

pumps out there and giving consumers more choices.

Then, finally, as the Senator from Nebraska said, it also puts money toward the debt, toward deficit reduction, and phases out the tax credit that is available today to ethanol producers in this country. It is a reasonable, responsible and, as the Senator said, measured way of dealing with this, not the way that is being proposed by the vote we are going to have tomorrow.

So I hope our colleagues will join us in working in a constructive way to continue to grow this industry and do it in a way that creates jobs for Americans and lessens our dependence on foreign nations.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

ECONOMIC DEVELOPMENT REVITALIZATION ACT OF 2011

Mr. KYL. Mr. President, I am going to talk about the basic underlying bill we are debating, not the amendment my colleagues have just been talking about. As a way of framing the discussion about this bill, I will cite some statistics that I think will help us understand the nature of the problem our country faces right now and why, in my opinion, this particular legislation does not solve that problem.

According to official statistics, the unemployment rate in the U.S. has risen from 6.8 percent when President Obama was elected in November of 2008 to 9.1 percent in May of 2011. Between the end of 2008 and the year 2010, America experienced a net job loss in the nonfarm sector of almost 7 million jobs. So just since the end of 2008 through 2010, 7 million jobs lost. In that same time, the unemployment rate peaked at 10.1 percent—that was in October of 2009. It averaged 9.3 percent during 2009, 9.6 percent during 2010, and the 5-month average for 2011 so far is 9.1 percent, where we are right now.

We are not making progress. In short, since President Obama's stimulus was enacted, unemployment has averaged more than 9 percent a year, and that is up from 6.8 percent when he took office. This is not progress.

The May unemployment figures show that the U.S. economy added only 54,000 jobs—far fewer than the 150,000 needed just to keep pace with population growth, let alone to help dig us out of the recession. So we only had about one-third of the jobs created that we need just to stay even. We are getting deeper in the hole. In fact, the number of unemployed totals now almost 14 million Americans, and the long-term unemployed increased to 6.2 million.

Real growth in our economy, the GDP growth from the end of the recession in mid-2009 has been only about half as strong as it was during each of the previous nine recessions since World War II. So unlike previous times,

we are not recovering as fast as we recovered from those earlier recessions.

On the TV program “Meet the Press” this weekend, the host, David Gregory, asked the chair of the Democratic National Committee, Representative DEBBIE WASSERMAN-SCHULTZ:

Why should Americans trust Democratic governance right now on the economy, and particularly the president's?

Amazingly, the head of the Democratic National Committee answered:

Because we were able to, under President Obama's leadership, turn this economy around.

Well, the economy has not turned around. The unemployment statistics I just cited demonstrate that it is getting worse.

Most observers recognize that the steps the President took to try to revive the economy have not worked. I think it is time we admit that our massive debt and deficit, which were exacerbated by the 2009 stimulus spending bill, have hurt our economy. It has made things worse.

Republicans are not recommending reductions in government spending just for the sake of austerity. We are pushing for the government to get its fiscal house in order so that the job creators in the private sector will have the confidence to begin hiring and expanding their operations. Right now, uncertain of their future tax liability, worried about the general fiscal path of this country and the increasing regulatory burdens imposed upon them, job creators are sitting on the sidelines. We need to cut government spending to keep our tax burden low, approve pending free-trade agreements, and make a serious effort to reduce red tape so our economy can begin growing again. In other words, we need to realize that the government does not create private sector jobs. What we can do in Washington is to create the environment where the private sector is free to grow and create jobs.

This bill we are talking about right now, the Economic Development Revitalization Act of 2011, is touted by some of its proponents as being a job creator. The bill is not a jobs bill. Calling it that doesn't make it so. The bill has 21 sections. The truth is, many of these provisions would have zero effect on facilitating the creation of American jobs. For example, section 16 moves the State of Montana from the Denver office to the Seattle office. That doesn't create any jobs. Most of the provisions of the bill don't have anything to do with creating jobs. There are only four that even mildly could be called related to job creation.

The central component is a reauthorization of the bill's amount of spending, and it would reauthorize it at \$500 million a year—\$½ billion a year. Remember that almost half of that has to be borrowed. We don't have the money to spend \$½ billion a year, so we will have to go out and borrow the money from someone in order to be able to spend it.

Given the fiscal constraints facing our Nation today, we can't afford that. Ironically, even the White House is not shy about admitting the fact that this EDA bill is too expensive. Specifically, the President's budget for 2012 requested only \$324.9 million for EDA, not \$500 million. Additionally, the administration's Statement of Administration Policy declared:

The bill would authorize spending levels higher than those requested by the President's budget, and the administration believes that the need for smart investments that help America win the future must be balanced with the need to control spending and reduce the deficit.

Well, this is one thing on which I agree with the administration. This bill would spend too much money. Hopefully, we will get a chance to vote on amendments, including one by the ranking Republican on the committee, Mr. INHOFE, to reduce this level to a more reasonable and realistic one.

The rest of the bill includes provisions, as I noted, that are of little importance. Section 11, for example, creates a \$5 million-per-year grant program related to renewable energy and brownfields sites. Section 12 relates to energy and water efficiency and decreasing foreign oil competition. These are part of a green jobs fad and are not really going to provide significant job creation for our country. If we really want to decrease the consumption of foreign oil, of course, and create U.S. jobs, we should develop more of our own resources. I mentioned another meaningless provision—just moving one State from the jurisdiction of the Denver office to the Seattle office.

Again, these are things that are not going to produce jobs in our country. So it seems to me, rather than spending time on bills such as this EDA bill, which will not actually create jobs, we should actually be focusing on the big cliff we are heading for and begin preparing for the debt ceiling debate. This is where we can insist on a very large down payment of reduced spending, reform entitlements, and put a straitjacket on future congressional budgets—all of which will give businesses and markets greater certainty about our fiscal future. As a start, we should have a thorough debate and a vote on a constitutional balanced budget amendment, which would get us on the right path to a sound fiscal future.

In the long run, the only way for our economy to create jobs is for the government to spend, borrow, and tax less, thus freeing America's enterprises to do what they do best. I suggest we not wait any longer. It is time to begin this debate. Let's have a vote on a constitutional amendment, find ways to reduce spending, ensure we do not increase taxes, and create the climate in which America's businesses can get back to work and put their fellow Americans back to work.

Mr. President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. 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.

PATENT REFORM

Mr. GRASSLEY. Mr. President, I wanted to address the issue of patent reform—a bill the Senate has already passed by an overwhelming margin. It is my understanding the House of Representatives is expecting to pass a patent reform bill the House wants, and in the process the House wants the Senate to agree very soon thereafter and do it without a formal conference.

I want my colleagues to understand why I hope the House-passed bill will contain a provision that was not in our Senate bill but passed unanimously out of the House Judiciary Committee.

The House committee report recognized that the “need to modernize patent laws has found expression in the courts” but that “the courts are constrained in their decisions by the text of statutes at issue.” That is from the House committee report.

The House Judiciary Committee amendment that passed unanimously resulted from a recent Federal court case that had as its genesis the difficulty that the FDA—the Food and Drug Administration—and the patent office face when deciding how to calculate Hatch-Waxman deadlines. The Hatch-Waxman law was a compromise between drug patent holders and the generic manufacturers. Under the Waxman-Hatch law, once a patent holder obtains market approval, the patent holder has 60 days to request the patent office to restore the patent term—time lost because of the FDA’s long deliberating process eating up valuable patent rights.

The citation for the case I am talking about is 731 F. Supp 2nd 470. The court case found:

the FDA treats submissions to the FDA received after its normal business hours differently than it treats communications from the agency after normal hours . . . when notice of FDA approval is sent after normal business hours, the combination of the patent trade office’s calendar day interpretation and its new counting method effectively deprives applicants of a portion of the 60-day filing period that Congress expressly granted them . . . an applicant could lose a substantial portion, if not all, of its time for filing a patent trademark extension application as a result of mistakes beyond its control . . . an interpretation that imposes such drastic consequences when the government errs could not be what Congress intended.

That is the end of the judge’s statement on why he ruled as he did in this particular case. Congress did not intend those drastic consequences that happen as a result of a difference between whether you are making an application to or an application from an agency. In other words, there should

not be any difference. Congress did not intend the consequences that come from such a different application of the law. So the court clarified the law so when FDA sends a notice of approval after normal business hours, the 60-day period requesting patent restoration begins the next business day. The House Judiciary Committee takes the court decision where common sense dictates: to protect all patent holders against losing patent extensions as a result of confused counting calculations.

I want to quote Ranking Member CONYERS of the House Judiciary Committee who sponsored the amendment and committee Chairmen SMITH who supported Mr. CONYERS. Ranking Member JOHN CONYERS stated during markup the amendment is needed to “remove what amounts to a trap and would clarify the term ‘business day’ . . . and so, our attempt here is to make the congressional effort at patent reform more clear, more efficient.”

Chairman LAMAR SMITH also advocated passage of this amendment during markup in the House Judiciary Committee. I will quote him.

I will recognize myself in support of the amendment. Now, the gentleman’s amendment—

Meaning the Conyers amendment—clarifies the counting rules that are imposed on patent holders who must submit documents to the agency within statutory time limits. It has been established that the PTO has inconsistently applied these rules, which is not fair to various patent holders. The gentleman’s amendment tracks the recent court case decided in favor of a patent holder that originally applied for an extension 10 years ago. My understanding is that there are not scoring problems with this provision and I support it.

That is what Chairman LAMAR SMITH of the House Judiciary Committee said.

This is a commonsense amendment. It improves our patent system fairness through certainty and clarity, and I hope the House will leave that in their bill when it sends it over here to the Senate.

My interest in this amendment is because I opposed it 2 or 3 years ago when it was first brought up. Because of the court decision, I am convinced the different application of the 60-day rule is very unfair. As ranking member of the Senate Judiciary Committee, I want the House Judiciary Committee to know that several Republican and Democratic Senators have asked me to support the Conyers language as well.

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. BOOZMAN. 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.

THE ECONOMY

Mr. BOOZMAN. Mr. President, the latest unemployment numbers indicate that nearly 106,000 Arkansans are unemployed. This 7.7 percent unemployment rate is higher than when the so-called stimulus passed that President Obama and Majority Leader REID promised would produce jobs for hard-working Americans. Although this rate is below the national average, the numbers show that out-of-work Arkansans continue to struggle to find gainful employment.

What is more alarming is that the President and the majority here in the Senate are resisting real change and insisting on more of the same borrow, spend, and tax policies that have given us record unemployment and a sluggish economy.

In November, Americans gave a clear sign that job creation needs to be a priority. Unfortunately, the Senate majority and President Obama have failed to prove that this is at the top of the agenda. Time and time again, the Senate and our President add to the uncertainty that is stifling job creation. Commonsense legislation that would create the conditions for job growth is not brought to the floor. It is not because the Senate has more pressing issues. There is no excuse as to why the Chamber avoids voting on legislative and policy items that will provide real relief for the unemployed, such as the stalled free-trade agreements.

As news reports have pointed out over the past several weeks, the business in this body is progressing at a historically slow pace. As the Washington Post reported last week, “Quorum calls have taken up about a third of its time since January, according to the C-SPAN statistics.”

Americans are tired of the games. They need jobs, and it is our duty to help.

Linda from Mountain Home, AR, recently wrote to me asking the same thing millions of Americans want to know: “Where are the jobs?” She continued her e-mail asking what legislation Republicans introduced that will stimulate the economy and create jobs. I want to thank Linda for her letter and let her know my colleagues and I are on the side of the American worker, and that is evident by the legislation we have offered. These practical free market ideas will put Americans back to work, and, like the millions of Americans who are looking for jobs, we are anxious to vote on them and approve these measures.

In February, we introduced the REINS Act, of which I am a proud co-sponsor. Too often, Federal agencies overstep their boundaries and enact expensive mandates that strangle investment and job creation without congressional approval. This commonsense legislation provides a check and balance between Congress and the executive branch and allows business to focus on growth instead of how to comply with burdensome regulations.