

small business. We extended the highway bill for a year. That saved 1 million jobs in America, hundreds of jobs in Nevada. We also had a provision that was unique and has created some jobs that has been extremely helpful. If somebody is out of work for 60 days, they can be hired for 30 hours. We don't set what price they can be hired, the minimum wage or whatever. At the end of their report period for withholding, they don't have to pay the withholding tax. At the end of a year, we give them a \$1,000 tax credit for every employee. We also did something that was totally bipartisan, a bill developed by Senators SCHUMER and HATCH. That is what I just talked about. That was totally bipartisan. We had another provision in that bill that said that a small business, if they wanted to buy a piece of equipment, whether it was an automobile, furniture, whatever it might be, no longer had to depreciate that. Up to \$250,000, they could simply write it off. We also added to that bill some money for Build America Bonds which local governments loved. That has created some jobs, but it is relatively small compared to the other things we have in this bill before the Senate now. I am glad to hear what the distinguished Republican leader had to say about that.

Mr. MCCONNELL. The majority leader is entirely correct about the importance of small business. We know it creates the vast majority of jobs. There is no question that small business at this particular point is kind of frozen with concern about the economy, about increased regulation, the potential for increased taxation as well. Senator SNOWE has certainly been the leader on our side on focusing on small business and small business job development. I am hoping we can work out a way to go forward on a bipartisan basis. It sounds to me as though both sides agree on the premise. Now if we can get a procedure for moving forward, hopefully we can address this most important subject.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 12 noon, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first 30 minutes and the Republicans controlling the next 30 minutes.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Good morning, Mr. President.

IMPROPER PAYMENTS

Mr. CARPER. Mr. President, I rise today to applaud, really, to share with our colleagues an important step by Congress to curb waste and, I think, fraud within the Federal Government. Later today our colleagues over in the House, where both the Acting President pro tempore and I once served, are expected to approve a piece of legislation—not a sexy title, but it is called Improper Payments Elimination and Recovery Act—and then they are going to send that bill to the President for his signature.

Every year, for about the last 6 or 7 years, Federal agencies have been required by law—important payments law signed by George W. Bush—to review their payments and to figure out which ones were appropriate and which ones were inappropriate. Initially, back in the middle of the last decade not very many agencies complied with the new law. But thanks to the perseverance of OMB and the commitment of a number of agency and department heads, over time more and more Federal agencies have begun reporting improper payments, mostly overpayments.

As we gather here today, there is still a number of very large agencies that do not comply with the law. The Department of Defense is a huge expender of taxpayer money. The Department of Defense does not comply with the law. The Department of Homeland Security complies in part with the law. If you look at Medicare, for Medicare Parts A and B, I believe they actually do a fairly decent job of complying with the law but for Parts C and D they do not.

But even without the full compliance of all Federal agencies reporting their improper payments, last year close to \$100 billion of improper payments were reported by the agencies that are already reporting them. That does not include the Department of Defense. It does not include all of Homeland Security. Frankly, it does not include some other major programs of the Federal Government.

But the good news here is that, one, agencies are beginning to report their improper payments. That is good. The second thing we want them to do is stop making the improper payments. The third thing we want them to do is to figure out where the improper payments have gone, especially the overpayments, and go out and recover the money. That is what we are about here: identify the improper payments and once they have been identified, stop making them. And the third thing is to

go out and recover as much of the money as we can.

Why is this important? Well, I think we all know our Nation has a large and growing debt. I am not so sure when the Acting President pro tempore joined the House of Representatives, but I believe he may have been there by the end of the Clinton administration and may recall when we actually had balanced budgets. We went from 1968—I want to say to 2000—maybe 2001—when we actually balanced our budget.

I remember being in a hearing here in the Senate where one of our witnesses—I am not sure; I think somebody from the Federal Reserve maybe, maybe somebody from Treasury—actually expressed concerns at the time that we were in danger of paying down our debt too quickly and that we had some threat of destabilizing our financial system or our economy. Imagine that: a decade ago concerns about paying down our debt too quickly.

Well, we did not do that. We did not pay down our debt at all. Between 2001 and 2008, we doubled our Nation's debt. In those 8 years we ran up as much new debt as we did in the previous 208 years of our Nation's history. We are on course now—even though we are starting to see deficits that begin to trend down—to double our Nation's debt again over the next decade, unless we do some things dramatically different.

Our President, to his credit, has suggested among the things we do are these: No. 1, to put an overall freeze on domestic discretionary spending, starting with this October 1, for the next 3 years. Certain programs within the overall discretionary spending budget can go up, some can go down, but overall, for 3 years, a freeze, and not a freeze that is just adjusted with the cost of living but an actual freeze on nominal dollars.

The second thing he suggested we do—when we tried to do this on the floor, seven of our Members who cosponsored the legislation, the Acting President pro tempore may recall, ended up voting against it. But the idea was to create a commission, much as we have had earlier commissions, and especially back in 1982 we created a commission—President Reagan was the President, Tip O'Neill was the Speaker—to actually examine Social Security, which was about to run out of money. They came up with a bunch of ideas that were adopted and implemented in 1983.

But anyway, when we failed to adopt by law and create a statutory commission on deficit reduction to look at entitlements, to look at revenues, our President, by executive order, created the commission. Erskine Bowles is one of the cochairs, former Chief of Staff to President Clinton. Alan Simpson, a Republican Senator, retired, from Wyoming is the other cochair. The people, for the most part, on the commission are very serious, very smart people. They have been meeting quite a bit.

Their job is to come back to us and tell us, later this year, some ways they think we could actually reduce the deficits further, through entitlement spending and looking at revenues and the way we collect money.

There are still some other things we need to do. I want to mention a few of those. One of those deals is what I call the tax gap. The IRS reported that in the last decade some \$300 billion of taxes that have been owed are going uncollected, and in many cases we know who owes the money. We have some idea how much they owe. Despite efforts in the past to close that tax gap, it is still too large, and we need to further continue to concentrate on that. My hope is, in part, this deficit reduction commission can help us with that. In the meanwhile, I know the Finance Committee and others in the House are endeavoring to reduce the tax gap.

A second thing we want to do is to change the way we manage and dispose of surplus property. The Federal Government is a huge owner of surplus properties. We do not use them all. A lot of them are vacant. We pay security costs to secure them. We pay utility costs. We pay maintenance costs in many cases. But we, for the most part, and too often, do not sell them. We do not dispose of them.

There is legislation that has been introduced again in this Congress, working with OMB, working with some of the homeless groups, to try to make sure their concerns are addressed, but that at the end of the day we should not be continuing to own and maintain and secure and provide utilities for thousands of pieces of property, buildings we do not need and we do not use.

Another area deals with weapons systems. It was reported back in 2001 that we spent \$45 billion in cost overruns for major weapons systems. Think about that: \$45 billion in 2001 on cost overruns for major weapons systems. We got an update on that about a year or two ago, and it was no longer \$45 billion. That is the good news. The bad news is, it is about \$295 billion.

We had a big debate here last fall, some will recall, on whether we ought to continue to buy F-22 aircraft that cost roughly \$300 million a copy at about a 55-percent mission capable rate, which means on any given day only about 55 percent of them can fly. It costs about \$45,000 a flight hour. They have never flown a single mission in Iraq, a single mission in Afghanistan. The question is, are we going to continue to buy them? That is the kind of thing we do not need to do.

We had a hearing yesterday in our Homeland Security and Governmental Affairs Committee on whether we ought to continue buying C-17 aircraft. It is a cargo aircraft, a great aircraft. We have about 200, almost 230 of them. The Pentagon says we do not need them, we do not need any more. They say they only need about 190 or 200, no mas, no more. They cost about a quarter billion dollars apiece, plus we have to operate them and provide hangars

for them and maintenance, and so forth, and crew them. They said there is a more cost effective way to meet our airlift needs, suggesting what that might be, in part to modernize some older C-5As and Bs, and help make them more efficient and more dependable. We are already starting to do that, and it is actually very encouraging.

What else can we do? We can do little things. I read in the news, maybe 2 weeks ago, we decided to go almost entirely to direct deposits and to move away from paper check. It does not save a huge amount of money, maybe \$5 million a year, \$50 million over 10 years, but it is the kind of thing we ought to do.

Another idea that has been kicked around for years is whether we ought to give the President something like statutory line-item veto power. Most Governors have line-item veto power, mostly through their State's constitution. Is that a good idea? We tried to do it in the House in 1992, to give like a 2-year test drive, to enhance the President's rescission power. That died in the Senate.

Senators FEINGOLD, MCCAIN, and I have come up, working with the administration, on a 4-year test drive that we think will meet constitutional muster, and to not give forever the President strength in rescission powers, but to make his powers real and to require us to vote on them. It requires us to vote on the President's proposed rescissions.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. CARPER. Mr. President, in closing, I want to come back later today and talk about the Improper Payments Act, which is going to be passed by the House today and I hope signed by the President, to speak about why that is another important step to get our fiscal house in order. I appreciate the opportunity to begin that discussion this morning.

I thank you chair.

The ACTING PRESIDENT pro tempore. The Senator from Maryland is recognized.

NOMINATION OF ELENA KAGAN

Mr. CARDIN. Mr. President, next week, the Senate Judiciary Committee will be voting on the nomination of Elena Kagan to be the next Associate Justice of the Supreme Court of the United States. This vote in the Judiciary Committee follows 4 days of hearings on her nomination. As the Acting President pro tempore knows, she is currently the Solicitor General of the United States. We not only had 4 days of hearings, every member of the Judiciary Committee had ample opportunity to ask questions and get responses from Ms. Kagan. We heard from outside witnesses, some who were directly affected by decisions of the Supreme Court of the United States. We reviewed tens of thousands of pages of documents.

I pointed out during these hearings why Americans should be so concerned

about who the next Associate Justice of the Supreme Court will be because the decisions of the Supreme Court affect your life. If you work, if you are a woman, if you vote, if you care about the air you breathe or the water you drink, if you are a consumer, you need to be concerned about the Supreme Court of the United States.

The Constitution protects us from the abuses of power, whether those powers are generated by government or powerful special interests. The Supreme Court was designed to be the protector of our constitutional rights.

We the people of the United States—

“We the people”—

in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The authors of the Constitution understood the timeless idea that justice was paramount. After questioning Solicitor General Kagan and listening to her testimony for a week, I am convinced she has a clear understanding of how profound an impact her future decisions may have on the lives of everyday Americans.

Based on the hearing and the conversations I have had with her, I am confident she will put the interests of the American people and justice for the American people first, above popular opinion or politics.

As Solicitor General Kagan said in her opening statement to the committee, equal justice under law “means that everyone who comes before the Court—regardless of wealth or power or station—receives the same process and protections. . . . What it promises is nothing less than a fair shake for every American.”

During the confirmation hearings, I asked Solicitor General Kagan about civil rights, campaign financing, and our environment. I used those three areas to demonstrate how important the decisions of the Supreme Court can be in the lives of everyday Americans. My concerns about recent Supreme Court decisions were an activist court that, by the narrowest margins—usually 5-to-4 decisions—reversed precedent, legislated from the bench, and ruled on the side of businesses over individual rights.

In civil rights, I think the importance of the Supreme Court was underscored by the decision of *Brown v. Board of Education* which opened educational opportunity for the people of this Nation. I pointed out during the hearings before the Judiciary Committee that it was Thurgood Marshall, a young attorney from Baltimore, who argued that case before the Supreme Court and then became, as the Presiding Officer knows, the first African-American Justice on the Supreme Court of the United States, and one of his law clerks was Elena Kagan.

Recent decisions of the Supreme Court underscore my concern as to