our Republican colleagues have their sights set on 2012 and beyond, when they hope to have a huge number of Federal court vacancies to be filled by a President more to their liking.

Obstruction of nominees hurts the functioning of the government our colleagues have strived to be part of. If they continue to block qualified nominees, our Republican colleagues only further demonstrate their unwillingness to perform the duties for which they were elected and prove their disdain for the constitutional responsibilities with which they have been entrusted.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, let me thank Senator WARNER for organizing this presentation to point out the abuses the minority has used in blocking the responsibility of the Senate to confirm appointments made by the President. I believe in the right of the minority. At times, it needs to be exercised. But it has been abused. The American people need to know that because it is affecting their rights and the ability of agencies and the courts to protect the rights of Americans.

Let me cite one number: 60 individuals the President has nominated for important offices have been blocked in their confirmation votes on the Senate floor even though their nominations were approved by the committees either by voice vote or unanimous vote or by significant supermajorities. These are just being delayed, when we now know the final outcome will be approval. As a result, Americans are being denied judges on the courts and administrators who can help enforce their rights.

We have already heard the circumstances about our courts, how we have had to take to a cloture vote, which means floor time, for the nomination of Judge Keenan, who received 99 votes and no one in opposition. We have two vacancies on the Fourth Circuit right now. These appointments have been approved overwhelmingly by the Judiciary Committee—Albert Diaz and James Wynn—by votes of 19 to 0 and 18 to 1. They have the support of Senators BURR and HAGAN. Yet they have still not been brought to the floor for a vote. That represents a 20-percent vacancy on the Fourth Circuit, denying the people of my region their full representation on the appellate court.

We are very proud of legislation we have passed to help the disabled—the ADA law—to guarantee gender pay equity with the Lilly Ledbetter law, and genetic discrimination prohibition legislation. But it takes the EEOC to enforce those rules. President Obama has submitted four nominees for the EEOC. They have been approved by the committee by voice votes, which means they are not controversial. Yet we cannot bring those nominations to the floor for quick action because Republicans are abusing their rights to hold up action on the floor of the Senate to carry out our constitutional responsibilities to act on the President's nominations.

This is denying the people of America the protections they are entitled to by the courts and by agencies. It is wrong. It is time for this practice to end.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Arizona.

Mr. KYL. I ask unanimous consent to speak for 15 minutes.

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

HIRE ACT

Mr. KYL. Mr. President, we are going to be taking up the so-called HIRE Act starting tomorrow. I wish to address some of the problems with it since the procedure under which we have considered this bill does not allow any amendments. As a result, we have no opportunity to fix problems that are inherent with the bill and will force me to vote against it.

The first provision that should be highlighted is the provision called the Build America Bonds. This was created first in the 2009 stimulus bill. It offers a direct subsidy from the Federal Government to States and other governmental entities to cover their cost of financing for certain kinds of projects.

The House-passed bill expands this subsidy by allowing four current tax-preferred bonds to qualify for the direct subsidy under this program and increases the generosity of that subsidy to cover all of the borrowing costs for education projects. This will mean an expansion of the already substantial support the Federal Government offers for State and local governments, support for which we taxpayers are then responsible. The Federal Government gave $44 billion in extraordinary stimulus State aid last year and regularly spends $26 billion annually in sub-Federal Government subsidies through tax-exempt bond financing. This is a significant Federal expenditure for which taxpayers will be responsible.

Here is the key problem, in addition to the additional exposure of taxpayers: Because interest rates reflect risks, States with poor credit ratings that therefore pay higher interest rates would actually be rewarded under this legislation due to the structure of these bonds. For example, a State that issues $1 billion worth of debt paying a 5-percent interest rate would receive a bigger direct payment from the Federal Government than a State issuing $1 billion worth of debt paying a 4-percent interest rate. Thus, States with lower credit ratings could receive larger subsidies, which, of course, encourages greater risk-taking and creates an incentive for States to issue even more debt than they would have without the subsidy.

The so-called jobs bill would further reward States with poor credit. The Senate version of the bill expands the Build America Bonds program by giving insurers of certain tax credit bonds for school construction and alternative energy projects the option of receiving direct payment of up to 65 percent of the interest cost. The House bill would, in certain cases, reimburse up to 100 percent of a project's interest costs.

The original Build America Bonds program encouraged States to take greater risks. The bill we will consider tomorrow would make the problem even worse. One of the lessons from the financial crisis is that people should not borrow more than they can afford. Unfortunately, it appears many of us have not taken this lesson to heart.

There is a provision relating to highway extension. Rather than being a straight extension of the current highway authorization, this bill represents a significant expansion of the Federal Government's funding for highway projects. The highway piece first cancels rescissions that were scheduled under the last highway reauthorization. It then permanently increases the authorization levels for highway spending and permanently authorizes interest payments from the general fund to the highway trust fund and authorizes a one-time transfer of $19.5 billion from the general fund to the highway trust fund.

Although not all of these costs will show up as increasing the deficit because of the unique CBO scoring conventions, all told, the highway extension under this bill will add $46.5 billion to the debt over the next 10 years and will authorize $142.5 billion in additional spending over the next 10 years.

You hear the President talking about not adding to the deficit. All of our colleagues wring their hands and say: We have to somehow control Federal spending. Yet in this legislation we take up tomorrow we add $46.5 billion to the debt over the next 10 years and then authorize an additional $142.5 billion of spending over the next 10 years. When will it stop?

There is a provision of the bill that has some merit to it. It is called the payroll tax holiday, although I think the way it has been constructed is not something we should do. This is the most expensive piece of the bill. In fact, the Congressional Budget Office has told us that it expects a provision similar to this to create five to nine jobs for each million dollars in budgetary cost in 2010. Since this provision would cost approximately $13 billion by using the CBO model, one would estimate that the provision would create between 65,000 and 117,000 jobs this year at a cost of $110,000 to $200,000 per job. This sounds a lot like the stimulus bill to me, a very inefficient way to create jobs, if, in fact, they actually get created.

The proposed payroll tax holiday comes on the heels of the Senate-passed health care bill which actually increases the Medicare payroll tax from 2.9 percent to 3.8 percent. This actually would relieve employers of an

element of the payroll tax. So which is it? Do we agree that payroll taxes that are increased are unhelpful to job creation?

According to Timothy Bartik of the Economic Policy Institute:

> The employer tax credit in the Senate jobs bill is likely to create few jobs and at an excessively high cost.

As I have said, up to $200,000 per job. He explains it this way:

> Awarding credits for hires can be very expensive. Over a one-year period, the number of hires, as a percentage of total private employment, is over 40 percent even during a recession. To pay for hires that would have occurred anyway will be expensive and won't necessarily increase total private sector employment. The Schumer-Hatch design tries to avoid some of these large costs in several ways. First, credits are limited to hiring the unemployed, apply only to the rest of 2010, and are only worth 6.2 percent of the new hire's payroll costs. The retention bonus is of modest size and delayed. While these limits control costs, they also hamper the credit's benefits.
>
> Limiting the credit to hiring someone unemployed at least 60 days makes the credit less attractive to employers.
>
> Not only does the credit become more complicated to claim (which reduces its effectiveness), but it restricts the employer's hiring to a more limited pool of workers.

Bartik also explains that past experiences—for example, with the targeted jobs tax credit, the work opportunities tax credit, and the welfare-to-work tax credit—show that tax credits to encourage hiring disadvantaged workers usually generate little employer interest and have a negligible effect upon employer behavior. He says:

> Employers are happy to claim such credits, if they happen to meet the credit's rules, but they are reluctant to change their behavior in response to such targeted tax credits.

So even the one provision of the bill that actually has some alleged relationship to job creation probably would not and, to the extent it does, would cost an extraordinary amount of money per job actually created.

Let me turn to one of the ways in which these expenses are allegedly offset: delaying the application of the so-called worldwide interest allocation. This is a very bad idea. This delays implementing a corporate tax reform we passed in 2004 in order to help American businesses properly account for their overseas income and, frankly, be more competitive with those abroad.

The worldwide interest allocation rules were originally improved as part of the American Jobs Creation Act of 2004, as I said, and were scheduled to take effect in 2009. However, the Housing and Economic Recovery Act of 2008 delayed the effectiveness of these rules by 2 years to 2011. The Worker, Homeownership, and Business Assistance Act of 2009 that extended the first-time home buyer tax credit further delayed the effectiveness of these rules to 2018.

The so-called jobs bill would delay this provision through the end of the existing budget window to 2021. Repeated delays have the same effect as repeal: an increase in the effective corporate tax rate. As I said, that does nothing to help our American businesses in their desire to compete overseas.

So these are just some of the reasons why I am not going to be able to support the HIRE Act, and I would urge my colleagues, since we are not going to have an opportunity to amend it, to oppose it as well.

Might I ask, Mr. President, how much time I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes.

HEALTH CARE

Mr. KYL. Mr. President, I wish to address now the health care legislation we passed in the Senate and that is pending over in the House of Representatives.

There is a news report that Democrats are going to use the strangest of all procedural tactics to try to pass the Senate health care bill over in the House of Representatives, and this is against a backdrop of a lot of strange things—the use of the reconciliation process, all the backroom deals that result in the various benefits for various Senators and Representatives—we have heard so much about.

It almost seems Democratic leaders view the views of their constituents as an obstacle to be overcome, and every time the polls show even more opposition to the legislation, they decide to try even more clever ways of getting around their constituents' views—wheeling and dealing, backdoor legislation—but nothing quite as brazen, I guess I would say, as the process we now see developing. This is a process I became familiar with as a Member of the Senate—not when I was in the House of Representatives because I do not believe it was ever used then, although it might have been and I was not aware of it. But it is a process by which House of Representatives Members can actually say they have passed a piece of legislation without ever voting on it.

You might say: That does not quite comport with what I learned in eighth grade civics class, and you would be right. We all know the only way a President can sign a bill is if identical versions of legislation pass both the House and the Senate.

Well, the House does not want to have to vote on the Senate health care bill because, as the Speaker of the House said: ''Nobody wants to vote for the Senate bill.'' So now what they have done is concoct a way you can actually pass the bill without ever voting for it, and it is by including the substantive Senate-passed bill into the rule that as a procedural matter the House votes on to consider each measure. So as a rule to consider the reconciliation bill is brought to the House floor, it would contain a provision that would deem the Senate-passed bill passed, even though the House Members would never vote on it.

That is wrong. It is probably unconstitutional. Any House Member who believes he or she can go home and say to their constituents: Well, I never voted for the Senate-passed bill is, frankly, not going to get away with it because, by voting for the rule, they will have voted for the Senate-passed bill.

It seems to me this is the time for principled Members of the House of Representatives to stand and say: Enough. I may even somewhat like what we are trying to do with this health care legislation, but somebody has to stand for principle, and principle means, at a minimum, voting for legislation that you send to the President for his signature—not standing behind a rule which deems legislation to have been passed, even though it was never separately voted on.

It seems to me, first of all, we should make it crystal clear we will make this famous to the American people, if in fact they decide to use this process—something that has never been used for a bill such as this before. This so-called deeming rule will become part of the lexicon of American political discourse, and people will come to know it, just like they did the House banking scandal and certain other things here in Washington, to represent a time period and a group of people who were willing to violate all rules of sensibility, of morality, as well as legality in order to try to accomplish ends that could not be accomplished in other ways.

Nobody who votes for this rule and then later claims they did not have anything to do with passing this Senate bill is going to be able to get away with that. The American people will understand it. Frankly, whether they are sympathetic to the underlying health care legislation, they are not going to be sympathetic to Members of the House of Representatives who decide to do this kind of end run, this sort of scheme to deem a bill passed that has never been separately voted on in that body.

I hope the health care legislation we have now debated for a year can stand or fall on its merits. The American people have made it clear they do not want this legislation. Twenty-five percent do, but seventy-three percent have said either stop altogether or stop and start over. That is what we should be doing. Because of this wave of opposition by our constituents, our colleagues in the House should not try to get around that by using a procedure that is totally inappropriate to the purpose.

The PRESIDING OFFICER. The Senator has spoken for 10 minutes.

Mr. KYL. Mr. President, might I make a parliamentary inquiry: Is there more time remaining on the Republican side?

The PRESIDING OFFICER. Fifty-one minutes.

Mr. KYL. Thank you, Mr. President.

What I would like to do, until Senator GRASSLEY arrives—I first ask