

My program would be on the very high incomes that are taxed very low. Not just high incomes. Somebody making \$50 million a year playing baseball, his taxes won't change. If they make a lot of money and they pay a very low tax rate, like me, it would be changed by a minimum tax.

How do we do that, and does it matter? It matters a whole lot because we are not talking about this distinction when we are addressing issues of fairness in society, the true nature of what has happened at the very top in this country.

The proposal of the President looks good at first glance; it sounds good on a TV bite. But in all respect to the people who put it forward, I do not believe it is smart policy, and it does not go where the real economic division lies in our country. This is what Warren Buffett is talking about.

If we look at the top .1 percent of our taxpayers, the very top, two-thirds of the money they take in is from capital gains and dividends. Only one-third is from wages.

What does that mean with respect to this surcharge we are going to put down? This is what the surcharge on earned income for millionaires will do: It will bring the tax on ordinary earned income from 35 percent—first, under the assumption of 39 percent, which is the failure to renew the Bush tax cuts—and then to 45.2 percent, someone making wages.

Who is in this category? Very few people. Let's say someone is an athlete, as Warren Buffett mentioned, and they have 3 or 4 years in their career where they can make the money. They are going to get their income, because it is ordinary earned income, taxed at 45 percent of everything they make, just for the Federal taxation, at the same time that capital gains tax, which is where two-thirds of the top .1 percent of our earners make their money, is going to stay at 15 percent. That is what Warren Buffett is talking about.

He is sitting here saying: I make my money off of stock sales, basic transactions where I get capital gains, and I am at 15 percent. My secretary is paying double what I am. The people who have ordinary earned income are going to pay three times the rate of what somebody is making on capital gains, and that is two-thirds of what the people at the very top make.

If we went after capital gains—let's just say, notionally, let's say we allow the Bush tax cuts to expire on capital gains but keep them on ordinary earned income. This margin would be 35 percent of ordinary income versus 20 percent. What would that do? According to the Joint Committee on Taxation, over 5 years they could recoup \$402 billion. That is almost as much as this other surcharge could make over 10 years in order to pay for this legislation.

Most important, we are going into issues of fairness that we have been trying to bring to the table; that is, to truly focus on those at the very top who have benefitted the most from

what has happened in what is frequently becoming a fractured economic society.

I am going to vote the exact opposite way the Senator from Connecticut is going to vote, but I think he and I share many of the same concerns. It is just how we get there. If people are ready to discuss capital gains, moving it back up to what it was, from 15 to 20 percent—if we are willing to discuss capital gains, I will know we are serious. If we are not willing to discuss capital gains, I think we have seen this movie before.

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.

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

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

Ms. AYOTTE. I ask unanimous consent to engage in a colloquy with Senator JOHN MCCAIN.

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

#### DEFENSE AUTHORIZATION

Ms. AYOTTE. Mr. President, I rise today to talk about the state of affairs and where we are in the Senate, particularly with regard to the Defense authorization bill. Right now in the Senate—I am a freshman Member of this body—it has been over 2 years since we passed a budget. We have only passed one appropriations bill. Last week, the Democrats changed the rules in the Senate because they did not want to vote on amendments.

For the first time in my lifetime, the Defense authorization bill is not being brought to the floor by the majority leader. This is at a time when we are engaged in two wars and the threats to us and our allies from the Islamist terrorists remain. In fact, today authorities broke up an alleged plot to bomb the Israeli and Saudi Arabian Embassies in Washington and to assassinate the Saudi Arabian Ambassador to the United States. At a time such as this, when there is nothing more important we can do in the Senate than to ensure the national security of the American people, the majority leader is refusing to bring forward the Defense authorization bill to this floor because he objects to one provision in it addressing detainees.

I am concerned that this is no longer the most deliberative body in the world. I am new here, and I am often asked what has surprised me most as a new Senator, and I have to say, honestly, how few votes I have taken since I have been in the Senate. In fact, the number of votes I have taken in the Senate since I have been here is far below what we took last year and what we took the year before.

What could be more important than voting on the Defense authorization

bill when our country faces issues such as these in terms of our national security?

I would ask my distinguished colleague from Arizona, who is a senior Member of this body, whether he has seen the Senate like this. Is this how the Senate is supposed to operate?

Mr. MCCAIN. I would like to respond to my colleague—by the way, I noticed she said it would be the first time in her lifetime that we had not passed a Defense authorization bill. It would not be the first time in my lifetime since it has been 41 years.

I would say to my friend and colleague, who has played a very important and essential role on many issues before the Armed Services Committee, not only because of the military background of her family, including a husband who is a distinguished A-10 pilot, but also as a former attorney general of her State, you are very familiar with many of the detainee issues.

I would like to say to my colleague that it was her amendments that were passed in the committee concerning detainee treatment that became part of the legislation. I believe the legislation in that section was passed by a vote of 25 to 1 in the committee. It is not as if there were sharp divisions between both sides of the aisle on the issue of detainee treatment. Yet apparently that seems to be the objection of the administration not only to the bill but even to taking up the bill for consideration before the full Senate, as the Senator from New Hampshire has pointed out, for the first time in 41 years.

I would like to explore with her for a second this whole issue of detainee treatment. Just in the last week or so, we were able to kill one of the leading al-Qaida operatives. I think that action was supported by the majority of opinion in America, thanks to passage of legislation after 9/11 including the fact that the President had a finding that this individual was a terrorist. Yet somehow the President's counterterrorism expert seems to say that under our legislation, we would never be able to turn the page on Guantanamo—and I quote from his speech at Harvard—and he went on to say:

Our counterterrorism professionals would be compelled to hold all captured terrorists in military custody.

First of all, I would ask my colleague, isn't there a national security waiver the President could exercise if he wanted to in the legislation? Second of all, is it not true that you would have to be a designated member of al-Qaida before you would be required to be held in military custody?

So my question is, Is Mr. Brennan misinformed or simply contradicting what is actually the case in the legislation we passed by a unanimous vote through the Senate Armed Services Committee?

Ms. AYOTTE. Senator MCCAIN, first of all, is absolutely right. This was an

overwhelmingly bipartisan vote in support of the detainee provisions, according to Senator REID, and that is why they are not being brought forward to the floor.

In my view, the President's counterterrorism adviser, Mr. Brennan, has it wrong. I am not sure he has read this legislation based on the objections he has raised because we are giving the President authority to detain, which is very important authority which he can exercise based on the national security of this country.

In order to have military custody, you have to be a member of al-Qaida or an affiliated force and planning an attack against us or our coalition partners. That is where the military custody comes in place, and I think that is very important because, of course, if you are a member of al-Qaida and you are planning an attack against the United States of America or our coalition partners, it seems to me that is a very appropriate instance for military custody given that we remain at war with al-Qaida and that the threats from al-Qaida are still very grave to our country, as demonstrated by—

Mr. MCCAIN. So the statement Mr. Brennan made in his speech on September 16 at Harvard Law School saying that our counterterrorism professionals would be compelled to hold all captured terrorists in military custody is not correct?

Ms. AYOTTE. I am really concerned that Mr. Brennan, again, has not read this legislation because that statement is not correct. As the Senator knows—he worked very hard on a compromise with the chairman of the Armed Services Committee, Chairman LEVIN, and Senator GRAHAM, and in that compromise provision that we passed in a very strong, overwhelmingly bipartisan vote to have military custody, you have to be a member of al-Qaida and planning an attack against us or our coalition partners. It is limited to a very narrow category of very dangerous individuals. It isn't every single terrorist who is encountered.

The important issue is that when you read Mr. Brennan's speech, did you see anywhere in his speech to Harvard where he talked about this topic where he ever mentioned what is happening with those who have been released from Guantanamo?

Mr. MCCAIN. It is interesting that he didn't because those who have been released, the latest number I have is about a 20-percent, roughly—and I don't know if the Senator from New Hampshire has different information, but at least one out of every five has returned to the fight and some of them in leadership positions of al-Qaida, which is, obviously, unacceptable.

Mr. President, I ask for an additional 3 minutes for the Senator from New Hampshire and myself.

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

Mr. MCCAIN. I just want to mention very quickly—because in some re-

spects, the Senator from New Hampshire comes from a military family—that it is so important that we care for the men and women in the form of pay raises, in the form of housing, in the form of benefits, in the form of all of the things that are Congress's obligation to the men and women who are serving in the military. Now we are telling those men and women: Well, because of one provision in this legislation, which should be resolved through debate and amendments and votes, we are not going to take up the bill that authorizes the men and women the things that are necessary and vital for the men and women fighting in two wars.

Ms. AYOTTE. Senator MCCAIN is absolutely right. It is outrageous that one provision that was a bipartisan provision is holding up the authorization from coming forward when it addresses things such as pay raises for our military. It addresses services for our wounded warriors. It addresses military construction that is needed for our soldiers. Those are very important issues. To hold this up at a time when we are at war, at a time when our soldiers need to know we are fully behind them, does a huge disservice to our country. This is an issue that, if there are problems with the detainee issues, should be debated on the floor. The American people deserve to know.

Guantanamo Director Clapper testified before the Intelligence Committee that the recidivism rate now is 27 percent for those reengaging in the battle, detainees whom we have released who are encountering our soldiers and our coalition partners, trying to harm Americans. So to not bring forward the Defense authorization bill, A, to help our soldiers and, most importantly, to do what is right for them, but also, B, to have a rigorous debate over this very important issue of protecting our soldiers from those detainees who have gone back and making sure we are protecting them and that we have a place to put those who are captured now, seems to me to be a disservice to this body and to our country.

Mr. MCCAIN. I thank the Senator from New Hampshire, who has played a very important role in the Armed Services Committee, particularly on the issue of detainee treatment, which is important to the American people. As she just mentioned, one out of four returns to the fight. It is a badge of courage and legitimacy and leadership now in al-Qaida for someone who has been released from Guantanamo.

I hope the majority leader and our colleagues would agree that we could sit down and bring this bill to the floor, have votes, amendments, and then let the men and women who are serving and those who have served, including our wounded warriors, know we care enough to pass legislation that is vital to their ability to defend this Nation and to make sure they are properly equipped and properly compensated.

I thank the Senator from New Hampshire.

Ms. AYOTTE. I thank very much the Senator from Arizona. No one has been more dedicated to our military through his own service and the service of his family but also as a ranking member of the Armed Services Committee who has worked across the aisle to bring forward this Defense authorization bill. I would share in his comments, and I hope the majority leader will bring this forward. It is so important for our country.

I yield the floor.

#### GULF OILSPILL

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. As the Senator from Arizona is in the back of the Chamber, I just want to say this Senator appreciates his long public service and his dedication to this country.

Mr. President, as one of the Senators from a State that borders the Gulf of Mexico, naturally we have been quite concerned in the followup to the Deepwater Horizon oilspill. You will remember that was an oilspill that at first BP said: Oh, it was only 1,000 barrels a day. It was not until Senator BOXER, the chairman of the environment committee, and I were able to wrangle the actual streaming video from 5,000 feet below the surface and put it up on my Web site that the scientists could then calculate how much oil was coming out. It was not anywhere close to 1,000 barrels a day. In fact, it ended up being 50,000 barrels of oil a day that was gushing into the Gulf of Mexico. As a result of that total number of days, almost 5 million barrels of oil has gushed into the gulf, we can expect some serious economic and environmental consequences and particularly the consequences on the critters.

It is hard to go down to 5,000 feet and get data, because of the pressure there, about what is happening to the critters. But we have an opportunity to find out what is happening by where all that oil seeped in toward shore, onto the beaches and into the estuaries. Of course, the estuaries that were closest to the oil spill were the ones along the coastline of Louisiana and a lot of those marshes.

What I have learned in public service is that when we are addressing a problem, if it is a problem of this enormous consequence to not only the livelihoods of people who live up and down the gulf, whether their livelihoods be tourism, as so much of our State of Florida was affected, or whether it be the health of the actual critters themselves and, therefore, the livelihoods of a lot of people because of the shrimping and the fishing industry, which is major, coming from the gulf—what I have learned over my years in public service is what we have to do is dig down and start relying on science to inform us as to what is at the root of