

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

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

ANNIVERSARY OF THE DEATHS OF OFFICER JACOB JOSEPH CHESTNUT AND DETECTIVE JOHN MICHAEL GIBSON

Mr. McCONNELL. Madam President, in our democratic system, protection and preservation of the United States of America, her institutions, and her citizens is based solely on the voluntary risks taken and sacrifices made by ordinary Americans.

Woven into the fabric of this great Nation and within all Americans is the notion that freedom is not free. Time and time again our citizens, members of our Armed Forces, and law enforcement officials, when called upon, have answered the call to defend that freedom.

Twelve years ago this past Saturday, two courageous Capitol police officers answered the call and made the ultimate sacrifice for their country and their fellow countrymen. Today, I wish to honor the sacrifice of Officer Jacob Joseph Chestnut and Detective John Michael Gibson. An American President once noted:

Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children's children what it was once like in the United States where men were free.

People like Officer Chestnut and Detective Gibson defended and even gave their lives in the service of this truth that is so vital to our society. That is why we remember them and that is why we will continue to tell their story, so those who follow will never forget the cost of freedom.

Both men served for 18 years on the Capitol police force. Officer Chestnut—or J.J. to his friends—was 58 years old and a father of five. He was a 20-year veteran of the Air Force, serving in Vietnam and Taiwan.

Detective Gibson was 42 years old and a father of three. A Massachusetts native, friends recall his intense love for his Boston sports teams—the Bruins, the Red Sox, and UMass basketball. A friend recalled that just a few days before the shooting, John told him he had never had to draw his weapon on the job. Yet, despite being mortally wounded on the day he died, John did not hesitate to return fire.

This is not only a tribute to Detective Gibson's commitment, it is a testament to the outstanding training and preparation the officers of the Capitol

police force receive to handle even the toughest situations. Officer Chestnut and Detective Gibson were the first Capitol police officers to die in the line of duty.

In honor of their sacrifice, a plaque has been placed in the Capitol, and their names have been etched upon the National Law Enforcement Officers Memorial, as well as the headquarters of the U.S. Capitol Police—fitting tributes to honor these good and courageous men.

My friend the majority leader, a former Capitol police officer himself, knows all too well the honor as well as the risks associated with the job. So as we honor Officer Chestnut and Detective Gibson today, we also honor all Capitol police who put their lives on the line every single day to protect us and this institution.

To all members of the Capitol police, we thank you for your service and your sacrifice. We are grateful for the heroic sacrifice of these two men. On this day of remembrance, we remember their families as well. May God continue to look after them, and may God continue to protect all those, like Officer Chestnut and Detective Gibson, whose daily work is to protect the rest of us from harm.

Madam President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DISCLOSE ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 3628, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 476, S. 3628, a bill to amend the Federal Election Campaign Act of 1971 to prohibit foreign influence in Federal elections, to prohibit government contractors from making expenditures with respect to such elections, and to establish additional disclosure requirements with respect to spending in such elections, and for other purposes.

Mr. SCHUMER. Mr. President, I rise today in strong support of S. 3628, the Democracy Is Strengthened by Casting Light on Spending in Elections Act, otherwise known as the DISCLOSE Act. I urge my colleagues to support the motion to proceed to a debate on this critical legislation tomorrow at 2:45.

We must not forget why we are here today. In *Citizens United v. FEC*, the Supreme Court narrowly overruled almost a century of law and precedent and held that corporations have the same first amendment rights as people and therefore can spend freely on elections from their treasuries. The Court also opened the door to new kinds of campaign spending by labor unions and certain nonprofit organizations.

At a time when the public's fears about the influence of special interests were already high, that decision stacked the deck even more against the average American. As a result, we are faced with a new reality in our democracy: unlimited amounts of cash can now flow into our Federal elections anonymously and with no accountability.

Voting is the bedrock of our democracy. Elections provide the voters a loudspeaker through which they can make their opinions heard. Allowing special interest money to pour into elections unchecked and undisclosed will drown out the voices of the voters. But the Supreme Court decision did leave us one narrow opportunity to make an impact on this new era in campaign spending.

In *Citizens United*, eight of the nine Justices agreed that disclosure of campaign expenditures is constitutional and in the public's interest. The Court held that disclosure requirements "do not prevent anyone from speaking" and serve governmental interests in "providing the electorate with information" about the sources of money spent to influence elections so that voters can "make informed choices in the political marketplace."

By working within the contours of the Court's majority opinion, we have crafted this bill around new disclosure requirements designed to shine a bright light on those who would operate in the shadows. This legislation will follow the money. In cases where corporations or other special interests try to mask their activities through shadow groups, the legislation drills down so that the ultimate funder of the expenditure is disclosed. No more Citizens for Good Government, or People for Democracy—and the ads are nasty and tawdry, but we never know who they are from.

This legislation requires the sponsors of ads to file regular reports with the Federal Election Commission detailing their political expenditures and the source of the donations they received to fund them.

This legislation enhances disclaimer provisions so the public is aware that it is not a candidate or a political party speaking but a special interest or a corporation. We require CEOs and heads of special interest groups to identify themselves in their advertising. Candidates for Federal office already have to stand by their ads. There is no reason that corporations and special interests should not have to identify themselves as well.

The bill also prohibits entities that receive taxpayer money—such as large government contractors or corporations that received Federal rescue funds—from turning around and spending that money to influence elections. The bill also bans foreign-controlled corporations from spending in our elections.

As Justice Stevens noted in his dissent, Citizens United allows foreign-controlled interests to participate in American elections now simply by using their domestic-based entities. We need to prevent that from happening, and the DISCLOSE Act does just that.

If not for the DISCLOSE Act, by the way, foreign companies, foreign corporations, foreign entities could participate in our elections. They could put themselves up under the name of “Americans for Good Government” and no one would even know. Let’s be clear, current law bans foreigners, foreign corporations, foreign unions from participating in our elections, but under the complex nature of corporate law, we have domestic entities that would no longer fit into this ban by current law but which are controlled by foreign interests or even hostile foreign governments. We cannot allow BP, CITGO, or Chinese sovereign wealth funds to influence our elections, particularly under a name that would not show it was them. We need to close this loophole now, and that is what the DISCLOSE Act does.

Let me turn to what the bill does not do. There has been a strong argument from the hard right, desperate to see that this bill not pass; that this is an infringement on free speech. That is absurd. Claiming that disclosure is tantamount to muzzling free speech is nothing more than a scare tactic from special interests that do not want the public to know what they are doing.

If you have the courage of your convictions, you should say who you are, plain and simple. Democrats and Republicans alike have long defended disclosure campaign expenditures as both appropriate and constitutional. The minority leader has talked about disclosure as a substitute for campaign finance reform. And in this bill, we are working well within the free speech guarantees of the first amendment in our strengthening of disclosures and disclaimers on campaign ads.

Second, this bill does not circumvent the Supreme Court. While I believe the Court’s ruling was an activist overreach, this legislation clearly does not. The main purpose of the DISCLOSE Act is to provide the American public with information on who is speaking when political advertising and expenditures are made. Its purpose is not to circumvent or overturn the Court’s decision by imposing a backdoor ban on special interest spending.

Recently, the Supreme Court, in another case, *Doe v. Reed*, again upheld disclosure as constitutional under the first amendment, with the support of eight Justices, which means a whole

number of conservative judges had to support that idea.

This bill does not treat corporations and labor unions, along with trade associations and most other organizations, differently. Last month, we all know the House passed its version of the DISCLOSE Act. We have made changes to the House bill that I believe make it more evenhanded while sticking to the central goal of bringing transparency and public disclosure to the new kind of election spending the Supreme Court approved. For example, the House bill received criticism for allowing organizations that collect dues to avoid disclosing transfers of funds they make to their affiliates. This was criticized, fairly or unfairly, as a union carve-out. So we eliminated this exemption in the Senate bill. Another exemption was made for transfers between separate organizations if the funds could not be traced to an individual donor. We removed this exemption as well. So anyone who votes against this bill under the guise that it treats labor and corporations differently has not read the bill. We have kept this bill balanced and evenhanded. The changes made a strong bill even stronger.

To recap, the bill does not chill speech. It does not impose a backdoor ban on corporate spending. It does not treat labor unions differently from corporations. What this bill does do is listen to the American people, and 8 in 10 American voters, Democrats, Republicans, and Independents, overwhelmingly disapprove of the Supreme Court’s opinion in *Citizens United* and overwhelmingly support what we are doing here today. And there is good reason why. The public does not want to be deceived by advertising from anonymous funders. The public does not want foreign-controlled interests taking over our elections. And the public does not want their tax dollars being used by large Federal corporations to influence elections.

Already, the *Citizens United* decision has given rise to a cottage industry of swift boat-style shadow groups, groups that do not make democracy proud. Karl Rove admitted this month that his new 527, dubbed “American Crossroads,” was born out of a loophole created by the *Citizens United* decision. He bragged that his group will flood the 2010 elections with \$52 million worth of ads bankrolled anonymously by special interests. Other shadow groups like Rove’s are planning similar levels of activity. All together, these groups could account for \$300 million in political spending this fall alone. The Supreme Court, unfortunately, opened the door to these anonymous donations. We must act now to close the door before faceless groups are allowed to spend unlimited sums without any accountability or transparency. The voters deserve to know the source of this spending.

My prediction—sad but I really believe true—is that if we do not close

this loophole, the roots of our democracy will get more and more corroded, endangering the whole vital tree, the oak of democracy itself. It is hard to believe that we are now saying that a company, a group, that has multimillions of dollars can spend that money against a particular candidate, say whatever it wants, whether it is true or false, and not be held to any accountability whatsoever. What has become of our democracy?

The Supreme Court made the wrong decision. I still can’t understand why they did it. But we have an opportunity here—not as Democrats or Republicans but as Americans—to rectify, at least modify within the Constitution and at least require disclosure because we all know disclosure will not chill speech but it will make sure that those who wish to launch millions of dollars of nasty and perhaps untruthful ads against a candidate they don’t like will at least have to say their name. What could be wrong with that?

The Senate will vote tomorrow afternoon to invoke cloture on the motion to proceed to the consideration of the DISCLOSE Act. I urge my colleagues to allow us to move to a debate on this crucial legislation. We have a clear choice tomorrow: We can vote to debate how to make our elections more open and transparent or we can bow to special interests that seek to influence our elections behind closed doors. It is time for us to have that debate. Our democracy cannot afford a filibuster of transparency and disclosure in its elections. Let’s be clear: If we fail to act now, the winner of November’s elections will not be Democrats or Republicans; it will be special interests.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ETHANOL

Mr. GRASSLEY. Mr. President, last week there was a news conference by a group of outside people who attacked ethanol, and then the senior Senator from Arizona gave a speech on that subject last week. I told the senior Senator that I was going to have something to say about ethanol this week; I didn’t tell the news conference people that I was. So it seems to be that time of year once again. Without fail, every few months or so, we have big oil on the one hand and big food interest groups on the other hand start a misinformation campaign in an effort to denigrate the U.S. biofuels producers. In other words, they are attacking renewable fuels.

Last week, almost as if on cue, a group opposed to domestic efforts to reduce our dependence on foreign oil began their usual song and dance. A

press conference led by the Grocery Manufacturers Association and other special interest groups was held to malign the benefits of homegrown renewable fuels. Don't forget that this is the same group of folks who, a few years ago, waged a high-priced, inside-the-beltway smear campaign against ethanol for allegedly leading to higher food prices. At that time, the price of corn was going up because there was speculation in commodities, the price of oil was going up, and so the grocery manufacturers decided: We have to have an excuse to increase the price of food—20 percent, roughly. Well, you know what, the price of grain came down, but the price of food has not come down. So I think it was simply a diversionary tactic to get away with what they maybe would not have gotten away with with the consumers.

Well, I think 2 years ago, maybe 3 years ago, that myth was roundly dispelled, but I want to keep reminding people that there was that campaign out there. Economists proved what Iowa farmers and our Nation's farmers knew to be true: The higher cost of corn was responsible for just a tiny fraction of the increase in food prices. So while food manufacturers wanted consumers to believe that corn ethanol was doubling or tripling their grocery prices, nonbiased observers knew that the corn input costs were just pennies of the retail price of food.

However, with dozens of multibillion-dollar corporations and profits to protect, it is not surprising to see this group—or maybe I better say these groups—attack our country's farmers and ranchers, who are working to produce our Nation's food, our Nation's feed, our Nation's fiber, and now, with renewable fuels, producing fuel that you and I burn in our car tanks almost daily. And farmers can do that. They can do all of that. They are doing it right now. This year, we will have the largest corn crop this country has ever produced, and doing it on 3 million less acres of cropland.

So these same groups are at it again. They see new opportunities to undermine our domestic biofuels industry, and they have a bottom line to look out for and pockets to line. They are now arguing that our Nation cannot afford government policies to foster the growth of renewable energy. In other words, they are arguing that the cost of energy independence is too high and we cannot afford it. They would prefer that we increase our reliance on fossil fuels and imported crude oil. The unfortunate outcome of such attacks, however, is that less informed individuals begin to believe this misinformation. So it is time that we review the true cost of imported fossil fuels.

In 2008, Americans sent over \$450 billion to foreign countries to satisfy our demand for oil. At \$80 a barrel—and I suppose oil is, I think, roughly \$75 now, but if it is \$80 a barrel, we will send nearly \$350 billion overseas, out of this country, this year for oil.

We rely on foreign oil to meet 60 percent of our oil demand. But do not forget, much of the world's oil reserves are located in the volatile and very unpredictable Middle East.

According to the Energy Information Administration, oil price shocks and price manipulation by the Organization of Petroleum Exporting Countries cost our economy about \$1.9 trillion between 2004 and 2008.

Our dependence on imported oil accounts for about one-half of our trade deficit—one commodity—a very important commodity for us, but it accounts for one-half of our trade deficit.

The Federal Government's support for homegrown ethanol equals less than 2 percent—just less than 2 percent of the money we will send to Canada, Saudi Arabia, Mexico, Venezuela, Nigeria, and other countries where we import oil.

The domestic ethanol industry supports 400,000 green jobs in the United States. Last year, ethanol contributed over \$50 billion to our gross domestic product. It contributed \$8.4 billion in tax revenue to the Federal Government. The incentives we provide for ethanol production lead to a surplus of tax revenue for the Federal Treasury. So which is the better bargain—being dependent on foreign countries for 60 percent of our energy needs at a cost of \$350 billion or keeping this money at home, creating green jobs and increasing our national and economic security? I believe the choice is very obvious.

Up to this point, I have only considered the economic cost. There are other costs. I will put up a chart with one of the environmental costs. This chart depicts a small example of the environmental cost of our dependence upon foreign oil. The first photo, the lower photo, is the one we are all too familiar with, the explosion and the ensuing oilspill at BP's Deepwater Horizon oil rig. The other photo might look like Mars or the Moon, but it depicts land in Canada where oil is being extracted from tar sands. The fact is, fossil fuels are getting more expensive to extract and are likely to come at greater environmental cost. That is the negative aspect, environmentally, beyond the economic issues I have discussed.

We have an alternative. That alternative, which the next chart shows, is homegrown, renewable biofuels. The chart shows the cornfield on the left, and where we go to the gasoline station to get the renewable fuels to power the car on the right. Today, ethanol accounts for 10 percent of our transportation fuels. No other fuel alternative comes close to ethanol's contribution to a clean environment and less dependence on foreign energy and less dependence upon fossil fuels. Domestically produced ethanol contributes more to the fuel supply than all imports except Canada. More ethanol means less greenhouse gas emissions. A University of Nebraska study found

that ethanol reduces direct greenhouse gas emissions by 48 to 59 percent compared to gasoline. Ethanol production continues to improve, and increasing crop yields means we are producing more fuel from less grain on fewer acres.

Let me repeat something I said earlier: Probably 13 billion bushels of corn, the largest crop ever produced in the United States, and we have 3 million less acres in crop production this year compared to a year ago. Ethanol producers are reducing energy and water usage. So the production of ethanol is becoming more efficient.

Finally, it is important we consider the national security cost of our dependence upon foreign oil. I will put up a chart about the Middle East. The Middle East accounts for 20 percent of U.S. oil imports; 17 billion barrels of oil are shipped each day through the single most important shipping chokepoint; that is, the Straits of Hormuz out of the Persian Gulf. In fact, the military people say that is one of the serious problems in dealing with Iran, if they decided to sink ships there, what they could do economically to the rest of the world and what they could do national security wise to the rest of the world. They have threatened that. They have never done it, probably because their livelihood depends on it as much as the rest of the world. But it is still one of those chokepoints. On average, 15 crude oil tankers pass through the Straits of Hormuz every day, with much of that oil headed to the United States.

We have two other large oil shipping chokepoints; one at the Suez Canal and the other one at the Gulf of Aden at the bottom of the map. To determine the true cost of America's dependence on foreign oil, it is important to understand the cost to the taxpayers of defending and protecting these shipping lanes. A New York Times editorial, in the late 1990s, calculated the true cost of a gallon of gas, including the military cost of making sure it can get from the oil wells of the Middle East to the United States at \$5 a gallon. Last week, I questioned four-star retired U.S. Army GEN Wesley Clark on the true cost of gasoline, when he appeared before the Committee on Agriculture. He estimated it to be around \$7 to \$8 a gallon today, 10 years later than the New York Times editorial.

Homegrown ethanol produced in the Midwest—I suppose anywhere in the United States, but most of the corn is produced in the Midwest—doesn't need a military escort to the gas stations on the east or west coasts such as oil from the Middle East does. Homegrown ethanol does not need the Department of Defense to protect its transport from our farm fields to consumers. Again, our Nation's investment in ethanol is a real bargain. It is increasing our economic and national security. That is why it is important we continue to support this industry.

Some have claimed it is a mature industry and it no longer needs our help.

This statement ignores the fact that ethanol is competing with a century-old industry dominated by big oil, which itself has received billions of dollars from the taxpayers over many decades and for decades longer than the ethanol industry.

Getting back to the detractors I referred to, most often the people who held the press conference a week ago today denigrating oil, these ethanol detractors continue to undermine these efforts. One organization estimates that a lapse in the tax incentive for ethanol would shut down 40 percent of the industry and result in the loss of 112,000 green jobs. That is 112,000 jobs that rely on the production of ethanol. We can't allow ethanol to follow the path of biodiesel which has essentially shut down because this Congress failed to extend that tax incentive that ran out last December 31. While President Obama spoke in his address on Saturday about investing in homegrown clean energy, 45,000 biodiesel jobs have vanished because of the lapse of the biodiesel tax credit. It is inexcusable.

President Obama touted the goal of creating 800,000 clean energy jobs by 2012. Why not take action today to extend the lapsed biodiesel tax credit and immediately put 45,000 people back to work? The same thing could happen to the ethanol industry, if we fail to extend the tax incentive which runs out December 31 this year. If we undermine ethanol, we are putting out the welcoming mat for dictators such as Hugo Chavez. In fact, last night on the television, it said Chavez is talking about maybe not selling oil to the United States.

Then, last week, as I referred to in my speech—and I told the Senator from Arizona I was going to speak on ethanol this week—we had the senior Senator from Arizona question the wisdom of domestic renewable fuel incentives. He was quoted as saying:

Maybe we will stop this damned foolishness called ethanol subsidies. It's one of the greatest rip-offs that takes place on the American taxpayers.

So to those who would do away with our domestic ethanol production, I have one question: Which country should we look to for 10 billion gallons of fuel? Would we want to go to Saudi Arabia? Would we want to go to Venezuela? Would we want to go to Nigeria? Whom would we rather support with our hard-earned money? I want to ask this question: Would we rather support Hugo Chavez or the American farmer? Would we rather support Chavez, which is an insane thing to do? Sending money to someone who buys guns to fight us is insanity. In this chart we have these two people on the left, Chavez and the President of Iran. We have the farmer of America on the right. Where would we want to get our energy from? Whom would we want to rely on?

It is pretty easy to answer that question. We shouldn't be reducing our use of renewable fuels. We should be in-

creasing it. We should produce all we can from corn and from the biomass that is left over from corn and from grasses and from wood waste. We should increase the use of biofuels by mandating the production of flex-fuel vehicles and increasing the availability of blender pumps.

Ethanol is here today. It is creating a cleaner environment. It is keeping money at home in our economy and increasing our national security. Undermining the only renewable fuel that has the proven ability to accomplish these goals would be insanity, a little bit like the two people we see on the left but not the person on the right. The person on the right is the backbone of the American economy because nothing has contributed to the national wealth except what comes from the national resources of the country.

Bottom line: Ethanol is good for America, but let's segment that. It is good for agriculture. It is good for good-paying jobs in small town America, where these renewable plants are located. It is good for the environment. It is good for lessening our dependence on foreign oil, which helps our trade balance, which helps our national security. There isn't another issue Members can come before the Congress with that has no negatives and all positives. In other words, everything about ethanol is good, good, good.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

RAISING TAXES

Mr. KYL. Mr. President, I suspect my colleague, the senior Senator from Arizona, will have something in response to say to my friend from Iowa. But what I wish to talk about is a comment Secretary of the Treasury Geithner made on television yesterday, in which he said he thought it would be a good idea to raise taxes in this country and that he didn't think income taxes on the higher two of the five tax brackets will hurt economic growth. He also said he supports allowing the top capital gains rate to be increased by 25 percent, from 15 to 20 percent.

I want to talk about that for a few minutes today. In this country, we have two goals: job creation and economic growth. We also want to reduce our Federal deficit and ultimately the Federal debt.

So how do we promote investment? There are two basic theories. One theory is that if we spend a lot of money that we borrow from countries such as China on programs such as the stimulus program, we can create economic growth and jobs. That has not worked. We have 3 million more people out of work today than when the stimulus package was put into effect. In fact, unemployment was supposed to be 8 percent or so now with the stimulus package, and, of course, it is 9.5 percent and with no relief in sight. The other way to do this is through investment by businesses, both large and small businesses. I think most econo-

mists believe that if businesses have capital to invest, they can hire more people, create more output or productivity, and therefore produce both growth and jobs.

So what we should be doing is promoting job creation and economic growth through private investment. How do we promote that? I know one thing you do not do, especially in bad economic times, is raise taxes. The last thing any business, especially a small business, needs—when you are asking them to hire more people—is to say: By the way, would you also give some money to Uncle Sam above what you are already contributing? We need it, and you can put off hiring that person you were going to hire for your business until later.

We know that is not how you promote economic growth. You should not raise taxes, as I said, especially in a time like this.

Secretary Geithner said he did not believe higher taxes would hurt economic growth. So I checked on what the President's chief economist said—Christina Romer, Chairwoman of the President's Council of Economic Advisers—to see whether she agreed with Secretary Geithner. Well, it turns out she very much disagrees. In a paper that has just been published in the June 2010 issue of the American Economic Review called "The Macroeconomic Effects of Tax Policy Changes," she writes, among other things, the following—I am quoting now from page 764:

Our estimates suggest that a tax increase of 1 percent of GDP reduces output over the next three years by nearly three percent. The effect is highly statistically significant.

So output or growth is reduced by nearly 3 percent just over the next 3 years.

She says on page 797:

The key results—

And we are talking about the impact of tax changes on consumption and investment, which are the two key components to growth.

She says:

The key results are that both components decline, and that the fall in investment is much larger than the fall in consumption. In response to a tax increase of one percent of GDP, the maximum fall in personal consumption expenditures is 2.55 percent. . . . just slightly less than the maximum fall in GDP. The maximum fall in gross private domestic investment is 11.19 percent. . . .

So think of it: Just raising taxes by 1 percent of GDP results in a decrease—or she calls it a fall—in gross private domestic investment of over 11 percent. So not only are you not contributing positively to investment and therefore hiring, but you are cutting it by 11 percent during this same period.

She says on page 781:

In short, tax increases appear to have a very large, sustained, and highly significant negative impact on output . . . the more intuitive way to express this result is that tax cuts have very large and persistent positive output effects.

So there you have it: Tax cuts promote economic growth. Tax increases

depress economic growth. They create a fall in both investment and consumption and therefore output, and the result is statistically significant.

Secretary Geithner is wrong. Raising taxes will have a highly significant, negative impact on job creation, investment, and economic growth in our country.

President Kennedy agreed with this a long time ago. He once said:

An economy constrained by high tax rates will never produce enough revenue to balance the budget, just as it will never create enough jobs.

The reason I quoted that is because the second goal we have—to reduce budget deficits and public debt—is often used as an excuse by those who want to raise taxes, saying: Well, we reduce debt by raising taxes. As President Kennedy said, if you have high tax rates, you are never going to produce enough revenue to balance the budget. You balance the budget with economic growth. The more growth you have, the more revenue is produced because people are making more money and they are paying more taxes. We know that historically. This is not in doubt. During times of economic growth, when people are doing well, revenues to the Treasury increase. In times like today, revenues are decreased. You are not going to be able to balance the budget in this kind of a situation by simply raising tax rates because—what did we just show a moment ago—raising tax rates depresses job creation, economic growth, investment. So you cannot do it by raising taxes.

Indeed, I think my colleagues on the other side of the aisle have exposed themselves a little bit here because they never seem to have a concern about the deficit when it comes to spending. That is why they were able to spend over \$1 trillion in an economic stimulus package and not pay for a variety of other things for which they increased spending.

I thought the most interesting example was last week when they refused Republican offers to pay for the \$34 billion cost of extending unemployment insurance. All of us wanted to extend unemployment insurance. That was not in doubt. The question was, Should we pay for it with offsets in spending elsewhere? In a \$3 trillion budget, we said: There are a lot of places you can get the money, starting with unspent stimulus funds. So we could have paid for or offset the \$34 billion cost of extending unemployment benefits. That was our proposal.

The Democratic side said: No. We will not extend unemployment benefits unless we can add to the debt in doing so. We are going to vote no unless it adds to the debt.

In the House of Representatives, the comment was made that they were philosophically opposed to paying for or offsetting the cost because they did not want to get into a position where they would have to find a way to do that in the future. So they rejected an

offer that was made by at least one Democratic Senator to use some stimulus funding to offset the cost of unemployment benefits. No, they said, we don't want to do that. We do not want to offset the costs in any way. We want to add to the debt.

So it seems a little hypocritical now for colleagues to come to the floor and say: Oh, we have this big deficit problem. We don't want to add any more to the debt. Let's raise taxes.

Then they have the temerity to say to Republicans—who say, we do not want to raise taxes on anybody, on corporations, on businesses, large, small, individuals, or anybody else—to say: Well, then, in that case, you are going to have to raise taxes on somebody because the budget assumes the tax rates that currently exist are going to be increased next year. So if you are going to increase those tax rates for some people—let's say the top two brackets—how are you going to pay for that?

We say: What is to pay for? Taxes should not be raised. They should not be raised on anybody.

Several of our colleagues on the other side of the aisle are apparently in agreement with that. This is not the time to raise taxes on anybody.

But in any event, if you say: Well, we have to raise taxes to reduce the budget deficit, then why just raise taxes on the top two income tax brackets? That would raise, over 10 years, \$682 billion. But if you raise taxes on everybody, you could raise taxes by \$2.731 trillion.

Well, the obvious answer is, well, we wouldn't want to pay for that. We wouldn't want to offset the cost of that.

But you have to figure out a way to offset the cost if we raise taxes on the upper two brackets. It is a circular argument that I suggest both makes no sense and is hypocritical.

The bottom line is this: Small businesses will get killed by an increase in the rates of income tax—the so-called upper two brackets. Twenty million people are employed by small businesses that pay their taxes in those two brackets. As a result, what you are going to do is inhibit the growth of our small businesses. An increase in the top effective rate—this is from Douglas Holtz-Eakin—from 35 percent to 42 percent would lower the probability that a small business entrepreneur would add to payrolls by roughly 18 percent.

So I think all of us realize that raising taxes, especially in those top two brackets, will inhibit growth because small business owners will have to pay the tax rather than hire someone. As I said before, according to the NFIB, there are more than 20 million workers in those firms directly targeted by the higher marginal rates. We would have to, in effect—and this came as a result of statistics presented to us by Senator SNOWE, who is also on the Finance Committee—you would need to have economic growth of 5.8 percent—about twice as much as we have today—in order to return to a 5-percent unem-

ployment rate by 2012. To get there by 2013, you would have to have an annual growth rate of 5 percent to get back to 5 percent unemployment. Well, how are we going to increase growth by that much?

I come back full circle to my original point: Our goal is economic growth and job creation. You do not get there by raising taxes. So when my colleagues start talking about raising taxes on anybody—from the death tax to the capital gains tax to marginal rates—my question to them is, Given the fact that the Chairwoman of the President's Council of Economic Advisers has been so clear that this will inhibit job creation and economic growth, why would you want to do that? Why would you want to inhibit economic growth and job creation? The better way, if we are really interested in reducing the deficit, as we should be, is to begin to slow down the spending so that eventually we are not spending more than we take in.

I will close with this point: Last Friday, the White House announced that it turns out the deficit for next year is going to be \$1.47 trillion. That is about three times higher than the highest deficit with President Bush, and that was when the Democratic Congress was appropriating the money. The year before that, it was less than \$200 billion. In fact, the exact deficit the last year Republicans were in control of the Congress and President Bush was President was \$160 billion—\$160 billion. That was 1.2 percent of GDP. For next year, it is going to be \$1.47 trillion—\$1.471 trillion—or 10 percent of our GDP.

The answer is clear: The way to reduce our deficits and reduce our debt is by reducing spending. The way to economic growth is by not increasing taxes. So I hope my colleagues will consider this as we begin to debate the plans to finally achieve economic growth and job creation for the United States.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President and colleagues, I rise today to talk about this legislation, the DISCLOSE Act.

Like much of the legislation that is being taken up in the Senate these days, the partisan battle lines are already being drawn on this bill. One side sees the impending vote as yet another opportunity to score some political points off the other, and vice versa. That makes for a lively debate, but I am not sure what good it does the American people.

I will say on a personal note that I will always fight with every ounce of my strength for the people of Oregon and the folks whom I have the honor to represent. I say to the Presiding Officer, you and I have talked about this from time to time. I do not exactly come to the floor of the Senate looking for gratuitous, political, counter-productive fights. What I have been interested in, what I have tried to make the hallmark of my service here, is trying to find common ground, trying to

find ways to bring people together. Some have said that is overly optimistic, almost too idealistic. But I prefer to say it is simply bipartisanship and principled bipartisan. It has been my experience in the Senate that if you can get folks to put aside their political talking points and focus on commonsense policy, not only are there opportunities for us in the Senate to find common ground, there are opportunities to advance policies that make sense for all Americans, whether they are Democrats or Republicans. I have joined Senator SCHUMER in cosponsoring the DISCLOSE Act because I continue to believe this is such an opportunity for bipartisanship and finding common ground.

For me, this issue took hold after the 1996 special election where Senator Smith, my former colleague—my very good and personal friend—and I campaigned against each other to be Oregon's first new U.S. Senator in more than 30 years. Suffice it to say that campaign was not the kind of calm and upbeat debate that folks here in the Senate would expect from either me or from Gordon Smith. Instead, it was one of the ugliest campaigns in Oregon history. There were attack ads being run by both the left and the right. Certainly, while policy differences and personal criticisms are fair and an almost inevitable part of a political campaign, what bothered Senator Smith and me at that time, during that special election—the only race that was being run anywhere in our country—is not only did Oregon voters not know who was responsible for the bulk of those ads; neither Gordon Smith nor I could figure out who was saying what about whom.

My view was that something had to change. Something is way out of whack when you are having scores of ads, hundreds and hundreds of ads being run, and no one can figure out who is running them. My concern is that we are heading back into exactly that same kind of situation, given the decision from the U.S. Supreme Court.

Shortly after my election in 1996, when I had watched all of those ads being run from all those various and sundry groups and not able to identify who was running them, I came back to the Senate and said I am going to do everything I can to change that. I got together with a number of us on both sides of the aisle; let me emphasize that, because it can't be emphasized enough. This was a bipartisan group that was concerned about that particular issue. We came up with a concept known as Stand By Your Ad, where, in effect, those who run ads in their campaigns—it has continued to this day—would have to own up to their being the ones sponsoring the message.

As part of the campaign reform of 2002, Stand By Your Ad was included. In my view, it has ushered in a new era of personal accountability in political elections by requiring candidates to

take personal responsibility for the contents of their ads. Not only has every Member of this body seen those ads; my guess is just about everyone but our new colleague from West Virginia has actually recorded those ads. That is, in effect, what is required. One has to say: "I am Ron Wyden and I approved this message." It certainly isn't a hard thing to do, and it certainly is not out of line with what the American people have a right to expect, which is openness and personal accountability.

Now with the Supreme Court decision giving corporations and unions and even foreign economic interests the ability to spend as much, if not more, money to influence elections than the candidates themselves, I think it is only right that these groups abide by the same rules as the candidates themselves. Just as voters have a right to know when a candidate is trying to influence their vote, I believe voters have a right to know when one of these powerful organizations seeks to do the same.

Of course, this is going to have an impact on the content of political speech. Sunlight is the most powerful disinfectant, and I think all of us ought to understand these groups that are buying all these ads are going to be a little bit more hesitant to pay for an outrageous attack, an outlandish overreach, if they know they have to put their name on it. I think the question that ought to be asked here in the Senate is not why should organizations have to stand by their political speech, but the question should be why don't they want to. What are they actually ashamed of? In my view, if you feel strongly enough about an issue to buy television time, you ought to have the guts to put your name on it. I have felt that ever since 1996 when I first campaigned for the Senate, and I continue to believe that today.

I know the debate we are going to have tonight and tomorrow on the DISCLOSE Act is going to spur a lot of very impassioned speeches about political elections, and there are going to be accusations flown by one side or another about who is going to get a political advantage and what ought to be done to quash the person who is somehow deriving a political advantage out of it. But I would simply say as we go into this discussion that everybody here in the Senate ought to remember exactly how we earned our seats in the first place.

This very institution was founded on the idea of equality and free and open debate. Each and every citizen's voice and vote would be given the same weight as each and every other. What concerns me is that the Supreme Court decision, in my view—I say this respectfully—does a disservice to that concept by making it possible for some voices to drown out others. That is what ought to be contemplated at this point, and it is certainly what I have been talking about at home, which is that this decision has made it effec-

tively possible for a foreign economic interest to have a louder voice in this country's political process than a hard-working, tax-paying Oregonian. I don't think that is fair; I don't think it is just; and I am not prepared to stand for it.

I am proud to join Senator SCHUMER in sponsoring and advocating for this important legislation that, in my view, is worthy of bipartisanship. I know there is going to be a strong push to deal with the politics of this issue, but I think this bill is now worthy of bipartisan support.

Changes have been made to the legislation to address some of the original concerns that were expressed about the bill. There were concerns originally addressed that some groups weren't being held as accountable as others and I believe the legislation has been amended to correct many of those problems. I think Senator SCHUMER deserves considerable credit for it. I have always felt that a credible effort at transparency means you have to hold your friends just as accountable as those who may disagree with you, and this legislation does that. It does other important reforms in terms of electronic filing, and I think it is very much in the interests of the American people. It certainly will make it possible for the press to report more expeditiously on these kinds of expenditures.

I wish to commend Chairman SCHUMER of the Rules Committee. I think he has been genuinely interested in a collaborative and open process. I believe Senator SCHUMER has asked me specifically to participate in this kind of process because he knows that is what I feel so strongly about.

We have major issues we have to tackle in the days ahead. I heard Senator KYL talk about taxes. Senator KYL made a point, in discussing taxes with me, about the whole role of tax expenditures which, in effect, is a huge issue in this tax debate. Senator GREGG and I have put out the first bipartisan tax reform bill in two decades. So we have a lot of work to do here and we have to do it in a bipartisan way. I am very hopeful the changes that have now been made, particularly ones ensuring that one makes it clear—that it is so important that accountability and transparency apply in the broadest possible way—and that will make it possible to bring both sides together here in the Senate.

We came together back in 1996 to write Stand By Your Ad. A number of those Senators on both sides of the aisle I know feel very strongly about open and transparent government. Let's find a way for the Senate to duplicate what we did in 1996, and let's make sure that as we go into this election there is transparency and accountability. I don't want to see again what we saw back in 1996 where ads are flying from all sides, in every direction, making charges that are clearly outrageous and over the line and in no way ensures that voters know who is

paying for those ads. The country deserves better. The Senate ought to make it possible for the country to get better and more accountable government, and I am very hopeful this Senate will pass the DISCLOSE Act, particularly the important changes that Senator SCHUMER has made, in the days ahead.

Mr. President, I yield the floor.

Mr. DORGAN. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE ECONOMY

Mr. DORGAN. Mr. President, I listened with some interest to my colleague from Arizona, the minority whip, discuss his notion about the economic issues confronting our country. I wish to respond a bit to them with great respect, of course, because I think the opportunity to have competing ideas about our country's future is a very important opportunity here on the floor of the Senate.

Some long while ago I wrote in a book that I published about Stanley Newberg. I wrote in the book that I had read about Stanley in a very small New York Times article, but it so piqued my interest that I decided to try to find out about Stanley, so I did. I found that Stanley had come to this country as a young boy to escape the persecution of the Jews by the Nazis. He, with his father, sold fish, I believe, on the Lower East Side of New York City, in Manhattan. He followed his dad selling fish. He learned English. He went to school. Then he was able to do well in school and go to college. His parents had saved for him. He went to college and graduated from college and then went to work. He got a law degree and then he went to work for an aluminum company. He did so well he rose up and finally managed the aluminum company and then purchased the aluminum company. When he died, they opened his will. In his will he said he wanted to leave his \$5.7 million to the United States of America for the privilege of living in this great country, and that was Stanley Newberg's will.

I thought: That is really unusual for someone to die and in their will leave their money to this country with gratitude for the privilege of living in this great country. What a remarkable thing to remind all of us that being an American is something we shouldn't take for granted Monday through Friday or all week long, for that matter.

It is the case, I think, for most of us that when we grew up, we understood this country was the biggest, the strongest, the best, destined to expand opportunity for our children, and things would always be better for the

next generation than for the last. That is how we viewed this country of ours.

But it is the case, it seems to me, these days that America has lost a step. There is great concern about whether the kids will have it better than we had it. There is great concern about the economy and the fact that there are probably 18 million to 20 million people who woke up this morning either without a job, or with less of a job than they could easily handle. They are underemployed or unemployed—18 million to 20 million people. People woke up this morning and saw the news that we are deep in debt and getting deeper in debt. They are concerned about the federal debt, and they should be, there is no question about that.

Let me, for a moment—because I want to engage on the proposition by my colleague from Arizona—transport us back to 2001. In 2001, on the floor of the Senate, during that period, we had a pretty raucous debate. That debate on the Senate floor was about the first budget surplus in 30 years under the last year of President Bill Clinton—a budget surplus of a couple hundred billion dollars. Alan Greenspan was not sleeping at night because he was worried that we were going to pay down the Federal debt too rapidly and that would injure the economy. Many of my colleagues said we have a surplus now, and the economists project that we are going to have surpluses for 10 years—as far as the eye can see. You have heard the old line that if you were to lay all the economists end to end, they would never reach a conclusion. Individually, almost all of them said we have a surplus, and now we will have one as far as the eye can see. Many of my colleagues supported George W. Bush's proposal to provide tax cuts for the next 10 years. They said: Let's provide tax cuts for the next 10 years because we need to give this surplus back to the American people.

I stood on the floor of the Senate then and said I don't think we ought to give back tax funds that don't yet exist. These surpluses are only projections. What if something would happen? How about being a little conservative about this? But, no, Katy bar the door; they said we are going to provide large tax cuts, and the largest to the wealthiest Americans, such that if you made \$1 million a year in income, you got an \$80,000 or so a year tax cut. That was the proposal. It passed—without my support, but it passed. So that was the experience in 2001.

Fast forward to 2010. Where are we? We are \$13 trillion in debt. By the way, this is testimony before the Senate Committee on Finance by Leonard Burman, who is the Daniel Patrick Moynihan Professor of Public Affairs at the Maxwell School at Syracuse University:

If the Bush tax cuts had never been enacted, the debt held by the public at the end of 2009 would have been 30 percent lower, to about \$5.2 trillion . . . This was less than the level of debt at the end of 1999.

The question is—and this is what brought me to the Senate floor—my colleague says we have to extend the tax cuts that were provided in 2001. The President says let's extend the tax cuts for middle-income folks making \$250,000 a year, or below. My colleague from Arizona, and others, say, no, let's extend all of Bush's tax cuts from 2001. Let's extend them all. The difference is about \$1 trillion added to the debt over the next decade. Extending those tax cuts for roughly 2 percent of the wealthiest U.S. households will cost, with interest, about \$1 trillion.

My colleague says if you don't do that, then you are increasing taxes on upper income people, and that is going to retard economic growth. Let me talk for a bit about that, because it is interesting to me that those who are on the floor saying let us not let the tax cuts expire—by the way, these were tax cuts for upper income people, who got the largest tax cuts, and they were given because we were trying to give a surplus back. Does anybody see a surplus around here? Has anybody seen a surplus for 9 years?

Right after the Senate and the Congress passed legislation to provide significant tax cuts for wealthy Americans, we had a recession in 2001, on 9/11 we had a devastating terrorist attack, and then we went to war in Afghanistan, and then we went to war in Iraq, and we had a continuing war against terrorism. We never saw a surplus beyond that year. That deficit and debt went up, up, up, and up.

At the same time all of that was happening, this new administration that came in in 2001 not only said we are going to cut taxes largely for the wealthy, but they said we are going to hire a bunch of regulators in this town who will promise not to look. You do what you want and we won't watch. Wall Street went wild. It was an unbelievable carnival of greed. We had trillions and trillions of dollars of financial vehicles being created that had never been created before, such as naked credit default swaps, synthetic CDOs—you name it—and they were trading back and forth. As Will Rogers said, people were trading things they never got from people who never had it. Everybody was making a lot of money on Wall Street, like hogs in slop, as they say on the farm.

The fact is that the house of cards they created came tumbling down. When this President crossed the threshold of the White House in January of last year, had he taken a Rip Van Winkle nap for a year and done nothing, the budget deficit he inherited was going to be \$1.3 trillion. Now we have a \$13 trillion Federal budget deficit, and now we have the circumstances of a tax cut, the bulk of which went to the wealthy, that was described by the minority 9 years ago as being essential to give back the surplus that doesn't exist.

The question is, will that tax cut be extended for the wealthiest Americans?

Phrased another way, shall we add another \$1 trillion in Federal debt in order to give tax cuts at \$80,000 a year to someone who makes \$1 million a year? At the same time our colleagues say that is essential to do, they say if you don't do that, you will have an unbelievable impact on small business, because that is who will pay these taxes. That is not true at all—just not true. About 3 percent of small business income, would be captured by that; 97 percent would not. Those are the facts.

At the same time we have people pushing for that—adding \$1 trillion to the debt by giving the highest income earners in the country extended tax cuts—the same folks are coming to the floor and saying, by the way, one of our highest priorities is not only to extend the tax cuts for the highest income earners, it is to make sure we repeal permanently the estate tax. They don't call it that; they call it the "death tax." Why do they do that? Because a pollster did a poll and said if you call it the "death tax," you can fool the American people who will believe there is a tax on death. But of course, there is not; there is a tax on inherited wealth.

It seems to me that is an interesting set of priorities. They say we are concerned about the Federal deficit and debt—and, by the way, we want to add \$1 trillion to the debt by opposing President Obama's request that we not extend the tax cuts for people making over \$250,000. We want to add \$1 trillion to the debt, and we also want to repeal the entire estate tax.

I don't know how one believes that set of priorities represents the best interests of our country. I am for lower taxes. I would love it if people could pay minimal taxes across this country. But I am also for a country that works, and a country that matters, and a country that invests in itself and its future. Someone once asked the question: If you were given the assignment to write an obituary and the only information you had about the deceased was their check register, what would you write? So you look at that check register and find out what did they spend money on? What was their value system? What was important to them?

The same is true with the Federal budget and the priorities we described by taxing and spending. What will historians say when looking back and seeing that we were in deep trouble, with 20 million people out of work or underemployed, a \$13 trillion debt, and the minority was saying the highest priority was to cut taxes for those earning \$250,000, and more, and to repeal the tax on inherited wealth? That is unbelievable.

You know, the only way, as of last year, you would pay any tax on inherited wealth is if you had more than \$7 million a year. How many families have more than \$7 million net per year? By the way, this year, the inheritance tax is zero, and it springs back the next year. That goofy set of cir-

cumstances was arranged by the same people who wrote the tax cut bill in 2001 to give back a surplus that turned out not to exist. So we have a zero tax year this year, and four billionaires have died so far. By the way, their estate will pay a zero rate, and my colleagues come to the floor and say that money has already been taxed. Wrong, it has not. Much of it is growth appreciation of property or tax, and it has never borne a tax. It is just the folks who go to work every day and pay their taxes on time; they pay for their kids' schools, and roads, and police, and fire protection, and the Defense Department, and the CDC—they are the ones paying the taxes.

But do you know what? If you find the people who have 10, 15, 20, and \$50 million in assets—I will show you that the bulk of that has come through growth appreciation that has never borne a tax at all in this country. That is the highest priority for the minority—to eliminate the tax on inherited wealth. That is unbelievable to me.

We in this country have a very serious set of problems. We need to cut Federal spending, there is no question about that. Federal agencies are big and, in some cases, bloated. I mentioned the other day that I think I have done pretty well myself. I want to spend in this country to invest in good things that will make this a better country. I want us to continue building and improving our roads, our schools, and the things that make this a better country. But I also believe we ought to cut back where we should.

In my State, some years ago, there was a proposal to build a new courthouse, and \$46 million was put into an appropriations bill, which passed, to build a new courthouse in the largest city of my State. I thought it was way overboard, so I cut it to \$23 million—in half. It was built for \$19 million. Some people say: That is strange, cutting funding for your own State. But I thought it was excessive spending. I don't care whether it is my State, or other States; we need to tighten our belts and cut spending. We can cut in areas where we are spending too much, no question about that.

You don't address this unbelievable burden of debt deficit and by deciding you are going to cut your revenue as well. You cannot do that. Who will pay for this country and what it needs? We have some people at the top of the income ladder in this country who are only paying a 15-percent income tax rate—the highest income earner, 2 years ago, earned \$3.6 billion—that is \$300 million a month—and paid a 15-percent tax rate.

Most working people don't get to pay a tax rate that low. Some of those folks are running their companies through tax haven countries, with deferred compensation deals to even avoid paying a 15-percent rate. Somebody has to pay some taxes to invest in the future of this country. We need to invest in our children and in our infra-

structure. Somebody has to pay those taxes. I understand that nobody likes to pay them very much, but we have to get control of this deficit, no question about that. We have to decide as a country that you can't ask men and women to lace up their boots and put on ceramic body armor and go halfway around the world and take a gun and fight and be shot at and, by the way, we ask you to do that in the name of our country, and we will not pay for a penny of it. We will add it to the debt. We have done that for 8 years. We cannot continue to do that. Americans know better than that.

Let me finish by saying that, as I said earlier, we should not necessarily believe that everything will be all right just because we live here in America. This country deserves good judgment and tough decisions to put the country back on track. In the book McCullough wrote on John Adams, they were putting this new country together and he was traveling in Europe. The record of all of that is in his letters to Abigail. He would write back as he was traveling abroad and ask the plaintive question: Where will the leadership come from to build this new country? From where will the leadership come? Who will be the leaders as we try to put this new country together? Then, in the next letter, he would answer the question.

There is only us to provide the leadership. There is me. There is Ben Franklin, Thomas Jefferson, George Washington, Madison, Mason. In the rearview mirror of history, the "only us" represents some pretty unbelievable human talent who risked their lives, risked their fortunes, risked all they had to do the right thing for this country.

The question for us now, with a \$13 trillion debt, an anemic economy, great partisan divides that exist between the political parties, and elections coming up in November, the question is, From where will the leadership come? Who really is willing to lead this country by saying: Here is what we have to do? It is not pleasant always. But who is willing to make those judgments to say we cannot just always take for granted what America's future might be based on what it was? This country deserves better.

I am not here to say one party is all right and one party is all wrong. I heard my colleagues say: If you do this, it is bad for small businesses. That is not the case in any event. We have had a bill on the Senate floor that would provide assistance, help, and investment to small businesses. It has been on the floor 3 weeks, and the very people who say they are for small businesses have been blocking it for 3 weeks. All we need is some straight talk from time to time.

I would like everybody to pay the lowest possible tax rate. I would like our government to be the most efficient. I would like us to invest in the future of our country. I would like all

those things to happen. I would like it if we were not at war. I watched yesterday down at a place called the Newseum. Once again, I watched the video of 9/11/2001. That was not brought on by us; that was brought on by others, and we did not have a choice but to address these issues.

When we do these things, we must do them as a country that cares about our future. We cannot just spend money, send soldiers to war, do all these things and say: We don't have to pay for any of it and you all will understand. That is not leadership.

This President inherited a pretty tough situation. Now he is criticized for saying he inherited a tough situation. The history books will write what he inherited. He is trying pretty hard but does not get agreement on much of anything these days. At the very least we ought to say we agree, let's extend tax cuts for middle-class Americans. This is a pretty tough time for them. But we had some of the highest rates of growth in this country when the wealthiest Americans were paying the tax rate that previously existed. Extending tax cuts for the wealthy at a time when we are at war and we say we would like to extend to them an \$80,000-a-year tax cut if they have a \$1 million a year income? That is not leadership, in my judgment.

This country deserves better, this country can do better, and this Congress can do better with a little less partisanship and a little more thought and see if we can come together to represent the future of this country.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DORGAN. Mr. President, I forgot to put my chart up again. Every day I want to remind people what this is all about.

Will Rogers, 80 years ago, said what applies today. He said:

The unemployed here ain't eating regular, but we'll get around to them as soon as everybody else gets fixed up OK.

We will get around to the unemployed as soon as everybody else gets fixed up OK. I am part of the Old West out in the northern Great Plains. They used to say about wagon trains: You don't move a wagon train ahead by leaving some wagons behind. This country is best when it works together.

Will Rogers described this in the 1930s:

The unemployed here ain't eating regular, but we'll get around to them as soon as everybody else gets fixed up OK.

Wall Street got fixed up with hundreds and hundreds of billions of dollars and untold trillions from the back door of the Federal Reserve Board.

They got fixed up. Now they are seeing record profits again.

There are a whole lot of folks at the bottom of the economic ladder who are not fixed up and are out of work—not from their fault, nothing they did; they are just out of work because they lost their jobs during a severe economic downturn.

It seems to me that is what requires our leadership. In this Chamber, at this moment, nobody is out of work. Everybody puts on a white shirt, a suit, and comes to work. Nobody is out of work. But a whole lot of Americans are. We ought to keep our priorities on that every single day.

This country works best when we are able to put people back to work. There is no social program this Senate is involved in, no social program as important as a good job that pays well. That is what makes everything else possible.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

SEPARATION OF POWERS

Mr. SPECTER. Madam President, I have sought recognition to comment about the serious erosion of the doctrine of separation of powers during the course of the past two decades. With the pendency of the confirmation of Solicitor General Elena Kagan for the Supreme Court of the United States, this is a particularly apt time to discuss this matter since these issues were a part of the confirmation process.

What we have found in the course of the past two decades is that Congress has lost considerable institutional authority, with the Court taking over on congressional authority or by refusing to decide certain cases, leaving the executive branch a great deal of what had been congressional authority. We find, for example, that the Foreign Intelligence Surveillance Act—where the Congress of the United States determined that the exclusive way for obtaining a wiretap on the invasion of privacy was through a court order—has been abrogated to a substantial extent by the terrorist surveillance program, which I shall speak about at a later time. Similarly, when you have the Foreign Sovereign Immunities Act, again by deciding not to take the case involving the survivors of 9/11, the Court has left the executive branch with considerable authority which, I would submit, rightfully belongs to the Congress.

But today the issue I want to discuss, and I will turn to others at a later time, is the question of how the Court has taken over more of congressional authority by moving into the area of

fact finding, which is a traditional legislative responsibility.

Chief Justice Roberts, in his confirmation hearings, testified extensively, as did Justice Scalia in his confirmation hearings, about it being a legislative function to find the facts. Congress has the institutional competence to have hearings, to examine witnesses, to go into evidence, and to make a factual determination about what public policy should be. As Chief Justice Roberts said in his confirmation hearing, when the Court moves into that area, the Court is, in effect, legislating.

I submit that where the traditional doctrine of separation of powers is being altered, it is a very fundamental and serious change in our constitutional structure. Separation of powers is an integral part of the structure of the Constitution: article I for the legislative branch, article II for the executive branch, and article III for the judicial branch. This separation of powers has provided the checks and balance in our system.

But in the course of the past two decades, the Court has moved into an area where Congress had traditionally been in charge. In the case of *United States v. Lopez*, a 5-to-4 decision decided in 1995, the Supreme Court of the United States said legislation which limited someone from carrying a gun on school property was unconstitutional because it was not justified under the commerce clause. This was a very surprising decision because there had not been a successful challenge to the exercise of Congressional authority legislating under the commerce clause for some 60 years.

This is what Justice Souter had to say, for a four-Justice dissent, the case being a 5-to-4 decision, as so many of them are. In dissent, Justice Souter said the Court should defer to "congressional judgment . . . that its regulation addresses a subject substantially affecting interstate commerce if there is any rational basis for such a finding. . . . The practice of deferring to rationally based legislative judgments is a paradigm of judicial restraint. . . . [I]t reflects our respect for the institutional competition of Congress on a subject expressly assigned by the Constitution to the Congress and our appreciation of the legitimacy that comes from Congress's political accountability in dealing with matters open to a wide range of possible choices. . . . The modern respect for the competence and primacy of Congress in matters affecting commerce developed only after one of the Court's most chastening experiences. . . ." Justice Souter was referring to what happened to the Supreme Court during the New Deal era when the Supreme Court in the 1930s struck down a great many of the congressional enactments, leading to a great deal of controversy, leading to proposals to expand the number of Justices, and the famous President Roosevelt Court-packing

plan. But within what Justice Souter says, and what I have just quoted, it is a matter of legislation when the Court moves into the fact-finding process.

The Lopez case was followed 5 years later by the case of *United States v. Morrison*. There, the Supreme Court of the United States invalidated portions of the Violence Against Women Act, holding that they were not constitutional because of the congressional method of reasoning. Again, Justice Souter sounded the clarion call, speaking for four Justices when he said:

Congress has the power to legislate with regard to activity that, in the aggregate, has a substantial effect on interstate commerce. . . . The fact of such a substantial effect is not an issue for the courts in the first instance . . . but for the Congress, whose institutional capacity for gathering evidence and taking testimony far exceed ours. . . . The business of the courts is to review the congressional assessment, not for soundness but simply for the rationality of concluding that a jurisdictional basis exists in fact.

Justice Souter then went on to point out that there was a mountain of evidence in support of what the Congress had decided to do.

The Supreme Court of the United States later invalidated congressional legislation in *Kimel v. Florida Board of Regents*, largely on the same ground. The case involved allegations of violations of age discrimination in employment, and, in the *Kimel* case as in the *Morrison* case, the Court relied upon a test where it said the act of Congress should be judged in terms of its proportionality and congruence. This test of congruence and proportionality was articulated by the Supreme Court in the *City of Boerne* case. It had never been a part of constitutional doctrine, and the grave difficulty is in inferring what is meant by congruence and proportionality.

In a later floor statement, I will take up two decisions of the Supreme Court of the United States, each 5 to 4, involving the Americans with Disabilities Act.

One of the problems which has been found in the confirmation process is the grave difficulty of getting an idea of the ideology of the nominees because of the refusal of the nominees to answer questions. It was thought that the confirmation proceeding of Solicitor General Elena Kagan would provide an opportunity to find out something about the approach, the ideology or philosophy of the nominee because Ms. Kagan had written so critically, in a 1995 article in *The University of Chicago Law Review*, about the nomination proceedings involving Justice Ginsburg and Justice Breyer.

Ms. Kagan, in that argument, criticized them for stonewalling and not answering any questions. Also, Ms. Kagan in that article criticized the Congress—the Senate, really—for not doing its job in the confirmation process and finding out where the nominees stood.

When Ms. Kagan appeared before the Judiciary Committee, it was a repeat performance. One question which I

asked her brought the issue into very sharp focus. I asked her what standard would she apply, if confirmed, on judging constitutionality? Would she use the “rational basis” standard, which had been the standard of the Supreme Court for decades, the standard which Justice Souter talked about in the two dissenting opinions I have just referenced? Or would she use the “congruent and proportional” standard, which had everybody befuddled.

Justice Scalia said that the standard of proportionality and congruence is a “flabby standard,” which was so indefinite, vague, and unsubstantial that it left the Supreme Court open to make any determination it chose and in effect to legislate.

In later floor statements, I will take up the question as to what might be done to try to stop this erosion of the doctrine of separation of powers, what might be done to stop the reduction of Congressional authority. One line which had been suggested was to defeat nominees. As I will comment later in more detail, there does not seem to be much of a Senate disposition to defeat nominees for failure to answer questions. Based upon what has happened in every confirmation proceeding since Judge Bork’s confirmation proceeding in 1987, the practice has evolved of no answers and confirmation.

Another idea was explored by Senator DeConcini and myself after the Scalia hearings, where Justice Scalia answered virtually nothing. Justice Scalia was confirmed in 1986. Justice Bork’s confirmation proceeding followed in 1987, and after Judge Bork did answer questions, as he really had to with such an extensive paper trail, Senator DeConcini and I decided we didn’t need to pursue the idea of a Senate standard. But that is an option which might be considered.

Another potential method of dealing with the issue would be the idea of televising the Supreme Court—which I have talked about and will talk about in some detail at a later date. Taking off on what Justice Brandeis said about sunlight being the best disinfectant, and publicity being the way, as Justice Brandeis put it in a famous article in 1913—being the way to deal with social ills.

In an article in the *Washington Post* on July 14, just a couple of weeks ago, a noted commentator on the Supreme Court, Stuart Taylor, said that the only way the Supreme Court would change its ways is if there was an infuriated public. To infuriate the public, the first thing that has to happen is for the public to understand what the Supreme Court is doing.

In light of the lateness of the hour, that is a subject which I will take up at a later time in detail. But the focus today is on the three cases: the Lopez case, the Morrison case, and the Kimel case.

I thank the staff for staying overtime. I know there had been a hope to conclude a few minutes earlier, by 6,

but we are not too far gone considering tradition on the Senate floor of extended presentations.

I believe there is an announcement the clerk would like me to make in concluding the proceedings today?

MORNING BUSINESS

Mr. SPECTER. Madam President, I ask unanimous consent to proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

20TH ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT

Mr. DODD. Madam President, I rise today to commemorate the 20th anniversary of the passage of the Americans with Disabilities Act.

The enactment of this important legislation was a significant milestone in our national journey to perfect our Union, uphold our founding values, and reaffirm our commitment to ensuring that the rights enshrined in our Constitution are truly available to all of our citizens. I was honored to have been able to support this bill in 1990, and am proud to be here today to talk about what its enactment means to millions of our fellow Americans, as well as to celebrate the contributions of those whose tireless work, and undying support, made passage of this bill a reality.

Thanks to this landmark law, our country has made progress in eliminating the historical stigma previously associated with mental and physical disabilities. It is also a critical step toward guaranteeing basic civil rights for an entire population who, for much of our Nation’s history, have faced incredible unfairness and isolation. For decades, we have fought for the civil rights of people with disabilities, combating the antiquated mindsets of segregation, discrimination, and ignorance. Our Nation has come from a time when the exclusion of people with disabilities was the norm. We have come from a time when doctors told parents that their children with disabilities were better left isolated in institutions. We have come from a time when individuals with disabilities were not considered contributing members of society.

Those times have thankfully changed. The passage of the ADA in 1990 provided the first step toward that change our country so desperately needed, and 20 years later, many of these individuals are thriving in ways that a few short years ago, would have been unthinkable. More and more, individuals with disabilities are able to integrate into communities across America. Thanks to the ADA, they are finding employment, buying their first home, and enjoying our public parks,