

Act of 2004 until December 31, 2014, and for other purposes.

Mr. REID. Mr. President, I object to any further proceedings with respect to this bill.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will be placed on the calendar.

Mr. REID. Mr. President, will the Chair announce morning business, please.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 11 a.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half.

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

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

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SESSIONS. Mr. President, I ask unanimous consent that Senator HATCH and I be able to speak in a colloquy.

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

THE BUDGET

Mr. SESSIONS. Mr. President, the Congressional Budget Act requires that Congress pass a budget by April 15. The Republican House has passed its budget. They stated their financial vision for the future in America. The Democratic Senate, however, has not passed a budget in 750 days. It has been 750 days since we have had a budget that passed the Senate. This year they haven't even brought a budget forward to committee to begin to mark up a budget as specifically required by the same statute. They have not even put forward a plan.

The Democrats control the Senate. They campaigned for the majority and, as my wife says to me when I complain: You asked for the job. So we have the largest economy on Earth, and we are in the middle of a fiscal crisis. For the majority party to skip work on the Nation's budget is not something to be taken lightly.

I ask my good friend, the Senator from Utah, the ranking Republican on the Finance Committee, my former chairman in the Judiciary Committee, if the American people were polled, how many does the Senator think would say the Senate should not pass a budget?

Mr. HATCH. That is a good question. The distinguished ranking member of the Budget Committee has asked a fundamental question. The answer, to me, and I think everybody else, is as clear as a bell: The American people overwhelmingly expect the Senate to do the people's business. First, we have to get our fiscal house in order. The House has taken the first step. The folks in Utah have dealt with their family budgets, business budgets, and government budgets, and they rightly ask that the Senate do exactly the same.

Mr. SESSIONS. One reason it is so important to have an honest, open budget process is that budgets are so easy to manipulate and spend. The President, in proposing a budget sometime ago, said his budget called on America to live within its means and "not add more to the debt." That was the President's own statement. In fact, his budget doubles the debt in 10 years, producing annual deficits each year, the lowest of which never once fell below \$748 billion. In fact, that would average almost \$1 trillion a year and nowhere close to balancing.

The CBO found numerous gimmicks when they analyzed the President's plan. They found that it contained another \$2.3 trillion in deficits. It increased the deficit. The President delivered a speech promising \$4 trillion in savings over 12 years. After his budget was ill-received by objective commentators all over the country, editorial boards, and in Congress, he made a speech and he promised \$4 trillion in savings over 12 years. But the committee analysts on our staff revealed that this so-called framework actually worsens the budget in relation to the CBO baseline.

Does the Senator from Utah believe the White House and the Democratic leaders in the Senate should produce an honest, concrete, fact-based budget on which we can rely?

Mr. HATCH. I sure do. They actually worsen the deficit by \$2.2 trillion in relation to the CBO baseline.

Until one sees the numbers in black and white, the budget is just talk. Democrats and Republicans have an obligation to produce fiscal blueprints in an intellectually honest, complete, and transparent fashion. The majority, the Democrats, have the responsibility to take the first step, and the Republicans have a responsibility to convey our fiscal blueprint through debate and amendments. That is the way this traditionally has always been done. As the distinguished ranking member indicated, our side is ready to engage in this important debate and process, but it is hard to do it when they would not

even put up a budget. They have not done that in the last couple of years. Without a budget, we don't have anything to debate and analyze.

Mr. SESSIONS. I ask Senator HATCH, for the people who may not understand, it is the chairman's responsibility to call a hearing and to begin a markup, and the minority is not able to call the committee into effect. So we do have to look to the chairman, and probably the chairman would operate in relation to the majority leader to call the committee into session; is that right?

Mr. HATCH. There is no question about it. The chairman has the responsibility for holding hearings that lead up to a budget resolution, the structure of the budget resolution, in accordance with his party's belief, it seems to me, and then bringing it up in committee where both sides can argue about it and both sides have the right to amend and improve it. Then they can bring it to the Senate floor. But they don't do that. Then they wonder why we are in such fiscal difficulties.

I know the distinguished Senator from Alabama understands this fully as the ranking member on the Budget Committee. Having also been chairman of the Judiciary Committee, frankly, I am concerned about it—and I think everybody is concerned—because they don't want to come up with a budget, and there may be invalid reasons for that.

Mr. SESSIONS. The budget is fundamentally a plan, a vision for the financial future of America. It is astounding that the party in the majority is not even prepared to say to the American people—

Mr. HATCH. Will the Senator yield?

Mr. SESSIONS. Yes.

Mr. HATCH. There is nothing more important in our lives now than coming up with a budget that would put us on a downward trend for spending. We are spending around 69 percent of the GDP. Our national debt of \$14.3 trillion is 90 percent of the GDP. We are headed toward 90 percent of GDP of spending. If we get there, this country will have difficulties that will be difficult to overcome. That is where we are headed, especially if we don't have a budget to debate on the floor of the Senate.

Mr. SESSIONS. I couldn't agree more. When the President submitted his budget, Mr. Erskine Bowles, whom the President asked to chair the fiscal commission that was supposed to come up with a plan to help us get out of this fix, said the President's budget is nowhere close to what is necessary to avoid our fiscal nightmare. That is what the co-chair of the President's commission said.

So now we are looking to Congress. That is the President's proposal, but the Senate has to move forward a proposal. We cannot even go to conference and begin to work out a budget that both Houses can agree on until the Senate moves a budget forward.

Mr. HATCH. That is right. I think the distinguished chairman of the

Budget Committee, Senator CONRAD, wants to do it. But in their caucus they cannot get together because they all want to spend and tax more. They want to keep spending and taxing the way they have in the past. It is clear we cannot keep doing that.

Mr. SESSIONS. I agree. As a matter of fact, we have heard reports that the Democratic caucus is debating a budget in closed door caucus meetings, and they have done that at least twice. This is now 6 weeks after the committee deadline to bring forward a budget has passed.

These reports indicate that in order to oblige the Senate's leading progressive, the Senator from Vermont, Senator CONRAD has moved his budget further to the left, I think, than he probably desires. So we are told this budget now has more taxes than savings—raising taxes \$2 trillion and possibly even \$2.7 trillion, while cutting just \$1.5 trillion in spending over 10 years. We will have to see it to know for sure. All we are hearing is news reports at this point.

Even the President, in his speech, called for \$3 in spending cuts for every \$1 in tax increases. Our analysis of his speech shows he did not do that. But that is what he said is the right approach.

As a ranking Republican on the Finance Committee, what are the Senator's thoughts about how steep tax hikes would affect the economy? Would it be better to cut wasteful Washington spending or to raise taxes and continue the spending spree we have been on?

Mr. HATCH. That is a good question. I tell my friend from Alabama that it amazes me how much our friends on the other side are hard wired to increase taxes.

As the ranking member knows, if current tax policy is left in place, including today's low rates, family tax relief and the alternative minimum tax patch, the Congressional Budget Office tells us revenues will trend to the historic average of 18 percent of GDP. The President moves revenues up to record highs as a percentage of GDP. Last year it was about 25.3 percent. The last time we had that was in 1945, at the end of the Second World War, at the height of it.

Now, the tax increases contemplated by the President's budget will mean half of the small business flow-through income will be hit with a marginal tax rate of 17 to 24 percent on top of the regular tax rate. Democrats and Republicans agree the small business sector is the key to job creation. Seventy percent of the jobs are created by small businesses. The top marginal rate on capital gains income will rise to 59 percent in a little over 18 months under the President's budget. That will drive down aftertax rates of return on investments.

Is that policy a path to recovery? I don't think so. I don't think anybody else who looks at it with any degree of intelligence thinks so. That is another

reason we need to engage in the budget process in the committee, and I have to say that I am appreciative of my friend's leadership on that committee. He will have to lead our side, but it is hard to lead when you don't have anything to lead on.

Mr. SESSIONS. Well, we cannot even have a discussion if a budget isn't brought up.

I just had occasion to meet with the Finance Minister from Canada, and he told me they are bringing their corporate tax rate down to 15 percent or below. We are at 35 percent. We have the second highest corporate tax rate in the world. Wouldn't it be nice if we can tax more and get some more money? But as the Senator knows from his experience, if we have too high of tax rates, it drives investment out of America, drives jobs out of America, and companies are liable to want to move to Canada where they pay less taxes, creating jobs for them and not us.

So there is a danger, is there not, economically?

Mr. HATCH. Of course.

Mr. SESSIONS. There is a danger economically, is there not, and a danger to growth, which we need desperately, if we keep raising taxes.

Mr. HATCH. Our corporate rate is 35 percent. That is the highest in the world, other than Japan's. It is causing a lot of corporations to leave our country. In the 1970s, 39 of the top 50 multinational corporations in the world were based in the United States. Today there are only 16—that was the last figure I heard—which is low. The reason is we are taxing them to death, and we have a lot of other screwy tax aspects that don't work. We can solve all these problems if we just get a decent budget and work to bring spending under control and get on a downward trend with regard to spending.

I have to say, we cannot do it without budget debates and balance. Our friends on the other side don't seem to be able to get their caucus together and allow the chairman to come up with a budget on time, in a way that will help us debate this matter and, hopefully, resolve it on the Senate floor.

Mr. SESSIONS. I think the Senator is right. This Senate is filled with remarkable people, but I think our colleagues on the other side are paralyzed, frankly, by the challenge of putting a plan on paper that can actually be examined, the numbers calculated, and ideas confronted. I think their problem is they are not able to produce a budget their caucus will support, that the American people will support, and that would actually get the job done. That is a difficult challenge. But if you want to be a leader, you have to meet that challenge.

Mr. HATCH. My friend from Alabama, as he always does, has arrived precisely at the critical point. We need a fiscal policy that is balanced. Its remedies must respond to the causes of

our current fiscal calamity. In the most recent fiscal year, spending hit, as I said, over 25 percent of GDP. That figure is easily more than 20 percent above the historical average.

It is unbelievable we are spending that much. Spending is fueling the deficits we are facing. The President's budget reaches into the American people's pocketbooks with taxes trending at or near historic highs in an anemic effort to close the gap. The other side of the ledger, spending, is not dented. It remains far above any reasonable historic average. Nobody can refute that fact. These are facts. I am concerned about it. I will tell my colleague that.

Mr. SESSIONS. Democratic leaders and the President talk a lot about a balanced approach to reducing our deficit. We believe in that approach. The Senator from Utah has indicated that. But I ask the Senator, what is the more balanced approach? Is the plan that hikes taxes and grows the government or a plan that controls Washington spending and shifts the balance back to everyday Americans?

Mr. HATCH. The ranking member, my friend from Alabama, summed up the fiscal predicament perfectly. It comes down to a lack of balance. Our friends on the other side simply cannot agree among themselves at this time, and the reason they cannot agree is, most of them are looking to the revenue side of the ledger to resolve what is a spending problem.

The Finance Committee has jurisdiction over 50 percent of Federal spending, and that will trend to 60 percent shortly. It has jurisdiction over nearly all revenues. As a member of the Finance Committee and ranking member, I fail to see how a tax-increase-driven budget can be advanced in the Finance Committee on a bipartisan basis. I am keenly interested in how the Budget Committee will come down on the biggest policy question of our time.

I am pleased to have the advice and counsel of my friend from Alabama as that process moves forward. I would like to have the advice and counsel of the distinguished Budget Committee chairman, but he cannot get his side to do what is reasonable; that is, bring down spending. That is what we have to do. We are taxing enough. We are spending us into oblivion, and that is the problem.

Mr. SESSIONS. This is true. It is dangerous to our country. We have gone 750 days without passing a budget in the Senate. I do believe if we took a poll of the American people, what percentage would one get if they were asked: Should the Congress of the United States, particularly at a time of great financial danger, have a budget? We will not have a budget unless the Senate acts.

It is a question both of philosophy and economics. Philosophically, the American people do not want Washington to hike taxes on millions of Americans in order to fund its wasteful

spending spree. Economically, the evidence shows cutting spending—not raising taxes—and we have done a number of studies on this—is the approach that consistently produces the best results time and time again.

We need a budget based on facts. We need a budget to grow the economy, not the government. We need a budget that imposes real spending discipline on Washington. We need a budget without gimmicks or empty promises. We need a budget that is produced publicly and openly, allowing the American people full opportunity to see what is in it and to consider it. We need a budget that the American people deserve, an honest budget that spares our children from both the growing burden of debt and the growing burden of big government. We need a budget that ensures America will compete, creating jobs, lead, and thrive in the 21st century.

Mr. HATCH. I thank my colleague. He sums it up pretty well, is all I can say. For our children, grandchildren, and great-grandchildren, we need to get this done. Frankly, it ought to be done in the Budget Committee and not by rule XIV on the floor. The reason it should be done in the Budget Committee is because I know the minority will weigh in and at least have their viewpoints expressed. There will be amendments, and people can vote up or down on whatever it is. Then they can bring it to the floor, and we should have a complete consideration of it here as well. That is the way it ought to be done.

As a former member of the Budget Committee, I have to admit it is a difficult process, but it is not difficult if we all work together to get spending under control and quit taxing the American people to death. We can do this if we work together.

I hate to say it, but I think our friends on the other side are not working together in their own caucus. The distinguished Senator from Alabama has pointed that out—I think courteously—today. I hope they will get together, even though I am pretty sure they are going to come up with a budget that continues to spend and tax such as we have had in the past. I hope they do not. If they do not, I think the American people will breathe a sigh of relief and say they did a good job. If they do, I think it will be more of the same.

Mr. SESSIONS. I thank Senator HATCH. I have enjoyed sharing these thoughts. I will note again that we are looking at a period in history in which our systemic debt problem is greater, I believe, than any time in our history. World War II was serious, but we could see our way out of it as soon as that war was over, and we bounced back rapidly.

Every expert tells us it is not going to be easy to bounce back out of the systemic problems we have. We need to have leadership. To have gone this long, 750 days without a budget in the Senate. Last year we did not pass a

budget, and there were 59 Democrats in the Senate.

One may say: Don't be so partisan, Senator SESSIONS. We are calling their names this morning. We like our colleagues, but the truth is, when you have the majority, you have a responsibility. The responsibility at this point in history could not be greater than to produce a blueprint, a plan for the future, such as the House has done, that the American people can see: Does that solve our problems? Does it put us on the right path? I think the House bill does.

We have yet to see anything out of the Senate that does. It is our responsibility in this body to pass legislation, because if we do not, we cannot conference with the House, and we can never get a budget passed.

I thank Senator HATCH. I look forward to working with our colleagues. Maybe we can somehow break this logjam. The American people have a right to watch us and not be happy when we are not doing the kind of work necessary to put this country on a sound financial path.

I yield the floor.

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

Mr. HATCH. Is it time to move to the Liu nomination?

The ACTING PRESIDENT pro tempore. Not until 11 o'clock. There are a few minutes remaining.

Mr. HATCH. Mr. President, I ask unanimous consent to move to the nomination, if the leader has no objection, so I may give my opening remarks.

I withdraw my unanimous consent request and suggest the absence of a quorum.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I suggest the absence of a quorum, and I ask that the time be divided equally.

The PRESIDING OFFICER (Mr. BROWN of Ohio). Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from California.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF GOODWIN LIU TO BE A U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume the following nomination, which the clerk will report.

The bill clerk read the nomination of Goodwin Liu, of California, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 2 p.m. will be equally divided and controlled between the two leaders or their designees.

The Senator from California.

Mrs. BOXER. Mr. President, I am very honored to speak in favor of the Goodwin Liu nomination and to urge my colleagues on both sides of the aisle to cast a proud vote for an extraordinary person, a remarkable young man who, for want of a better word, is just a star in everything he has ever done.

This is a picture of Goodwin. To say Goodwin personifies the dream of America is an understatement. To say this is a good nomination understates the way I feel about it. I thank the President for moving forward with Goodwin on two occasions, two nominations—or three times. I thank the Judiciary Committee for reporting him out on more than one occasion. Of course, I thank Senators LEAHY and REID and FEINSTEIN for their hard work in getting us to this point.

It is rather stunning for me to hear conservative Republicans come to the floor and blast this nominee because Goodwin Liu, Professor Liu has support from some of the most conservative legal minds in the country. Ken Starr, who, as we all know, was the special counsel on the White Water matter and who was considered at that time quite partisan and was one of the conservative, I think—I want to say stars of their thought, said:

In our view—

And he writes this with Professor Amar, and this was published.

In our view, the traits that should weigh most heavily in the evaluation of an extraordinarily qualified nominee such as Goodwin are professional integrity and the ability to discharge faithfully an abiding duty to follow the law. Because Goodwin possesses those qualities to the highest degree, we are confident that he will serve on the Court of Appeals not only fairly and competently, but with great distinction. We support and urge his speedy confirmation.

This is Kenneth Starr.

So I say to my Republican conservative friends, before you come here and start attacking Goodwin Liu for things he has never done, read what some of your conservative leaders in the legal profession are saying.

Just today in Politico there is yet another op-ed written by the chief