

are supposed to have passed a budget by April 15—tax day. We haven't even begun to mark it up.

People are attempting, politically, to explain. The Democratic spinmasters are attempting to explain what it is all about. Why are we doing these things? Why hasn't a real budget been produced? They say Republicans are divided. They say: Oh, tea party people and Republicans are all divided. The Republican House has passed a budget. Where is the Democratic Senate? Who is divided? Why can't they produce a document? Why do we have to have the Vice President and the President having meetings and the President giving speeches? Why don't we see a real budget that the American people can see in advance and be able to evaluate and Senators standing, as we are paid to do, and casting votes for or against it? That is what we need to be doing.

I don't agree with the fact that the President is leading. I wish I could say that. Maybe he will surprise us on Thursday with something. I hope so. But I don't sense any leadership at all, because the budget he produced will not do the job. That is the only one we have in the Senate at this point. Indeed, Mr. Erskine Bowles, the man the President chose to head his fiscal commission, said the President's budget came nowhere near doing what is necessary. Actually, what he said was the President's budget goes nowhere near where they will have to go to resolve our fiscal nightmare.

I am wondering what is happening. The American people get it. They sent a message in the elections last November. They sent 64 new Members to the House of Representatives, and every single one of them promised to do something about reckless spending in Washington.

What about this budget the President has submitted to us? It is the only one we have in the Senate. The Senate Democratic leadership hasn't presented one. The President's budget called for a 10.5-percent increase in education, a 9.5-percent increase in energy, a 10.5-percent in the State Department's budget, and a 62-percent increase in the transportation budget. Well, we don't have the money. Forty cents of every \$1 we spend is borrowed. That cannot be continued. We are on an unsustainable path. The American people know it. Every expert has told us. We know it. Where are our leaders in the Senate?

Senator CONRAD, apparently, made a presentation of his budget, and the Republicans have asked Senator CONRAD to present it to us 72 hours before the committee meets. He said he is not going to do that. He made a presentation to the Democratic conference and, apparently, it didn't go well. Senator CONRAD apparently proposed reducing spending more than they liked to hear. The Democratic leader, Senator REID, was sort of critical, actually. He said it was a nice bunch of charts. Obviously, he wasn't happy.

When are we going to see a budget? Are we going to go another 700 days? Are we not going to have a budget this year? The way things should work is like this: The Senate should come forward—the Democratic Senate, because they have the majority and we can pass a budget with a simple majority—and propose a budget that hopefully will get bipartisan support. If not, they stand and say what they believe in and how this budget reflects their vision for America. The House has done that. Then we go to conference committee. After it comes to the floor and is voted on, it goes to the conference committee and differences are worked out. Then it comes back and we have to vote on final passage of an agreed-upon budget.

We have to have a budget. It is time for this country to begin to reverse the reckless trend we are on because we are placing our Nation at risk. Mr. Bowles and Senator Alan Simpson, when they testified before the Budget Committee, warned us we have to do something significant. In the written statement they both signed, they said we are facing the most predictable economic crisis in our history. When asked when that could occur, Mr. Bowles said 2 years, maybe. Alan Simpson said: I think maybe 1. We are not talking about our grandchildren. I am talking about now.

What I would just say is, I think it is time for us to go back to regular order. We have tried a lot of different approaches to confront this crisis we face. It seems to me our leadership in the Senate is desperately seeking to avoid having to do what is responsible; that is, to stand and produce a budget. If they aren't prepared to stand before the American people and tell them how they think the country ought to be run and where the money ought to be spent and how much ought to be collected, then they are not leading, it seems to me.

I am very disappointed in the President's leadership. He has been roundly criticized because the only proposal he has sent to us is irresponsible. It in no way comes close, as Mr. Bowles said, to doing what is necessary to avoid our fiscal nightmare, and that is the path we are headed toward. It is not a matter of dispute. We will not reach 10, 15 years down the road spending like we are because we will have a catastrophe before then.

Alan Greenspan, the former head of the Federal Reserve, said he thought maybe some sort of compromise would be reached that would be good for the country. The only question, he said, was whether it would be before or after a debt crisis occurs. This was a few weeks ago that Alan Greenspan was saying this.

It is a challenge for us and a challenge for the leadership in this Senate to come before the American people and produce their plan and seek support on the floor of the Senate. Let's debate it. Let's have amendments offered. Let's go to conference, and some-

how, some way hammer out a budget that will put this country on a better path. We have no other choice. It is the defining moment for this Congress. We have no higher duty than to confront the dangerous fiscal path we are on.

ORDER OF PROCEDURE

Mr. REID. Madam President, I ask unanimous consent that at 2:15 today the Senate proceed to executive session and begin consideration of Executive Calendar No. 61, the nomination of Edward Chen of California to be U.S. District Judge for the Northern District of California under the previous order.

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

Mr. REID. Madam President, there will be 3 hours of debate on the Chen nomination beginning at 2:15 p.m. today. Senators can expect a rollcall vote on the Chen nomination at approximately 5:15 p.m. today.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arkansas.

FLOODING AND FEMA

Mr. PRYOR. Madam President, I will speak in morning business for 10 minutes or less. Let me talk about a couple things this morning. First, I wish to talk about something my State has been going through since mid-March and has continued to the present day. We have been battered by tornadoes and high winds and now flooding. We see this in a photo that was taken a few days ago, late last week, of one of the areas in our State underwater. We have had many towns that have been evacuated, many counties have been declared disaster areas. In fact, the Corps of Engineers showed me a map on Friday when I met with them. They have a map that is a large overview that starts down near Dallas, TX, pretty much through all the State of Arkansas, then a little bit of Missouri and Tennessee and Illinois and even, I think, a little bit into Kentucky.

The folks in those areas in that oval have received six times the normal rainfall. When we have six times the normal rainfall, this is what we get. This is a photo where we can see the water is in the house and up on the front porch. These folks are underwater, similar to a lot of people in our State.

I will say this. The Governor of our State is doing all any Governor can do. He is doing a great job. Even though we have Interstate 40 underwater right now in one area where the White River goes under Interstate 40, they are trying very hard to get that open, maybe even today if the water will cooperate. We are seeing a lot of emergency response in our State, seeing neighbor helping neighbor, churches are rolling out, we have seen folks doing everything they can to make this work.

Also, I thank the Corps of Engineers. It is easy for us to beat up on the Corps

of Engineers sometimes, but the truth is probably 95 or more percent of the time they do things right. They do things the right way. If it weren't for the Corps of Engineers, a lot of east Arkansas would be underwater and maybe a lot more. The system they designed and built has worked. Even though this is a 100-year flood or even worse, it is working and it is saving billions of dollars in damages and hardship. I thank the Corps and I also thank FEMA. FEMA has been on the ground in Arkansas for 3 or 4 weeks now, probably, with different teams going around the State helping in different ways and they have been very helpful.

I wish to go to my second topic, and I wish to emphasize what we are seeing happening in the State right now is not impacted by what I am about to talk about. But I think this FEMA administration is still cleaning up some of the mess from the previous FEMA administration. A few years ago, we had another series of floods in our State. Now we are seeing FEMA trying to recoup that money against people in our State. Let me give a little background.

Three years ago, in an area around Mountain View, AR, the White River flooded. FEMA came and they actually went to a woman's house—I wish to talk about her and her husband. They went to this couple's house. They are on Social Security. They retired. FEMA assured them they would be eligible for assistance. FEMA took pictures. They verified the damage. They gave them the paperwork—even kind of coaxed them through some of the paperwork. They assured them repeatedly that they would qualify for some assistance from FEMA.

They did end up getting \$27,000 for home repairs and that is exactly what they spent it for. They played by the rules. They filled out all the paperwork. FEMA was physically on their premises. They got the check, plowed it right back into the house, exactly like they said they would, and it helped them stay in their house.

Fast forward 3 years. We see FEMA writes them a letter, what I would call a demand letter, where they are requesting that they repay all this money, that they have 30 days to repay the balance of the debt they owe FEMA. This, of course, is a big shock to them because they were assured, repeatedly, that they had a legitimate claim. FEMA encouraged them to file this claim, they got the money, and they thought everything was great.

What has happened is, this couple, similar to many others in our State, built their home down on the river. They knew it could possibly flood one day. When they built it, they bought flood insurance. After years of paying the flood insurance, it never flooded. But after years of paying the flood insurance, the flood insurance company said they would not cover flood insurance anymore. They actually went to Lloyd's of London and paid for that for a number of years. Eventually, Lloyd's

of London said: We are not doing flood insurance anymore. They desperately tried to find flood insurance and could never find it.

FEMA has a rule that in order for anyone to get flood insurance through the National Flood Insurance Program, the county or the city has to pass an ordinance. That is necessary in order for them, the people in the community, to get flood insurance. FEMA knew this particular county, Stone County, had not passed this ordinance. Nonetheless, they assured this couple, repeatedly, they were entitled to this money. So in a very real sense, these people and many others in our State are twice the victim. They are the victim of the storm and the flood, but then they are a victim of their government because their own government has injured them by the way they have handled all this—giving out the money and then demanding recoupment for the money 3 years after the fact, when they get the notice of debt.

FEMA, by the way, did not just send it out to this one couple; they sent it out to 35 families around the State. Three years later, when they get this notice of debt, they have no means to pay it back. These folks are on Social Security. In fact, they would not have qualified for the payment had they had substantial resources. So one of the ironies is, what we are doing is we are telling the poorer people they need to pay FEMA back. The poorer folks owe FEMA the most money. That is the way the program works.

I think if we had Director Fugate, who again I think is doing a good job running FEMA—if we had him here today, I don't know exactly what he would say about the situation, but I think he would say the statute ties his hands, and he doesn't have much flexibility under the statute. Whether he agrees with the hardship of the situation or the equity of the situation, he doesn't have a lot of leeway in trying to deal with this. I am offering a solution. I am offering it in the Homeland Security Committee this week. I hope Members of the Senate will look at my legislation. It is only four pages long. We are asking Congress to give FEMA some flexibility when it comes to the recoupment process and to allow leniency for some individuals under certain circumstances. I think our couple in Arkansas fits those circumstances exactly. Basically, they have played by the rules, they have done all they can do and they continue to play by the rules and do all they can do.

I filed a bill that is going to be in the Homeland Security Committee this week. I would love to have my colleagues look at it and support it, if they see fit. It does three things. No. 1, it says FEMA may waive a debt owed to the United States in cases where funds were distributed purely by FEMA error, which is the case here, because FEMA knew this particular county had not passed this ordinance. FEMA knew no one in this county was entitled to

any assistance under this particular provision of the disaster relief law because the county had not passed the ordinance. FEMA knew that for the entire county. In fact, they have a list of every county—every ZIP Code in the country where people do not qualify. This woman of the couple from Arkansas was very clear about her location as she went through this process.

FEMA, whether they admit it—we can produce the documentation—FEMA was clearly in error in giving out this check, in assuring her she was entitled to it, and assisting her through this process. They were clearly in error. I think it is a case of the left hand not knowing what the right hand is doing.

Again, I think this FEMA administration has cleaned up this problem. My guess is we will not see this type of problem in the future, especially not out of this FEMA administration.

The second thing it does is it says they have to waive a debt owed to the United States in cases where the rationale for recoupment was failure to participate in the National Flood Insurance Program. Again, what this will do is acknowledge that FEMA made some mistakes 3 years ago. It is kind of competence 101 that they would know which counties and which residents would be entitled to this particular relief, but somehow, some way, they dropped the ball. This would make it very clear, from 2005 to 2010—again, this is the limited duration of this bill, this is a relief bill to help a specific group of people—that because of FEMA's mistake and because the folks here could not participate in the flood insurance program, no matter how much they wanted to—and this particular couple did want to participate in the FEMA flood insurance program, they could not do it—this would basically say we cannot now punish them and come back on them for that money.

The third thing it does, it makes clear that Congress is not giving any waivers in cases of fraud or misrepresentation or false claims or anything of that nature. This is purely for mistakes and errors made by the Federal Government when the Federal Government is trying to come back in and recoup moneys they wrongly paid.

Let me run through a couple other things, and I will be glad to yield the floor in just a few minutes. These communities that have not passed this ordinance and, therefore, are not entitled to participate in the flood insurance program, they are called sanctioned communities. That is what FEMA calls them. They are called sanctioned communities. There was a lawsuit a few years ago that basically challenged FEMA's ability to do certain things. It is too long and involved to talk about, but the court found there are 168,000 cases. Mostly these go back to the hurricanes of Katrina, Rita, et cetera—the biggest bulk of them. Of the 168,000 cases that FEMA has to revisit and

maybe recoup some money from people, so far they have only done 5,000 of these cases. Out of the 5,000 cases they have reviewed, only 18 cases, 18 total out of 5,000—out of 5,500 cases—would be impacted by my bill.

So we are talking a very small percentage. We are talking three-tenths of 1 percent is what we are talking about here. This is a very tiny, very narrow exception. I am for recoupment as much as anybody. I think it is very important that the government do it right and do it right the first time. If there is some sort of fraud or some sort of misrepresentation, then the government absolutely should go after that money and try to recoup as much of that as possible.

What we are talking about here is in 99.7 percent of the cases they can pursue recoupment. But based on the numbers we have today, it is three-tenths of 1 percent of the time where the mistake is completely on FEMA's side of the equation, and we would say no, as a matter of fairness and as a matter of equity, then they cannot seek recoupment in these cases.

To me this is a matter of equity. This is a situation where this particular couple in Arkansas—and we have other couples, we have other families too—we know of a total of four in our State who fall into this category. So we only have four out of how ever many thousands have received FEMA payments over the years. But nonetheless, this is a matter of equity because if you look at this couple I am talking about here in Arkansas near Mountain View, they basically would never have done this. They would have made other arrangements 3 years ago.

I do not know if they would have gone to the bank. I do not know if they would have gotten a second mortgage. I do not know if they would have sold the property and moved out. I do not know. They do not want to think about it. Because this FEMA check actually allowed them to stay in their house.

Now they are coming back in a worse condition than they were before because FEMA says, you have 30 days to pay this back. The fact they have not paid it back yet and that they filed an appeal with FEMA to try to work this process to get some relief, which FEMA, apparently, very seldom if ever grants—the fact that they filed this paperwork means that they have a little extension on the principle load. But it is very clear from the correspondence from FEMA that now interest is accruing. So interest is accruing on these folks.

Again, I think they are in a worse situation today than they would have had FEMA said no 3 years ago as they should have done. To me this is a matter of equity. I think if we were in a court, you might use the word estoppel. I think the Federal Government should be estopped in this situation from pursuing this money, because there was detrimental reliance on the part of the family.

They did not ask for this. FEMA showed up at their house. FEMA took pictures. FEMA helped them fill out the paperwork. FEMA walked them through the process. They do exactly what they are supposed to do. They put it in the house. It saves their house and gives them the ability to stay there. And now 3 years later, they get a letter basically saying, notice of debt, you owe FEMA \$27,000. Well, you can imagine, this is devastating for a family on Social Security who has very few other means. Again, if they qualified for this in the first place, you know they are not high-income folks. And \$27,000 at this stage of life for them is a lot of money. It is a mountain that is too tall to climb.

What I would love for my colleagues to do is look at what we are going to offer in the committee. I hope you can support it. We will be glad to answer any questions if any of my colleagues want to talk about it today or in the hallways here in the Senate over the next couple of days as we are working through this.

I certainly want to thank Senator LIEBERMAN for allowing us to put it on the markup. I think folks around here rightly are in a recoupment mode. They want to recoup money that has been wrongly paid out. And, again, I am for that 100 percent. In fact, we had a hearing in one of the Homeland Security subcommittees the other day about recoupment. We have talked about this. This is very important that we stop the bleeding and the government not pay out more money than they should. But in this particular case, I think the principle of equity and fairness is certainly on the side of these folks who again, as I said, are twice the victims. They were first victimized by the storm, and second they are victimized by their own government.

I yield the floor and 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. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BINGAMAN. Mr. President, I ask unanimous consent to speak as in morning business for 15 minutes.

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

NATIONAL ENERGY POLICIES

Mr. BINGAMAN. Mr. President, yesterday I introduced two bills on a subject of great importance—two different subjects—related to our national energy policy. The two bills were the Oil and Gas Facilitation Act of 2011. The second was the Outer Continental Shelf Reform Act of 2011.

Both of these bills are based on bipartisan, largely consensus work, that was

done in the Committee on Energy and Natural Resources during the last Congress. I should note that these important issues are being addressed in separate bills very consciously and for a reason. In the past we have crafted comprehensive energy bills that attempted to address all of the energy policy issues of the day in a single piece of legislation. There are obvious advantages to that. But there are well-documented disadvantages as well. I wish to avoid those disadvantages this year in furtherance of completing our important work.

There is no disagreement in the Senate about the need to have robust and responsible domestic production of oil and gas. At the same time, there is probably considerable disagreement about how best to address that issue. We need to begin work on that. However, ensuring the safety and viability of our operations on the Outer Continental Shelf is a separate matter which deserves attention on its own. The question of how we undertake oil and gas exploration and production on the Outer Continental Shelf appropriately, in my view, stands apart from the question of where we undertake those activities.

I do not believe it would make sense to try to trade off safety or environmental protections against the issue of access, for example. I believe the Congress should set an appropriate level of safety and environmental compliance, regardless of where the oil and gas exploration and production is occurring.

I will also observe that there was much greater consensus on the need to reform the rules governing Outer Continental Shelf production in the last Congress than on other issues such as those related to access to particular areas. So conflating these separate issues in the one bill is not likely to be the best path to success in enacting a bill into public law. Accordingly, we have introduced two bills.

That is not to say we don't have a responsibility to address both issues. We do. I believe they should be addressed on parallel tracks and not in combination. I hope to be able to move forward in the committee with consideration of both of these bills later this month.

The first of the bills, the Oil and Gas Facilitation Act, is intended to enhance sufficient and appropriate domestic production of oil and gas and to limit the dependence of the United States on foreign sources of oil.

The last 2 years have been a time of real success in increasing our domestic production of both oil and gas and in reducing our reliance on imported oil. We are currently the third largest producer of oil in the world. The percentage of the oil we use that is imported has declined from 60 percent in 2008 to about 51.5 percent in 2009 and to about 49 percent in 2010. We want to be sure we continue this progress while protecting our other natural resources and our communities' health and safety.

This bill, the Oil and Gas Facilitation Act, addresses production issues in