

is now all the way from the wellhead off Louisiana, all the way across the gulf coast of northwest Florida. The blessing we had is that the wind has kept most of it off the coast. But, inevitably, when the wind rises up in the South, it brings the tar balls up. It has brought some of that terrible-looking orange mousse. That is one of the most repulsive-looking things. When I saw that in Pensacola Bay, to think of that in a pristine bay such as that and that the tides and wind were carrying it right to downtown Pensacola—that is what we are having to deal with.

Tomorrow, the Energy Committee is having a hearing on legislation Senator MENENDEZ and I have sponsored. This is to rectify the situation that brought us to this situation in the first place; that is, the safety checks were not made, the attention to detail on the application was not paid, and the checks were not made to see that the backup devices on the blowout preventer were, in fact, going to be there. In other words, the oil regulator—the part of the U.S. Government that is supposed to do all of these safety checks—was not functioning.

Why was it not functioning? Because for better than a decade, there has been a cozy relationship between the oil industry and the regulator, called the Minerals Management Service in the Department of the Interior, and that regulator was so compromised by gifts, by trips, by jobs. Indeed, I am sad to report that the 2008 inspector general's report talked about there were parties, there was booze, there were drugs, there were illicit sexual relationships going on between the industry and the government regulators. How can you have government regulation under these conditions?

Of course, there was the revolving door. The revolving door happens in other regulated industries as well, but this one was particularly revolving and revolving. What that is, somebody would come out of the oil industry, they would go through the revolving door, they would go right into the government regulator shop, they would stay there for a while and they would supposedly be an independent regulator, but, no, the door would revolve again and they would then go right back out of the government job, back into the oil industry—the very industry they were supposed to be regulating before. Is that a conflict of interest? You bet it is. Can you have an independent regulator? Of course you can't under those circumstances.

So Senator MENENDEZ and I have filed a bill. As a matter of fact, we had this back in 2008 when that inspector general's report came out. We could not get anybody to pay any attention to it back then. What is the result of lax regulation? It is exactly what has been visited upon us—this trauma so many people in that region of the Gulf of Mexico are suffering.

As the administration goes about the process of cleaning up the Minerals

Management Service, reorganizing it, getting new personnel, then it is up to us to change the law to make sure there are penalties—indeed, even criminal penalties—for gifts and trips by the very industry you are supposedly regulating, which in this case claimed 11 lives and countless jobs and livelihoods and a whole way of life in a culture along the gulf coast.

The bill that will be heard tomorrow, which we are grateful for, sets new penalties. It sets a limit—a mere 2 years—so that when someone comes out of the government regulator's office, they can't be employed in that oil industry they have just regulated until a period of time of 2 years has lapsed. It also provides penalties for the gifts, the trips, the favors we have seen chronicled, not in my words but in the words of the 2008 inspector general's report; the report 2 months ago, the inspector general's report; and the report a month ago, the inspector general's report. In this last report, he particularly talked about the revolving door. It is something we have to change. Sadly, it has taken the biggest environmental disaster in U.S. history, but because of this tragic condition, this Congress ought to be poised now to crack down on the government's buddy-buddy relationships with the oil industry.

Tomorrow, the Senate Energy Committee is set to begin debating legislation aimed at cutting the oil drillers' close ties to the industry and aimed at stopping that revolving door. It is going to prohibit the employees of the Minerals Management Service or its successor—since the Secretary of Interior, Ken Salazar, is now busting it up—they are going to have to wait around for 2 years before they get a job back in the industry. The goal is obvious: to limit the degree of influence big oil has on those who are hired to keep the drillers in line. It is the least we can do for those folks down home who are suffering so much right now. They expect us to update laws to meet the times. This is such a time.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina is recognized.

#### THE CAPITAL GAINS AND DIVIDEND TAX

Mr. DEMINT. Mr. President, I wish to speak for a few minutes on the motion that relates to the coming increases in capital gains tax and dividend tax. Very few Americans are aware and I think even some people in the Senate are not aware that in about 6 months, there is going to be a tax explosion in this country—taxes on everyone from the 10-percent bracket all the way up to major corporations. Taxes are going up at a time when we know raising taxes will kill jobs in America.

The Heritage Foundation estimates that if we allow taxes to expire this year, the current rate of taxes to ex-

pire, and taxes go up in our economy, in the first year we could lose 270,000 jobs. This is really unacceptable when unemployment is already nearly 10 percent, the economy is waning, and we just got a bad housing report. As all of these companies plan for their future, they are certainly not going to risk capital to expand their companies and add people if they know their taxes are going to go up.

What I proposed as part of this debate on a tax bill is to focus on just one area that we know has a lot to do with investment, with growth of companies; that is, the capital gains tax and the dividends tax. My motion would refer the underlying bill back to committee to add the provisions that cap gains tax and dividend taxes will both stay at 15 percent. If we do not act, in 6 months the capital gains taxes will go from 15 to 20 percent and the dividend taxes, which affect a lot of senior citizens on fixed incomes, will go from 15 all the way up to nearly 40 percent. That makes absolutely no sense in a recession and with the joblessness we have across this country. Surely, as a Senate, as a Congress, we could recognize that raising taxes on investment—those who are going to risk their capital—does not make sense when we are trying to do everything we can to stimulate the economy.

We tried it the other way. We tried the government spending approach. We all know this government spending plan we call the stimulus, where we spent nearly \$1 trillion, has failed. The President promised that if we rushed that through and got stimulus immediately into the economy, over a year ago, that we could keep unemployment below 8 percent and put Americans back to work. But since then, we have lost millions of real jobs. We have added some government jobs because this is basically a government spending plan, but we certainly have not put the real economy most Americans depend on back to work.

We are continuing to lose ground. Yet we stick to this failed stimulus plan. Even when we try to pay for extending unemployment benefits with unspent stimulus money, my colleagues on the other side are holding so tightly to this that they will not even use that money to pay for it. Instead, they want to raise taxes and add to our debt—again, at a time when we really cannot afford this as a nation, when all of the so-called economic experts are warning us that this debt we have today is unsustainable. But almost every week in this body, the Democrats are proposing programs that add to the debt, that increase taxes—everything that is counter to improving our economy and adding to jobs and helping to build a brighter future in this country. Even some of those who were strong supporters of the stimulus bill have come out publicly and said: We guessed wrong. I am afraid we should not continue to guess.

One thing we know from history is— if we look back over several decades—

when we lower capital gains and dividends we improve the economy and we increase job creation in the economy. It makes no sense for us to move ahead, sending the signal to all of the investors in this country that we are going to punish their investment at a time when we need them to step up to the plate.

I hope my colleagues will consider this. What we are asking is that the bill be sent back to the Finance Committee so they can work on ways to keep capital gains and dividend taxes the same rather than let them explode, along with all of the other taxes that are going to go up in the next 6 months.

I hope we will have a chance to vote on this bill. I understand the majority is trying to table this motion. I strongly urge my colleagues to take up this matter, to send it back to the Finance Committee where they can figure out how to make sure we do not kill more jobs in the economy like we have done with the other failed stimulus plan.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant bill 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.

#### MORNING BUSINESS

Mr. REID. Mr. President, we are working to complete work on the so-called extenders bill. We thought we would be ready to do the procedural votes to get to that a couple of hours ago. But as things happen around here, there has been changes requested by a number of Senators. As a result of that, we are going to have to go back to the Joint Committee on Taxation and get some more numbers. That is probably going to take about an hour.

So we are not jammed for time, I ask unanimous consent that the Senate proceed to a period of morning business until 4:30 p.m. today, and that during that period of time Senators be allowed to speak for up to 10 minutes each. We are not going to divide the time Democrat and Republican. What we will do is, if there is a Democrat who wants to talk, talk for 10 minutes. If there is a Republican here, then it would be their turn.

We will try to work this out by a gentlemen-and-ladies agreement to go back and forth, if in fact there are people who want to talk, with 10-minute limitations alternating time, if in fact there are the Senators. If there are two Republicans and no Democrat here, then the two Republicans and vice-versa.

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

Mr. REID. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

#### ELENA KAGAN AS POLITICAL OPERATIVE

Mr. MCCONNELL. Mr. President, on Monday, the Senate will begin the confirmation hearings on Supreme Court nominee Elena Kagan. And I think it is safe to say most American do not know all that much about her.

But a fuller picture of this nominee is beginning to emerge.

The recent release of documents relating to Ms. Kagan's work in the Clinton White House reveals a woman who was committed to advancing a political agenda, a woman who was less concerned about objectively analyzing the law than the ways in which the law could be used to advance a political goal.

In other words, these memos and notes reveal a woman whose approach to the law was as a political advocate, the very opposite of what the American people expect in a judge.

This is the kind of thinking behind the current Democratic effort to pass the so-called DISCLOSE Act, a bill designed to respond to the Supreme Court's decision in *Citizens United* that they think puts them at a political disadvantage in the fall. That is why the bill was written by the chairman of their campaign committee.

And this is also the kind of thinking that seems to have motivated the Clinton White House to seek a similar legislative response the last time the Supreme Court issued a decision in this area that Democrats thought put them at a political disadvantage.

I am referring here to the case of *Colorado Republican Federal Campaign Committee v. FEC*, a case in which the Supreme Court essentially said that the Federal Government could not limit political parties from spending money on campaign ads called "independent expenditures" that said things like, "Vote against Smith," or "Vote for Jones."

This was not an especially controversial decision, as evidenced by the fact that it was written by Justice Breyer, one of the Court's most prominent liberals. But the decision put Democrats at a political disadvantage. So the Clinton administration did the same thing then that the Obama administration is trying to do today. They considered proposals to lessen its impact and to benefit Democrats over Republicans. And Elena Kagan worked to advance that goal as part of President Clinton's campaign finance task force.

Ms. Kagan's notes reveal that finding ways to help Democrats over Republicans was very much on her mind. According to one of her notes, she wrote: "Free TV as balance to independent expenditures? Clearly, on mind of Dems—need a way to balance this."

The "balance" Ms. Kagan is referring to was a way for Democrats to balance what they viewed as the Republicans' advantage in helping their candidates with independent expenditures. And "free TV," well, that is a reference to Democrats wanting free television to help them out in their campaigns. Providing free TV would be a "significant benefit," Ms. Kagan wrote. It was also something the Clinton administration could bring about, she suggested, by simply having the FCC issue a new regulation, or by adding such a provision to legislation the White House was helping to craft.

But this was not the only way in which Ms. Kagan thought about stacking the deck to help Democrats over Republicans at the time. Another note reveals her approach to the issue of soft money, the money political parties used to spend outside of Federal elections. Ms. Kagan's notes show that she thought banning it would hurt Republicans and help Democrats. She even seemed to delight in the prospect of finding ways to disadvantage Republicans. Here is what she wrote in her notes:

"Soft [money] ban—affects Repubs, not Dems!"

And if I had this quote up on a chart, you would see that she punctuated this sentence with an exclamation point.

So let me repeat that quote one more time:

"Soft [money] ban—affects Repubs, not Dems"—punctuated with an exclamation point.

We already knew that Ms. Kagan and her office argued to the Supreme Court at different points in the *Citizens United* case that the Federal Government had the power to ban political speech in videos, books and pamphlets if it did not like the speaker.

Then we learned she went out of her way to prevent lawyers at the Justice Department from officially noting their serious legal concerns with campaign finance legislation in order to help the Clinton administration achieve its political goals.

Now we learn that she thought about drafting such legislation in ways to help Democrats and hurt Republicans. And her advocacy and apparent glee at identifying some political harm to Republicans is, to my mind, another piece of her record that calls into question her ability to impartially apply the law to all who would come before her as a Justice on our Nation's highest Court.

The more we learn about Ms. Kagan's work as a political adviser and political operative, the more questions arise about her ability to make the necessary transition from politics to neutral arbiter. As Ms. Kagan herself once noted, during her years in the Clinton