

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

on filling the vacancies that already exist. Unfortunately, the Judiciary Committee is moving at a glacial pace toward that end. It has only held two circuit court hearings this year. Before that, it hadn't held a single one since last September. We have no indication that it is going to pick up the pace. There are several outstanding nominees who have been sitting in committee who meet the chairman's criteria. Until they are treated fairly, the majority will find our cooperation increasingly hard to come by.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I understand that my distinguished counterpart has a right to do this, an absolute right. I don't question that right. We will just have to schedule the hearing at a different time, if they don't want to have the hearing. I will, though, briefly comment, quoting Majority Leader Lott from years past. When we go home to our respective States, there are a lot of issues. Every State has the same issues: housing problems, high gas prices, doing something about global warming. When is the last time anyone went home and somebody said to you: Boy, are you guys going to do something about those judges? As Senator Lott said: The question never comes up.

Senator LEAHY, chairman of this committee, and I have said before, this Judiciary Committee has wide-ranging jurisdiction over a lot of issues, most of which are extremely difficult to deal with. He does a remarkably good job. I am very proud that he is the chairman of the Judiciary Committee. But he and I said we would do our utmost by the Memorial Day break to confirm three more circuit court judges. I think it was three; I don't remember the number. We did our utmost. Senator LEAHY did his utmost. But it was slow walked by the Republicans on the Judiciary Committee. So we are at a point now where finally we had two circuit court judges reported out of the committee last week. We are going to vote on those as soon as we can. We have fulfilled our commitment, so no one needs to talk about commitments not being fulfilled.

Again, I didn't invent the Thurmond rule. It was invented by long-time Senator Strom Thurmond, at one time chairman of the Judiciary Committee. He said that after June 1, he felt it was appropriate not to rush into appointing more Federal judges. We have not said that the Thurmond rule is in place. But some said we should have it in place. It is well after June 1, and Senator LEAHY and I are still committed to taking care of more circuit court judges. We are going to do that. I am sure there will be opportunities to take a look at some trial court judges. But we are doing our very best.

I admire and appreciate the work of Senator LEAHY.

Mr. LEAHY. Will the Senator yield for a question?

Mr. REID. Yes, I will.

Mr. LEAHY. Mr. President, I ask through the Chair, did the majority leader not hear the distinguished Republican leader say they don't want to give consent to these hearings that the majority may want? I was wondering if the distinguished majority leader was aware of this discussion on May 15 of this year about this judgeship act. First, I quote Senator SESSIONS, a noted Republican:

My comments on the judges' bill, as a member and Ranking on the Courts Subcommittee, we did have hearings several years ago but not recently.

Then we heard from Senator KYL, the distinguished deputy minority leader:

So what I would like to do, Mr. Chairman, is just recommend that you take our colleagues up on the suggestion that we have a hearing to validate the requirements.

At which point Senator COBURN, another Republican, said:

If we're going to fix it, let's fix it right. Let's have a great hearing. Let's bring the GAO in, let's bring the Conference in, and let's find out [how] to do it right.

And then Senator GRASSLEY, another noted Republican said:

That is the purpose of a hearing, and that's why it is very important that we give this adequate study. I ask the distinguished leader, was he aware of the fact that this hearing was being held after four senior members of the Republican caucus asked me to have the hearing?

Mr. REID. I say to my friend, in response to his question, yes. And the Senator from Vermont followed the advice of his colleagues and had someone from the General Accounting Office testify. I appreciate that.

I ask that we have the vote now. Members have been waiting.

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

##### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

##### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 767, H.R. 6049, the Renewable Energy and Job Creation Act of 2008.

Harry Reid, Max Baucus, Barbara Boxer, Amy Klobuchar, Benjamin L. Cardin, E. Benjamin Nelson, Maria Cantwell, Patty Murray, Bernard Sanders, Daniel K. Akaka, Robert Menendez, Ron Wyden, Debbie Stabenow, Blanche L. Lincoln, Patrick J. Leahy, Richard Durbin, Sheldon Whitehouse.

Mr. SPECTER. Mr. President, I have sought recognition to discuss my vote against cloture on the motion to proceed to H.R. 6049, the Energy and Job Creation Act of 2008.

H.R. 6049 would revive important tax provisions that expired at the end of

2007 and extend provisions that are set to expire at the end of 2008. I support extension of the R&D tax credit, teacher expenses deduction, tuition deduction, accelerated depreciation for leasehold and restaurant improvements, the renewable energy tax incentives, and many other important provisions in this package.

In addition, the bill includes a provision that I introduced, S. 814, which would allow attorneys to deduct reimbursable court costs and expenses in the same tax period in which they are paid or incurred. I strongly support this provision and have urged Chairman BAUCUS and Ranking Member GRASSLEY to include it in this bill.

While the House bill, H.R. 6049, does not address the alternative minimum tax, AMT, it is my understanding that a Baucus substitute amendment will include a 1-year AMT "patch," without offsets, to prevent millions of additional taxpayers from being hit by the AMT as a result of bracket creep. I support the AMT "patch" so long as it is not used as an excuse to raise taxes elsewhere by adding offsets. The AMT revenues on millions of taxpayers were never intended to be collected.

Despite the positive elements of this legislation, there are still significant issues that must be addressed. The main sticking point between Democrats and Republicans is whether temporary extensions of tax relief should be offset with permanent tax increases elsewhere. Following that process year-in and year-out means that permanent tax increases must be enacted so that taxpayers can maintain the current tax structure. On April 23, 2008, I, along with 40 other Republicans, wrote to Finance Chairman BAUCUS to support "enacting a 2008 AMT patch and extending the various expiring tax provisions without offsetting tax increases." It would be my preference to see the tax extenders package passed without offsets.

As it relates to the renewable energy tax incentives, it is difficult to understand why the House bill and the anticipated Baucus substitute would require offsets when the Senate has already spoken clearly on the issue. On April 10, 2008, the Senate voted 88 to 8 for an Ensign/Cantwell amendment to the Foreclosure Prevention Act to extend the renewable energy tax incentives without offsets. Pennsylvania is among the leading producers of wind energy east of the Mississippi River. The thousands of Pennsylvanians employed in the alternative energy industry and those interested in clean, renewable sources of energy for their homes are looking to Congress to provide clarity and certainty on this issue. Without immediate action, it is widely believed that investments will decline significantly throughout the second half of 2008.

On June 10, 2008, the Senate failed to invoke cloture on the motion to proceed to H.R. 6049 by a vote of 50 to 44. That vote, and the vote which occurred