than at any other time in recent history—Congress cannot get its act together to extend emergency insurance, as we have always done with bipartisan backing for decades.

Well, part of the reason is that many on the other side do not see this as an emergency. They look at a crisis for families' budgets and see an opportunity for their political fortunes. They think when unemployment goes up, so do their poll numbers.

Some even think that the unemployed enjoy being out of work. That is why one of the top Republicans in the Senate called unemployment assistance a ''disincentive for them to seek new work'' and voted three times in recent weeks against extending it.

Another senior Republican Senator said these Americans—people who want nothing more than to find a new job—''don't want to go look for work.'' And then he, too, voted ''no'' three times.

A third senior Republican Senator, who, like his colleagues, has time and again stood in the way of addressing this emergency, justified it by saying—listen to this quote—''We should not be giving cash to people who basically are just going to blow it on drugs.'' That is a direct quote.

My constituents take offense at these absurd allegations, and they have let me know about it time and time again. They have written or called, sent me e-mails. They have pulled me aside when I have been home to talk to me about this.

One of these e-mails came to me last week from Las Vegas, where unemployment is now 14.5 percent. Statewide it is 14.2 percent. This man's name is Scott Headrick. He wrote me, and you can hear in the e-mail his anger. It is sad. He is one of 2.5 million Americans who, because of Republicans' objections, is no longer getting the unemployment help he needs. This is what Scott Headrick wrote to me:

I've been unemployed since July 2008 and have not been able to obtain a position at a supermarket packing groceries. I've been religiously seeking, searching and applying for work without any luck. I have since left my family in Las Vegas, a wife and five children, to look for work in other states and again, without any luck.

Scott mentioned the Senators making these outrageous claims and demanded that they, in his words:

apologize to those Americans truthfully looking for work to support their families. . . . I and my family have already lost everything but each other.

Scott is right. The twisted logic we have seen in the unemployment debate is not just appalling or heartless, though it is certainly both of those things. It is also factually wrong.

First, there is only one open job in America for every five Americans desperate to fill it. So no one should be so crass as to accuse anyone of being unemployed by choice—especially not those same lawmakers whose irresponsible policies over the past decade created the very crisis that collapsed the job market in the first place.

Second, unemployment insurance works. It helps our economy recover. Mark Zandi, who was JOHN MCCAIN's economic adviser when he ran for President, calculated that every time $1 goes out in unemployment benefits, $1.61 comes back into the economy. The Congressional Budget Office has estimated that number could actually be as high as $2, meaning we double our investment in helping the unemployed.

If you think about it, it makes sense. Nobody is getting rich off the $300 unemployment check they get each week. And nobody keeps those checks under his mattress. These Americans turn around and spend the money. They immediately pay their bills, go to the store, keep up with their mortgage payments, which stimulates the economy. They spend it on the basics and bare necessities while they look for work. The money goes right back into the economy, which strengthens it, fuels growth, and ultimately lets businesses create the very jobs the unemployed have been looking for, for so long.

The people we are trying to help want to find work. They are trying to find work, and they would much rather get a paycheck than an unemployment check.

Nevadans such as Scott Headrick, who lost his job 2 years ago this month, and who has tried tirelessly to find a new one, is just one of millions who needs our help. Democrats are not going to turn our backs on him. He sends out resumes and goes to job interviews, but for months and months he has heard nothing but ''no.'' What a shame it is that he is hearing the same from the Republicans in the Senate on this issue.

Mr. President, will the Chair announce the business for the day.

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, the Senate will now proceed to a period of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. LEAHY. Mr. President, 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. LEAHY. 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.

SECURING THE PROTECTION OF OUR ENDURING AND ESTABLISHED CONSTITUTIONAL HERITAGE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 460, H.R. 2765.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2765) to amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Securing the Protection of our Enduring and Established Constitutional Heritage Act'' or the ''SPEECH Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The freedom of speech and the press is enshrined in the first amendment to the Constitution, and is necessary to promote the vigorous dialogue necessary to shape public policy in a representative democracy.

(2) Some persons are obstructing the free expression rights of United States authors and publishers, and in turn chilling the first amendment to the Constitution of the United States interest of the citizenry in receiving information on matters of importance, by seeking out foreign jurisdictions that do not provide the full extent of free-speech protections to authors and publishers that are available in the United States, and suing a United States author or publisher in that foreign jurisdiction.

(3) These foreign defamation lawsuits not only suppress the free speech rights of the defendants to the suit, but inhibit other written speech that might otherwise have been written or published but for the fear of a foreign lawsuit.

(4) The threat of the libel laws of some foreign countries is so dramatic that the United Nations Human Rights Committee examined the issue and indicated that in some instances the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work. The advent of the internet and the international distribution of foreign media also create the danger that one country's unduly restrictive libel law will affect freedom of expression worldwide on matters of valid public interest.

(5) Governments and courts of foreign countries scattered around the world have failed to curtail this practice of permitting libel lawsuits against United States persons within their courts, and foreign libel judgments inconsistent with United States first amendment protections are increasingly common.

SEC. 3. RECOGNITION OF FOREIGN DEFAMATION JUDGMENTS.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by adding at the end the following:

''CHAPTER 181—FOREIGN JUDGMENTS

''§ 4101. Definitions

''In this chapter:

''(1) DEFAMATION.—The term 'defamation' means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

''(2) DOMESTIC COURT.—The term 'domestic court' means a Federal court or a court of any State.

''(3) FOREIGN COURT.—The term 'foreign court' means a court, administrative body, or other tribunal of a foreign country.

''(4) FOREIGN JUDGMENT.—The term 'foreign judgment' means a final judgment rendered by a foreign court.

''(5) STATE.—The term 'State' means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

''(6) UNITED STATES PERSON.—The term 'United States person' means—

''(A) a United States citizen;

''(B) an alien lawfully admitted for permanent residence to the United States;

''(C) an alien lawfully residing in the United States at the time that the speech that is the subject of the foreign defamation action was researched, prepared, or disseminated; or

''(D) a business entity incorporated in, or with its primary location or place of operation in, the United States.

''§ 4102. Recognition of foreign defamation judgments

''(a) FIRST AMENDMENT CONSIDERATIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that—

''(A) the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States and by the constitution and law of the State in which the domestic court is located; or

''(B) even if the defamation law applied in the foreign court's adjudication did not provide as much protection for freedom of speech and press as the first amendment to the Constitution of the United States and the constitution and law of the State, the party opposing recognition or enforcement of that foreign judgment would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States and the constitution and law of the State in which the domestic court is located.

''(2) BURDEN OF ESTABLISHING APPLICATION OF DEFAMATION LAWS.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showings required under subparagraph (A) or (B).

''(b) JURISDICTIONAL CONSIDERATIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that the exercise of personal jurisdiction by the foreign court comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

''(2) BURDEN OF ESTABLISHING EXERCISE OF JURISDICTION.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showing that the foreign court's exercise of personal jurisdiction comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

''(c) JUDGMENT AGAINST PROVIDER OF INTERACTIVE COMPUTER SERVICE.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation against the provider of an interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230) unless the domestic court determines that the judgment would be consistent with section 230 if the information that is the subject of such judgment had been provided in the United States.

''(2) BURDEN OF ESTABLISHING CONSISTENCY OF JUDGMENT.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of establishing that the judgment is consistent with section 230.

''(d) APPEARANCES NOT A BAR.—An appearance by a party in a foreign court rendering a foreign judgment to which this section applies shall not deprive such party of the right to oppose the recognition or enforcement of the judgment under this section, or represent a waiver of any jurisdictional claims.

''(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

''(1) affect the enforceability of any foreign judgment other than a foreign judgment for defamation; or

''(2) limit the applicability of section 230 of the Communications Act of 1934 (47 U.S.C. 230) to causes of action for defamation.

''§ 4103. Removal

''In addition to removal allowed under section 1441, any action brought in a State domestic court to enforce a foreign judgment for defamation in which—

''(1) any plaintiff is a citizen of a State different from any defendant;

''(2) any plaintiff is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

''(3) any plaintiff is a citizen of a State and any defendant is a foreign state or citizen or subject of a foreign state,

may be removed by any defendant to the district court of the United States for the district and division embracing the place where such action is pending without regard to the amount in controversy between the parties.

''§ 4104. Declaratory judgments

''(a) CAUSE OF ACTION.—

''(1) IN GENERAL.—Any United States person against whom a foreign judgment is entered on the basis of the content of any writing, utterance, or other speech by that person that has been published, may bring an action in district court, under section 2201(a), for a declaration that the foreign judgment is repugnant to the Constitution or laws of the United States. For the purposes of this paragraph, a judgment is repugnant to the Constitution or laws of the United States if it would not be enforceable under section 4102 (a), (b), or (c).

''(2) BURDEN OF ESTABLISHING UNENFORCEABILITY OF JUDGMENT.—The party bringing an action under paragraph (1) shall bear the burden of establishing that the foreign judgment would not be enforceable under section 4102 (a), (b), or (c).

''(b) NATIONWIDE SERVICE OF PROCESS.—Where an action under this section is brought in a district court of the United States, process may be served in the judicial district where the case is brought or any other judicial district of the United States where the defendant may be found, resides, has an agent, or transacts business.

''§ 4105. Attorneys' fees

''In any action brought in a domestic court to enforce a foreign judgment for defamation, including any such action removed from State court to Federal court, the domestic court shall, absent exceptional circumstances, allow the party opposing recognition or enforcement of the judgment a reasonable attorney's fee if such party prevails in the action on a ground specified in section 4102 (a), (b), or (c).''.

(b) SENSE OF CONGRESS.—It is the Sense of the Congress that for the purpose of pleading a cause of action for a declaratory judgment, a foreign judgment for defamation or any similar offense as described under chapter 181 of title 28, United States Code, (as added by this Act) shall constitute a case of actual controversy under section 2201(a) of title 28, United States Code.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

''181. Foreign judgments ..... 4101.''.

Mr. LEAHY. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The bill (H.R. 2765), as amended, was passed.

Mr. LEAHY. Mr. President, today the Senate has passed important bipartisan legislation to reduce the chilling effect that foreign libel lawsuits are having on Americans' first amendment rights.

I am the son of printers and I consider this a matter of great importance. My parents told me from the time I was a child: Believe in and uphold the first amendment. It is the basis of our democracy. It guarantees us the right to practice any religion we want or none if we want. And it protects the right of free speech. Those protections guarantee diversity. If you have a constitution that guarantees diversity, you guarantee a democracy.

That is what this does. I wish to thank Senator SESSIONS, the ranking member of the Senate Judiciary Committee, for working with me on this bill.

Let me speak a little bit about what the bill does. The Securing the Protection of our Enduring and Established Constitutional Heritage Act or, as we call it, the SPEECH Act, will ensure that American courts will not enforce foreign libel judgments from countries where free speech protections are lower than what our Constitution affords against American journalists, authors, and publishers.

Too frequently, foreign plaintiffs bring libel suits against American writers and publishers in countries where the plaintiff or the publication lacks any significant connection to the foreign forum. The lawsuit is brought there because of that foreign country's weaker plaintiff-friendly libel laws. This is known colloquially as libel tourism.

In other words, if somebody in the United States writes a book, probably

very accurate, about some despot or some leader of a country who has done criminal acts, has stolen the property of that country or any one of a number of things—it could be very accurate and, in our country, truth is a defense—what they will do is maybe order online a couple copies of the books and deliver them to another country with weak libel laws and then seek judgments against the author, against the publisher, against newspapers that may have published excerpts of it; everything to chill any criticism of those who have either breached human rights or stolen from their own country and on and on.

On a broad scale, libel tourism results in a race to the bottom. It causes America to defer to a country with the most chilling and restrictive free speech standard determining what they can write or publish. This undermines our first amendment. The first amendment, as I said earlier, guarantees the diversity of thought and opinion in this country which actually allows and determines and guarantees that democracy.

The freedoms of speech and the press are cornerstones of our democracy. They enable vigorous debate, and an exchange of ideas that shapes our political process. Reporters, authors and publishers are among the primary sources of these ideas, and their ability to disseminate them through their writings is critical to our democracy. The broad dissemination of materials through the Internet, as well as the increased number of worldwide newspapers and periodicals, has compounded the threat of libel tourism.

This problem is well documented. Two years ago, the United Nations' Human Rights Committee observed that one country's libel laws ''discourage[d] critical media reporting on matters of serious public interest, adversely affect[ed] the ability of scholars and journalists to publish their work,'' and ''affect[ed] freedom of expression worldwide on matters of valid public interest.''

Several States, to their credit, have enacted legislation to combat this problem, but we need a national response. While we can't legislate changes to foreign laws that are chilling protected speech in our country, what we can do to uphold the right of free speech in our own country is assure that our courts do not become a tool to uphold foreign libel judgments that undermine American first amendment or due process rights. The SPEECH Act is an important step toward reducing this chilling of American free speech

The SPEECH Act is an important step toward reducing this chilling of American free speech. Americans have a great gift in their right of free speech. Every single Senator, Republican and Democratic, should join, as we have in this case, to protect America's rights.

The SPEECH Act is the product of hard work and extensive negotiations on both sides of the aisle, and the process is certainly mindful about principles of international comity. Many supporters would not have written this bill in this exact way, but all recognize that a bipartisan compromise is an important step in confronting the libel tourism issue. Without it, we could not pass this bill.

Among the supporters are the Vermont Library Association, former Attorney General Michael Mukasey, the former Director of the Central Intelligence Agency, James Woolsey, the American Library Association, the Association of American Publishers, the Reporters Committee for Freedom of the Press, the American Civil Liberties Union, Net Coalition, and renowned first amendment lawyer, Floyd Abrams.

I would also like to recognize Dr. Rachel Ehrenfeld, Director of the American Center for Democracy, who herself has been the victim of a libel suit in the United Kingdom, and has been a tremendous advocate for Congressional action in this area.

I wish to thank Senators SPECTER, SCHUMER, and LIEBERMAN for their work in raising this important issue in the Senate and Representative COHEN for his hard work on libel tourism legislation in the other body. I am pleased the Senate has adopted this bipartisan legislation. I look forward to its prompt consideration and adoption by the House and to the President signing it into law.

Mr. President, I do not see anybody else seeking recognition, so I will 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. SESSIONS. 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.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

SMALL BUSINESS LENDING FUND ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 5297, which the clerk will report by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5297) to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

Pending:

Reid (for Baucus/Landrieu) amendment No. 4402, in the nature of a substitute.

Reid amendment No. 4403 (to amendment No. 4402), of a perfecting nature.

Reid amendment No. 4404 (to amendment No. 4403), of a perfecting nature.

Reid amendment No. 4405 (to the language proposed to be stricken by amendment No. 4402), to change the enactment date.

Reid amendment No. 4406 (to amendment No. 4405), of a perfecting nature.

Reid motion to commit the bill to the Committee on Finance with instructions, Reid amendment No. 4407 (to the instructions on the motion to commit), in the nature of a substitute.

Reid amendment No. 4408 (to the instructions (amendment No. 4407) of the motion to commit), to change the enactment date.

Reid amendment No. 4409 (to amendment No. 4408), of a perfecting nature.

Mr. SESSIONS. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

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

KAGAN NOMINATION

Mr. SESSIONS. Mr. President, I wish to speak on a very serious issue relating to the confirmation of Solicitor General Elena Kagan for the Supreme Court of the United States. As I was preparing for her hearings, I noted what struck me as a disturbing decision she had made as Solicitor General shortly after taking that position, in a case called Witt v. Department of the Air Force. In that case, a former member of an Air Force Reserve unit in Washington State sued the government to challenge the ''don't ask, don't tell'' law, which essentially says openly homosexual persons may not serve in the U.S. military. The case was dismissed by the district court, and the military was allowed to proceed with its policy. But when it was appealed to the Ninth Circuit, that very liberal court of appeals overturned the district court and said the case should go to trial and announced an unworkable legal test that the lower court must apply and that the government would have to meet for the ''don't ask, don't tell'' statute to survive constitutional challenge.

After that unprecedented ruling, the Solicitor General's Office, then manned by the Bush administration personnel, immediately authorized an appeal to the full Ninth Circuit, en banc, and the government asked the full court to take a look at it and overturn the three-judge panel. The full court of appeals declined to do so, over strong objections from several judges on the Ninth Circuit who thought their colleagues had clearly gotten the case wrong. In fact, the First Circuit in the Northeast had already reached a different conclusion in a very similar case, and had upheld the statute.

At that point, the government could have appealed the Ninth Circuit decision to the Supreme Court, as I think the Solicitor General's Office clearly was on track to do. First, they sought en banc review, and then they would seek interlocutory appeal to the Supreme Court. But as it happened, by