

can have a crystal ball and determine all these disasters are going to take place. So we need to understand these are emergency monies. If there ever were an emergency—it is these people who have been hurt by these devastating storms and emergencies.

On Thursday, I look forward to hearing President Obama's speech. It is a joint session of Congress. He is going to talk about job creation. It will be crucial for Congress to work together with the President to jump-start our flagging economy. It won't be easy for Congress to tackle all the things this fall—and I am only talking about things we need to do this work period—but it has never been more important than now to put our jobs agenda ahead of either party's political agenda.

I look forward to a productive work period during which colleagues on both sides of the aisle will work together for the good of our economy and the good of this great Nation.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader.

CONTROL OF THE ECONOMY

Mr. MCCONNELL. Mr. President, it is good to see my friend the majority leader. I agree with him that I think we can make some significant progress in the next few weeks on some issues on which both sides have largely agreed. However, there are other things where clearly there remains differences among us.

As lawmakers return to Washington this week, every one of us, I am sure, is aware of the fact that many Americans are not only frustrated with the state of our economy but also with the state of their government. I don't think any one of us is under any illusion that the American people were particularly eager to see us come back. And who could blame them? After 2½ years of being told that Washington had the answer to everything from the high cost of health care to high unemployment, people have every reason to be skeptical. For more than 2½ years under the administration, Americans have been hearing about the wonders government spending would do for our economy and about the dangerous consequences of failing to apply bold solutions to big problems. And what has it gotten them? As Washington has grown bigger and bigger, Americans have continued to lose jobs. The national debt has exploded literally out of sight. And for the first time in our history, America's once pristine credit rating has been downgraded by a major rating agency. The average length of unemployment recently surpassed 40 weeks for the first time ever, and just last week we learned that in the month of August not a single new job was created in this country—not one. But here is the bottom line. In the 2½ years

since President Obama signed his signature jobs bill—the so-called stimulus—there are 1.7 million fewer jobs in our country.

Statistics such as these help us to understand the dimensions of the economic challenges so many Americans continue to face. But most people don't need to read the morning papers or wait for the monthly jobs report to know they are struggling. And no amount of speeches, however carefully crafted to appeal to the anxieties of the moment, will convince them that some politician here in Washington, from the President on down, has the solution. The truth is, President Obama did more for jobs last week by reversing himself on a single government-imposed regulation than he has done in all the speeches he has given put together.

At this point, I think most people have safely concluded that the problem with our economy isn't that Washington is doing too little but that Washington is doing too much already. That is why in the coming weeks and months many of us will continue to press for an entirely new approach, one that puts individuals and businesses at the center of our recovery instead of Washington, one that clears away the redtape and the regulatory overreach, one that lifts the cloud of uncertainty that has been holding job creators back and enables the American people to move our economy in the direction they want instead of having it dictated to them from above by the President.

It is time for an approach that is based on the simple principle that if the American people are going to have control of their own destiny, they need to have more control of their economy. They have seen where consolidating every economic decision in Washington has gotten us. They see that folks in Washington seem to be doing just fine. Millions of Americans may have lost their homes over the past few years, millions more may owe more on their homes than those homes are worth, but home values here in Washington are going up—going up. Countless Americans outside of Washington may have seen their savings dry up or have been forced to decide between making a car repair or a tuition payment, but you would never know that here. As countless economic tragedies unfolded in homes across the country over the past few years, the Washington metropolitan area was working on a new distinction: the highest median income in America—the highest median income in America right here in Washington. I assure you, these folks aren't getting rich off of farming. While most of the rest of the country continues to struggle, Washington is booming. And that is not the kind of change people voted for 3 years ago.

So before we get into the details about what many of us believe will succeed in reigniting the economy outside of Washington, we need to be clear about what hasn't because while I have

no doubt that the President will propose many things on Thursday night that when looked at individually sound pretty good or that he will call them all bipartisan, I am equally certain that, taken as a whole, they will represent more of the same failed approach that has only made things worse over the past few years and resulted in fewer jobs than when we started.

Over the weekend, the President tested a few of the lines I expect we will hear on Thursday. His central message, evidently, is that anyone who doesn't rubberstamp his economic agenda is putting politics above country.

Well, with all due respect, Mr. President, there is a much simpler reason for opposing your economic proposals that has nothing whatsoever to do with politics, and it is this: They don't work.

We can trace these failures to the President's very first days in office. One of the first things he did upon assuming office was to direct Congress to send him the stimulus. Here was one of the single most expensive pieces of legislation Congress has ever approved. The interest payments alone were projected to cost an average of \$100 million a day. This was the President's way of jump-starting an agenda that, in his words, "began with jobs." The agenda, he said, began with jobs, and he knew some of us were skeptical it would work. That is why shortly after it became law he asked if he could come up to Capitol Hill and use his very first speech to a joint session of Congress to explain exactly what it would achieve. Here is what the President told us. The stimulus, he said, would save or create 3.5 million jobs—3.5 million jobs, he said—and ultimately that is how he will measure its success, on whether it created jobs. To reassure those of us who thought government couldn't be counted on to spend this kind of money wisely, he insisted that anyone who received it would be held strictly accountable.

Then he said something some people may have forgotten: He said the stimulus was just a first step. The primary purpose of the stimulus, he said, was to help the economy in the short term. But the only way to fully restore America's economic strength, he told us then, was through a 10-year budget that would reach into all areas of the economy that the stimulus did not.

Just like the stimulus, the unifying theme of the President's budget was more government. And once again, he felt in selling it that he needed to speak to the skeptics first. Here is what he said about that. The goal of the budget, he said, wasn't to replace private enterprise but to catalyze it, not to stifle business but to create the conditions for entrepreneurs and businesses to adapt and thrive. Well, how did that work out? As government continued to grow, the economy sputtered, and it is still sputtering. Yet the President wants to know why the people are

resistant to his economic proposals. He says they must be motivated by politics.

A stimulus bill aimed at creating jobs was followed by a period where we lost 1.7 million jobs. The inspector general who was appointed to oversee distribution of the stimulus funds reports that he received more than 7,000 complaints of wrongdoing. More than 1,500 of those complaints have triggered investigations. Just last week, one of the companies the President personally vouched for as a shining example of how stimulus dollars would work announced it was laying off more than 1,000 workers and filing for chapter 11 bankruptcy. And it wasn't the first. But still, according to the President, anyone who opposes this agenda is playing partisan games.

Well, the President can attempt to blame our economic problems all he wants on his political adversaries or his predecessors or natural disasters. But at the end of the day, he is the one, as he himself said, who is responsible for what happens on his watch, and that includes the epic failure of a bill he himself touted as the key to our recovery.

By any measure, including his own, the stimulus and the economic principles it was built on have been a failure, and that is the reason so many people are skeptical of the President's economic proposals. They don't work as advertised. Now, the President, of course, doesn't want to acknowledge it, and I understand that. It is hard to admit when you have been wrong. But in other, more subtle ways, the administration has acknowledged the fundamental flaws in its approach to the economy. The only reason the President agreed to keep taxes from going up last December, for instance, was that he knew it would lead to even more job loss. The only problem with this proposal and others like it, of course, is they are temporary, which only perpetuates the uncertainty that has kept so many businesses, large and small, from making investments in new products and new workers over the past few years. Businesses actually do not want shots in the arm or quick fixes. They want to know what the landscape will look like a few years down the road. And, until now, that is not something the President has been willing to do. He has not been able to bring himself to let go of government's grip—which brings me back to a different approach which some of us have been proposing for some time now, and which the White House continues to resist. Simply put, we think Washington should take a little break from the massive spending programs the President likes to refer to as "bold" solutions. Quite frankly, we are not very good at them, and anyone who thinks otherwise has not been paying very much attention to Washington over the past few years.

No one believes government doesn't have a role to play. Of course it does.

But it is not the center of the universe and it should stop pretending to be the center of the universe. What we need is a shift in thinking when it comes to thinking about how government's role in the economy should work. We need to shift the center of gravity away from Washington and back to the innovators and entrepreneurs, the engineers and the shop floor managers who will be at the heart of our recovery. We need to be serious about it.

The President is forever eager to embrace big proposals whenever government is at the helm, but when it comes to doing the kinds of things job creators want, he is suddenly quite timid. He will agree to a tax cut as long as it is temporary. He will agree to reverse a job-killing regulation, but only if he knows he has gotten dozens of other doozies in the pipeline right behind it. We need to do a lot better than that. We need the President to be as bold about liberating job creators as he has been about shackling them. I mean, you do not lift a single regulation and suddenly claim to be Margaret Thatcher. The Environmental Protection Agency alone has dozens of other new rules in progress. The Labor Department has dozens of rules of its own in progress. The administration's proposed utility standards would increase costs for every family and business in America. One of these new standards, for boiler emissions, would endanger literally tens of thousands of jobs. New rules for cement plants would strike a blow right at the heart of our manufacturing and building sectors. New rules regulating coal ash would endanger thousands of jobs.

Then there is the ObamaCare bill, which has to be counted as one of the most far-reaching and comprehensive single sources of government regulation ever devised. Though this bill has still not yet taken effect, the myriad of rules that will be imposed on every American have been written as we speak, and so far those regulations already run to nearly 10,000 pages.

Republicans will spend the next weeks and months arguing in favor of a robust legislative agenda aimed at blocking or repealing some of the most pernicious rules and regulations so business can breathe again and begin to hire, and the American worker, not Washington, can help this economy get moving again.

Putting the American people back in charge of our economy also means reforming the Tax Code and that is why, over the next weeks and months, Republicans will continue to make the case that Washington should get out of the business of picking winners and losers. We should strive to become more competitive by lowering the tax rate on American job creators that right now ranks as the second highest in the developed world, and we should level the playing field with America's competitors overseas by approving the three free trade agreements with Colombia, Panama, and South Korea that

have been languishing on the President's desk for nearly 3 years. The President himself acknowledges that these trade pacts will help create tens of thousands of jobs right here at home by vastly expanding the market for U.S. goods. He should send them to Congress today so we can finally ratify them.

Another thing we can do is reform the budget process. There is no good reason that nearly three-fourths of government spending is on auto pilot and that last year's spending levels should automatically carry over into the next, regardless of whether they are effective or affordable.

We need to continue to make the case for a balanced budget amendment. Budget reform is an essential part of getting Washington to live within its means. It needs to be a top priority.

None of these ideas are groundbreaking and they certainly should not be controversial. They are just common sense. Most importantly, they are rooted in a respect for the independence, the wisdom, and the power, as another U.S. President once put it, "of a free people and the efficiency of free institutions."

The President who spoke those words did so during another period of sluggish growth and high unemployment and the solution he proposed, not only for the sake of the domestic economy but also for the preservation of America's influence in the wider world, focused not unlike the one I have outlined here on alleviating the heavy burdens government had imposed on both individuals and businesses.

This is what he further said: "The final and best means of strengthening demand among consumers and businesses is to reduce the burden on private income and the deterrents to private initiative which are imposed by [the] . . . tax system."

"Such an approach," he continued, "would lead to a new interest in taking risks, increasing productivity, and the creation of new jobs and new products for long-term economic growth." I would only add that the same approach President Kennedy outlined with these words in 1962 is worth trying again today.

We have tried President Obama's approach. It has failed. It is time for something new. The new approach we are suggesting is not aimed at pleasing any party or constituency. It is aimed at nothing more than giving back to the American people the tools they need to do the work Washington has not been able to do on its own. Once we do that, once we come together and agree to turn the keys of this economy back to the American men and women who actually drive it, I have no doubt that much of the acrimony that has marked our dealings here over the past several months will fade away.

Even more importantly, though, we will have done something good for the country and for the millions of Americans who are looking for Washington

not so much to do more but for the first time in a long time to do less so they can finally do what it takes to get this economy moving again.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, 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 5 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent to speak for as much time as I might consume.

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

AMERICA INVENTS ACT

Mr. KYL. Mr. President, I rise today to urge my colleagues to support H.R. 1249, the Leahy-Smith America Invents Act. Some other responsibilities may take me from the Senate floor during this coming week when we will be debating the act and therefore I wanted to lay out my views at this time, strongly urging my colleagues to support the bill.

Although the present bill originates in the House of Representatives, it is actually based on and is substantially identical to the bill that passed the Senate in March by a vote of 95 to 5. Also, before Chairman SMITH brought his bill to the House floor, he negotiated final changes to the bill with the lead supporters of the measure in the Senate Judiciary Committee. The House and Senate have now been working on patent reform for 6 years. The present bill is a good bill. It reflects a genuine compromise between the House and the Senate. It is a bill that will provide substantial benefits to the U.S. economy in the coming years, so I hope that, as I said, the Senate will adopt this legislation and be able to pass it on directly to the President for his signature.

The overarching purpose and effect of the present bill is to create a patent system that is clearer, fairer, more transparent, and more objective. It is a system that will ultimately reduce litigation costs and reduce the need to hire patent lawyers. The bill will make it simpler and easier to obtain valid patents and to enforce those patents, and it will cure some very clear litigation abuses that have arisen under the current rules, abuses that have done serious harm to American businesses.

By adopting the first-to-file system, for example, the bill creates a rule that is clear and easy to comply with and

that avoids the need for expensive discovery and litigation over what a patent's priority date is. By adopting a simple definition of the term "prior art," the bill will make it easier to assess whether a patent is valid and cheaper for an inventor to enforce his patent. By recognizing a limited prior user right, the bill creates a powerful incentive for manufacturers to build factories and create jobs in this country. By allowing post-grant review of patents, especially low quality, business method patents, the bill creates an inexpensive substitute for district court litigation and allows key issues to be addressed by experts in the field. By eliminating the recent surge of false-marking litigation, the bill effectively repeals what amounts to a litigation tax on American manufacturing.

Let me take a few moments to describe how the provisions of this bill will provide concrete benefits to American inventors, both large and small, and to the American manufacturing economy. First, prior commercial use defense.

A new provision of the present bill that was added by the House of Representatives will provide important advantages to U.S. manufacturers. Section 5 of the bill creates a new defense to patent infringement of prior commercial use. This new defense will ensure that the first inventor of a new process, or of a product used in a manufacturing process, can continue to use the invention in a commercial process even if a subsequent inventor later patents the idea. For many manufacturing processes the patent system presents a Catch-22. If the manufacturer patents the process, he effectively discloses it to the world. But patents for processes that are used in closed factories are difficult to police. It is all but impossible to know if someone in a factory in China, for example, is infringing such a patent. As a result, unscrupulous foreign and domestic inventors will simply use the invention in secret without paying licensing fees. Patenting such manufacturing processes effectively amounts to giving away the invention to foreign manufacturers.

On the other hand, if the U.S. manufacturer does not patent the process, a subsequent party may obtain a patent on it and the U.S. manufacturer will be forced to stop using a process that he was the first to invent and which he has been using for years.

The prior commercial use defense provides relief to U.S. manufacturers from this Catch-22, allowing them to continue to use a manufacturing process without having to give it away to competitors or running the risk that it will be patented out from under them. To establish a right to this defense, however, the America Invents Act requires the manufacturer to use the process in the United States. As a result, the AIA creates a powerful incentive for manufacturers to build their factories and plants in the United

States. Currently, most foreign countries recognize some prior user rights that encourage manufacturers to build facilities in those countries. This bill corrects this imbalance and creates a strong incentive for businesses to create manufacturing jobs in this country.

Second, something called supplemental examination. A provision of this bill that will particularly benefit small and startup investors is section 12, which authorizes supplemental examination of patents. It is one of the reasons the bill has such strong support in the small business community. Currently, even minor and inadvertent errors in the patent application process can lead to expensive and very unpredictable and very inequitable conduct litigation. It is often the case that startup companies or university researchers cannot afford to hire the very best patent lawyers. Their patents are prosecuted by an in-house attorney who does a good enough job but who is unfamiliar with all of the sharp corners and pitfalls of the inequitable conduct doctrine, such as the need to present cumulative studies and prior art. Later, when more legally sophisticated investors evaluate the patent for potential investment or purchase, these minor flaws in prosecution can deter the investor from purchasing or funding the development of the invention. An investor would not risk spending hundreds of millions of dollars to develop a product if a potential inequitable conduct attack may wipe out the whole investment.

Parties on both sides of these exchanges report that investors routinely walk away from inventions because of their inability under current law to resolve uncertainties whether a flaw in prosecution was, in fact, inequitable conduct. These decisions not to invest in a new invention represent important new cures never tested and brought to market and other important inventions that are never developed.

The America Invents Act provides a solution to this problem by authorizing supplemental examination of patents. This new proceeding will allow inventors or patent purchasers to return to the Patent Office with additional material and have the Patent Office reevaluate the patent in light of that material. If the patent is invalid in light of the new material, the Patent Office will cancel the claims. But if the office finds that the patent is valid, the parties will have a patent that they can be legally certain will be upheld and enforced. The authorization of supplemental examination will result in path-breaking inventions being developed and brought to market that otherwise would have lingered on the shelf because of legal uncertainty over the patent. It will ensure that small and startup companies with important and valid patents will not be denied investment capital because of legal technicalities.

Let me talk about what I think is undoubtedly the most important among