

have to suffer any more than they already are for the President's failure to turn this jobs crisis around. Unfortunately, the majority leader has yet to introduce legislation that can actually pass the Senate or the House. One would think if that is one of the President's top priorities, then the Democratic leader of the Senate would put together a proposal that is designed to actually pass. But we haven't seen it yet. We all know what a successful bill would look like. So I hope the majority leader comes forward with a real proposal soon because time is running out. It makes absolutely no sense at a moment when 14 million Americans are looking for jobs to raise taxes on the very people we are counting on to create them. That is why the Senate rejected the idea last week on a bipartisan basis.

Look, the Democrats know as well as we do that this is a terrible idea. They have seen the same letters I have. The National Association of Manufacturers says this tax hike would seriously impair the ability of their members to put unemployed Americans back to work. The Democrats know as well as I do that four out of five of those who would be hit by this are business owners, people who create jobs. The only reason—the only reason—we even went through this exercise is because it obviously polls well.

So this is what Washington has been reduced to: a President and a Senate who would rather spend their time doing cheap political theater than giving people the certainty they want. What we need to do is to step back and realize that the only reason we are talking about a one-shot stimulus measure nearly 3 years into this Presidency is because of the President's failure to turn this jobs crisis around. We need to get beyond the temporary fixes and start talking about fundamental tax reform that puts the American worker in charge of this recovery, not Washington.

But for now, it is perfectly clear that the path to an accomplishment on this issue does not run through tax hikes. Yesterday, the President warned Congress to keep its word to the American people and "don't raise taxes on them now." I wish to remind my colleagues and the President that the Republican plan is the only plan that meets the President's standard. The President just warned us: Don't raise taxes on the American people. The proposal we offer is the only one that meets that standard.

If our friends are serious about passing this extension of the payroll tax cut, they have a choice: We can have an accomplishment or we can have additional partisan show votes.

#### CONSUMER FINANCIAL PROTECTION BUREAU

Mr. McCONNELL. Madam President, later this week the Senate will vote on whether the new Consumer Financial

Protection Bureau should move forward with a director before addressing concerns that have been raised about the bureau's lack of transparency or accountability to the American people.

I understand through press reports that the President plans to make a big push for this nominee to the CFPB. Let me tell my colleagues something the President hasn't done when it comes to this position: In the 7 months since 44 Republicans sent the President a letter outlining some very serious and very reasonable concerns about it, he hasn't done a thing to address these concerns—not one thing. If he picked up the phone to talk these issues over with anybody in our conference, I haven't heard about it. If he has put some thought into how he could ensure the perfectly legitimate concerns we raised in that letter are addressed, he hasn't let us in on the game plan.

Here is what we asked for in that letter, which has now been signed by 45 Republican Senators—not 44, 45: All we asked for before we vote to confirm anybody to run the CFPB—regardless of their party affiliation, regardless of who the President is—are three clear, simple, commonsense reforms that would make sure this new agency is accountable to the American people.

No. 1, replace the single director with a board of directors that would oversee the bureau. Under the deeply flawed Dodd-Frank bill, the Director of the CFPB, by design, is set to lead one of the least accountable and most powerful agencies in Washington. What we are saying is no single person who is unaccountable to the American people should have that much power. We are asking for the same structure as the SEC, the CFTC, the FDIC, the FTC, the NLRB, and the Consumer Product Safety Commission—the same structure we use anytime we give unelected bureaucrats new powers that need to be checked to protect against abuse.

No. 2, subject the bureau to the congressional appropriations process. Subject this new CFPB to the congressional appropriations process. Currently, the CFPB is housed at the Federal Reserve and funded through a percentage of their annual budget, giving it a funding stream that is completely unique in government, entirely without a check from the American people and making it one of the least transparent agencies in Washington. If one likes the level of accountability over at the Fed, one will love the CFPB.

A journalist who wanted some information about the Fed's lending practices recently had to sue to find it out. This is information not even Congress could have gotten on its own.

If my colleagues ask me, the American people should be getting more transparency out of this administration, not less. We don't need any more unelected, unaccountable czars in Washington.

No. 3, we asked for a safety and soundness check for the prudential financial regulators who oversee the

safety and soundness of financial institutions. This would help ensure that we are not inadvertently causing bank failures through excessive regulations.

Our proposal would do nothing more than give congressional committees a proper level of oversight and accountability over this new bureau and ensure that its decisions were subject to the checks and balances that were meant to be inherent in our system—something we owe the American people.

Everybody supports strong and effective consumer protection, but the CFPB, in its current form, cannot stand. In its current form, the CFPB could easily be used for political purposes at the expense of access to credit, job creation, economic growth, and financial stability.

What is needed is transparency and accountability. That is all we have asked for, and the President has done nothing to address these concerns. Instead, he has ignored these perfectly legitimate concerns, and now he is suddenly making a push to confirm his nominee because it fits into some picture he wants to paint about who the good guys and the bad guys are in Washington.

So once again he has used the Senate floor this week to stage a little political theater. He is setting up a vote he knows will fail so he can show up afterward and say he is shocked. This is what passes for leadership right now in the White House, and it is truly unfortunate.

Look, we all believe Americans need access to financial products that are not rigged against them. We just think nobody should be above oversight, including the overseers. We do not think a bureau designed to watch Wall Street should have the ability to squeeze out hiring on Main Street. Frankly, the President's refusal to even consider our calls for oversight and transparency only serve to deepen our concerns about this agency. So, once again, we call on the President to take these concerns seriously and work with us on achieving something positive.

The fact is the CFPB needs a drastic overhaul before any nominee can be confirmed. This will not come as a surprise to anybody at the White House, and our doors remain open.

#### NOMINATION OF CAITLIN HALLIGAN

Mr. McCONNELL. Now, Madam President, on yet another topic—there are a number of things going on this week—today the Senate will vote on the nomination of Caitlin Halligan to the U.S. Court of Appeals for the DC Circuit. I will be opposing this nominee, and I would like to explain why.

First and foremost is Ms. Halligan's record of advocacy for an activist view of the judiciary and a legal career that leads any reasonable person to conclude that she would bring that activism right on to the court. As I have said many times before, the proper role

of a judge is that of an impartial arbiter who gives everybody a fair shake under the law as it exists. The role of a judge in our system, in other words, is to determine what the law says not what they or anybody else wants it to say. Yet looking over Ms. Halligan's record, it is pretty clear she does not share that view.

In Ms. Halligan's view, the courts are not so much a forum for the evenhanded application of the law as a place where a judge can work out his or her own idea of what society should look like. As she herself once put it: The courts are a means to achieve "social progress," with judges presumably writing the script.

Well, my own view is that if the American people want to change the law, then they have elected representatives to do that, and these elected representatives are accountable to them. This also happens to be how the Founders intended it, and it is what the American people expect of their judges: to be fair, impartial arbiters. But that is not what they would get from a Judge Halligan.

So how do we know this? Well, it is true that like many of this President's other judicial nominees, Ms. Halligan repudiated President Obama's own off-stated "empathy standard" for choosing judges and disclaimed an activist bent in her confirmation hearings. But her record belies this now familiar confirmation conversion.

Let's take a quick look at her record to see what it does suggest about the kind of judge she would be.

On the second amendment: As solicitor general of New York, Ms. Halligan advanced the dubious legal theory that those who make firearms should be liable for third parties who misuse them criminally. The State court in New York rejected the theory, noting it had never recognized such a novel claim. Moreover, the court called what Ms. Halligan wanted it to do to manufacturers of a legal product "legally inappropriate."

So let me say again, the New York Appellate Court termed Ms. Halligan's activist and novel legal theory to be "legally inappropriate." The Congress passed legislation on a wide bipartisan basis to stop these sorts of lawsuits because they were an abuse of the legal process. Undeterred, Ms. Halligan then chose to file an amicus brief in the Second Circuit Court of Appeals in another frivolous case against firearms manufacturers. Not surprisingly, she lost that case too.

What about her views on enemy combatants?

In 2005, the U.S. Supreme Court ruled in *Hamdi v. Rumsfeld* that the President has the legal authority to detain as enemy combatants individuals who are associated with al-Qaida. Yet despite this ruling, Ms. Halligan filed an amicus brief years later—years after that—arguing that the President did not possess this legal authority.

On abortion: Ms. Halligan filed an amicus brief in the U.S. Supreme Court

arguing that pro-life protesters—protesters—had engaged in "extortion" within the meaning of Federal law. The Supreme Court roundly rejected this theory 8 to 1.

On immigration: Ms. Halligan chose to file an amicus brief in the Supreme Court arguing that the National Labor Relations Board should have the legal authority to grant backpay to illegal aliens even though Federal law prohibits illegal aliens from working in the United States in the first place. Fortunately, the Court sided with the law and disagreed with Ms. Halligan on that legal theory too.

The point is that even in cases where the law is perfectly clear or the courts have already spoken, including the Supreme Court, Ms. Halligan chose to get involved anyway, using arguments that had already been rejected either by the courts, the legislature or, in the case of frivolous claims against gun manufacturers, by both. In other words, Ms. Halligan has time and time again sought to push her own views over and above those of the courts or those of the people as reflected in the law.

Ms. Halligan's record strongly suggests that she would not view a seat on the U.S. appeals court as an opportunity to evenhandedly adjudicate disputes between parties based on the law but instead as an opportunity to put her thumb on the scale in favor of whatever individual or group cause in which she happens to believe.

So, Madam President, we should not be putting these kinds of activists on the bench. I have nothing against the nominee personally. I just believe, as I think most Americans do, that we should be putting people on the bench who are committed to an evenhanded interpretation of the law so everyone who walks into a courtroom knows he or she will have a fair shake. In my view, Ms. Halligan is not such a nominee. On the contrary, based on her record and her past statements, I think she would use the court to put her activist judicial philosophy into practice, and for that reason alone she should not be confirmed. So I will be voting against cloture on this nomination, and I urge my colleagues to do the same.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. 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. REID. 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. REID. Madam President, would 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 now be in a period of morning business for 1 hour, 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.

#### EXECUTIVE SESSION

#### NOMINATION OF RICHARD CORDRAY TO BE DIRECTOR, BUREAU OF CONSUMER FINANCIAL PROTECTION

##### CLOTURE MOTION

Mr. REID. Madam President, I move to proceed to executive session to consider Calendar No. 413, and I send a cloture motion to the desk. In fact, it is at the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

##### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Richard Cordray, of Ohio, to be Director, Bureau of Consumer Financial Protection:

Harry Reid, Joseph I. Lieberman, Jeff Bingaman, Patty Murray, Patrick J. Leahy, Kent Conrad, Sheldon Whitehouse, Jack Reed, Benjamin L. Cardin, Barbara Boxer, Al Franken, Max Baucus, Richard J. Durbin, Robert Menendez, Jon Tester, Sherrod Brown, Tom Harkin, Tim Johnson.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

#### LEGISLATIVE SESSION

Mr. REID. Madam President, I now ask unanimous consent that the Senate resume legislative session.

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

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. DURBIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.