the Senate were given a chance to agree with this, and six different times they prevailed and voted “no.” Now they come before us today and argue it is the Democrats who want to take money out of the Social Security trust fund.

Take a look at the reality of deficits under this administration. Take a look at the surplus, the black ink, inherited by President Bush, and then look at deficits that have been created. One-half of this deficit was created by tax cuts, primarily to the wealthiest people in America.

Now look at how this deficit will grow, if the President's privatization plan on Social Security goes through.

Mr. Greenspan came to Capitol Hill. He had a chance to talk about being fiscally conservative. He had a chance to tell us that privatizing Social Security was a bad idea because of the deficits it creates for future generations. But once again, he stopped short of that kind of sound advice.

Today, Mr. Greenspan told the Senate Banking Committee the single biggest tool the Government has to increase national savings is to reduce the deficit. We all agree with that. Unfortunately, Mr. Greenspan is not candid and direct when it comes to the President's privatization plan for Social Security, which adds dramatically to the deficit.

Imagine, over 20 years we are going to add \$4 or \$5 trillion to the deficit so that President Bush can create the so-called private accounts. That is shortsighted. It is not going to help the country recover.

After the President submitted a budget last week showing a dramatic worsening of the Nation's fiscal outlook, the President sent Congress a request for an additional \$82 billion in spending for the war in Iraq. The money to fund the war on terrorism, the money to fund this war in Iraq is not included in the President's budget. President Bush's plan to privatize Social Security was not included, either. The \$2 trillion that is needed for this transition in Social Security is not there.

The Republican Policy Committee wants to criticize Democrats on Social Security instead of answering the hard questions about the President's privatization plan. Where did the money go that Americans paid into Social Security? Where will the money come from to transition to any privatization system?

Instead of criticizing the so-called Democratic bill that does not exist, the Republicans ought to produce their bill to privatize Social Security. Once the American people understand it doesn't add up, they will reject it.

We are going to go back to principles and values which say we should protect

Social Security first. That is what President Clinton said. That should still be our guiding value in this debate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CORNYN. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. The Senator is correct.

#### NOMINATIONS

Mr. CORNYN. Mr. President, I will spend a few minutes correcting the record in response to a question of press availability on Tuesday about whether Democrats were opposing as a caucus all of the renominated judges that previously were denied an opportunity for an up-or-down vote when a bipartisan majority stood ready to confirm them last year.

The Senate minority leader said, “Renomination is not the key. I think the question is, those judges that have already been turned down in the Senate”—in other words, he said these judges, even though they commanded the support of a bipartisan majority of the Senate during the last 2 years and were not permitted to have an up-or-down vote, he characterized those judges who have now been renominated by the President as judges who have, in fact, been turned down by the Senate.

So my question is, to whom is the distinguished Democratic leader referring? None of President Bush's nominees have been turned down by the none, zero. The nominees he referred to were denied a vote altogether. In fact, all of these nominees would have been confirmed last Congress had majorities been allowed to govern as they have during the entire history of this country and the entire history of the Senate—save and except for the time when Democrats chose to deny a majority the opportunity for an up-or-down vote.

So I would say, correcting the record, it is a little difficult to turn down a nominee, as the minority leader has said, if the nominee never gets an up-or-down vote on the Senate floor.

Now, the second part I would like to correct is that when the Democratic leader was asked whether obstruction would create a 60-vote threshold for all future judicial nominees, he said:

It's always been a 60-vote for judges. There is—nothing change[d].

He said:

Go back many, many, many years. Go back decades and it's always been that way.

Well, we took his advice, and we did go back over the years. It turns out it

has not always been that way. Indeed, there has never, ever, ever been a refusal to permit an up-or-down vote with a bipartisan majority standing ready to confirm judges in the history of the Senate until these last 2 years. Many nominees have, in fact, been confirmed by a vote of less than 60 Senators. In fact, the Senate has consistently confirmed judges who enjoyed a majority but not 60-vote support, including Clinton appointees Richard Paez, William Fletcher, and Susan Oki Mollway; and Carter appointees Abner Mikva and L.T. Senter.

Specifically, the distinguished Democratic leader, yesterday, when he said this had been used by Republicans against Democratic nominees, mentioned Judge Paez. Well, obviously, that is not correct because Judge Paez, indeed, was confirmed by the Senate and sits on the Federal bench today.

So it reminds me of, perhaps, an old adage I learned when I was younger, when computers were not as common as they are now, and people marveled at this new technology, and those who wanted to chasten us a little bit would say, well, they are not the answer to all of our concerns, and they said: Garbage in, garbage out. In other words, if you do not have your facts right, it is very difficult to reach a proper conclusion.

So I thought it was very interesting—and I thought it was important—that the Democratic leader would make this claim, first of all, as I said, that these judges had been somehow turned down by the Senate when, in fact, they had been denied an opportunity for an up-or-down vote; and, secondly, that somehow there is a 60-vote requirement, and it has always been that way, because the facts demonstrate that both of those conclusions are clearly incorrect.

Finally, he said something I do more or less agree with, although I would differ a little bit on the contentious tone. He said: We're hopeful they'll bring them to the floor so there will be a fair fight. Well, I think I knew what he meant. I hope he meant a fair debate. Frankly, the American people are tired of obstruction and what they see as partisan wrangling and fighting over judicial nominees.

In the end, that is what happened during the Clinton administration when, perhaps, judges who were not necessarily favored by our side of the aisle did receive an up-or-down vote and did get confirmed. And that is, of course, what happened during the Carter administration. In fact, that is what has happened throughout American history—until our worthy adversaries on the other side of the aisle decided to obstruct the President's judicial nominees and they were denied the courtesy of that fair process, that fair debate, and an up-or-down vote.

Let me just conclude by saying this really should not be a partisan fight. Indeed, what we want is a fair process. We want a process that applies the

same when a Democrat is in the White House and Democrats are in the majority in the Senate as we do when a Republican is in the White House and Republicans are in the majority in the Senate.

We want good judges. The American people deserve to have judges who will strictly interpret the law and will rule without regard to some of the political passions of the day. A judge understands that they are not supposed to take sides in a controversy. That is what Congress, the so-called political branch, is for. That is why debate is so important in this what has been called the greatest deliberative body on Earth. But we do not want judges who make political decisions. Rather, we want judges who will enforce those decisions because they are sworn to uphold the law and enforce the law as written. Members of Congress write the laws, the President signs or vetoes the laws, and judges are supposed to enforce them but not participate in the rough and tumble of politics.

So it is important that the process I have described produces a truly independent judiciary because we want judges who are going to be umpires, who are going to call balls and strikes regardless of who is up at bat. So I think the process we have seen over the last couple years, which, unfortunately, it sounds like, if what I am hearing out of the Democratic leader is any indication, is a process that has not only been unfair because it has denied bipartisan majorities an opportunity to confirm judges who have been nominated by the President, but it is one which, frankly, creates too much of a political process, one where it appears that judges who are sworn to uphold the law, and who will be that impartial umpire—it has made them part of an inherently political process.

Now, I want to be clear. It is the Senate's obligation to ask questions and to seriously undertake our obligation to perform our duty under the Constitution to provide advice and consent. But, ultimately, it is our obligation to vote, not to obstruct, particularly when we have distinguished nominees being put forward for our consideration, when they are unnecessarily besmirched and, really, tainted by a process that is beneath the dignity of the United States. Certainly none of these individuals who are offering themselves for service to our Nation's courts in the judiciary deserve to be treated this way.

So, basically, Mr. President, what we are talking about is a process that works exactly the same way when Democrats are in power as it does when Republicans are in power. That, indeed, is the only principled way we can approach this deadlock and this obstructionism. I hope the Democratic leader—who I know has a very difficult job because he, no doubt, has to deal with and reflect the views of his caucus on this issue—I hope he will encourage his caucus, the Democrats in the caucus,

and we will all, as a body, look at the opportunity to perhaps view this as a chance for a fresh start, a chance for a fair process, one that is more likely to produce an independent judiciary that is going to call balls and strikes regardless of who is at bat.

Mr. President, I thank you for the opportunity. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Journal clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the order for the quorum call be dispensed with.

Without objection, it is so ordered.

#### RECESS

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the Senate stand in recess until 4 p.m. today.

There being no objection, the Senate, at 3:02 p.m., recessed until 4 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

The PRESIDING OFFICER. The Senator from Massachusetts.

#### THE NOMINATION PROCESS

Mr. KENNEDY. Mr. President, before going up to the 3 o'clock briefing, I heard my friend—he is a friend and colleague of mine—Senator CORNYN make comments about our leader, Senator REID, accusing him and Democratic Senators of obstruction in the judicial nomination process earlier today.

That sort of rhetoric may be good for sound bites, but it doesn't match the reality of the Senate's tradition or the Founding Fathers' vision in creating the checks and balances of our constitutional system.

In the Constitutional Convention, they considered four different times who should have the authority about naming justices. On three of those four times, it was unanimous that the Senate of the United States was named. The last important decision the Constitutional Convention made was dividing the authority between the President and the Senate of the United States. Any reading of those debates will reaffirm that.

With all respect to my colleague making comments about our leader, the Senator from Nevada, he clearly has not read carefully that Constitutional Convention. It says that we have a responsibility, a constitutional responsibility to exercise our will on these matters. Historically, the record shows more than 98 percent of the President's nominees have been approved. In fairness to my friend who can speak for himself and does that very well and does not need me here, as to these attacks on Senator REID, it is important to understand the facts and