

Order Act of 2010. I offered the text of this bill to H.R. 725, the Indian Arts and Crafts Act Amendments, and last night, the Senate passed this bill as amended by unanimous consent.

As chairman of the Committee on Indian Affairs, I have presided over 14 hearings relating to public safety on our Nation's tribal lands over the past three years. These hearings revealed a longstanding crisis of violence in many parts of Indian country. Indian reservations on average suffer rates of violence more than 2.5 times the national rate. In my home State of North Dakota, the Standing Rock Sioux Reservation suffered 8.6 times the national rate of violence in 2008. In early 2008, there were 9 police officers patrolling this 2.3 million acre Reservation, which meant at times there was no 24-hour police response service. As a result, victims of violence reported waiting hours and sometimes days before receiving a response to their distress calls. With this level of response, crime scenes can become compromised, and justice is not served to the victims, their families, or the community.

Our hearings found that violence against Indian women has reached epidemic levels. The Justice Department and the Centers for Disease Control and Prevention report that more than 1 in 3 American Indian and Alaska Native women will be raped in their lifetime and more than 2 in 5 will be subject to domestic or partner violence.

The broken and divided system of justice in place on Indian lands that was devised by dozens of Federal laws and Federal court decisions enacted and handed down over the past 150 years is not well-suited to address the violence in Indian country. Because of these laws and decisions, responsibility to investigate and prosecute crime on the reservation is divided among the Federal, tribal, and in some locations, state governments.

Based on this authority, these governments should be diligent in preventing and prosecuting these crimes. Thus, one of the primary purposes of the bill is to ensure that the United States upholds its treaty promises and legal obligation to investigate and prosecute violent crimes on Indian lands. Our Nation made treaty promises, and enacted laws—specifically the General and Major Crimes Acts—that provided for Federal criminal jurisdiction over Indian lands. At the same time, the United States limited tribal government authority to punish offenders in tribal courts to no more than 1 year for any one offense.

The Tribal Law and Order Act of 2010 takes steps to hold the United States to these solemn promises, and will address the restriction on tribal court penal authority over defendants in tribal court where certain protections are met.

Mr. KYL. I thank my colleague from North Dakota for his work on this important bill. We held a field hearing in my State of Arizona on an early

version of this bill. There we heard from tribal leaders about violence in their communities. In 2009, the Bureau of Indian Affairs reported that in my home State of Arizona the San Carlos Apache Tribe endured a violent crime rate that is more than six times the national average and the White Mountain Apache Tribe suffered a violent crime rate more than four times the national average. On the southern border, the Tohono O'odham Nation needs assistance in addressing the onslaught of Mexican drug and human traffickers that exploit the sprawling reservation, which is the size of the State of Connecticut.

I would like to address changes made to section 201 of the Tribal Law and Order Act that concern Public Law No. 83-280, commonly known as Public Law 280. This law was enacted on August 15, 1953. Public Law 280 removed the Federal Government's special Indian country law enforcement jurisdiction over almost all Indian lands in the States of Alaska, upon statehood, California, Minnesota, Nebraska, Oregon, and Wisconsin, and permitted these States to exercise criminal jurisdiction over those lands. The act specifically provides that these states "shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country . . . to the same extent that such State . . . has jurisdiction over offenses committed elsewhere within the State . . . and the criminal laws of such State . . . shall have the same force and effect within such Indian country as they have elsewhere within the State."

Public Law 280 has been a mixed bag for both tribes and States. The States that are subject to Public Law 280 possess authority and responsibility to investigate and prosecute crimes committed on reservations, but, because of subsequent court decisions that sharply limited the extent of Public Law 280's grant of civil jurisdiction to affected states, these states have almost no ability to raise revenue on Public Law 280 lands. And to the extent that tribal governments retained concurrent jurisdiction over crimes committed by Indians on these lands, such authority is currently limited, as my colleague from North Dakota states, to no more than 1 year for any one offense. Thus, residents of reservations subject to Public Law 280 have to rely principally on sometimes underfunded local and state law enforcement authorities to prosecute reservation crimes.

Section 201 of the Tribal Law and Order Act of 2010 allows the Federal Government to reassume criminal jurisdiction on Public Law 280 lands when the affected Indian tribe requests the U.S. Attorney General do so. If the Attorney General concurs, the United States will reassume jurisdiction to prosecute violations of the General and Major Crimes Acts, sections 1152 and 1153 of title 18, that occur on the requesting tribe's reservation.

The bill makes clear that, once the United States reassumes jurisdiction pursuant to this provision, criminal authority on the affected reservation will be concurrent among the Federal and State governments and, "where applicable," tribal governments.

Mr. President, I would like to ask the sponsor of the bill to make clear that nothing in the Tribal Law and Order Act retracts jurisdiction from the State governments, and nothing in the act will grant criminal jurisdiction in Indian country to an Indian tribe that does not currently have criminal jurisdiction over such land.

Mr. DORGAN. That is correct. The phrase that jurisdiction "shall be concurrent among the Federal Government, State governments, and, where applicable, tribal governments" is intended to clarify that the various State governments that are currently subject to Public Law 280 will maintain such criminal authority and responsibility. In addition, this provision intends to make clear that tribal governments subject to Public Law 280 maintain concurrent criminal authority over offenses by Indians in Indian country where the tribe currently has such authority. Nothing in this provision will change the current lay of criminal jurisdiction for state or tribal governments. It simply seeks to return criminal authority and responsibility to investigate and prosecute major crimes in Indian country to the United States where certain conditions are met.

Mr. KYL. Mr. President, I concur with the interpretation of this provision expressed by my colleague from North Dakota.

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#### AMERICAN JOBS AND CLOSING TAX LOOPHOLES ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from Washington State is recognized.

Mrs. MURRAY. Mr. President, I rise to express my disappointment that we have gotten to this point on this very important piece of legislation that is before us, the tax extenders bill, the jobs package we have been trying to get passed. We have worked very hard to put together a bill that will provide much needed help to families and communities across the country. It is a bill that will make sure our recovery is not jeopardized. It is a bill that would extend tax credits to individuals and small businesses that both of our parties think are important. It provides incentives for clean energy companies to expand and create jobs at a time when we need them. It allows families in States such as mine to deduct local sales tax from their Federal returns, an important boost to the economy. It provides critical support for States that are struggling today to provide health care for their families in these very tough economic times. And it will extend unemployment benefits to support those in our communities who,

through no fault of their own, have lost a job and now, as the economy is getting back on track, need support for a few months longer so they can get a job and go back to work. It is a commonsense bill to help our economy get back on track. When we originally brought this bill to the floor, every single Republican said no to supporting our communities. Instead of walking away on this side, instead of furthering their goal of partisan gridlock, we extended a hand to our minority colleagues and worked with them. We trimmed sections they wanted trimmed. We reduced the support we thought was important for our families, but we reduced it in order to get their support and brought it back to the floor again. But once again, they said no to American families. So we went back and a third time trimmed it back even further. We did exactly what they asked us to do.

Now I am saying to our Republican colleagues, it is time to stop saying no. It is time to stop saying no to clean energy companies in my home State and across the country that depend on these tax credits to stay competitive. It is time to say stop saying no to the thousands of police officers and corrections officers and so many others who will lose their jobs in my home State and everywhere if this bill does not pass and our State has to further slash its budget. It is time to stop saying no to the men and women across the country who are desperately trying to find work today but need a little more help to keep their heads above water in these tough economic times. It is time to stop saying no to middle-class families across Washington State who depend on that sales tax deduction that would be extended in this underlying bill to help. They will be out hundreds of millions of dollars if this bill continues to be blocked.

We have tried very hard. Senator BAUCUS, chairman of the Finance Committee, deserves our gratitude for reaching across the aisle time and time again to work with the other side. We have compromised, and then we compromised again and then again. It is disheartening that the other side has refused to work with us. I say enough already. I go back home to Washington State every weekend. I talk to my constituents. I try to explain what we are doing here in Washington, DC. To be honest, I am having a heck of a lot of trouble explaining why when big banks and Wall Street were on the brink of failure and threatening to blow up our economy, Republicans immediately came together with us to help step us back from the brink. But now that Wall Street is fine, regular families and communities are continuing to struggle, those same Republicans are nowhere to be found. I don't have an answer for the families at home who ask me about this. Quite honestly, I don't get it myself. Because the fact is, we have had put together a bill that is fully paid for with the exception of un-

employment benefits, that is a direct stimulus to the economy, that has been passed as emergency spending time and time again under both Democratic and Republican control, because that is exactly what it is. We have done all we can. If those on the other side say no again, it is pretty clear to me they are putting their interests before the interests of our hard-working families who are struggling today.

I know in the State of the Presiding Officer and in my State families are hurting. They are fighting every day to stay on their feet. I am not going to stop fighting to be on their side. There is a tremendous lot at stake in this bill.

I urge all of my colleagues to follow our example and put families and communities and States above partisan politics and goals and work with us to pass this bill so hundreds and thousands of American families can wake up tomorrow and know the Senate was on their side.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WICKER. 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. WICKER. Mr. President, I ask unanimous consent to speak as in morning business.

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

#### NOMINATION OF ELENA KAGAN

Mr. WICKER. Mr. President, I rise today to speak briefly on the upcoming hearings the Judiciary Committee will hold on President Obama's nomination of Elena Kagan to be a Justice on the U.S. Supreme Court. I am not a member of the Senate Judiciary Committee, and I do not envy the difficult task before the committee members. However, I would like to highlight a few things I will be watching, as a Member of this body with the constitutional duty to advise and consent, and listening for as Ms. Kagan's nomination hearings begin on Monday.

First and foremost, I will be listening for indications on how closely Ms. Kagan will adhere to the Constitution and the laws of our Nation as written. The judicial oath requires judges to apply the law impartially to the facts before them—without respect to their social, moral, or political views.

Although Ms. Kagan certainly has an impressive resume in academia and as a political adviser in the Clinton and Obama administrations, she lacks key courtroom experience as either a judge or as a private lawyer. Therefore, it is appropriate and vitally important that members of the committee perform their due diligence to question her judicial philosophy.

This is a line of questioning that Ms. Kagan herself has endorsed. In a 1995

University of Chicago Law Review article, she wrote:

The kind of inquiry that would contribute most to understanding and evaluating a nomination is . . . discussion first, of the nominee's broad judicial philosophy and second, of her views on particular constitutional issues. By "judicial philosophy" . . . I mean such things as the judge's understanding of the role of courts in our society, of the nature and values embodied in our Constitution, and of the proper tools and techniques of interpretation, both constitutional and statutory.

I could not agree more with Ms. Kagan. I hope she will live up to her own measuring stick and provide the Senate with the open and constructive answers which she has herself advocated.

In addition to her general judicial philosophy, I hope my colleagues on the Judiciary Committee will question Ms. Kagan on two specific issues important to many Americans and many of my constituents in the State of Mississippi; that is, her views on abortion and the second amendment.

I am concerned that many of the documents from Ms. Kagan's service as a law clerk for the late Justice Marshall and as a political adviser during the Clinton administration reflect a troubling bias.

Two years ago, the Supreme Court ruled, in *District of Columbia v. Heller*, that the second amendment guarantees an individual's right to keep and bear arms. Ms. Kagan has said publicly that she views *Heller* as settled precedent of the Court. But as a law clerk for Justice Marshall, Ms. Kagan wrote a strikingly personal memo on gun rights.

The case in question on that earlier occasion challenged the District of Columbia's handgun ban that was markedly similar to the *Heller* case. In her 1987 memo urging Justice Marshall to vote against hearing the case, Ms. Kagan stated:

[The petitioner's] sole contention is that the District of Columbia's firearm statutes violate his constitutional right "to keep and bear arms." I'm not sympathetic.

The recommendation itself is troubling, but the personal note she employed is even more disturbing. Rather than pointing to text and precedent, rooting her analysis in law or looking to the Constitution, Ms. Kagan chose the personal pronoun saying: "I'm not sympathetic."

This should concern Senators because it seems to indicate a personal aversion to the right to bear arms. I hope members of the committee will question Ms. Kagan on this issue.

Ms. Kagan's work in the Clinton administration raises further questions about her views of the second amendment. According to records at the Clinton Presidential Library in Little Rock, Ms. Kagan was a key adviser to President Clinton on gun control efforts. She drafted an Executive order restricting the importation of certain semiautomatic rifles and was involved in the creation of another order requiring all Federal law enforcement officers to install locks on their weapons.

She advocated various other gun control proposals, including gun tracing initiatives, legislation requiring background checks for all secondary market gun purchases, and efforts to design a gun that would automatically restrict the ability for most adults to use it.

In a May article, the Los Angeles Times put it this way:

As gun rights advocates viewed it, there was one clear message: The Clinton White House wanted to remove as many guns from the market as it could.

Records show that Ms. Kagan was a key player in this effort.

I believe the upcoming hearings present an opportunity to hear more about Ms. Kagan's views on the second amendment—a right clearly enumerated in the Bill of Rights—and whether she views it as binding on all levels of government. I am confident I will not be the only one following her answers closely.

With regard to the second issue, with regard to abortion, Ms. Kagan, having neither served as a judge nor spent any significant time in a courtroom, lacks a judicial record to give us insight into her views on abortion. But there are several red flags that show the need for pointed questions from Judiciary Committee members on this issue.

First, Ms. Kagan has extensively criticized the 1991 Supreme Court decision *Rust v. Sullivan*, where the Court upheld the constitutionality of the Department of Health and Human Services' regulations that prohibit title X family planning funds from being "used in programs where abortion is a method of family planning."

The rulings in that case and others like that case are absolutely vital to protecting the unborn. Congress has the constitutional duty to maintain the power of the purse. If, as Ms. Kagan argues, that authority should be limited in the name of free speech, then the American people will lose the ability for their elected Representatives to prohibit abortion funding and provide any balance to the executive branch.

One of the most noteworthy issues on which Ms. Kagan advised President Clinton during her time at the White House was partial-birth abortion—a truly reprehensible procedure. Memos from Ms. Kagan to President Clinton indicate she believed partial-birth abortion is constitutionally protected. I have profound concerns about that point of view and believe this raises serious questions about how she would interpret the Constitution if confirmed to the Supreme Court.

In closing, there is no doubt these are important issues deserving lengthy and deliberate consideration by the Senate Judiciary Committee, particularly for a lifetime position on the highest Court in our Nation.

I hope Ms. Kagan will adhere to her own advice and be open and forthright with the committee as to her judicial philosophy and views on the specific constitutional questions I have men-

tioned. I look forward to joining many Americans in closely following Ms. Kagan's responses.

I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Maine.

Ms. SNOW. Madam President, today I rise to express my concerns about the pending tax extenders legislation that we are debating and will be voting on in the Senate shortly. As you know, we have had a series of votes on this particular question, to no avail. There is no substantive reason for the impasse at which we have arrived on this package. It certainly could have been different. I have been involved in a number of discussions over the last 2 weeks with respect to how we could reach a resolution on some of these questions, so I think it is important to set the record straight.

Frankly, I think it is the result of the yawning chasm that exists between the artificially generated political landscape in Washington and the actual real-world state of our economy that Americans have been experiencing on a daily basis beyond the Capital Beltway.

If we are serious about creating jobs, we absolutely could identify a pathway to extend the expiring tax provisions in this legislation which are important to America's job generators, without simultaneously and inexplicably raising taxes on our small businesses—the very entities we look to in order to lead us out of this recession—in the name of increased spending and a more expansive tax extenders package. This approach simply makes no sense and lays bare the stark disconnect between Washington and the entire rest of the country.

We hear the mantra of "jobs, jobs, jobs" as our No. 1 priority, as it should be. Concerns about the economy are foremost on the minds of the American people, rightfully. That is why there is so much anxiety across America today on Main Street. They do not think it is being replicated in the Senate and the overall Congress with respect to the actions we should be taking.

Yet what is proposed for legislation today—which highlights the disconnect between here and the rest of America—is "taxes, taxes, taxes" and "spending, spending, spending," which will do nothing to grow our economy. In fact, we still have not considered a small business jobs package, and it is now almost July.

What is it that we do not understand? What is happening on the economic landscape and among small businesses upon whom we depend to create jobs? It is not exactly that we are mass producing jobs in America's economy today. In fact, I met yesterday with the president of the Boston Federal Reserve, Eric Rosengren, and as he pointed out, the growth the economy has demonstrated thus far is, for the most part, in inventory. This is not exactly real growth. It is drawing down inventory. But the economy has not dem-

onstrated an ability to create jobs and real economic growth because there is uncertainty among the business sector and, in particular, small businesses that do not want to take the risk of investments or hiring additional people because of the uncertainty of the policies that are emanating from Washington.

Last month, as we discovered with the unemployment numbers: of the 431,000 jobs that were created, 411,000 were due to temporary government workers—that is why our national unemployment rate is not worse than it is. So, ultimately, our government is the only real growth industry in this country, and I challenge anyone to seriously argue that is a sustainable path to a brighter economic future.

The fact is, growth is not occurring in our economy. I have heard that time and time again. I have heard that from small businesses, medium-sized businesses, large businesses, every organization that represents businesses in America. They are saying there is no real growth in our economy, and they are not going to be hiring, they are not going to be making the investments necessary because of the uncertainty coming from Washington with respect to taxes, with respect to regulation, with respect to the health care legislation that became law this year.

So what will it require? In the Federal Reserve's analysis, it will require, in terms of reducing the unemployment rate in this country—just in order to reduce the unemployment rate to, let's say, 5 percent by 2012—in the charts they gave me yesterday, it would require at least a 6-percent annual growth rate in GDP in order to equalize the losses in jobs we have already experienced and suffered.

That rate would be slightly higher than the level of growth we experienced during the recovery from the 1982 recession and approximately double the growth following the 1991 and 2001 recessions.

So when you think about it, in order to achieve a 5-percent unemployment rate by 2012, it would require approximately a 6-percent annual growth rate in 2011 and 2012. Would it be possible under the scenario that is occurring? Probably not because the growth is not occurring, and job creation certainly is not. That is disturbing, and it is deeply troubling.

In fact, I was talking to someone today who is in the business community who said small businesses are not going to take those risks. You will not see the kinds of startups in America because of the state of the economy, because of the policies that are coming out of Washington that mean more taxes and more spending, which gets to the tax extenders package that is before us today. And that is my concern, with the detachment we have between what is happening in America on Main Street and what is happening in Washington, DC, in the House of Representatives and the Senate. There isn't that

reality check, and that is obviously exemplified by the kind of legislation we are trying to ram through the Congress, once again, that means more taxes and more spending and that is going to cost more jobs. It is going to provide more risk in the economy. Therefore, we are not going to see the kind of economic growth the American people deserve.

Somehow, we think there is not a cause and effect and a correlation between what we do here and what happens across America. I know that in speaking to my constituents and to small businesses, I hear it day in and day out. I go home and I talk to them and I listen, more importantly, and I hear what they are saying. They are uniformly saying the same thing: that the policies coming out of Washington cause them great pause. It causes them alarm. Therefore, they will not take the risk. They will not make the investments to increase the number of employees and to add to their personnel or to make the capital investments, because they do not know how much the Federal Government is going to cost them with respect to taxes, with respect to regulation and, of course, the new health care law, as well as all of the other tax consequences that have now resulted in this legislation that is pending before the Senate. Somehow, people think it won't matter.

Then I am beginning to think that maybe people haven't read these provisions to understand exactly how they work, and that is why there is so much concern and apprehension across America. That is why Congress has such a low approval rating that has certainly crossed the historic thresholds in terms of how low it is, and understandably so, because there is no connection. There is no correlation between what we are doing and what is happening in America and in small businesses and in family households which have lost their jobs and are enduring anxiety and apprehension about where the next job is going to come from and how they are going to make ends meet.

So we truly have our work cut out for us when we look at the low economic growth, the inability to create jobs and, frankly, the fear. When we think about what has been created in this economy, from their standpoint, it isn't so much the problems we are dealing with today, it is the direction Congress is taking with respect to the issues that matter most to them in order to take the risks we need them to take in order to reverse this economic cycle.

Also, when we think about the projections for economic growth, this bill doesn't take into account the potential effects of what is happening in Europe and the economic turmoil that certainly could engulf our own economy or the potential fallout from the BP disaster in the gulf. That has not manifested itself in the unemployment numbers or economic growth. It is a

travesty what is happening there, and it certainly is devastating a way of life and so many small business owners. So that is another dimension and component we will have to incorporate in our calculations for the future. Certainly, that will have an impact on the bottom line with respect to job creation and our ability to see the kind of growth we require in order to reverse the declining growth in America.

We certainly have our work cut out for us. That is what makes me wonder exactly what world we are living in here in Congress as we pay lip service to job creation, when in reality we are instead on a glidepath toward higher taxes on America's job generators and at precisely a moment in time when we should be providing the kind of relief I have been advocating for through small business legislation. I have been championing it for 6 months now—6 long months. I started in January. I thought it was going to be on the front burner. It is still languishing on the back burner. So much for jobs being a priority. So much for depending on small businesses to create those jobs. So we have paid no deference to the greatest issue that is facing America today, and that is job creation and the economy. That is the No. 1 priority of the American people. But here we are approaching July and it is yet to be on the legislative calendar, even though I have been promised. I know the Presiding Officer, who serves on the Small Business Committee, has been a great advocate and a champion for small business tax relief and creating jobs and how vital it is. We have had numerous hearings on that question before our committee which underscores the imperative of passing a small business tax relief program so they can generate jobs because they are the one entity that creates jobs in America. But we have yet to consider the small business tax relief jobs package. It is approaching July. I had a package prepared in mid-March and I was asked to defer because we were promised that we will be considering a small business jobs package before the April recess. Well, April has come and gone. May has come and gone. June has come and gone. Obviously, July will come and go, before it becomes law—so it is regrettable.

It is a red herring to suggest that a potential \$12 billion small business jobs bill might mitigate the damage of some of the initiatives that are incorporated in this tax extenders bill that is now pending before the Senate and that we will vote on shortly with respect to cloture. That is my point here today. Because when we do consider a small business jobs relief package, and we provide the billions of dollars that are necessary to jump-start our economy to small businesses with tax relief, at the same time we are imposing additional taxes on small businesses in the tax extenders package, that will not neutralize the circumstances for small businesses. It only makes it worse. So on one hand we could provide

some benefits and on the other hand we take them away.

Let us remember that those increases will be in addition to the tax increases on the small business flow-through income that is expected to increase from the current rate of 35 percent to 39.6 percent, as well as a tax on capital gains that is scheduled to rise from 15 percent to 20 percent at the end of this year. Astoundingly, the tax rate on dividends 6 months from now will rise from 15 percent to as high as 39.6 percent, which is a 264-percent increase. That is not even taking into account some of the marginal tax effects such as the phaseout of itemized deductions that will raise the rate even higher, or the tidal wave of uncertainty headed toward the business community as they evaluate and grapple with, as I said earlier, the health mandates resulting from the legislation that was passed in December. It doesn't even incorporate the Medicare payroll taxes that were imposed on small business in the health care reform law: \$210 billion worth of taxes that were inserted in the health care legislation that became law in December, that imposes a payroll tax on small businesses. It also taxes unearned income and investments for the purposes of the Medicare payroll tax that also will affect small businesses to the point that there will be a net increase of 67 percent in capital gains on small businesses as a result of that legislation that became law in December.

So the cumulative effect of all of these tax increases is going to be pronounced on the ability of small business to create jobs, let alone make investments in equipment that is so essential to expanding and to growing.

As my colleagues see on this chart I have on display that was issued in May of 2010 by the National Federation of Independent Business, the foremost organization that represents small businesses in America, small business optimism at an unprecedented low. It is not surprising, given the status of the economy today. In fact, there is virtually no economic growth occurring, because we don't have a growth strategy. We have a tax strategy, we have a spending strategy, but we don't have a growth strategy. The administration doesn't have a growth strategy. Congress doesn't have a growth strategy. There has been no regard or deference to a growth strategy that ultimately would encourage small businesses, or any size business in America today, to take the risks to make those investments, because there is too much uncertainty, in addition to all of the potential tax increases that will occur at the end of this year, not to mention those that have already occurred and the ones that are pending in this tax extenders legislation we will be voting on shortly with respect to cloture.

In the tax extenders bill, we are imposing a \$9 billion tax on small businesses and \$13 billion of retroactive new taxes on global businesses. On

companies that do business abroad, there are retroactive taxes as well. Retroactive tax increases are a bad habit. It is a bad practice. It is bad policy to reach back and now tell businesses: Oh, by the way, we have changed our mind. Let's reach back and tax you. You might ask: Well, how far back? Because that is the question I have asked. How far back do you tax? Well, guess what. Back to the first event that represents a capital gains event, as far back as it goes because we have changed our mind.

Well, it is very difficult, when you have to meet a bottom line—which is anathema to Congress because we don't have to meet a bottom line. We don't have to balance our budgets. We don't have to worry about how much we spend and how much we tax, because we don't have to balance it out, but businesses do, in a very challenging and fragile economy. Yet we are suggesting, oh, by the way, let's have retroactive tax increases.

It is regrettable that we have to go that far, exhibiting a total disregard for the effect it is going to have ultimately on the average person in America who is seeking to get a job and can't find one because businesses aren't hiring. They are virtually at a standstill, and rightfully so, in their hesitancy and their reluctance, because they don't know what is coming next out of Congress. We don't even know, because a lot of these provisions were sort of dumped in there that we didn't have hearings about. So by the way, we have changed our mind and we are going to reach back and tax you. Maybe it is a year, maybe it is 2 years. Whenever you have that first event that is taxable under this provision, we will reach back and we will tax you.

The tax offsets in this bill are worse than the lack of an extension of the existing policy. That is why the provisions in the bill are too high a price for any major business or organization, from the Chamber to NFIB to Business Roundtable, to support it in its current form.

It didn't have to be this way. I certainly laid out a blueprint. I want to be very clear about this. I laid out a blueprint of how we could proceed to a consensus solution to passing a responsible tax extenders package. I worked diligently. I answered every call. I went to every meeting for the last few weeks since this became an issue, in good faith, to attempt to extend the unemployment benefits that I think people rightfully deserve, as well as to help with the reimbursement for doctors that, by the way, we have known has been a problem for more than a year. I know I stood on this floor last fall, during the time we were considering the health care bill that was pending before the Senate, and after which \$210 billion worth of Medicare taxes were inserted in the health care bill—\$210 billion that was a tax on small businesses.

I said: If you are going to take that route, if that is the policy you are

going to embrace, then why not defer it and pay for the doctors reimbursement to avert the 21-percent reduction. Why not use it for that purpose? If you are going to raise Medicare payroll taxes, at least use the revenues from Medicare, within the Medicare system—knowing this was a serious problem.

With a 21-percent reduction in doctors reimbursements in the Medicare Program that was scheduled for January, we knew we had a problem. Yet, on one hand, we raised Medicare taxes on small businesses, and we used it for other purposes—to expand other programs—rather than targeting it to the very problem and issue that existed in the Medicare Program that we knew about. How practical is that? Of course, it is not practical.

We knew with that \$210 billion we could have arrived at a permanent solution at least for 10 years on the doctors reimbursements—for 10 years. We would have had a decade solution, rather than this ad hoc approach, where we are reconsidering it every 6 months or every year and putting the patients as well as the doctors through this endless cycle, which has almost become perpetual, as to whether we are going to provide for the reimbursements or allow the cuts to go forward. It becomes gamesmanship that is, unfortunately, at the expense of Medicare patients, because they hear from the doctors: We don't know what we are going to be able to do. We hear it from the providers who are challenged, because Medicare rates are hardly reflective of the true cost of delivering that care. My State has the second lowest rate of Medicare reimbursements in the country. We know doctors are dropping Medicare patients. So it has a pernicious effect. We could have taken care of that proactively and done something reasonable and pragmatic. We could have funded a 10-year solution that we knew was in the area of \$200 billion, because we had another bill on the floor that said let's do the doctor fix but let's not pay for it. It was in the approximately \$200 billion range. But that wasn't to be. It certainly didn't have to be this way.

I have sought to balance the necessities by identifying tax offsets, urging that the stimulus money be reprogrammed so these funds are spent in a timely manner, as was the intention when this body passed the stimulus bill.

With respect to the unemployment benefits extension in this legislation, I have long advocated for this, and I voted for them in the past, obviously. I think we have a responsibility to pass extensions until the economy improves and until we can demonstrate that the economy can create jobs. I understand and appreciate some of my colleagues who believe these extensions should be fully offset. I just don't happen to be in that category, until we can turn the economy around and produce jobs—particularly at this time of high unemployment, which is at the rate of 9.7

percent, and that has been the status quo with minimal changes. That means Congress has to enact economic policy to foster job creation. I would not impede unemployment benefits by insisting they are not emergency spending and should be fully paid for. I believe there is a majority that supports that policy.

I recommended, why not separate the unemployment benefits and move that along? Why put people at risk who are unemployed? We could have done that and separated this out several weeks ago, which I proposed and recommended, and we could have separated the doctor fix and paid for it. Actually, we ended up doing that. That is what we did 2 weeks later. We could have done the same with unemployment benefits—separated it and moved it along, assuming that, of course, we had unanimous support on the majority side for that. We could have done that. I certainly would have supported that.

It is important so that people aren't kept in turmoil, wondering whether they are going to have additional benefits. I thought we should have addressed it as a separate matter, rather than entangle it with other muddled policies being swallowed up in this legislative morass pending today.

I supported State aid for Medicaid. As I said, this program should be offset by unobligated stimulus funds. In the stimulus bill, we provided for additional funding for Medicaid. Had we known then what we know now, we could have provided an additional year, instead of lower priority, longer term, less effective spending. After all, stimulus is supposed to be timely, targeted, and temporary. If the money hasn't been obligated, obviously, it is none of those things at this point. So why not redirect it for more stimulative purposes? And certainly doing it for the Medicaid Program is highly stimulative, along with unemployment benefits. That is the maximum stimulus you can provide in the economy today. I said let's redirect those funds and spend them on FMAP.

In the substitute extenders package proposed last night there was a breakthrough on that issue that became a consensus item for a brief and shining moment. Apparently, some on the other side objected to the overall package on several of the other issues I will get to in a moment. I have had some serious concerns with some of the proposals that small businesses in this legislation have, particularly when it comes to subchapter S corporations. There was an indication that, as I was told last week, those new taxes would be removed because of the punitive effect they would have primarily on small businesses, again, the group we are depending on to create jobs. Yet, last night, the tide turned again, and I was informed that they would in fact remain in the tax extenders legislation.

These revenue provisions that have never been the subject of hearings,

have never been seen by the public, would significantly damage the business environment for businesses both large and small, just at a time we should be creating businesses, not curtailing them. The egregious provision regarding subchapter S corporations would harm millions of small businesses in their ability to create those jobs. Under section 413, a new burdensome payroll tax of 15.3 percent is imposed on subchapter S corporations on the dividend distributions paid to employee owners, to family members, who are shareholders or partners, and unbelievably, retained earnings in the business when distributions are kept in the business for reinvestment. At a time of festering high unemployment, this is exactly the wrong prescription for job creation.

The provision is aimed, as I have been told, at a specific abuse of the S corporations wrapped in a partnership, which is a business format that allows a business owner to inappropriately divert more money than is justified to nonsalary distributions that are not subject to payroll taxes. Unfortunately, in order to prevent this specific abuse, the authors had to write a very expansive anti-abuse provision causing collateral damage to taxpayers who are not abusing the system and imposing payroll taxes on retained earnings on small businesses. This is a job killer, because retained earnings are the most reliable form of capital available to small businesses. While there have been clear abuses of existing law regarding reasonable compensation, it should be noted that the IRS successfully prosecutes cases where business owners inappropriately divert salary income to dividend distribution.

In fact, the ruling as recent as May 27 of this year in *David E. Watson PC v. United States* proves that the “reasonable compensation” standard can be workable. Yet, it is not a clear bright line test that is either easy for the IRS to enforce or for taxpayers to understand.

That is why I worked diligently, along with my staff, to find a way to address this abuse and agree that if we could find a way to improve upon and make clearer the “reasonable compensation” standard, we should do so. In fact, my staff, last week, was at Joint Tax to do just that. Then I was informed that the subchapter S provision would be removed in its entirety from the tax extenders bill, so we didn’t proceed any further, because I was told it was not going to be in this legislation. Obviously, that all changed last night when it summarily was reinstated.

Unfortunately, the new regime that would be created in this legislation is less effective for either compliance by taxpayers or enforcement by the IRS; it is the current reasonable compensation standard.

One week ago, the majority leader offered to remove the provision from the bill and I accepted this. Unfortunately,

negotiations must not have been as clear, because last night that offer to drop that provision was fully rescinded. The provision in S. 4213 replaces 20 years of law with wholly untested, expensive, very difficult to administer new standards that attempt to address situations that, under current law and practices, are already not permitted. Specifically, this provision would impose Medicare and Social Security taxes at a rate of 15.3 percent on the first \$106,800 of both wages and dividends, as well as 2.9 percent on amounts retained in the business, even when distributions are kept in the business for reinvestment. Retained earnings are the most reliable form of capital for a small business because the owner doesn’t need to go to a bank to apply for a loan or to investors to seek infusion of equity.

This tax would appreciably reduce that capital at a time when other sources remain exceedingly difficult to access. At a time of high unemployment, this is exactly the wrong direction for job creation. In fact, this new levy would kill jobs and discourage hiring throughout the economy.

While I commend the authors of the bill for attempting to rein in the game playing that can take place, this bill is extraordinarily more broad than addressing just that problem. Unfortunately, in their critique of my efforts to address these problems, neither the *Washington Post* nor the *New York Times* editorial pages have taken into account anything but a pithy one-line description of the effects of these provisions. It is unfortunate because this new tax on small businesses and medium-size businesses is a broadside attack on what has been for decades a job-creating engine of the economy.

The substitute pending before the Senate would create vague new terms and tests for the IRS interpretation and taxpayer confusion as to whether payroll taxes are owed. These new terms and tests would replace the reasonable compensation standard for a list of specific service-based businesses. The new test would impose payroll taxes on certain professional service businesses, if 80 percent of the income of the business is attributable to three or fewer shareholders of the firm. While these terms are certainly less onerous than an earlier version of the substitute, each of these new terms will be subject to IRS rulings and inevitable litigation.

I will start outlining my concerns with the “attributable” to shareholders” concepts. This standard is no easier for the IRS to inform or taxpayers to understand than is the current “reasonable compensation” standard. Does “attributable” mean that if a law firm partner brings another partner and an associate to meet with a prospective client, that the income generated is “attributable” three ways? Or does it depend on who performs the most billable hours? If the associate performs the majority of

billable hours with only sign-off from the partner, to whom is this income “attributable”?

Frankly, this new proposed standard is no clearer than the current “reasonable compensation” standard that is also very dependent upon specific “facts and circumstances.” Why would we replace one standard with something no more enforceable by the IRS and is just a trap for taxpayers?

Another component of the bill that is no clearer than “reasonable compensation” is the test of “substantially all of the activities” of the firm. Two issues arise with respect to this phrase. First, this is clearly not an objective revenue test; it is a subjective “activity” test, meaning that these employers would now be required to keep timesheets of all their employees, even if a firm or profession doesn’t currently track billable hours. This would create a whole new expensive paperwork morass with no point other than compliance with mindless tax rules.

Further, whether “substantially all” means more than half, three-quarters, or 90 percent of “activities” is not defined in the statute. We simply do not know the definition of “substantially all.” Neither would the IRS or the business owners. This doesn’t advance compliance or enforcement to a level any better than the existing “reasonable compensation” standard.

Turning now to the additional provisions, I want to point out that the list of “professional service businesses” in the legislation is at best obtuse, and at worst, it is simply a quagmire for litigation. Professions targeted for this tax include services “in the fields of: health, law, lobbying, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, investment advice or management, or brokerage services.”

While it is sometimes clear which businesses are included, for other businesses and professions the new definition is not so clear-cut. We can only assume that with the expansive regulatory authority granted in this bill that other service providers would be ensnared. Years of regulatory effort and litigation will eventually sort out whether the following would be subject to this provision: Web designers, who are not software “engineers;” interior designers, who are not “architects;” tax preparers, who are not “accountants;” real estate or insurance agents, who are not “brokers;” writers, who are not “performers;” beauticians, who are not in “health.”

Then there are other service providers who would be ensnared the next time Congress is seeking additional revenues, including plumbers, electricians, hairdressers, construction contractors, heating oil distributors, car mechanics, recruiting and staffing firms, and professional fundraisers, just to name a few.

Every day this provision has been public—and that is a total of only 1 month 4 days—we seem to find another

unintended consequence of the provision. Five days from now, we are likely to find five more unintended consequences.

I wish to specifically raise two additional unintended consequences that have been brought to my attention. The first of these, of which my colleagues may be unaware, is that this provision would reduce the Social Security benefits of early retirees who invest in a family member's business. This issue was raised by the American Institute of Certified Public Accountants and results because the shareholder would be deemed to have additional wages through the proposal's family attribution rules, which then reduces Social Security early retirement benefits. I am disappointed that the sponsors of this provision have not addressed this problem despite having known about it for at least two iterations of their bill.

If a parent invests as a shareholder in the business being set up by their adult child, then this legislation would count the dividend distributions as earned income subject to a payroll tax, which reduces the early retirement benefit of the parent. This tax would either be a shock to investors who had no idea about this complication or invariably, to the extent it is known, it would reduce investment by family members in entrepreneurial businesses. Of course, this would reduce a critical form of capital for startup businesses. Why does the majority feel the need to starve young entrepreneurs of the ability to get startup capital from their parents?

A second specific unintended consequence concerns the complex web of anti-abuse rules that is created to prevent "leakage" from the S corp shareholder provision. It ensnares limited partners of partnerships. The bill imposes payroll taxes on the limited partnership income of employees for whom these limited partnership shares are like an employee stock purchase plan. Employees are not subject to payroll taxes on stock purchase plans distributions. Further, limited partners are not subject to payroll taxes because this is investment income. But to combine the two and for some reason to impose a 15.3-percent payroll tax on the investments of middle-income employees is inexplicable. Despite this known problem, it was not addressed even in the version of the bill that was released last night and pending before the Senate.

I want to be clearly understood that this provision was publicly released on May 20 and was adopted by the other body on May 28 with virtually no debate on an \$11 billion tax hike. There have been no hearings on this proposal in either the House or the Senate. While the chairman has modified his initial proposal and it is now a \$9 billion tax, significant concerns remain. Notably, the number of groups that are supporting my amendment to strike this provision sent a letter to both the

chairman of the committee and the ranking member about that earlier version, emphasizing that "this new tax is an excellent example of what happens when the legislative process is short circuited."

This chart is an illustration of the number of organizations that have written letters to Chairman BAUCUS and Ranking Member GRASSLEY of the Senate Finance Committee about this legislation. It says new taxes would hurt job creation, would reduce the capital these employers have to create jobs and invest in their businesses—an excellent example of what would happen when you short-circuit the legislative process.

That is exactly the end result of this legislation. It is ill-timed, and it is poorly targeted. I appreciate the support from Senators ENZI and ENSIGN, who joined me in offering an amendment—unfortunately, we have not had the ability to offer it—to strike it in its entirety so we can take a step back and address only the abusive situations without capturing everybody else. That is going to affect job creation in small businesses and entrepreneurs in America at a time when we desperately need them.

We are now making a broadside attack on job generators. Regrettably, this will affect small and medium-size businesses. They are not in a position to shoulder this enormous burden as we look to them to create the jobs our economy so desperately requires right now.

I have been asking for months on end, as I said earlier in my statement, for a small business tax relief and jobs package that is so central to what we require in our economy today because of virtually no economic growth, no job creation. We are nearly into July, so 6 months into this legislative calendar and there is no legislative package on small businesses yet. What are we doing? More taxes and more spending—that is exactly what is represented in the tax extenders bill.

I attempted to address these issues over the last few weeks and to reach a consensus and solution. As I said, removing the doctor fix and paying for it separately—eventually that happened, and that was important; removing unemployment benefits to move that along so people can get their unemployment benefits without having them lapse and expire during this challenging economy; and then, of course, address all the other issues to make sure we are getting it right. That is what it is all about.

It is a matter of practicality and reasonableness that we get it right and not force more taxes on the very entities we depend on to create the jobs people deserve in America today to go back to work and to support their foundation of financial security rather than removing it.

At a time when we should be encouraging and nurturing small businesses, we are stifling the entrepreneurial spir-

it by adding \$9 billion more in taxes with an ill-conceived provision that has had no hearings, no examination, no evaluation. It is a terrifying template for additional taxes on small businesses when they are already facing more taxes as a result of the health care bill. No wonder small businesses are bewildered and are unwilling to hire new employees.

In the final analysis, America's small businesses would benefit greatly from the extension of myriad tax provisions, but they do not want this bill at any cost, not when they are going to have to be paying some very onerous and punitive taxes under this legislation. Because it will be virtually all small businesses that are going to face and bear the brunt of the consequences of this legislation and the taxes it represents. It is going to continue the stagnation with respect to job creation. It is going to further that and the deteriorating trend within our economy with respect to job creation and with the lagging economic growth that is reflected in today's economic environment.

For all those reasons, I will not be voting for the tax extenders package. I regret it because I thought we had reached a consensus. Obviously, that was not to be. Hopefully, we can continue our discussions at a time when we can reach a consensus.

But I think it is important in the final analysis to state the fact that these impasses and the stalemate and the deadlock that result time and time again that require cloture votes are really not necessary if we are willing to listen to one another, to reach across the political aisle, and to build a consensus on the issues that are so important to America and so crucial to reversing the economic direction of our country, where more than 70 percent of the American people believe America is moving in the wrong direction with respect to the economy and yet we have failed to address it satisfactorily because we are not willing to listen, not willing to work, not willing to do the things necessary to create the right kind of legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I have a unanimous consent request which the Senator from Arizona will appreciate. I ask unanimous consent that the cloture vote on the Reid motion to concur in the House amendment to the Senate amendment to H.R. 4213 with the Baucus amendment No. 4386 occur at 5:14 p.m. today, with Senator KYL recognized to speak for up to 2 minutes and Senator BAUCUS recognized to speak for up to 2 minutes prior to the vote.

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

The Senator from Arizona.

Mr. KYL. Madam President, I will not take 2 minutes.

First let me say that I associate myself fully with the remarks of my colleague, the senior Senator from Maine.

Her analysis and criticism of the so-called S corp provision and retroactive tax provisions should be heeded by all of us.

I thank my colleague from Maine for her indefatigable work on this bill and her leadership to reduce its costs and fix its bad policy. She has spent countless hours working in a bipartisan way to develop an approach that will extend unemployment benefits, ensure physicians are paid properly for caring for Medicare patients, and reduce the fiscal impact of the bill. It is certainly through no fault of her own that the product before us remains unsupportable. No one has fought harder to support the small businesses that create jobs in America than Senator SNOWE.

We need to extend the tax provisions in this bill and achieve its other objectives. Like my colleague, I hope we can reach the right result, one that responds to our constituents' pleas that we stop spending and taxing and focus on job creation and economic growth.

The other side has offered several versions of the so-called tax extenders legislation. Unfortunately, each version has had at least two things in common with the previous versions—an increase in taxes and spending that leads to increased deficits. The provisions raising taxes are permanent changes even though they are being used to offset short-term tax cuts. I would like to focus on one of these tax increases that will be particularly harmful to many of our Nation's small businesses, which are incorporated as S corporations.

Currently, limited partners pay payroll and other employment taxes on payments received for the services that they provide. Partners in small businesses organized as S corporations pay employment taxes on their compensation even if the earnings are not distributed. The Baucus substitute filed last night would essentially require partners providing "professional services" to pay payroll taxes on their investment income as well.

The intent of the provision is to prevent cases of abuse as when former Senator John Edwards used the organization of an S corporation to avoid paying the 2.9 percent Medicare tax he owed as a lawyer on his wages. Edwards earned \$26.9 million during the late 1990s while only reporting \$360,000 in salary.

However, the IRS has the ability to go after firms and individuals who do not pay themselves a reasonable wage using the reasonable compensation test. The service has already successfully litigated cases where compensation was considered less than reasonable. A few examples are *Radtke v. US*, 712 F.Supp. 143 (7th Cir., 1990) and *Spicer Accounting v. US*, 918 F.2d 90 (9th Cir., 1990).

Furthermore, Congress just gave the IRS another anti-abuse tool when it codified the economic substance doctrine as part of the healthcare bill.

Consequently, if the structure of the business is designed solely with the intent of avoiding the Medicare payroll tax, it would lack economic substance and the IRS could disallow it.

Not only does the IRS already have the ability to go after those who try to avoid paying taxes through S corporation revenue abuse, but the provision as it is currently drafted will create uncertainty, cause additional compliance problems and unfairly hit those it is not intended to impact.

One problem with the current proposal is that it will be very difficult to trace the hours of work for certain shareholders and link it back to the firm's revenues. Lawyers and CPAs can track their hours because that is how their businesses operate, but other service professionals such as engineers and architects do not.

As such, this will be especially burdensome for a number of the covered businesses at a time when we are counting on these same small businesses to generate jobs.

The provision also does not define what amount of participation in professional services activities determines if one must pay the new tax. The House version says "substantially all." The Senate version seems to suggest that even very limited participation in any of the activities listed under the new definition of professional services would be subjected to the tax. Is that the intention?

Finally, the family attribution rules would appear to hit inactive family members who are solely shareholders and do not actively participate in the day-to-day operations of the business by subjecting their investment income to payroll taxes.

The bottom line is that this provision unnecessarily treats the income of 4 million small businesses organized as S corps all as wages, which undermines the entire rationale for having flow-through entities: to avoid the double taxation of entrepreneur's income. How are small businesses suppose to grow and hire more workers to get us out of this recession if we keep creating impediments to expanding investment opportunities?

The most galling aspect of this debate is that if the extenders bill passes with this roughly \$10 billion tax increase on small business, the next tax bill we expect to consider is a bill to help small businesses with just \$5 billion in tax relief. So the net effect of these two bills would amount to a \$5 billion tax increase on small business. I just don't understand the logic. Of course, the real logic is simple: Supporters of the bill need more offsets to pay for the increased spending. I support the efforts of the senior Senator from Maine to strike this tax on small businesses, and I commend her for leading the effort to solve this problem.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, let us remember what this bill is all about.

This bill will help American families face this great recession. This bill works to strengthen our economy and put Americans back to work. This bill would create jobs. That is what people want. It would cut taxes for businesses. That is what people want. It would facilitate small business loans. It would foster investment in highways and other infrastructure. This bill would cut taxes for families paying for college. It would cut taxes for teachers. It would cut taxes for Americans paying property taxes and sales taxes. It would extend unemployment insurance, health care tax credits, housing assistance for people who have lost their jobs. It would help States cover the cost of low-income health care programs.

This week, 900,000 out-of-work Americans have stopped receiving unemployment insurance benefits. Why? Because Congress has failed to enact this bill.

This has been a difficult fight, but it does not have to be difficult. In previous recessions, in previous Congresses, it was not this hard. But for months now, we have addressed Senators' concerns.

Senators expressed concern about the size of the bill. So we cut the total size from \$200 billion, then down to \$140 billion, then down to \$118 billion, now less than \$110 billion. We cut spending on health care benefits to unemployed workers under COBRA. We cut spending on the \$25 bonus payments to recipients of unemployment insurance. We cut spending on the relief to doctors in Medicare and TRICARE. We cut spending on help to States for Medicaid by one-third. Senators asked for more spending cuts. We came forward with more spending cuts. Since the first time the Senate passed this bill, we found \$77 billion in new offsets. This bill is now 70 percent paid for.

I just want to say that there is a great need for this bill. Americans want this bill passed, and, frankly, I very much hope this bill does pass. We do need the 60 votes.

We do not need the 60 votes; the American people want us to pass this legislation.

I yield back the remainder of my time.

#### CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The 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 concur in the House amendment to the Senate amendment to H.R. 4213, the American Jobs and Closing Tax Loopholes Act, with a Baucus amendment No. 4386.

Harry Reid, Max Baucus, Patrick J. Leahy, Al Franken, Patty Murray, Richard J. Durbin, Sheldon Whitehouse, Roland W. Burris, Kent Conrad, Daniel K. Akaka, Robert P.

Casey, Jr., Jeanne Shaheen, Edward E. Kaufman, Jeff Merkley, Jeff Bingaman, Mark L. Pryor, Sherrod Brown, Carl Levin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to concur with amendment No. 4386 in the House amendment to the Senate amendment to H.R. 4213, the American Workers, State, and Business Relief Act of 2010, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Alaska (Ms. MURKOWSKI) would have voted "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 57, nays 41, as follows:

[Rollcall Vote No. 200 Leg.]

YEAS—57

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (OH)	Kerry	Sanders
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—41

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Nelson (NE)
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Collins	Johanns	Voinovich
Corker	Kyl	Wicker
Cornyn	LeMieux	

NOT VOTING—2

Byrd Murkowski

The PRESIDING OFFICER. On this vote the yeas are 57, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Republican leader.

Mr. MCCONNELL. Madam President, I indicated to my friends on the other side of the aisle I would be propounding a consent agreement. Let me make a few brief observations and then I will do precisely that.

The majority wants to make this debate about Republicans opposing some-

thing. Let me be perfectly clear: The only things Republicans have opposed in this debate are job-killing taxes and adding to the national debt. We have offered ways of paying for these programs and we have been eager to improve them.

What we are not willing to do is to use worthwhile programs as an excuse to burden our children and our grandchildren with an even bigger national debt than we already have. So the biggest reason the cloture vote we just had failed is because Democrats simply refused to pass a bill that does not add to the debt. That is the principle we are fighting for in this debate, and let me suggest that I can prove it. In a moment I will offer a 1-month extension of the expired unemployment insurance benefits, COBRA subsidy, flood insurance program, small business lending program, and the 2009 poverty guidelines. This extension would be fully paid for using the very same stimulus funds that our friends on the other side just voted—almost unanimously—to redirect for these purposes. Let me repeat that. We would pay for the extension with a Democratically approved stimulus offset.

If the Democrats object to extending these programs using their own stimulus offset to pay for them, then they will be saying loudly and clearly that their commitment to deficit spending trumps their desire to help the unemployed.

Let's be clear about the principle that is at stake here. Are our friends on the other side willing to extend these programs without adding to the debt? That is the real question in this debate.

So, in that regard, I ask consent that the Senate proceed to the immediate consideration of H.R. 4853; that all after the enacting clause be stricken and the McConnell amendment at the desk be agreed to; that the bill as amended be read a third time and passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Reserving the right to object, Madam President, for 8 weeks Senator BAUCUS and Senator REID have negotiated with Republicans in an attempt to pass this important jobs bill. They have been asked to make the package smaller, which they did. They have been asked to pay for portions of the package, which they did. And still Republicans continue to filibuster and stop this bill.

What the Senator from Kentucky wants to do would be virtually unprecedented, that we would pay for the emergency spending for unemployment compensation by removing money from our jobs program, the stimulus program. So he is going to kill jobs on one side to pay for the unemployed on the other side. It makes no sense economically and it is certainly not within the tradition of the Senate, and I object.

The PRESIDING OFFICER. The objection is heard.

Mr. MCCONNELL. Madam President, I would only briefly offer that the offset I offered was one that the majority just voted for. Obviously they did not find it offensive in the context of the measure that was defeated.

We will continue to work on this in the hopes that we can pass this worthwhile measure without adding to the national debt.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. The filibuster that has been waged by the Republicans in the Senate has gone on now for 2 months to stop unemployment benefits. What the minority leader just offered was a 1-month extension. We have been limping and dragging our way from one short extension to another, and that is not fair.

It is not fair to 80,000 people in Illinois, unemployed, who just lost their unemployment benefits because of the Republican filibuster. Why do the Republicans oppose this bill? Well, the good reason they say is the deficit. But let me tell you the real reason. The real reason is because this bill pays for virtually all of the programs except unemployment by making changes in the Tax Code, changes to which the Republicans object.

Let me give you an example. One of the changes would eliminate the loopholes in the Tax Code which allow American businesses to relocate American jobs overseas. We know what that means to manufacturing in this country. We are losing good-paying jobs right and left, and the Tax Code rewards the companies that make those bad decisions. We want to eliminate that, and the Republicans want to protect it.

Secondly, this bill provides help to small businesses across America, and we pay for it. Third, this bill will provide money to governments so we would not have to lay off teachers, policemen, firefighters, and nurses. That is going to happen. We are trying to send emergency money back to the States to avoid that.

The Republicans continue to filibuster it and to say no—no to plugging up the loopholes so jobs will not move overseas, no to the assistance for small businesses so they can create jobs, and, no, so that we can help to protect the jobs of the people who protect us in our homes and communities and schools.

I do not understand the Republican sentiment. There used to be a bipartisan sentiment that when America faced a disaster, we would pull together, whether it was the flooding and hurricanes in Louisiana or the disastrous situation in the Gulf of Mexico. We have a national emergency with this recession and 14 million Americans out of work.

We are asking only—only—to extend them an unemployment check so they can feed their families—literally feed their families for the next few months. The Republicans continue to filibuster and continue to say no.

The record is clear. It is a party of no which is hoping the voters will vote yes in November. I hope they will remember that the Republicans had no alternative when it came to this disastrous economic situation, and we are doing our best to create jobs and help those who have lost their jobs through no fault of their own.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

GULF OIL SPILL

Mr. NELSON of Florida. Madam President, I want to show the Senate Pensacola Beach yesterday. It has hit us full force. That white is the natural sugary sand of the northwest Florida beaches. You can see as far as the eye can see down to the beach. It is covered with this black tar-like sludge.

This was yesterday. More rolled in last night. There have been attempts to get out and scoop this up. This, as you can see, is not the tar balls, the little quarter-sized or dime-sized tar balls that have hit the beaches before. No. What this is showing is when you have 60,000 barrels a day gushing into the Gulf of Mexico now for more than 2 months, and that very likely will continue to gush for the rest of the summer—that is another 2½ months. It shows you what is the potential that is being portended.

Another picture here from yesterday, Pensacola Beach. This is where the pier is. Here is the gulf. Here are the waves crashing in. This is far over this sugary white sand that you can see how much oil has collected.

In the middle of the day when the Sun is beating down, it stays almost fluid like this. As the Sun goes down and it cools, this will start to become a more viscous consistency. As much as we want the people to come and enjoy our beaches—and this is the height of the season on the world's most beautiful beaches—is this going to be an incentive for them to come? You can imagine the lost income from the hotels, the restaurants, and all of the ancillary businesses.

So this is a saddening reality, but it is a glimpse of what it is yet to become with that much oil out there in the Gulf of Mexico.

Let me just give you a couple of iterations. They have said by putting this top hat—that is like a funnel to siphon off a lot of it until they can finally kill the well. They are saying it is going to be the end of August, the first part of September before they can get down to the bottom, the 18,000 feet below the seabed, intercept the well pipe, and then put cement down in it to kill the well.

Until that point, they are trying to siphon it off at the well head, which is where the blowout preventer failed. Remember, they went in with one of those big shears and they clamped off the pipe called the riser pipe, and they put this kind of funnel over it called a top hat, and they are siphoning off.

They said they have been able to siphon off 25,000 barrels a day. Well, that

is very good, except 60,000 barrels a day are gushing. So as much as they can continue to siphon that off, at least maybe, certainly not half but at least some is being siphoned off and taken up to a tanker on the surface 5,000 feet above the seabed.

But you know, check the Weather Channel. There is a tropical wave that is now developing in the South Caribbean. If you look at the National Weather Service projection of where it is going to go, it is going to intensify. It is going to become a tropical depression. Then it is going to likely become a tropical storm. Who knows, it may be a hurricane. And its projected path is to go right up in the Gulf of Mexico toward this damaged well. What happens? The ships cannot stay out there if a hurricane is coming. They have to go in and find safe port. So some 5 days before the arrival of the hurricane, the ships would have to decouple, stop the siphoning off of the 25,000 barrels, and, therefore, the entire 60,000 barrels a day would be gushing.

Well, for how long? It would be 5 days before the hurricane and another 5 days after the hurricane passes before they can get back out there, reposition their ships, reattach the top hat. We are talking about a total of 10 days with no siphoning that 60,000 barrels a day and 600,000 barrels will have gushed into the gulf. That is three times the amount of oil that was spilled by the Exxon Valdez just in that 10-day period.

So, of course, what I am asking is that the U.S. Navy preposition ships so we can have a surge of ships to come to the site after a hurricane has passed, so that extra 600,000 barrels of oil that has gushed from when they had to shut down would be skimmed.

Now, let me tell you about the skimmers. Still today there is not a sufficient command-and-control structure as much as this Senator has continued to ask the incident command and the unified command: How many ships do you have out there? What kind are they? What are their positions? I still cannot get a straight answer to that. What is more is that the Navy has a series of smaller boats that are skimmers in port. That is pursuant to the law. Where you have a port, under the Clean Water Act and under the Oil Spill Act, and all of those existing laws, you have to have the capability, if there is a spill in port, to go in and clean it up. The Navy has some 45 vessels that can do that.

Out of those, only six have been deployed to the gulf. These are boats that are basically 30 feet long. We cannot use them out in the gulf, but we can sure use them in the bays. When the oil goes through the pass or the inlet into the bays, we can have those additional smaller boats that skim up the oil before it gets into the bays.

Out of those 40 boats, the Navy has identified another 27. Would you believe that until 2 days ago they still had not approved getting those 27 boats

which the Navy has identified that they can put on trailers and bring to the gulf coast to preposition them in those bays to protect the estuaries?

This Senator has called the head of the EPA, Lisa Jackson. Fortunately, on that very afternoon, she had approved the EPA signing off with a waiver for those boats, to allow those boats to leave those ports to get to the place where the big oilspill is. It has only been going on for over 2 months now. But at least that approval is in.

But as of this afternoon—that was over 2 days ago. But as of this afternoon, this Senator cannot get those boats on trailers and on their way.

Let me give an example. All along this beautiful beach there are several passes. Others call them inlets. At the State line, the Alabama-Florida State line, is Perdido Pass. That goes into Perdido Bay. That is shared by Alabama and Florida.

Further to the east is Pensacola Pass. That goes into Pensacola Bay, the cradle of Naval aviation, at Pensacola Naval Air Station. It is right there on Pensacola Bay. That is where 2½ years ago, in a Fish and Wildlife boat in Pensacola Bay, that orange mousse that looked so awful was flowing in and flowing right toward downtown Pensacola. We gave a longitude and latitude position, and I think somebody got it before it got downtown. That is where the smaller boats can help and need to be prepositioned.

Go further east. We have an interesting different kind of pass. It is called Destin Pass. It is the only inlet going into a huge bay that borders Eglin Air Force Base, called Choctawhatchee Bay. It is huge, with a lot of wetlands.

This pass, unlike Pensacola Pass, is shallow. But because it is shallow, the incoming tide rushes through. You can imagine the force of that current, that once the oil gets to that point it is going to carry it into the bay. It is all the more reason we need the small Navy boats in the bays to skim it up before it gets into the wetlands.

Because of all of the booming we have done—and I was just there Monday inspecting the booming—when that tide comes rushing in, a lot of those booms are not going to hold it. They even have sophisticated systems that we are trying to get. Since it is a shallow pass, you put on the bottom a pipe that shoots air up and therefore would get oil suspended below the surface, shoot it to the surface so you could collect it with booms, if the booms will hold in that onrushing high tide.

Go further to the east, it is the pass going into Panama City, St. Andrews Bay, again, a deepwater pass, a similar situation. We need the skimmers in there. And then go further to the east, to a place where my grandfather came on a boat, my great-great-grandfather, 181 years ago, when my family came to Florida in 1829 to Port St. Joe, inside a natural bay that is created because of the arm of a cape called Cape San Blas.

From the tip of that cape to the mainland is only about a mile and a half. It is hard to boom that. There, again, is why we need additional skimmers in that bay. If the skimmers out in the gulf can't get it all—and with so much oil in the gulf, that is going to be a chore—then at least we have a fighting chance of getting it in the bay.

It is with a heavy heart that I show a picture from yesterday in Pensacola Beach. It is a fact. This isn't the only time. We are going to be faced with this for months, indeed, probably for years. It is not only going to be the gulf coast, because when this oil shifts to the south and gets in a current called the Loop Current, that will carry it south to the Florida Keys, which becomes the gulf stream, which will take it up the east coast of not only Florida but the eastern seaboard of the United States.

I remember after Hurricane Andrew that valiant emergency operations center director who said, when there was no Federal resources coming in: Where is the cavalry?

I am asking now: Where is the cavalry? The cavalry is all these extra skimmers for the bays. The cavalry is the extra surge capacity of additional skimming, when a hurricane comes through and all that extra oil is gushed out. I am asking for the cavalry.

I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Florida is recognized.

Mr. LEMIEUX. Mr. President, I thank my colleague, the senior Senator from Florida, for his comments, bringing the proper focus to the issue of skimmers. It is something I have been talking about for weeks. I have been coming to the floor for the past week to talk about the lack of response from the Federal Government in keeping oil off our beaches, out of our intercoastal waterways, out of our estuaries in Florida. I said earlier this week that I would come to the floor every day until we had good answers as to where the skimmers are. It makes absolutely no sense that we do not have a more robust effort from the Federal Government to keep the oil from coming onshore. Right now we have not only tar balls on our beaches, we have large swathes of brown oily slop that have come ashore in Pensacola. It breaks one's heart to see it.

When I was there last week meeting with the President, I talked to a woman who was working at the dock, right on the pier. She is a woman who sells food to folks coming to the pier. I asked her: Are people coming out since we have had the oilspill to see the beach?

She said: Yes. The folks who are coming haven't seen the beach in a long time. They are coming to see the beach one last time, as if they are visiting a family member who is on his or her deathbed.

We know BP is responsible. We know they cut corners. We know they are re-

sponsible for ultimately paying for all of the economic damages. But there is another part of this equation, and that is the Federal Government. The Federal Government is here to do what local and State governments cannot do at a time of disaster, and that is to marshal unbelievable resources to prevent harm to the people, to the environment, and to the economy.

As I have come to the floor over the past week, I have talked about the fact that we can't get a straight answer as to how many skimmers are actually off the coast of Florida. These are ships that suck the oil off of the water and keep the oil from coming onshore. Today we still don't have a straight answer. The Federal Government tells us in their shore operations report from the National Incident Command that there are 118 skimmers. But yesterday they told us these reports are not accurate and that there are, in fact, 86 skimmers. So we have the number 118 and we have the number 86. We have a number from the State of Florida that is different. The number from the State of Florida was 31, 25 plus 6 additional skimmers that the State of Florida had to go out on their own and get. They took the initiative to get the skimmers on their own because they were not getting them from the Federal Government.

Today the report is different. It is shown in a different way. When we called to ask the State of Florida, they couldn't tell us how many skimmers there were. Yesterday it was 31. The Fed said 118. But then they say the number is really 86. Whether it is 31, 86, or 118, it is not enough.

Why is it not enough? There is a huge area between Pensacola and Panama City that needs to be treated by the skimmers, let alone the rest of the area that goes all the way over to Louisiana. We know there are about 400 skimmers in the Gulf of Mexico, but there are 2,000 skimmers in the United States.

Before I talk about domestic skimmers, I want to talk about the offers of assistance that have been made by foreign countries to help us. We are the greatest country in the world. When there are disasters, whether they be in Southeast Asia with the tsunami or Haiti with an earthquake or Central or South America with an earthquake, we send resources, volunteers, teams of people, aid. We are there to help them. The world community has been offering us assistance—some of it free, some of it they want paid for, but assistance nonetheless. We are coming to find out that we are not responding to their offers of help. The State Department has reported as of last week that we had 56 offers of assistance from 28 countries or international groups. But we have only accepted 5 of these offers, 5 offers of assistance out of 56. We have a lot of great skimmers that are working in the Gulf of Mexico, but some of them are pretty small, to be honest. We are happy they are there. A small skimmer is better than no skimmer.

But let me show a skimmer that was offered to the United States that is not a small skimmer. In fact, it is a huge vessel. This was offered to us by a Dutch company called Dockwise. This ship is called the Swan. It could be outfitted with skimming arms. It was available to go to the gulf. The U.S. Government didn't return the call. It was offered on May 6. Now some 50 days later, it still has not been responded to. It is still under consideration. This ship is able to take up 20,000 tons of material, whether it be oil, or an oil/water mixture, 20,000 tons. This is not some skimmer that can go on the back of a train or on a boat or an airplane and be flown down to the gulf or trucked or trained down to the gulf. We are happy to get those too. This is a serious piece of ship equipment. We haven't called them back.

Guess what. This is no longer available. Instead it was replaced by a ship with one-twentieth of the capacity, a U.S. ship. I am all for America first. I am all for using U.S. assets. But this is not an either/or situation. We should be using American ships and international ships. We gave up a ship with 20 times the capability that could be out there in the gulf sucking up this oil, perhaps keeping it off the beaches of my State, off the beaches of Pensacola, and we didn't return the phone call. Nor did we return the phone call to the other 51 offers of assistance. It is beyond belief.

Let me go back a second and talk about the domestic skimmers. This map I have in the Chamber is going to be a little hard for you to see, but I want to walk through it. This shows different parts of the country, broken up by districts. In each of these districts, there are skimmers.

Where did we get this information? We got this information from the U.S. Government, from the Coast Guard because Admiral Allen said, a week ago, there are 2,000 skimmers in the United States.

Why are not the vast majority of those skimmers in the gulf right now? What is the holdup? We hear about legal entanglements. Is it the Jones Act, is it Federal law, is it local law, is it EPA restrictions that are keeping skimmers in different parts of the country in case there is an oilspill?

I asked the President of the United States about this last week in Pensacola, and he said: Well, we are trying to get all the skimmers we can. Obviously, Admiral Allen wants to get all the skimmers we can, but some of those skimmers need to stay in place in case there is an oilspill.

Well, Mr. President, there is an oilspill. It is in the Gulf of Mexico. And saying we are not going to bring skimmers because of legal entanglements or constraints from other parts of the country because there might be an oilspill there is like me saying we are not going to send the fire engine to your house that is on fire because there might be another fire someplace else.

This is the worst environmental disaster in the history of this country and every available resource should be used.

As shown on the map, this is district 8 right here, which is the Texas area. This is district 7, which is Florida, Georgia, South Carolina. The number of skimmers in the Texas area is 599. The number of skimmers in the Florida district is 251. So between these two areas, 850 skimmers, just between Texas and all the way up to South Carolina.

How can it be that there are 850 skimmers in, basically, the Gulf of Mexico States—with the exception of going around to South Carolina; but we are talking about Georgia, Florida, Alabama, Mississippi, Louisiana, Texas—how can there be this many skimmers—850—but we only have 400 in the gulf right now, if that number is correct? How can that be? How can we be 65-plus days into this and not have those skimmers in the Gulf of Mexico, when they are virtually there anyway, according to this report, or right next door?

Beyond this 850 in the district that encompasses all the way from North Carolina up to the mid-Atlantic, we have another 157 skimmers. Up here, in the New England area, there are another 160 skimmers. Up near Michigan, there are 72 skimmers. If you go over to California—and we can bring these things through the Panama Canal or, if they are smaller, they can be flown in—in this California district, there are 227.

So we are literally talking about more than 1,000 skimmers that are available, but we only have 400, if this number is correct, at work. It is hard to believe the response is this anemic. It is hard to believe there is this lack of urgency or sense of purpose in getting this done.

I see my colleague from Louisiana is in the Chamber. Her State has been impacted worse than any other so far, and I know she wants every available resource off the coast of Louisiana to stop this oil from coming ashore, just as our friends in Mississippi, in Alabama do, and just as we do in Florida.

This is not a partisan issue. I want the President to succeed. I want the Coast Guard to succeed. But right now it is not just oil washing up on the shore of Florida, it is failure. We have to do more. We have to get focused and get passionate and get something done about this issue.

I will keep coming to the floor to talk about this issue as long as it is a problem, as long as we keep refusing foreign help, as long as we have thousands of available skimmers in this country to do the job that should be done. I should look off the coast of Pensacola and see an armada of skimmers doing the job that needs to be done to keep this oil off our beaches, out of our waterways, and out of our estuaries. So I promise to be back until the problem is solved. I hope I do not

have to come back because I hope I can report in a positive way that the Federal Government has gone into action and we are doing what we should be doing for our people and for our environment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, before I speak briefly about the subject I came to the floor to speak about, which is small business—I am chair of the Small Business Committee—I want to thank our colleague from Florida for his advocacy for the gulf coast, as we struggle as to how to stop this gusher in the gulf and to clean up what has been done.

We have recently seen some terrible photographs from the beaches of Florida. We have photographs equally as troubling from the marshes of Louisiana. I want to thank the Senator for his leadership, and we are all going to double our efforts to get this job done, and to do it in a balanced way.

As upsetting as this oil is, in trying to clean it up, and keep it from our shores—both the beaches and the marshes—we also have to find a balance as to how to let this industry at some point move forward with these 33 rigs or we are going to lose the entire deepwater gulf drilling, which will put thousands—tens of thousands—of people out of work, some of whom live in Florida; and some of the businesses benefit, as well as so many in Louisiana.

But I thank my colleague for his continued effort, and we will look into some of the issues he has raised and push as hard as we can from Louisiana as well.

Mr. President, I know my colleagues are on the floor to speak about job creation. That is why I am here as the chair of the Small Business Committee.

I say to the Presiding Officer, you have had a great deal of experience in your own role, before being a Senator, as a bank president and as a lender for small business. You know how important it is.

I start by sharing this graph I have in the Chamber that shows that from 1993 to 2009, 65 percent of the net new jobs created were created by small firms with 1 to 500 employees—65 percent of the jobs. Large firms created 35 percent of the jobs. So I suggest this is a very important topic for us to be discussing, and I am very pleased the leader wants to bring this small business bill to the floor next week.

We have been—many of us—clamoring to get to this debate, and I want to see this bill move forward if we can work out a few minor differences. This package has been put together with very good bipartisan cooperation, from my view as the chair of the Small Business Committee, both from our committee and then the Finance Committee has done its part as well. But there are a few items I wish to high-

light because there are some agreements that must be reached and some points I wish to make briefly.

First of all, let me briefly describe the small business provisions. One is the increase in 7(a) loans from \$2 million to \$5 million; 504 loans from \$1.5 million to \$5.5 million; and microloans from \$35,000 to \$50,000. If I could, I would lay an amendment down to raise that to \$100,000.

We have had testimony from business advocates—from conservative to moderate to liberal advocates—saying this is one of the most important things we need to do to stimulate lending to small businesses through the Small Business Administration, to give capital, to give credit to these small businesses that can create the jobs I am talking about. We must get credit into the hands of small businesses from Maine to California to Texas to Louisiana to Washington State, and these small businesses, if we can strengthen the SBA programs, can, in fact, begin to turn this recession into a job creation era and opportunity. That is in the bill. It passed our committee 17 to 1—a great bipartisan vote.

The Small Business Export Enhancement and International Trade Act, which Senator SNOWE has worked so hard on—and I want to commend her for her work; and I have worked with her on this as well—this is a challenge for us. Less than 1 percent of small businesses in America are exporting. I want to say that again. Less than 1 percent of America's small businesses are exporting.

The market is overseas. The population growth is overseas. If we do not help our small businesses with technical assistance and support to be able to allow them to position to market, particularly with the ability of the Internet today—an extraordinarily exciting tool—with broadband, high-speed Internet, there are opportunities for a person, whether they are in Chicago, IL, or in New Orleans, LA. If they have a product, they can go on the Internet, show the product, and it can be shipped to China or India or any other country in the world, and the profits can come home right here and jobs can be created. That is in this bill, and it is extremely important we move to it and figure out the few problems we have with it.

There is the Small Business Contracting Improvement Act that has not been completely worked out, but I want to take a moment to speak about it. The Federal Government is one of the largest purchasers of goods and services in the world. If we are going to try to help businesses, we most certainly, in my view, should strengthen the opportunity to contract with small businesses so the Federal Government can purchase goods and services. We want to allow small businesses to do that. There is a problem we are trying to work out that Senator THUNE has raised, and I look forward to working with him over the weekend to work through that.

The fourth section of the bill is the Small Business Community Partner Relief Act. This would allow SBA, upon request by a woman business center or a microloan intermediary, to waive or reduce the non-Federal share. Why is this important? We have also added \$50 million to the small business development centers. Small businesses cannot necessarily create the jobs they want to create without help and support. We have a great network. We have a great backbone, a great reach through women business centers, through university-based centers, and this bill we are going to bring to the floor next week has support for them so they can then reach out and help small businesses on Main Street.

This bill is not about Wall Street. I have heard as much about Wall Street as I want to hear and so have the people in my State. We want to start hearing about Main Street at home, businesses that are struggling and need our support and our help.

We also have some additional sections for the 8(a) improvements, and I have offered a section of the bill that I think is very important to help the 11,700 businesses that, unfortunately, on the gulf coast are still paying off loans from the last disasters 5 years ago, Hurricanes Katrina and Rita.

As you heard Senator LEMIEUX from Florida and as you have heard Senator NELSON from Florida, now we have another catastrophe along the gulf. I have asked, in this bill, for some interest relief for these businesses. Some of these businesses are paying \$1,000 a month—\$700 in interest, \$300 on principal. And that is the example that Jaimie Bergeron of Fleur de Lis Car Care in New Orleans presented to our committee. This bill would allow the owners, the Bergerons, right now—where their sales are down; the region is threatened—to go from paying \$1,100 a month down to \$300 or \$400 a month.

We can afford to do this now. We have to be able to give these small businesses some relief. There is some opposition to this provision. I hope people will think about how important this is for these gulf coast businesses. We have had support not only from our local newspaper, the Times-Picayune, but even the New York Times has said the people of the gulf coast deserve a break. We need a little help, and we need it now. Giving these small businesses some interest relief would be a great help.

Finally, in this bill, the White House has put forward, and I support, \$30 billion for small business lending. We have the estate small business credit initiative developed by Senator WARNER, Senator LEVIN, and others. We have \$1 billion going to community development finance institutions that are not banks but lend money to neighborhood-based, grassroots organizations that then turn around and lend money to small businesses. So there are some great provisions to include in this bill.

We have a few things to work out over the weekend with my colleagues

from the other side. I just want to say that no one could be working harder than our committee, both Democrats and Republicans, to try to bring a consensus to this floor.

In good faith, I come to ask my ranking member, Senator SNOWE, please let's work hard over the weekend to work these final provisions out so we can provide to the American people not only a bill that works for them—and Senator STABENOW helps us grow small business—but a bill we can actually enthusiastically support in a bipartisan way. I think the American people deserve our best efforts. I am going to work double-time over the weekend, even doing some other things I need to do in my home State to get this work done, and I look forward to being here on Monday to see if we have been able to achieve that.

Ms. STABENOW. Mr. President, would my friend be willing to yield for a question?

Ms. LANDRIEU. Yes.

Ms. STABENOW. First, if I might, I wish to take a moment to say thank you to the senior Senator from Louisiana for her leadership on small business. Her efforts in terms of job creation and availability of capital and so on is right on point.

My question would be, is it the Senator's desire to have this done by the end of next week so we can move this forward and hopefully have these benefits take place as quickly as possible for our small businesses?

Ms. LANDRIEU. Absolutely. It is my desire to have many conversations over the weekend. There are just a few points that need to be worked out. The Finance Committee has done its portion of the work, and I thank Senator BAUCUS and Senator GRASSLEY. Senator SNOWE and I have a few other things to work out.

The Senator from Michigan is correct. This effort on the part of the Small Business Administration is crucial to change these programs, to lift their limits, provide some support for them to be able to help reach out and support our small business growth throughout the country.

The White House has worked very hard on this \$30 billion capital infusion to the banks. The Independent Bankers of America supports the \$30 billion in additional capital that would be available to them, again, not for lending on Wall Street or Fancy Street but on Main Street where the Senator from Michigan and I come from, to get money into the hands of small businesses. It is imperative particularly for women-owned and minority-owned businesses that have been particularly hard hit by this recession. Some of the provisions reach right to those disadvantaged neighborhoods in our country that need the most help right now in creating jobs for people of every different walk of life.

Ms. STABENOW. Mr. President, I wish to thank the Senator from Louisiana again because she is focusing on

jobs. That is what we are focusing on every day here, with every bill: jobs, putting people to work, supporting small businesses, supporting manufacturers, and getting this economy going. So I thank her for her leadership.

AUTHORITY TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS

Ms. STABENOW. Mr. President, I ask unanimous consent that the majority leader be authorized to sign any duly enrolled bills and joint resolutions on today, June 24.

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

Ms. STABENOW. Mr. President, this evening we had a vote that I find to be extremely concerning. Once again, after 8 weeks of trying to work out some kind of an agreement with our colleagues on the other side of the aisle to overcome a Republican filibuster—changing our jobs bill over and over and over again, and every time there was a change, then there was something else and something else—we finally hit a brick wall tonight, when we didn't know what else to do. Once again, we did not have one Republican colleague willing to vote with us to overcome a filibuster. We have the votes on the floor to pass this jobs bill, which includes incredibly important benefits for people who are currently out of work, to extend unemployment benefits.

People who have worked hard all of their lives, through no fault of their own, find themselves in this situation, and they are asking us to simply help them be able to keep a roof over their head and food on the table for their families and maybe a little bit of gas in the car so they can go look for work, while we can continue to focus on creating jobs in what has been a terrible economic crisis for our country.

We have the votes. If we were doing a majority vote, we would have the votes. We have more than enough votes, but what we don't have is enough votes to overcome a filibuster. That takes at least one Republican colleague, and we don't have that. We don't have any at this point. So, therefore, it is estimated that by the end of this month, over 87,000 people in my great State of Michigan will lose their unemployment benefits, the little bit of help they get to be able to help them keep going. A lot of people are going back to school, but unemployment benefits are paying for the rent or food. People are trying desperately not to lose their houses on top of losing their jobs. This is a desperate situation for almost 1 million people across this country.

All we get over and over again is, no. We are creating jobs in this bill, putting money and partnerships in with manufacturers to create capital for manufacturers, and all we hear is no; capital for small businesses to be able to invest and grow their businesses and hire people, and all we are getting is no; the ability for States and local governments to keep police officers and

teachers and firefighters on the job, and all we hear is no.

The resounding no has been to help anyone who currently finds themselves out of work because of no fault of their own and needs to count on the ability for us to have unemployment benefits. This is an outrageous situation.

Before turning it over to my colleague from Ohio, who I know shares my deep concern about what has been happening, let me remind people that despite the fact that we are beginning to grow the economy, we have turned the corner. When President Obama came into office, we were losing 750,000 jobs a month. With the Recovery Act, we got that down to zero. We are turning the corner, but we still have five people out of work for every one job opening. What happens to them, while we are working as hard as possible to turn this economy around? What happens to them? Those are the people we are fighting for every single day. They are the people we care about here on the floor of the Senate, and we are going to keep coming back and fighting because they deserve to know there are people here who understand what they are going through.

I will now turn it over to my colleague from Ohio for a few moments. Then I will make a few more comments.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I thank the Senator from Michigan. I think the Senator said it exactly right. She talks about statistics and so many people being laid off. Yes, 750,000 people a month were losing their jobs when President Obama started in office. We are seeing job growth now but not as much as we would like.

In Ohio, in April, we had the largest job growth in the country, with 37,000, which is not great, but it is better than when President Obama inherited this economy from President Bush. I think when you speak to individual people, you understand it.

I want to share a handful of letters from constituents. I know Senator STABENOW gets letters like this from Lansing, Grand Rapids, all over Detroit, and everywhere in her State, from people who have been affected by the failure of the Republicans to want to extend unemployment benefits.

It seems to me that our Republican colleagues—the people who consistently voted no on something as simple as extending unemployment benefits—some of them view unemployment as welfare, when it is called unemployment insurance not unemployment welfare. When you have a job, whether you live in Detroit or Columbus or whether you live in Dayton or Toledo, you pay into the unemployment insurance fund when you are working, and you get assistance when you are not. That is the whole point of unemployment insurance. You hope you never need it, like you hope you never need your car insurance, to cash in your car

insurance, or you hope you don't need your health insurance. You want it to protect yourself. That is what unemployment insurance is. I think some of my colleagues, who are so ultra conservative, think it is welfare. I don't understand that because very few people in the public think that.

Too many colleagues—the people who vote no on extending unemployment insurance—don't know anybody who lost their job or they don't know anybody who has lost her insurance or anybody who has lost their home.

Senator STABENOW is out all the time in Michigan. She is all over the State. I will be in Columbus tomorrow, and I will also be in Lorraine and Cleveland tomorrow. I think a lot of colleagues who vote no on extending unemployment insurance simply don't meet with people who might have lost their job. They hang around with other Senators and with people who are pretty privileged. Do they look somebody in the eye and say: What is it like to lose your insurance or your home?

Try to imagine somebody—a parent or a husband and wife or a mother and father—who lost their job and lost their health insurance and are about to lose their home, and they have to explain to their 12- or 13-year-old child: We are going to have to move and don't know where we will be living, and I don't know what school district we will be in yet. Just think of the uncertainty and sadness of that. I don't think they think about that.

Maybe we can help by sharing a few real letters from people in Akron and Lima and Cleveland and Urbana, around Ohio. I will share these.

Ellen from Summit County, in Akron, writes:

I am writing to make you aware of my situation, which I fear is very similar to that of many other people.

If an unemployment insurance extension is not passed, it will in essence destroy my family. We are struggling to keep our bills paid and have come to the point of alternating months on paying our mortgage and utility bills.

Think of that—one month you pay your mortgage and the next month you pay your utility bills, hoping that neither will your utilities be cut off nor your home foreclosed on.

We need this extension. Until my husband lost his job, he worked over 20 years in the banking industry—he has more than paid into the system to receive his fair share of compensation.

We are nine years into our 30-year mortgage and are at risk of losing our home. We are fighting just to stay above water.

A UI extension will in no way guarantee our future, but it will at least give us a chance.

Like most people who have worked for years, people don't ever choose to lose their jobs. They are not getting rich on unemployment. It is a bridge until they find a job. As you know, unemployment insurance allows you to receive the benefits you need to keep looking for work. You send in résumés. I get letters from people all the time

saying: I drive in a five-county area looking for a job, I apply more, and I send in résumés and nobody answers half the time because they are buried with résumés.

Aaron, from Allen County, near the Indiana border in Lima, writes:

I worked at a company for 19 years before it was closed and moved to Mexico.

Since then, I went back to college to earn a mechanical engineering degree, while working part-time.

But I recently lost my unemployment benefits, which means I won't be able to support my family.

There are so many people in my situation. If unemployment benefits are extended, it would help thousands of dislocated workers and their families.

Mr. President, it is not just the individual help for these families, it is their next-door neighbor because if Aaron's house is foreclosed on, the next-door neighbor's home drops in value. If he gets his unemployment, the local hardware store will get some of that money, as will the local clothing store and the local restaurant or grocery store where they are spending this money. The unemployment insurance that people receive—according to former Presidential candidate, JOHN MCCAIN and one of his top economic advisers—has the biggest multiplier effect of any stimulus. It doesn't stay in the pockets of the unemployed workers very long. It immediately goes into the community and is spent and respent.

Here are the last two letters I will read. This is from Elizabeth from Cuyahoga County, the Cleveland area:

I turned 60 this year and have spent the last 30 years as a computer programmer. Since losing my job, I have tried to learn new programming skills to make me a stronger applicant.

In the meantime, I apply for every single job that I can possibly perform. I have hoped beyond hope for jobs at grocery stores, home health care agencies, and retail stores.

I am now at the end of my rope. I don't have any other ideas of what to do. I have worked for 42 years, since high school, and even full-time while attending college.

Those who are not unemployed or have no one in their family who is unemployed, don't understand what it feels like. I have other friends who are losing their unemployment benefits now and in the coming weeks. I am not out here by myself.

I simply cannot imagine someone voting against extending unemployment to Elizabeth or Aaron or Ellen or if they know people who have lost their benefits, who have lost their jobs, their health care, or their homes. I cannot imagine anybody standing on the floor of the Senate, when their names are called, saying Mr. BURRIS, Ms. STABENOW, or Mr. BROWN, and saying no.

Lastly, Jane, from Champaign County, west of Columbus near Dayton, in Urbana:

I am an unemployed mother of two children. I will lose my unemployment benefits by the end of the month.

I go above and beyond the minimum requirements to receive unemployment benefits. I apply to 4 to 10 jobs per week.

It's not that I don't want to work, as some people are implying. I worked in the same job for ten years, since I was 19 years old.

I lost that job through no fault of my own, which is the story of most unemployed Americans today.

I have lost my house and my car. My family's American dream has been crushed. If this bill doesn't pass, my family's nightmare will be just the beginning.

Please do whatever you can to urge your fellow Senators that this extension is needed. This vote shouldn't be about anything else except the American people.

Mr. President, they could not have said it better. I can read their letters and meet with people like this, but I cannot understand because that has never happened to me. I wish my colleagues—those people who walk down in this well when their name is called and vote no on extending unemployment benefits to these workers—these people live in every State and, frankly, they should be ashamed of themselves for voting no.

I yield the floor.

Ms. STABENOW. Mr. President, I thank my friend from Ohio. There are many things we share in common: a love of the Great Lakes, and we have a rivalry in football and baseball and our great universities, and so on. But we also share a tremendous passion for what is happening to our people. I thank Senator BROWN for his fight on behalf of manufacturers and the people who, in fact, need a voice. I thank him very much for that.

It is so hard to know what to say when you read these letters or e-mails or take phone calls. Most people cannot understand what in the world is going on around here. But what is going on? Don't we get it? What is going on here?

Unfortunately, I think the Senator from Ohio, when he says that maybe it is that folks have never met someone who lost their job or had it happen in their families—it has happened in my family. About half of the families in Michigan have somebody who has lost their job. We certainly get it, and we understand what is going on now. We know people are lining up for work. Whenever there is an announcement for jobs, 50 jobs are hiring at a business or 100 jobs, literally I have seen people lined up around the block—hundreds and thousands of people—because people want to work.

The people who are out of work now are people who have worked all their lives. They have played by the rules. They are now trying to figure out what happens and how they can turn it around for their families and keep going.

The bill in front of us, like many things we have put forward in the Senate this year, has been all about jobs. That is where we are. It is not a slogan to say jobs, jobs, jobs. That is what we are focused on. Next week, we are going to focus on small business jobs. We will see what happens in the Senate.

The jobs bill that we have been focused on for 8 weeks has major provisions to help manufacturers. I was pleased to include provisions that

helped manufacturers be able to get some refunds on their taxes if they put it back into equipment and hiring people, and there are other provisions in the bill. It is about jobs.

Frankly, we have two different views of the world, two different beliefs that I think are reflected in what has happened to our country. I look back only because we are debating the same values, the same choices that got us where we were and where we are today. Those are the same kinds of choices that our friends on the other side of the aisle are suggesting we make for the future.

It is important to look at what has worked and what has not worked. Under the previous administration, they looked at the world very differently. They said: All right, we are going to stimulate the economy and keep things going by focusing on the wealthiest Americans. We are going to give them big tax cuts and it will trickle down and everyone will benefit and there will be jobs.

Well, it didn't work. It didn't work. If it had worked, I would be celebrating because an awful lot of people in my State would be doing much better than they are today. What we saw was an economic policy that said we are going to focus on the privileged few, and then it will help everybody else; it is going to trickle down.

What we saw was—these are job loss numbers—down, down, down under that policy.

I will also say those job numbers come from the fact that the same people said: You know what. We believe corporations, corporate interests can police themselves. So we are going to back up. We are going to let Wall Street go to town. They are going to make a lot of money, and it is going to be good for the economy.

They backed up. They let Wall Street police itself. They let mining firms police themselves and oil companies police themselves. We lost lives. We lost 8 million jobs because of what happened on Wall Street. People lost their savings, 401(k)s, their pensions because of a set of ideas, because of what they believed. They believed that by backing up, corporate America would police itself and everything would be OK: Let's give to those at the top. It will trickle down, and we will get jobs.

Those two things combined to create the largest number of crises that I certainly have seen in my lifetime that have brought down the middle class of this country. We saw jobs go down, down, more and more job loss. When President Obama came into office, about 750,000 jobs a month were being lost. It was an economic tsunami. If that is not a crisis and an emergency, I don't know what is. If over 15 million people being out of work right now is not an emergency, I don't know what is.

We went to work and we focused on a different set of ideas, a different approach. Where they were focusing on the privileged few, we said we are going

to focus on middle-class Americans, on working people, on investing in manufacturing jobs.

I am very pleased to say we are beginning to feel that in Michigan. Sixteen companies have benefited from the battery manufacturing money we put into the Recovery Act, the stimulus. I was at an opening on Monday in Midland, MI, a new manufacturing facility, that is going to put 1,000 people to work in construction and 800 people to work at the facility. That is a different approach. We said: We are going to invest in America, invest in the American people. We are going to invest in opportunity, and we are going to help the people who are out of work because we know we are not talking about people who are lazy. We are talking about people who lost their jobs, a lot of them because of either lack of accountability and oversight of what was going on on Wall Street or people not paying attention when our jobs were going overseas.

Through no fault of their own, people were caught in this economy. We decided on a different approach. President Obama came in and the numbers began to change. I would prefer they were much faster, but they are moving in the right direction. We have gone to zero job loss into the positive column. We are gaining jobs every month.

Our colleagues on the other side of the aisle are saying: Wait, stop, stop. I know if things are going to turn around, maybe in an election year people do not like that and they want to be sure things continue to be bad, that somehow it benefits them. That is a pretty cynical view.

These folks who are gaining jobs, as well as the people who lost jobs, are Republicans, Democrats, and Independents. This is not a partisan issue. We ought to be rooting for America and rooting for what is getting people back to work instead of fighting along partisan lines. The policies we put in place are beginning to do that. They are not done. They are beginning to do that. We are putting back the oversight and the accountability and commonsense regulation on Wall Street and on the oil companies and the miners. We are putting back in place middle-class tax cuts instead of just the privileged few. We are focusing on jobs, investing in private sector jobs, partnering with the private sector, with businesses to help create investment in innovation, and we are beginning to turn things around.

The problem we have is, we still have too many people caught because the changes we have been able to make have not caught up to them, and there is much more to do.

The bill that was on the Senate floor, the bill we are going to continue, we are going to put it aside. We are going to be ready if one or two Republican colleagues say: Yes, we want to stop a Republican filibuster. We can come back to it and get this done.

But what we have seen is a continual effort for 8 weeks to block us from the

next step in the recovery, from investing in jobs, from keeping people employed—police officers, firefighters, teachers—and from focusing on those who have lost their jobs, to be able to help them keep a roof over their heads and food on their tables until they can get that next job.

I see my friend from Rhode Island on the Senate floor, and I will turn to him in a moment. He has been a real champion and fighter on this issue. We should also know that in this bill there are some important provisions that have been opposed by the other side of the aisle to make sure wealthy investors actually pay their fair share—not somebody who is middle class but wealthy investors pay their fair share.

We also put in place provisions to take away incentives for shipping our jobs overseas. I could go on for an awful long time about why we have lost a lot of jobs in Michigan because of unfair trade practices and losing our jobs overseas. This bill takes away incentives to ship our jobs overseas.

This bill also added a few more cents to an oilspill trust fund to make sure the oil companies are actually paying for the cleanup in the gulf.

On one side we have jobs, investing in jobs and partnering with manufacturers and small businesses and helping people who are out of work to keep things going. That is our side. On the other side we have wealthy investors who do not like this, and oil companies that do not like another 41 cents on every barrel of oil to be put toward the cleanup. We have people who ship jobs overseas who do not want us to close those loopholes. That is on the other side.

Which side did our Republican colleagues pick? They picked the wealthy investors, the oil companies, and the people who ship jobs overseas.

The American people are counting on us to understand what is going on in their lives, to get it, to be willing, as in any other time in our history—Republican or Democratic President, any other time in our history when unemployment has been this high; this Congress has stepped forward to extend unemployment benefits for people who were temporarily out of work, Democratic or Republican Presidents. Now we have a situation where after 8 weeks, we cannot get even one of our colleagues from the other side of the aisle to come forward and help us break this filibuster.

I don't know what to say beyond the fact that we are going to keep fighting. We are going to keep doing everything we can to get through this logjam. We are going to keep doing everything we can to keep this economy recovering and keep creating jobs. But there is something wrong with the system right now that has gotten so divided, so warped, so partisan that we cannot come together on behalf of almost 1 million people in this country who are counting on us right now because they may have no other option for themselves and their families.

There is one job for every five people who are unemployed. Prior to the Recovery Act, that number was six people. It is a little bit better. There is a lot more to do, but we cannot just say to somebody: Why don't you get a job, when there are five people out there for every one job opening.

I see my friends on the floor. I see my partner from Michigan on the floor. I will turn to him if he wishes to say a few words because he and I understand what we have been through in Michigan. We have been hit harder, longer, and deeper than anyplace else in this country. When we look at the fact that over 87,000 people in Michigan will lose their unemployment insurance benefits by the end of this month because of what has happened—inaction, the constant naysayers blocking, obstructing, saying no—it is more than I can tolerate.

I yield to my friend from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, first, I thank Senator STABENOW for her tenacity and her efforts. I join them with a full heart at a very sad moment when we see an unconscionable Republican filibuster succeed again today against the extension of unemployment benefits and the other parts of this American jobs bill.

I asked Senator WHITEHOUSE if he would yield to me for a moment. He was on the floor before me. I will not take advantage of his good nature and good grace other than to say we are not going to abandon this effort. We are going to proceed with every tool we have at our disposal to make sure people who desperately need the extension of these benefits are protected, as intended by this program.

The financial crisis and resulting recession that continue to trouble our Nation have called for sustained action on the part of the Congress. From passage of the American Recovery and Reinvestment Act to the Hiring Incentives to Restore Employment Act to the Wall Street reform legislation now taking its final shape, we have sought to reduce the harm this recession has caused our fellow citizens. Passage of the legislation that we were denied the chance to consider today would have been another significant step in fulfilling that task.

The legislation we failed to take up would extend unemployment benefits through November of this year. For the more than half a million residents of my State who are receiving unemployment benefits, and millions more across the country, this extension is crucial. For many families, these benefits are all that is keeping food on the table and a roof over their head. The income they provide is important not only to families receiving the benefits, but to the communities in which they live and to the businesses for whom those families are customers.

But now opponents of extending unemployment insurance are, once again,

filibustering this legislation. So under Senate rules, 60 votes are required to invoke cloture and bring an end to debate.

The opponents of this extension say they are concerned about deficit spending. This would be more convincing if not for two factors. First, many of these same opponents were in favor of massive, unpaid-for tax cuts benefiting the wealthiest Americans, tax cuts which, according to independent analysts, made a far greater contribution to our deficit than any of the measures we have taken to address the financial crisis and recession.

Second, concern about long-term deficits in the middle of a continued recession is the equivalent of pulling out fire hoses in the middle of a flood. The catastrophe we face today is that millions of Americans are without work and will not be able to find work until we can generate real growth in our economy. The danger to them and to our economy today is not deficit spending; it is recession. It is the fact that factory floors remain silent, that shops lack shoppers, that businesses are without customers. Failure to pass this measure does nothing to address that shortfall.

Surely my colleagues understand that assistance to families in need is not just an aid to those families. It helps all of us by helping us pull out of the recession. Direct assistance to Americans in need is the single most effective tool we have in boosting our economy. Aid such as unemployment assistance has a greater bang for the buck than any other stimulus effort we can make. If we abandon the drive to extend these benefits, we abandon a key effort to strengthen our economy.

The stakes are enormous. The people who need these benefits are not abstractions. They are real people, flesh and blood, who are paying the price, who have been paying the price for months and months, for a crisis bred on Wall Street. More than half a million of them live in my State, which was suffering in recession even before the crisis hit. These are people who desperately want to work, who want to provide for their families, who want to give a better life to their children. They have done so in the past. They want to do so again. What they ask from us is a small measure of assistance so they can continue to feed and shelter their families while they search for work.

Literally thousands of emails and letters have flowed into my office from people asking us to extend these benefits. One from Waterford, MI, from a worker whose benefits expired in April, reads: "Our life savings are gone! At some point we will be homeless, no doubt about it. We need help from Washington." Another, from Burton, MI, wrote to me: "I know things will get better but we need help to make ends meet until then."

Those stories, those pleas, have come in by letter and email by the thousands. The many months of on-again,

off-again extensions of unemployment benefits have added painful anxiety and uncertainty to what is already a tragedy for hundreds of thousands of Michigan families. Time and again, we have delayed and debated on whether to extend these benefits. On more than one occasion, a single Senator—just one—has obstructed our consideration of legislation to extend them. Now it appears that our colleagues across the aisle, despite enormous effort by the majority leader and Senator BAUCUS and others, have decided they simply will not allow an up-or-down vote on the extension.

We will have failed a basic responsibility to our constituents if we abandon the effort to approve an extension of unemployment benefits. Millions of Americans ask only that their government provide the safety net that keeps them from falling deeper into tragic uncertainty and debt. The Republican filibuster of that help is unconscionable. It leaves millions of families all across this country without help in their hour of need.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, we lost this important vote today 57 to 41. For people who are watching who may not be familiar with the peculiarities of the Senate, you might think to yourself: How on Earth did you lose 57 to 41? It sounds to the ordinary person like you won by 16. What do you mean you lost 57 to 41? How could that have happened?

That happened because the other party, as it has done throughout the Obama administration, has used an arcane Senate procedure called the filibuster more times than ever in the history of this country to block progress for this administration.

The rule requires that the majority get to 60 when the minority so demands, and they have been demanding that 60 on everything over and over. There have been years when it was almost never used. There have been years when it was used two or three times. In really bad years, it might have been used 14, 15 times. This group of Republican colleagues has set the record. They use it on everything.

I think we are over 100 acts of obstruction and delay around this filibuster rule as a result. If one is wondering why we lost 57 to 41—if that sounds strange—we got the 57 votes, they got the 41, and we lost—it is because they are pulling out of the rule book this procedural trick so that the majority does not rule, so they can block progress.

They are doing it for what they claim is concern about deficits. I have to say, being lectured by our Republican colleagues about deficits and debt is like being lectured by Evel Knievel about safe driving. They should have a little sense of, at minimum, irony about that.

They say the past is prologue. Let me review a little bit of the past.

When George Bush took office, President Clinton, a Democrat, and the Democratic Congress at the time had left an annual budget that was in surplus. It was returning more money to the Federal Government than we were spending. It was an annual budget in surplus. We had a national debt at the time, but with the annual budget in surplus, our Congressional Budget Office—the nonpartisan, not Republican, not Democratic, professional Congressional Budget Office—had estimated that, when George Bush took office, we would be a debt-free nation by 2009. We would be a debt-free nation by 2009. That was the trajectory that Democratic President Bill Clinton and the Democratic Congress left, along with those annual budget surpluses, when George Bush and the Republicans took office.

So 2009 came and went. How did we do? Did we get to a debt-free nation? Are we at zero debt? No. Something changed when the Republicans took power, and when the Bush administration left, it left \$9 trillion in debt—not a debt-free nation but \$9 trillion in debt and an economy in which Americans were losing 700,000 jobs a month. They left \$9 trillion in debt and families losing 700,000 jobs a month. That is the situation President Obama inherited—a little different from what President Bush inherited.

So have we spent since then? Yes, because every economist worth their salt knows that when family spending is contracting, when business spending is contracting, when municipal and State spending is contracting, the entire economy can contract to the point that it seizes up unless the Federal Government does what an economist would call countercyclical spending. If the economy is dying for lack of spending, if it is seizing up, the Federal Government can put money back into it to try to bring it back to life. As Senator STABENOW's graph has shown, it has brought it back to life. We have gone from losing 700,000-plus jobs a month to losing no jobs a month—actually gaining a few. So it worked.

In that context, to say to the people who are still out of work—the ones who lost their jobs back when 700,000 jobs a month were out the window and going overseas; the Bush legacy—to say that we can't help those people any longer, to say that we are cutting off their unemployment insurance, their lifeline, because we are concerned about the debt, I have to ask: Where was the concern about the debt when they were taking a trajectory toward a debt-free America and turning it into a \$9 trillion debt? Where was the concern then? Where was the concern when it was tax breaks for billionaires?

We just had our first billion-plus-dollar estate pass under the Bush tax cuts, where the estate tax was eliminated. As a result, a \$9 billion estate of a Texas tycoon went to his heirs tax free. How much tax? Zero dollars. Zero dollars. At the prevailing tax rate that

has stood for most of this time, you would have paid \$4 billion in estate taxes and your heirs would have had to suffer through with only \$5 billion to divide amongst themselves. That \$4 billion in lost revenue added to our debt and deficit doesn't bother our friends on the other side at all. They couldn't be happier. That is their plan. Those are the Bush tax cuts. America loses \$4 billion, and they smile. It is their plan. But when we are talking about people who lost their jobs because of those very policies, because of letting Wall Street run unregulated and having that financial meltdown, and now regular families across this country who got hit by that tsunami of misery are out of work, now they are concerned about the debt. Now they are concerned about the deficit. They were OK with the billion-dollar family passing its estate tax free, but they can't have ordinary working Americans keep that unemployment insurance lifeline.

I think those are backward policies. I think those are upside-down policies, and they hit very hard in my home State. My home is Rhode Island. For over a year, we have had double-digit unemployment. We have been in the top three or four States every month for unemployment. I know Michigan has suffered immensely, and that is why Senator STABENOW and Senator LEVIN were here. But I have to say that my small State of Rhode Island, with only 1 million people, is not far behind. We have 70,000 families out of work, and because it has been a long recession in Rhode Island, those families—all their assets, everything they had salted away, they have gone through that. What is left is the unemployment insurance lifeline. It is the basic lifeline. To cut that off, frankly, I think it is disgraceful.

This is a low moment in this body—70,000 families missing a paycheck, 70,000 families with a provider who is out of work, 70,000 families with kids wondering where the income for mom and dad is coming from. This money would go right into the economy. It would be spent instantly. It would be spent on shoes. It would be spent on food. It would be spent on paying the electric bill. It would be spent on putting some gas in the car to get out to the job interviews. It would have been spent immediately on the necessities of life.

But that is not good enough. That is not good enough. Those are the families in the toughest circumstances whom our friends want to cut off because of the debt, because of the deficit. The billionaires can go untaxed, but the working families who have lost jobs through no fault of their own are the ones who have to bear the brunt of this. And it hits home to real people, real families, with real fears, who, late at night, sitting at the kitchen table, with the bills laid out in front of them and the kids asleep upstairs, are adding them up—adding up what they have and what is coming in—and realizing

they are not going to make it that month, that something is going to have to go. That is a cold and lonely moment for a family. When families are having that cold and lonely moment, that late night at the kitchen table with the bills they can't pay, that is the time when we are supposed to provide the insurance to protect them against unemployment. That is the policy of this Nation.

It is discouraging. It is discouraging to Dan, a Rhode Islander, in East Greenwich. He has worked in sales. He has been unemployed since April of 2009. His wife is disabled. He is looking for work, but in Rhode Island, as in Michigan, people can look as hard as they like and they are lucky to find a job because there are more people looking than there are jobs. The jobs just aren't there, and Dan has not been able to find one. Without unemployment insurance, he has let my office know that he and his wife are likely to be evicted from their apartment. That is the human consequence of today's decision for one person in Rhode Island—Dan.

Bill, from North Kingstown, contacted us. He is 56 years old. He has been unemployed for a while now—since January of 2009. This has been a persistent recession in Rhode Island. He used to work in the engineering field. He is a talented man, but he has been twice faced with eviction as his unemployment insurance has been put at risk. He received only \$200 over the last 3-week period, as his benefits have expired. He is in that first leading group for whom the benefits have expired. He has lost his COBRA benefits. He needs heart medication. Without COBRA benefits, how can he pay for his health insurance that will provide the heart medication? The real cost of today's shameful decision comes home hard to somebody like Bill.

Nancy, in Portsmouth, RI, is 59 years old. She has been unemployed for a while, too—21 months. She has been looking for work for 21 months, looking through the classifieds, going online, reaching out to all her friends and contacts to try to find somebody who has a job for her. She has a bachelor's degree, she has several different industry certifications, and she has an extensive background in sales and marketing. She is somebody who, in an ordinary economy, would have no trouble finding a job. But after the Wall Street meltdown sent that tsunami of misery across our country, she got caught in it. For 15 years, she worked in the insurance industry, and now she can't find a job. She will soon lose her unemployment benefits if we don't continue to fight for it.

So behind all the big brave talk about how we have to fight the deficits—ironic talk coming from the people who were responsible for virtually all of these debts and deficits—are the human stories that are just being ignored here, and it is wrong. We have to change our direction and start putting people first instead of the big corporations.

Let me mention one other topic. There were winners today and there were losers today. The people who lost today were Dan and Bill and Nancy and many, many others like them in Rhode Island and across the country. The people who won today—among them—were the big Wall Street financiers, the hedge fund hotshots, the ones who have been earning millions of dollars every year and through clever legal tricks have got their million-plus-dollar salaries treated as if they were capital gains. So the hedge fund superstar out there in his private jet, getting ready to fly down for a weekend in the Caribbean in the private jet, looking out the window at the fellow stuffing his luggage into the hold of the private jet, the guy in the jet is paying a lower tax rate than the guy outside with the earmuffs on and the jumpsuit stuffing the luggage in the hold. The guy in the private jet is paying a lower tax rate than the guy outside working day-to-day and putting his luggage in the hold. The guy being driven around in his car is paying a lower tax rate than the man behind the wheel who is driving him around.

Who is the biggest, best, most prominent capitalist in America? I would submit that it is Warren Buffett. Warren Buffett is a legendary investor, a spectacular investor. He is one of the great success stories of American capitalism. He has come to lobby us about this issue. He has come to lobby us about the fact that he pays a lower tax rate than his secretary. He has come to lobby us about it because it is wrong, because he finds it embarrassing that, in a country like ours, somebody who has been as successful as he has, who has received such remarkable benefit from his talent and his energy, ends up paying a lower tax rate than the secretary who does his mail and takes his phone calls. He knows that is wrong and we should know that is wrong.

We could have corrected that. That was one of the ways that the benefits for regular working folks in this bill could have been paid for.

That is who won and that is who lost: Dan and Bill and Nancy lost. Tonight when they get word about this they are going to sit in their homes and they are going to worry. They are going to be anxious. They are going to be heart-sick. They are going to be looking at a future that is filled with uncertainty.

Our friends on the other side will say no, once they get off unemployment insurance that is just a spur, that is an incentive to get out and find a job; get off the dole and get back out in the workforce. Not in Rhode Island, not with a 12.3-percent unemployment rate. At a rate like that Dan, Bill, Nancy—the three of them might go out looking for a job, but there will only be one for the three. These are people who have been looking for work for over a year. These are people who have had a lifetime of work experience. These are people who want to be back to work. Their character, their sense of self is

that they are people who work and support themselves. They want to be back to work. The argument that they are going to fritter away their time on unemployment insurance until it ends and then they will get serious and get back to work is nonsense. It is nonsense. The suffering they are going to face as a result of this is real.

Those are the people in the column who lost today. In the column of the people who won is Warren Buffett. Based on what he said when he has come here to lobby us, I will bet you dollars against Dunkin' Donuts that he is embarrassed to be in the winners column. But he knows that it is not right, in this great country of ours, for the people who have been most successful, who have earned financial rewards beyond what ordinary people can dream of, to be able to pay a lower tax rate than the regular working people who come to their offices everyday and serve in their businesses. It is wrong. It is topsy-turvy.

I cannot tell you how discouraging a day it is. First in the real regular world you would have thought we had won today, 57 votes to 41. But, no, there is this procedural trick. So because we did not get to 60, we lost. Because we lost, Dan and Bill and Nancy lost. And the wealthiest people in our country won in a way that embarrasses probably America's greatest capitalist, Warren Buffett.

I see the majority leader is on the floor. I will inquire to see if the majority leader desires the floor? If so, I will gladly yield.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, before the Senator leaves the floor, I so appreciate his advocacy for the people of Rhode Island, but in speaking for the people of Rhode Island he is speaking for the people of this country. We are United States Senators. The States of Rhode Island and Nevada are having a very difficult time.

As I heard my friend say when manipulation of Wall Street finally caught up with them, it wrecked our two economies. I have so admired my friend and his colleague, the other REED in the Senate, JACK REED, and their wonderful presentations explaining that these are not just numbers that we talk about. These are people who have no jobs.

I was looking at the headlines from the Boston newspaper a few minutes ago in the cloakroom, after this failed vote. One man said: I hope politicians understand what I'm going through. My unemployment benefits will run out in 2 weeks. I have a wife who is working part time. I have two children. I lost my job 2 years ago.

These are not deadbeats out there looking for a handout. These are people who are desperate, looking for a job. So I do say to my friend, I appreciate his speaking—I repeat, not only for the

people of Rhode Island but for the people of Nevada and the rest of the country.

Mr. President, I was going to ask consent that we proceed to the Small Business Lending Fund Program but I have been told by my friends on the other side of the aisle are not here and they would object anyway, so there is no need that I propound that request.

#### SMALL BUSINESS LENDING FUND ACT OF 2010—MOTION TO PROCEED

Mr. REID. I now move to proceed to Calendar No. 435, H.R. 5297. I have a cloture motion at the desk that relates to that.

#### CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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. 435, H.R. 5297, the Small Business Lending Fund Act of 2010.

Harry Reid, Debbie Stabenow, Dianne Feinstein, Mark Begich, Jeff Merkley, Bernard Sanders, Carl Levin, Edward E. Kaufman, Mark L. Pryor, Richard Durbin, Frank R. Lautenberg, Jeanne Shaheen, Daniel K. Inouye, Barbara Boxer, Roland W. Burris, Sherrod Brown, Mary L. Landrieu.

Mr. REID. Mr. President, I ask unanimous consent that at 5:30 p.m., Monday, June 28, the Senate return to legislative session and vote on the motion to invoke cloture on the motion to proceed to H.R. 5297; that notwithstanding rule XXII, the Senate then proceed to executive session and vote on confirmation of the nomination of Calendar No. 814, Gary Feinerman to be a United States District Judge, with the time running postcloture; and that upon confirmation, the Senate resume legislative session.

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

#### UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. As in executive session, I ask unanimous consent that on Monday, June 28, at 5 p.m., the Senate proceed to executive session to consider Calendar No. 814, the nomination of Gary Feinerman to be a United States District Judge for the Northern District of Illinois; that debate on the nomination extend to 5:30 p.m., with the time equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that upon confirmation, the motion to consider be considered made and laid upon the table, the President be immediately notified of the Senate's action, and the Senate resume legislative session.

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

Mr. REID. 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.

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

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

#### UNEMPLOYMENT

Ms. STABENOW. In closing, I wish to take a few more minutes to stress again how disappointing and, frankly, outrageous I find what happened tonight to be as it relates to the continual 8 weeks of blocking the jobs bill in front of us, for the ability for people who are out of work to be able to get some temporary help just to be able to keep things going for their family while they are looking for that next job. There are almost 1 million people who find themselves in a situation now where they have lost their jobs and have lost their insurance benefits, insurance benefits paid in when they were working to then be able to get help when they are not working, as any of us would want for ourselves and our families.

We are in a situation where we cannot get beyond—we cannot get even beyond one, and we need two Republican colleagues—we cannot even get one to be able to join with us to overturn this filibuster. We have a bill, a jobs bill in front of us that would provide tax cuts to businesses, provide help to State and local and municipal governments to keep police officers, firefighters, and teachers on the job in our communities for our children, and the other side has said no.

Time after time, no. We are putting much needed tax cuts, money back into the pockets of middle-class families. The other side has said no. We wanted to help small businesses be able to restore credit to create jobs. They said no. We want to help people who are going back to school to start a new career, people who have been looking for work, and they have said no. And we want to make sure we are investing in the kinds of jobs that are going to rebuild America—roads and bridges, other kinds of construction efforts, good-paying jobs for engineers, construction workers. Those provisions were in this bill, and they have said no. For people who are out of work, they have gotten a great big no, no way, time and time again from colleagues on the other side of the aisle.

We know that for every \$1 we put into unemployment insurance benefits, we get, according to Mark Zandi, an economist, and certainly many other economists, at least \$1.40 back in investment. Why? Because somebody goes to the store and buys some food with that \$200 or \$300 a month in unemployment benefits. They go buy some shoes for the kids. They put gas in the

car. They keep the lights on. They are able to pay their rent or the mortgage or do other things we all want to be able to do for our families, for our children. So when you give unemployment insurance benefits to someone who is out of work, they, unfortunately for themselves, have to turn right around and spend it. But from an economic standpoint, that is stimulus, which is why that is viewed as one of the best economic stimuli you can have, to be able to provide assistance for people who are going to turn around and spend it in the economy.

We are struggling now. Even though we have the majority in the Senate, we do not have a supermajority, enough to stop filibusters. And we are struggling with a perversion of the Senate rules that has taken place. I think, frankly, our forefathers would be rolling over in their graves to see the perversion that has gone on here. Instead of using a majority vote like any of us would use if we were in an election—one more vote than the other guy wins the election—here one more vote than the other guy does not get us moving forward because of the efforts to block, obstruct, and filibuster that go on every single day and require 60 votes in order to overcome.

So what are they saying no to? Why are they blocking and stopping? Why do we see this continual effort to go back to the way it was, to go back to the policies that got us where we are today? We are in a situation now where we want to go forward. We want to change things. We want to go forward. And all we get are efforts to take us back.

Well, what was happening then? What was happening at the place they want to go? Well, in the last Presidency, when they were in charge, we saw us lose jobs, more and more jobs throughout the 8 years of this former President. And there were a number of reasons: wrong economic policies; wrong investments; investing in people who were very wealthy hoping that it would trickle down; not enforcing our trade laws; not stopping the incentives to ship our jobs overseas; not paying attention to manufacturing and making things in this country; and, frankly, not paying for things; two wars, not paid for; Medicare prescription drug benefit, not paid for—nothing was paid for. Everything was put on the credit card. And now the people who got us into this ditch, amazingly, are arguing for policies to take us back into the ditch. They dug the ditch, and now they want us to give them back the shovel and get more shovels to dig a bigger one.

We have a very different view and, frankly, a different set of priorities on whom we are fighting for. We are losing the middle class of this country. We are losing the middle class of this country because of the policies that have focused not on jobs, not on things that matter to middle-class families, working-class families, but on what the privileged few care about.