

Congress can invest in renewable energy that will help control energy costs and fight climate change. I urge my colleagues once again to support this measure and to vote yes and pass it today.

Mr. President, 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. VITTER. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. TESTER. Mr. President, are we out of the quorum call?

The PRESIDING OFFICER. We are out of the quorum call.

Mr. TESTER. Mr. President, I ask unanimous consent that our remaining time be yielded back.

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

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### RENEWABLE ENERGY AND JOB CREATION ACT OF 2008—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to H.R. 6049, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 767, H.R. 6049, an act to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12:30 p.m. shall be equally divided and controlled by the two leaders or their designees.

The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I have townhall meetings all around Louisiana on a very regular basis. At these meetings we discuss a number of crucial issues facing all of us. Lately, of course, it has been dominated by sky-high gasoline prices and the need for a coherent energy policy. But what I hear more than anything else as I reach out to my constituents all around the State, the biggest, most important sentiment I hear is: When are most folks in Congress going to stop playing political games and actually act? When are most folks in Washington going to stop posturing and arguing just toward the next election and take care of the people's business? Unfortunately, I believe this exercise we have going on on the Senate floor is yet another example of the posturing

and of the political gamesmanship that feeds that understandable frustration.

We are going to have a vote coming up later today on the Democratic tax extenders bill. This is a pure political exercise and a pure waste of time. Whether you are for it or against it, whether you like most provisions in it or not, one thing is perfectly clear: This Democratic partisan bill is going nowhere. It doesn't have the support in the Senate. In addition to that, there is a veto threat—a very crystal-clear veto threat—from President Bush. That is for substantive reasons. There are significant objections to the bill—I share most of them—with what is included in this package, things such as a huge earmark to build a train in New York, a new tax break for trial lawyers, expansion of the Davis-Bacon Act, and \$55 billion of taxes.

The point isn't the substance. Whether you agree with the substance or not, the point is this bill is going nowhere, and therefore to call it up again and again and to posture and to make speeches is just a political exercise and a waste of time. It is perfectly clear from the vote we took last week that this package doesn't have near the 60 votes required in the Senate to pass it through the process.

If that weren't enough, it is perfectly clear that President Bush will veto the bill. Of course, to override a veto doesn't simply take 60 votes, it takes two-thirds of the Senate—67. So it is perfectly clear that it is going nowhere, and here we are again posturing, making political speeches and political points on the floor.

I have a radical idea. Let's come together in a bipartisan way. Let's come around a consensus bill and actually pass it through the process and get it signed by the President. I believe the Grassley bill, which has been introduced in the Senate, is the basis for that sort of bipartisan discussion and real work.

This is particularly important for many of my constituents in Louisiana because many of those Louisianans, as well as folks in Mississippi and elsewhere, have been suffering from a very unfair situation. They are actually paying a tax penalty because of the enormous losses they suffered during Hurricanes Katrina and Rita. What am I talking about? It is this: In 2005, Hurricane Katrina struck the gulf coast with enormous ferocity. A few weeks later, Hurricane Rita struck southwest Louisiana and southeast Texas. Of course, as we all know, many folks suffered enormous and tragic losses. Many folks I know personally lost their entire homes and virtually all of their belongings. Of course, folks in that situation legitimately could take a big loss on their next tax return. As a result, in 2005, people did what you would expect them to do: They filed loss deductions on their tax returns for that year because of these enormous and tragic losses.

Push forward to 2007. The good news is that the American people responded

to the enormous tragedy and Congress responded, representing the American people. One of the most important things the American people funded, one of the most important things Congress passed, was help for these folks I am describing who suffered uninsured losses. In Louisiana, it became known as the Road Home Program. In Mississippi, there was a similar program called the Housing Assistance Program—grants, help from the American taxpayers to help cover uninsured losses.

So what is the problem? The problem is that under present Federal law, the IRS says that you have to add that check many of these folks got in 2007 to their income and pay taxes on it because under present Federal law that is taxable income. If it was simply a matter of counteracting, equalizing the tax benefit these same individuals gained by claiming a huge loss deduction in 2005, that would be fair, but it went far beyond that in many cases. It increased many of these individuals to a higher marginal tax rate. Because of the size of the help, it pushed them into a whole other tax bracket. It subjected many taxpayers to the AMT, which they would not have been subjected to otherwise. It phased out certain deductions for them. It even subjected some individuals' Social Security benefits to additional taxation. It made many taxpayers ineligible for Federal student loans. So it didn't simply counteract and equalize the tax benefit some folks got in 2007 by claiming a very large loss deduction; it went beyond that in thousands upon thousands of cases.

So on top of Katrina, on top of Rita, on top of unimaginable—to most of us—personal tragedy, what happened is these folks got a tax penalty. That is ridiculous. We need to fix that. There is a clear sentiment and a clear majority in Congress to fix that. That fix for the Road Home Program in Louisiana and for the Housing Assistance Program in Mississippi is included in this Grassley tax extenders bill, which can be a bipartisan product, which can garner bipartisan support, which can gain far more than 60 votes in the Senate, and which can and would be signed into law by the President.

This is enormously important for tens of thousands of Louisianans. This is enormously important for many folks in Mississippi. These aren't simply run-of-the-mill folks; these are by definition folks who suffered through some of the worst losses due to Hurricanes Katrina and Rita. In that context—as they wait year after year simply for a fix so that they aren't penalized by the tax man on top of everything they suffered through because of the hurricanes—in that context, how dare anyone play political games. How dare anyone posture and make political speeches rather than simply trying to come together and do the people's business. But again, that is what is going on here on the floor.

We have a tax extenders package which has provisions that many folks, including myself, have major objections to: A huge earmark to build a train in New York, a new tax break for trial lawyers, an expansion of the Davis-Bacon Act which would hurt our economy, and \$55 billion of tax provisions. I cannot support that Baucus package because of those clearly objectionable items. More importantly, about half of the Senate can't support it for that reason, and therefore the Senate isn't near the 60 votes required to pass that on in the process. Even if it were, as I said before, President Bush has made it crystal-clear that because of these controversial provisions, he would veto the bill. So this package is going nowhere. To revote on this package is to waste time and play political games. I don't know why the majority leader is determined to do that, but he is doing that today. He has even talked about doing it a third time.

I urge the majority leader and all of my colleagues to act for the good of the American people, to come around a consensus package that can be passed and be signed into law, not to simply try to score political points, make more speeches, and waste even more time on the Senate floor.

All of the American people deserve that. But, surely, folks who suffered enormous losses because of Hurricanes Katrina and Rita deserve that even more. Surely, those folks deserve the relief contained in both bills, but also the relief that can actually be passed and signed into law in a bipartisan consensus package.

Let's do the work of the American people. Let's put people before politics, and let's pass this important legislation by moving on to a consensus bill that can gain far more than 60 votes in the Senate and be signed into law by the President.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, before the Senator leaves, I would like to make a simple point. He mentioned various provisions he would like to see enacted. I suppose most of them concern his State of Louisiana, as they appropriately should. Let's ask ourselves, what is the parliamentary position we are in now? It is very clear.

The vote before us, which will be taken soon today, is very simple. It is whether we move to the next step to get on legislation. It is called a motion to proceed. It is true it is a motion to proceed to a House-passed bill. If the Senate lets us proceed—including the Senator from Louisiana—to that bill, then I will offer a substitute and presumably we will be on the substitute. I thought it was not only the prerogative of the Senate, but it is an opportunity for Senators to debate amendments and for Senators to offer amendments—amendments to strike certain provisions or amendments to add cer-

tain provisions. That is called legislating. It is debate. Before we can do that, we have to get onto the bill. We cannot pass legislation until we can get on the bill.

So I am asking my good friend from Louisiana if maybe the better alternative—nobody is playing politics. We are trying to get ourselves into a procedural situation so we can debate legislation and pass legislation for the good of the country. I ask my good friend from Louisiana if he might consider voting for the motion to proceed so that we can get on the legislation and so that other Senators can offer amendments to improve the legislation and so the Senate can vote.

Mr. VITTER. If the Senator will yield, I appreciate his comments. I would be open for that path forward if there was assurance from the majority leader that there would be that full opportunity for amendments, particularly on the crucial objectionable items that I outlined. Unfortunately, to date, there has been absolutely no assurance in that regard. In fact, the majority leader, through his actions, has taken the opposite course time after time after time, as the Senator knows, by filling up the tree. So if we could take that path forward, with the assurance to have votes on amendments regarding those clearly objectionable matters, that might be productive. Unfortunately, that hasn't been the assurance the majority leader has offered to give, and it hasn't been his practice.

Mr. BAUCUS. I will ask another question. If we vote for the motion to proceed, with the assurance and understanding that there would be the full opportunity for amendments, but also, I think, in the spirit of comity and good faith—sometimes amendments are blocked because they are not good-faith amendments, such as on abortion and other issues that have nothing to do with the bill. They are political amendments. The Senate has, unfortunately, come to the point where because they offer political amendments, with nothing to do with the issue at hand, the majority leader is sometimes forced into that situation in order to set up a procedure to minimize the possibility of the occurrence of those political amendments. So it is a two-way street. It is my objective—and I would counsel the majority leader to allow amendments. That is the way the Senate should operate.

There has to be a good-faith understanding on the Senator's side of the aisle on good-faith amendments.

Mr. VITTER. I only say to the distinguished Senator, if the majority leader would come to the floor and guarantee amendments on the substance of the bill, on the train to New York and the Davis-Bacon provision and down the line in terms of all those highly objectionable issues I outlined a minute ago, which go to the substance of the bill, I will be all ears. Unfortunately, that has not been his practice on prior issues or in this situation.

Mr. BAUCUS. Maybe we are making headway because the substitute amendment I will offer would not include Davis-Bacon, or may not consider some provisions the Senator is addressing. Again, to go back, there has to be an understanding on the Senator's side of the aisle that the amendments offered would be good-faith amendments and not obstructive political amendments.

I thank the Senator for the dialog. Maybe we have made a little headway so we can get enough support to proceed to the bill.

Mr. President, Samuel Johnson called a second marriage "the triumph of hope over experience." Actually, that is where we are today. The Senate seeks a similar triumph of hope today because we are here again to consider the vote on a motion to proceed to H.R. 6049, the Renewable Energy and Job Creation Act of 2008. This time I hope for a better result. And maybe somewhat, based on the discussion I just had with the Senator from Louisiana, we can find a way so that we can proceed to the bill and pass these very important provisions.

This bill will foster clean, new energy sources. This is a bill to extend some very important tax provisions that benefit American families and businesses. This is a bill on which I hope to offer an amendment to stave off certain tax increases under the alternative minimum tax.

Last Tuesday, we tried to do this same thing—move to this bill—but we fell short of 60 votes. Many of my colleagues on the other side of the aisle were against moving to the bill. That meant we could not even get on the bill; therefore, we could not offer amendments to improve it and pass it to help many Americans and individuals in businesses. Again, that meant we could not even discuss the merits of the bill. That meant we could not consider my substitute amendment, which would have addressed several Senate priorities, including a couple on the other side of the aisle.

This bill contains a robust energy package, with more than \$17 billion in incentives for alternative energy, efficiency, and clean coal. This package is important for our environment and our energy security, and it is important to facilitate the transition to a carbon-controlled economy. If we don't get this bill, we cannot do any of that.

This bill would extend expiring individual tax provisions, including the teacher expense deduction and the qualified tuition deduction. The bill would also extend expiring business tax provisions. These include the R&D tax credit and the active finance expensing provisions.

These business provisions help to keep America competitive in a global economy. These business provisions help to maintain and create jobs. If these individual and business provisions are not extended, millions of families and businesses will face tax increases. If we don't pass this bill, many

individuals and businesses will find their taxes going up.

The bill is paid for with two revenue raisers that have very broad support. It is also sound tax policy. The arguments against this bill this week may as well be the same as last week's arguments. Last week, we heard that we should not increase taxes to pay for tax cuts.

As I said before, and will say again, these revenue raisers are not tax increases. The first revenue-raising provision in the bill is the delay of the effective date of the worldwide allocation of interest. This provision would delay application of the interest rule, which was not supposed to go into effect until next year.

Many of the companies that will benefit from this provision told me they would rather have the business extenders than early applications of the worldwide application of interest.

Why? These companies realize that because of the firm position of the House of Representatives, we need to offset extending these valuable tax benefits. To make that point more clear, this body knows the House has been insisting that offsets be utilized to pay for some of these tax reductions that will pass with this bill. That is a political reality, something we all face. That is partly why these offsets are in this bill, including delaying application of worldwide allocation of interest.

These companies have weighed the costs and benefits, and they have made the choice in favor of the tax extenders in the bill. The second revenue-raising provision addresses offshore deferred compensation. This provision would prevent hedge fund managers from deferring income.

This is not an increase in tax on hedge fund managers. Rather, it is a change in the timing of when income tax will be applied. This is a timing issue, not a tax increase. Therefore, I believe it is sound tax policy.

Last week, we heard that we should not need to offset extending current tax benefits. This is a curious argument. It is curious because the Senate paid for extending expiring tax provisions in the recent past.

We paid for extenders in the JOBS Act in 2004, we paid for extenders in the Tax Relief Act of 2005, and we paid for extenders in the military tax relief bill that Congress just passed and presented to the President on June 6. We have done that. So this week the Senate is faced with a choice that, in my opinion, is relatively easy. If we can get to H.R. 6049, if the Senate will vote to get to the bill, we could then take up my substitute amendment.

My substitute amendment contains the provisions that I have talked about, plus a 1-year AMT patch—making sure people don't have to pay the AMT in the next taxable year, and that is without any offsets. So by going to the bill and seeing it through, Congress would take care of a lot of families and a lot of businesses.

We need to decide whether we will develop new jobs and new medications. We need to decide whether we will help teachers, families, and schools. We need to decide whether we are going to make energy independence a priority, or we can continue to allow hedge fund managers to defer, without limitation, their compensation for investing other people's money.

Let's show America we can make the right choice. Let's give American families and businesses reason for hope. Let's not give them the same experience they received last Tuesday. Let's proceed to this important tax relief bill for many American families and businesses.

Mr. President, I ask unanimous consent that the quorum calls prior to the recess be charged equally to both sides, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:31 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

Mr. BAUCUS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### UNANIMOUS CONSENT REQUEST— COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, we have a vote that will occur momentarily. I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate in order to conduct a hearing entitled "Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2008." It is scheduled for 2:30 this afternoon in the Dirksen Building. The witness list is remarkably good. We have the chairman of the Judiciary Resources Committee, Judicial Conference of the United States; the Director of Homeland Security and Justice from the United States Government Accountability Office, William O. Jenkins. That would be an important hearing to

go forward. As of now, we have not had consent from the minority to go forward with this.

The PRESIDING OFFICER. Is there objection?

Mr. McCONNELL. Mr. President, I object. I will use a few moments of leader time to explain why.

The PRESIDING OFFICER. Objection is heard.

Mr. McCONNELL. Mr. President, we need to get back to first principles around here. The Democratic majority scheduled the hearing my good friend references in a way that would violate the standing rules of the Senate. Rule 26.5 provides:

Notwithstanding any other provision of the rules, when the Senate is in session, no committee of the Senate or any subcommittee thereof may meet, without special leave, after the conclusion of the first two hours after the meeting of the Senate commenced and in no case after two o'clock . . . unless consent therefor has been obtained from the majority leader and the minority leader . . .

Typically, as we all know, the minority provides consent for committees to violate rule 26.5. The minority routinely provides this consent, frankly, in the interest of comity. But comity also requires the majority to treat the minority fairly which means, at a minimum, that the majority needs to keep its commitments to the minority. If commitments in this body are not kept, then comity breaks down. If that occurs, the minority will not routinely grant consent to those matters that we usually do. In this case, we have unfulfilled commitments with respect to treating circuit court judges fairly. It is the middle of June. The Senate has only confirmed eight circuit court nominees. This is less than half the number the majority leader and I agreed to at the beginning of the Congress. It is barely half the number of circuit court nominees that a Republican Senate confirmed in President Clinton's final Congress. More troubling, the chairman has threatened to soon stop confirming circuit court nominees altogether here in June.

The Republican conference does not consider this lack of progress and thinly veiled threat to be, frankly, in good faith. Not surprisingly, it is, therefore, not inclined to freely give its consent to matters that are important to the majority. That is the way things work around here. As I have said before, the Senate works best when there is a spirit of cooperation. Absent that spirit, the minority will be compelled to protect its rights using all protections afforded it under Senate rules.

There is an easy solution to the problem. We have been talking about it both privately and publicly over the last few months. The majority needs to start confirming circuit court nominees, at least those who meet the chairman's own criteria.

And it seems to me that before the committee spends its time creating new vacancies, which is what the hearing today was about, it needs to work