

departure from the solutions that have existed in the past. Under the McCain-Warner-Lieberman approach, 22 percent of the credits available to industry and energy users would be auctioned and there would be an allocation of credits.

What do I mean by that? A cap-and-trade system at its very basic level—concept—is that we are going to put limits on how much carbon you can emit into the air as an industry. We will have one for the power sector, the transportation sector, for manufacturing. We are going to put a cap on these industries, and anything you emit above that cap, you are going to have to go get a credit, purchase a credit.

Well, if you have a 100-percent auction of these credits, hedge funds are going to come in and buy these credits and bid them up, so it would be very hard for an industry to purchase the credits. People start speculating with these credits.

Now, the northeastern compact has a 100-percent auction, but the emission standards they have decided upon allow—basically, it is greater than the current emissions that exist, so the credits only trade for \$3 because they don't have much of a cap that puts pressure on anybody. The only way you will solve this problem is to have caps that will push people to get away from using carbon, but our manufacturing sector is hanging by a thread in the global economy. If you put too much of a burden on these industries to move away from carbon and their cost of doing business goes up vis-a-vis their competitors in China and India, you are going to put them out of business.

So in some circumstances, you have to allocate to these industries some credits so they can make it through the transition phase. This idea of having a 100-percent auction on day one is a radical departure, and it does generate more revenue, and I think that is what this whole exercise is about—revenue—not solving the climate problem. They have a budget problem, and they are using the climate change debate to generate money.

I have asked the Secretary of Energy and the OMB Director: Where did you get \$646 billion to plug into your budget? What system did you evaluate that would generate that much money? What did the credits trade for? Nobody has a clue. I literally think they made up these numbers. Some people are talking about the \$646 billion being maybe half of what the actual cost would be if you went to a 100 percent auction. So this is a major departure from the way we have tried to solve the climate change problem in the past, and I think it is going to destroy the ability of the Congress to come together to solve a problem that is looming for the world and particularly this country.

So I hope our colleagues who are serious about the climate change issue will reject this proposal, and let's get to-

gether, talk among ourselves, rather than making up numbers that will increase the cost to American consumers by hundreds of dollars a month. This idea of using revenue from a cap-and-trade system to pay for a tax plan of the administration is a complete departure from what we have been doing in the past. I wouldn't expect my Democratic colleagues to allow the Republican Party to come up with a cap-and-trade system to fund one of our projects. The money from a cap-and-trade system should go back into the energy economy to help people comply with the cost of a cap-and-trade system and to develop technologies to get us away from using carbon.

The make work pay tax program is something I don't agree with. It doesn't apply to everybody who will be using energy, and it is a departure from how we would envision the use of revenue, and that is a problem that has to be addressed. If the administration is going to insist on a cap-and-trade system that would generate this much money from our economy at a time when we are weak as a nation economically and would dedicate the revenue to controversial programs, they have done more to kill the climate change debate than any group I know of. You have some people who disagree with the idea that climate change is real. I respect them. They are attacking it up front. We are having a genuine debate. But to say you believe in climate change as a result, and you devise a program such as this without talking to anybody means that you have put climate change second to the budget problems you have created by a massive budget. So this is not going to bear fruit. This is a very low point, in my opinion, in the bipartisan effort to try to create a meaningful inclusion to climate change. I hope the administration will reconsider.

To my Democratic colleagues, those of you who stood up and said: We are not going to let reconciliation—we only need 50 votes to pass something regarding climate change; we are not going to go that route, you have done the country and the Senate a lot of good because if you ever try that, you have destroyed the position of the minority in the Senate on a major piece of legislation, and that is not what we need to be doing. That is certainly not the change that anybody envisioned. That would be a radical departure in terms of how reconciliation has been used in the past.

To take an issue such as climate change, which has a massive economic impact and is politically very difficult with a lot of honestly held differences, and jam that through reconciliation, well, that would not be the politics of the past, that would be the politics of the past on steroids. That would be taking us to a place where no one has gone before, and if you wanted to destroy any chance of working together, that would be a good way to do it.

Now, as to my colleagues on the Democratic side who see through that,

God bless you for standing up and not letting that happen.

So I wish to end my discussion with where I began. Senator MCCAIN and others have charted a path that would lead to a bipartisan solution. I hope the President will consider nuclear power because it is very disingenuous to say you want to solve the climate change problem and you will not address nuclear power as part of the solution. Seventy percent of the energy that is created in America that is not emitting, that has no carbon base, comes from nuclear power. When he campaigned for President, candidate Obama openly talked about offshore drilling and nuclear power. When his budget comes out, there is nothing in the budget to enhance nuclear power, and Yucca Mountain is now going to be closed, apparently, and the idea that reprocessing of spent fuel is the way to store less spent fuel seems to be resisted by this administration.

So I thought we were going to have an administration where science trumped politics. Well, I can assure you when it comes to nuclear power, politics is trumping science. Other than that, I have no problem with what they are doing.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

THE BUDGET

Mr. ENSIGN. Madam President, this Nation is in the midst of a serious and defining challenge. Every single day we are buried in the news of our economic turmoil. Thousands more are being laid off, foreclosures are reaching new highs, property values are dipping to new lows, more businesses are shutting their doors, and Americans are struggling to pay for life's essentials. Consumer confidence is tragically low, and Congress has not acted appropriately to make things better. If this is not another Great Depression, it is surely greatly depressing.

Instead of innovative policies that put more money in the hands of consumers and create incentives for small business growth, we are passing trillion-dollar and multibillion-dollar spending bills as if we are in a race to spend money as quickly and as recklessly as possible. It is time to say hold on. It is time to seriously consider what we are doing, what the impact will have, and how we are quickly driving this Nation off a financial cliff.

For as long as living standards have been recorded, Americans have looked to the next generation as an improvement over the last generation. Opportunities, living standards, and conditions have improved. Technology and research have advanced. There is hope that our children will have more, that it will be even better for them. The optimism that has been uniquely American has always driven us to want more for the future generations but, unfortunately, that has changed. Now we are

becoming accustomed to taking more from future generations. We are digging ourselves into greater and greater debt at an alarming and an unbelievable rate. We are spending obscene amounts of money today without thinking about who will pay for it. This keeps falling on deaf ears, but it is our children and our grandchildren who will be stuck with the bill.

I know some of my colleagues like to ask: Where was this concern over the last 8 years as the deficits kept rising higher and higher and higher? Rest assured, there has always been a dedicated group of us beating this drum of fiscal responsibility. My question is, why aren't my Democratic colleagues listening now? They can keep blaming the policies of yesterday while this happens, or they can step up now, as more and more of my colleagues have, to demand an end to this selfish spending addiction.

Alexis de Tocqueville once observed that America was made great because of its good and moral people. How good and moral are we if we are so committed to this immediate gratification that we are willing to jeopardize the potential of our children and our grandchildren? If we continue to spend at the rate we are, our children, and even some of us, will be facing tax bills as high as 88 percent. If you think we will still be the land of opportunity with that kind of tax rate, you are wrong.

When I speak to high school students today and tell them they may be facing tax rates as high as 88 percent when they start working, they become speechless. You can see the disbelief and the fear on their faces. It takes a lot to really throw off teenagers these days. Forget doing better than their parents. They won't have a fighting chance at any level of success while bearing this kind of a tax rate burden.

We cannot afford to let selfishness absorb our purpose of life. Once that takes root in our policies, as we are seeing right now, the great experiment of this democracy will be closed and ready for the history books.

Instead, we need to refocus. We need to refocus our efforts on another very American concept—that we are each in control of our own destiny. That means we keep more of our own hard-earned money because we know best how to spend it or save it or invest it. We don't just throw all of our money to the Government and let them choose one cause they believe is better than another cause. That has never been the American way.

Unfortunately, the Obama administration is taking a huge step away from this concept with its effort to knock down charitable groups at a very crucial time. Non-profits around the country are feeling the pain of this economic recession today, and they are serving more and more people and are having a harder and harder time raising the funds they need to address these increased needs. It is a horrible

situation. To make it worse, the Obama budget seeks to reduce the tax deduction that donors can take for their contributions. Studies show that this type of change will discourage almost half of those people from making charitable contributions.

The outrage from the non-profit world in Nevada and across the country has been loud and clear. Groups across the spectrum—education, health care, food banks, rehab, et cetera—have all been stunned by this attack on their missions.

Charitable groups have come face to face with an administration that wants to spread the wealth by spending more money on government solutions to education, health care, hunger, and other services.

Unfortunately, the administration's budget is saying to these groups, who work tirelessly in the communities to improve the quality of life of the citizens, that Government knows better and can do better. I believe, as many others do, they are wrong on this point.

I hope more of my colleagues and more Americans will join me in expressing outrage over the Obama Administration's efforts to decrease the charitable deduction for certain taxpayers.

For all the campaigning the President did on transparency in Government spending, he is going to have an awful lot of trouble masking the intent of his budget. It is full of tax hikes that will stifle future growth and knock the wind out of the middle class.

Benjamin Franklin once said:

It is a maxim that those who feel, can best judge.

Well, the American people are feeling a great deal of pain right now. They are in a perfect position to know what will best improve the economic situation they are facing, and it is not tax increases.

While President Obama has promised not to raise taxes on families who earn less than \$250,000 a year, a proposal called cap and trade will certainly result in people paying more for everything that takes energy to produce—obviously including their electricity bills. This is an indirect tax on all Americans.

This is a quote from last year by then-candidate Barack Obama:

Under my plan of a cap and trade system, electricity rates would necessarily skyrocket.

He is admitting electricity rates will skyrocket under his plan of cap and trade. Does he really think Americans can afford that right now? This is a violation of a campaign promise, just like the one made by the first President Bush when he said, "Read my lips."

Energy Secretary Steven Chu explained earlier this month that because higher prices are supposed to motivate changes necessary to reduce carbon energy use, climate taxes may drive jobs to countries where costs are cheaper. I didn't realize our country was in a po-

sition right now to drive jobs overseas. I know lots of Americans who are looking for jobs right here, right now.

People seem to think they have discovered a pot of gold, but that money comes out of the pockets of American families. This is a tax we will all pay—rich and poor. The average annual household burden will be a little over \$3,000—and that is on the low end of the estimate. How many families do you know right now who can handle an additional \$3,000 a year? And because it is a regressive tax, lower income families will actually be hit the hardest.

Compare this to a Making Work Pay tax credit that is supposed to help working families by using money from the new climate tax. Individuals, under the President's proposal, will get \$400 per year, with a phase-out at earnings of individuals earning \$75,000 a year.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ENSIGN. I ask unanimous consent for 3 more minutes.

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

Mr. ENSIGN. Families will get \$800, with a phase-out of earnings of \$150,000 a year. I am pretty sure that if we ask most families whether they would like to get \$800 in return for paying over \$3,000, they would tell us to just skip the whole exercise. In that respect, the American public is smarter than many folks in Washington.

What will Washington do with the excess money this bill generates? We know what it will do: it will spend it, of course.

Not to worry, President Obama's budget provides targeted tax increases as well—targeted at small businesses that are responsible for a significant amount of the job creation in this country. Top tax rates on small businesses are going up under President Obama's proposed budget. The lower rate is 33 percent now, and under his proposal it will go to 40 percent. On the highest end, right now, it is 35 percent, and that will go to 42 percent.

History and research have shown that raising taxes on businesses depresses investment. It is not surprising that lower taxes on businesses increase employment and wages. It seems like a no-brainer. But in this new area of Government command and control, rather than personal responsibility, President Obama is opting to increase people's taxes—especially on those who creates jobs—in order to pay for a larger and more intrusive Government.

This tax, the President has said, only affects 3 to 4 percent of the small businesses out there. This chart refers to the fact that about half of the small businesses, with 20 or more employees, are eligible for the top tax rates I just pointed out.

This is the important point to make: these small businesses that will be hit by this tax create two-thirds of the jobs in America, and we are going to raise their taxes. That doesn't seem like a bright thing to do, especially

with the economic position we are in today. My home State of Nevada has been led by small businesses. We have led the country for many years on the percentage of small businesses creating jobs. We really can't afford to have small business taxes increased in my State, nor in any other State across the country.

Going back to the wise words of Benjamin Franklin, the American people are feeling the pain of this economy. They elected President Obama because he campaigned on a slate of "change." I don't believe this is the change the American people signed up for: reckless and endless spending, higher taxes on small businesses, increased energy costs for all families, fundraising hurdles for charitable groups, and a devastating national debt. The list goes on and on.

Madam President, this is the President's budget, and it is a recipe for disaster. We need to come back to the idea of personal responsibility and letting families and businesses have more of their own money to make the kinds of decisions and investments that will drive prosperity in America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

(The remarks of Mr. KOHL and Mr. GRASSLEY pertaining to the introduction of S. 647 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GRASSLEY. I yield the floor.

EXECUTIVE SESSION

NOMINATION OF ELENA KAGAN TO BE SOLICITOR GENERAL OF THE UNITED STATES

The PRESIDING OFFICER (Mr. BROWN). Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Elena Kagan, of Massachusetts, to be Solicitor General of the United States.

The PRESIDING OFFICER. There is now 6 hours of debate on the nomination, equally divided between Senator LEAHY, the Senator from Vermont, and Senator SPECTER, the Senator from Pennsylvania.

Mr. LEAHY. Mr. President, before we begin, I know that a number of people—I see Senator GRASSLEY, Senator KOHL, and Senator CARDIN on the floor—a number of people have asked me—I hope we will not be taking the full 6 hours. I have not discussed this with Senator SPECTER, so I cannot speak for him. A few of us are going to speak briefly. I hope at some point we will be able to yield back the remainder of our time and go to the vote. I know a number of Senators, especially Senators from the west coast of both parties, tell me they want to try to reach planes later today. And with the

weather, there is some problem. So I hope we might be able to yield back time.

Today, the Senate considers the nomination of Elena Kagan to be Solicitor General of the United States. It is fitting that we consider this historic nomination this month—and I think of my wife, my daughter, and my three granddaughters—because, of course, this is Women's History Month. When Elena Kagan is confirmed, she is going to become the first woman to serve as Solicitor General of the United States.

Nearly 10 years ago, President Clinton nominated Elena Kagan for a seat on the Court of Appeals for the DC Circuit. At that time, she had served as a clerk for Supreme Court Justice Thurgood Marshall and for Judge Abner Mikva on the DC Circuit, a law professor at the University of Chicago, Special Counsel to the Senate Judiciary Committee, Associate Counsel to the President of the United States, Deputy Assistant to the President for Domestic Policy, and Deputy Director of the Domestic Policy Council. Her credentials also included two years at Williams and Connolly and a stellar academic career, graduating with honors from Princeton, Oxford, and Harvard Law School, where she was Supervising Editor of the Harvard Law Review. Despite her outstanding record, the then-Republican majority on the Judiciary Committee refused to consider her nomination. In a move that was unprecedented, she was among the more than 60 highly qualified Clinton nominees that were pocket-filibustered. No Senate majority—Democratic or Republican—has ever done anything like that before or since. Apparently, they felt she wasn't qualified. So she returned to teaching, becoming a professor at Harvard Law School and, in 2003, she became the first woman to be dean of Harvard Law School.

Now, I mention that not just because Elena Kagan reached one of the pinnacles of the legal profession, but in that position, she earned praise from Republicans and Democrats, as well as students and professors, for her consensus-building and inclusive leadership style. She broke the glass ceiling. Now Dean Kagan is poised to break another glass ceiling. Similar to Justice Thurgood Marshall, for whom she clerked, she would make history if confirmed to what Justice Marshall described as "the best job he ever had." I hope that today the Senate will finally confirm her as President Obama's choice to serve the American people as our Solicitor General.

Two weeks ago Dean Kagan's nomination was reported out of the Senate Judiciary Committee, 13 Senators voted in favor, only 3 opposed. Senator KYL, the Assistant Republican Leader, and Senator COBURN voted in favor of the Kagan nomination, and I commend them. Just as I voted for President Bush's nominations of Paul Clement and Gregory Garre to serve as Solicitor General, Senator KYL and Senator

COBURN looked past the differences they might have with Dean Kagan's personal views, and recognized her ability to serve as Solicitor General.

I am disappointed that after 2 weeks, with so many critical matters before the Senate, the Republican Senate minority has insisted on 6 hours of debate on a superbly qualified nominee who has bipartisan support. Democrats did not require floor time to debate the nominations of President Bush's last two Solicitors General, Paul Clement and Greg Garre, who were both confirmed by voice vote.

Even the highly controversial nomination of Ted Olson to be Solicitor General, following his role in the Florida recount and years of partisan political activity, was limited in early 2001 to less time. He was eventually confirmed by a narrow margin, 51 to 47. That was the exception. Other than that controversial nomination, every Solicitor General nomination dating back a quarter century has been confirmed by unanimous consent or voice vote with little or no debate.

Just last week, the Republican Senate minority insisted on 7 hours of debate on the Deputy Attorney General nomination before allowing a vote. Of course, after forcing the majority leader to file for cloture to head off a filibuster and then insisting on so much time, the Republican opposition to that nomination consumed barely 1 hour with floor statements.

I wish instead of these efforts to delay and obstruct consideration of the President's nominees, the Republican Senate minority would work with us on matters of critical importance to the American people. I will note just one current example. Two weeks ago the Senate Judiciary Committee reported an antifraud bill to the Senate. The Leahy-Grassley Fraud Enforcement and Recovery Act, S. 386, needs to be considered without delay. It is an important initiative to confront the fraud that has contributed to the economic and financial crisis we face, and to protect against the diversion of Federal efforts to recover from this downturn.

As last week's front page New York Times story and the public's outrage over the AIG bailout remind us, holding those accountable for the mortgage and financial frauds that have contributed to the worst economic crisis since the Great Depression is what the Senate should be spending its time considering. We have a bipartisan bill that has the support of the United States Department of Justice. It can make a difference. In addition to Senator GRASSLEY, Senator KAUFMAN, Senator KLOBUCHAR, Senator SCHUMER and Senator SHELBY have worked with us on that measure. I would much rather be spending these 6 hours debating and passing that strong and effective antifraud legislation.

Our legislation is designed to reinvigorate our capacity to investigate and prosecute the kinds of frauds that have