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No. 195

## House of Representatives

The House was not in session today. Its next meeting will be held on Monday, December 19, 2011, at 10 a.m.

## Senate

SATURDAY, DECEMBER 17, 2011

The Senate met at 9 a.m. and was called to order by the Honorable RICHARD BLUMENTHAL, a Senator from the State of Connecticut.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Today, O God, we magnify Your Name for Your purity, holiness, and justice as the Judge of the universe. Let Your purity, holiness, and justice be seen on Capitol Hill today. Bind our lawmakers together in the oneness of a shared commitment to You, a passionate patriotism, and a loyal dedication to find Your solutions for the concerns that confront and often divide us. May the words of our Senators and the meditations of their hearts be acceptable to You. Use their labors so that justice will roll down like waters and righteousness like a mighty stream.

We pray in Your merciful Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable RICHARD BLUMENTHAL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUE).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 17, 2011.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD BLUMENTHAL, a Senator from the State of Connecticut, to perform the duties of the Chair.

DANIEL K. INOUE,  
President pro tempore.

Mr. BLUMENTHAL thereupon assumed the chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

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

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 President, I ask unanimous consent that the order for the quorum call be rescinded.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

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### VOTE COMPROMISES

Mr. REID. Mr. President, as happens once in a while here, we do not have a final score on part of the payroll tax issue that we have, the legislation. Joint Tax, CBO said they will have the score by 10 o'clock today. Therefore, we are going to reverse the order of what we are doing. We are going to vote on the matters relating to the omnibus first. However, I ask unanimous consent that if the Reid-McConnell substitute amendment is not agreed to—that is the payroll tax issue—the Senate's action with respect to the conference report to accompany H.R. 2055 and H.R. 3672 be vitiated and the majority leader be recognized.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from Tennessee.

Mr. CORKER. Mr. President, what was the parliamentary procedure the leader just referred to?

Mr. REID. We do not have a final score on the payroll tax matter. There is something dealing with SGR that is not quite right, so we want to make sure everything is totally paid for. We are going to get a score in just a few minutes, probably by 10 o'clock for sure, and we want to reverse the order. We are going to do all the omnibus stuff because people have things to do and want to leave. But if by some happenchance the payroll tax does not pass, then all this stuff, the votes on the omnibus, would be vitiated.

Mr. CORKER. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

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

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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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. Mr. President, in the Senate we work on an adversarial basis lots of times because that is the way the Founding Fathers set up our country. I am not going to give a long lecture on this because I know people have a lot to do.

This little Constitution was very hard to come by. It was very hard to come by. We tried the Articles of Confederation. They did not work at all. We had the State of Rhode Island, a little, tiny place, with not many people in it; we had the big State of New York, with lots of territory and lots of people.

How were they going to work that out? They could not—until a man from Connecticut, Elbridge Gerry, came as one of the delegates, in June of 1787, to Philadelphia, who said: I have a great idea. It was an idea that had never been tried before. It was a stunningly interesting idea that he had. He suggested to the Founding Fathers a bicameral legislature, having a legislature made up of two bodies, two legislative bodies, the House and the Senate. That is the reason we are able to have a constitution.

But in the process, built into our Constitution is constant vying for power. You have the executive branch, the judicial branch, but within the legislative branch, there is constant vying for power between the House and the Senate. That is the case, even though both bodies may be of one party. When PELOSI was the Speaker, the Speaker and I were very good friends, but we had problems trying to work out things between the two bodies. When you have one body with one party and the other body with another party, it becomes even more difficult.

The times we are going through are not unusual for the Senate in the 200-plus years we have been a country. In fact, they are very peaceful and calm compared to sometimes. As we know, a Member of the House of Representatives did not like what a Senator from Massachusetts was saying. He came over here and, with his cane, nearly beat to death the Senator from Massachusetts. The Senator from Massachusetts was out of work for 2 years, and he was irreparably damaged. His health never returned.

So I know how difficult and hard it is for people to accept our way of doing business. But if you look back over the time we have been a country, it has worked out pretty well. For example, what we are going to vote on shortly—both the omnibus, the spending bill; and the payroll tax—were truly legislative accomplishments. They were compromises.

The omnibus is much better than it was previously. We were able to actually pass individual appropriations bills this year. The goal of the Republican leader and me is to pass them all next year. We are going to try. It is going to be one of our important issues we have to deal with, to try to get our appropriations bills back together.

I, when I first came to the Senate, became an appropriator. I think that committee is so integral to how this body works, and it has not been working well; that is, the appropriations process.

So people may be disturbed about some of the stuff that is on the floor, but it was true legislation because it was compromise. The omnibus—there are lots of things in that I do not like, and I will bet you every Senator has something in it that they do not like.

With the package we have dealing with unemployment, the package with the payroll tax and SGR, there are things in there I would rather not have in either one of those, but we are here because that is the way we were able to bring this and lead to what I think is an accomplishment that is important for the American people.

I appreciate the ability of the Republican leader and myself to sit down and talk, as we do, often, away from all of you, away from everybody. We started this conversation alone, and we ended it alone, working on these measures we have here. I know members of my caucus say: Why couldn't I have been in on doing all this stuff? We involved as many people as we could.

But, ultimately, as hard as it is for the two of us, we, on occasion, have to do what we think is right for the good of the country. So I appreciate very much the Republican leader and his ability to remain friends with me, as I do with him. I hope everybody understands today is a very important day for our country because we are doing today exactly what the Founding Fathers thought we would do.

Mr. MCCONNELL. Mr. President, I want to make just a few comments about the pipeline-payroll package that the majority leader and I have offered on which we will be voting shortly. It is not the bill I would have written. It falls short in several respects, in not having both certainty—the certainty issue is awfully important to the private sector if we are going to come out of this economic slowdown. But as the majority leader has indicated, our side approached this debate conscious of something Democrats in Washington tend to forget these days; that is, in order to achieve something around here, we have to compromise.

As the majority leader indicated, that is, in fact, what we have done. We have crafted a bill not designed to fail but designed to pass. The main thing Republicans were fighting for and got was the Keystone XL Pipeline provision authored by Senator LUGAR and also Senator HOEVEN, and Senator JOHANNIS was particularly instrumental

in working out the Nebraska aspects of this to the satisfaction of his Governor and his State legislature.

So why were Republicans fighting for the pipeline? We knew the whole reason we were even talking about temporary tax relief and extending unemployment benefits is because 3 years into this administration the private sector is still gasping, literally gasping for air. So we said let's also do something that would help create private sector jobs. Let's start to change the equation and do something that will actually get at the heart of the problem.

Keystone was an obvious choice. Everybody in Washington says they want more American jobs right now. Well, here is the single largest shovel-ready project in America. It is literally ready to go awaiting the permission of the President of the United States.

Some of the news outlets are calling this pipeline controversial. I have no idea why it could be called controversial. The labor unions like it, many Democrats want it, it strengthens our national security by decreasing the amount of oil we get from unfriendly countries, and it would not cost the taxpayers a dime—not a dime. It is a private sector project ready to go.

All we are doing is saying the President has 60 days to decide whether the project is in the national interest—60 days for the President to make a decision one way or the other. Since most of us have not heard a good reason from the White House as to why they would block it, I am very hopeful the President, in the course of this 60 days, will do the right thing for the country and get this crucial project underway.

The only thing standing between thousands of American workers and the good jobs this project will provide is a Presidential decision. As I said, I am hopeful and optimistic the President will make the right decision.

I thank my friend, the majority leader, for the opportunity to work together with him on something that could actually pass the Senate and be signed by the President.

I yield the floor.

Mr. LEAHY. Mr. President, we are close to voting on a payroll tax extension bill that includes a House provision designed to force the President to approve the Keystone XL tar sands oil pipeline. Proponents of this tar sands project argue that it belongs on this bill for one reason: building the pipeline would create jobs.

Any construction project creates jobs, and it is no surprise that this debate has come down to this. Unable to sell the pipeline as necessary to meet the country's energy needs, which it is not, or to refute charges that tar sands strip mining and the refining and burning of high carbon oil cause egregious harm to the environment and health, which it does, the Canadian energy company TransCanada has flooded the media with dire warnings about the American jobs that will be lost if the pipeline is rejected.

Not surprisingly, our Republican friends, always ready to fight for the oil companies, have echoed these scare tactics.

What they don't tell you is that the 5,000 or 6,000 temporary construction jobs will disappear once the pipeline is built. Only a few hundred permanent jobs are needed to operate and maintain the pipeline.

And they also don't mention that the choice is not between jobs or no jobs. They ignore the tens of thousands of permanent, safe American jobs that could be created by investing in clean, renewable sources of energy, which, unlike tar sands oil, don't pollute and will not be used up in a few short decades.

People can disagree about building the Keystone Pipeline, but there is more to this than the short-term jobs it would create. Jamming it through Congress on this bill in the waning hours of the session has a lot more to do with politics than jobs.

The Keystone provision in this payroll tax extension would force the President to approve or disapprove the pipeline within 60 days. Any decision to grant a permit would be "deemed," by Congress, to satisfy all the environmental requirements, even if it does not, and any modification to the construction mitigation and reclamation plan "shall not" require supplementation of the final environmental impact statement. In other words, don't study the consequences or give the public a chance to comment on the revised plan.

This is from Members of Congress who in the last election ran on a platform of "open" government. Yet when it comes to helping Big Oil, it is a different story. They cut the time for making a decision from a year to 60 days and short circuit the environmental review process. Forget the science. Forget the public. Preempt the law. Ignore the risk. The only thing that matters is pumping more oil.

Tar sands are a particularly dirty source of petroleum, from extraction to refinement. Anyone who is interested, regardless of which side of this debate they are on, should look at the photographs of the tar sands mines in the boreal forests of Alberta. What was once an extraordinarily beautiful landscape has been ravaged by heavy machinery, vast ponds filled with polluted water and sludge, and a ruined wasteland where the forests used to be.

We all know that the extraction of oil, minerals, and other natural resources harms the environment, but there are degrees of harm. Extracting heavy oil from tar sands is among the most energy-intensive and destructive.

Under the law, the State Department has the responsibility to approve or disapprove the pipeline because it crosses an international boundary. More than a year ago, I and 10 other Senators—Republicans and Democrats—sent the first of a series of letters to the State Department raising

concerns about the proposed pipeline and the impact of tar sands oil on global warming.

Since then, concern about the pipeline has evolved into a heated controversy over the impact the pipeline will have on our Nation's energy policy, our continuing dependence on fossil fuels, and the environment.

From the beginning, I had misgivings about the State Department's ability to conduct a thorough, credible assessment of a project of this complexity that they were approaching with an attitude of inevitability. The State Department did not anticipate the strong reaction of Members of Congress of both parties, including several from Midwestern States that have been coping with multiple oilspills from the original Keystone Pipeline—oilspills that have caused damage costing hundreds of millions of dollars that company officials have treated as inconsequential.

Concerns about the risks of this project have united not only those living along the proposed route but people across the Nation, including in Vermont, as well as in Canada, who care about the environment and who understand the need to wean our Nation from oil and other fossil fuels.

Every President since the 1970s has spoken of the need to reduce our dependence on oil and coal, but despite all the speeches, year after year we are more dependent on these finite, polluting sources of energy than ever before.

Today, energy companies are spending staggering amounts of money in search of new sources of oil in some of the most inhospitable places on Earth, where its extraction involves great risks to the workers involved, to the environment, and to precious sources of water for drinking and irrigation.

No matter what we do today, later this week, or later this month, this country will be dependent on fossil fuels for many years to come. But while TransCanada and its supporters extol the virtues of the Keystone XL Pipeline, as the minority leader and others have done, simply by reducing waste we could eliminate entirely the need for the energy from the oil that would flow through the pipeline. It is one of those inconvenient facts they would prefer to ignore.

I come from a State that shares a border with Canada. My wife's family is Canadian. I have a great fondness for that "giant to the north." But this issue is not about U.S. relations with Canada. We are inseparable neighbors, friends, and allies. There are strong views about this pipeline, pro and con, in both countries. As Americans, we have to do what is right for our country's energy future, for the environment, for our citizens.

Some have argued that if this pipeline is not built, TransCanada will simply build another pipeline to the coast of British Columbia and export the oil to China. But there are significant ob-

stacles and no indication that such an alternative route is a viable option.

Others maintain that the carbon emissions from extracting and refining this oil would not appreciably exceed those from oil shipped by tanker from the Middle East, but they do not address the environmental harm and pollution caused by the strip mining and separation process.

Then there is the jobs issue, which has been shamelessly exaggerated in a last-ditch attempt to win votes in a time of economic hardship.

Last month, in response to concerns about the crucial aquifer that the pipeline would traverse in the Midwest, the White House announced that the State Department would consider alternative routes through Nebraska and that the President would make a decision in 2013. Now, Republican defenders of the oil industry want to short circuit this process, whatever the risks.

Fossil fuels are finite, inefficient, and dirty. The cost we pay at the gas pump bears no resemblance to the long-term environmental and health costs borne by society as a whole.

We cannot lessen our reliance on fossil fuels by continually ignoring it, nor can we do it by spending huge amounts of money, energy, and American ingenuity to search the farthest reaches of the globe for every last drop of oil, regardless of how dangerous or harmful to the environment.

This pipeline would perpetuate a costly dependence that has gotten worse year after year, for which we are all to blame. Keystone XL would once again do nothing to address the problems associated with fossil fuels. It would virtually assure more oilspills, it would do nothing to promote conservation and reduce waste, and it would do nothing to spur investment in clean energy alternatives.

Most important, it would provide yet another excuse to once again postpone for another day the urgent, national security imperative of developing a sustainable energy policy for this country. That is what the decision about the Keystone XL tar sands oil pipeline has come to represent regardless of what route it takes.

Mr. President, sometimes a bad situation can be the beginning of something better. Once this bill is passed, President Obama will have 60 days to decide if building the pipeline is in the national interest. He should reject these strong-arm tactics by the other party. He should use this blatantly political maneuver as an opportunity to inaugurate a new energy policy that will finally end our dependency on foreign oil. It is time to finally put the environment, and the health and energy security of the American people, above the interests of the fossil fuel industry.

Mr. LEVIN. Mr. President, once again, the Senate finds itself in an untenable situation. We can approve the legislation before us, which is inadequate to the needs of our Nation, or

we can reject this legislation and make matters even worse. I will vote to approve this legislation, but I will do so knowing that we have missed yet another opportunity to do the right thing for the people we represent. Instead, we are doing some damage to important goals, in order to avoid doing even greater damage.

We are in this position because our colleagues across the aisle, and their Republican allies in the House of Representatives, refuse to make even the most basic of concessions to reality. The truth is, more than 3 years after the beginning of a recession, too many Americans are still desperately in need of assistance. Those who are working need us to help support economic growth so their jobs are more secure and their incomes can grow. Millions are still without work not because they don't want it, but because the number of people seeking work is vastly greater than the number of available jobs and they need us to help support economic growth so they can find work to support themselves and their families.

Yet what our colleagues have insisted upon is to present us with two choices. The legislation before us would continue middle-class tax relief, the only economic boosts Republicans have allowed us to even consider, but pay for it in a deeply misguided manner because Republicans refused to consider more equitable ways to offset its costs. It would extend unemployment benefits, but in a way that leaves thousands of Michigan families facing a sudden loss of their benefits, because it effectively eliminates 20 weeks of the current 99-week maximum benefit for Michigan and other States where, though unemployment remains high, it is beginning to fall. And these extensions would last for just 2 months.

As bad as that is, the alternative rejecting this legislation is even worse. Without passage, economists tell us that the loss of middle-class tax relief could put our already slow economic recovery into even greater doubt. Without passage, even more families, in Michigan and elsewhere, will lose the economic lifeline of unemployment benefits. More than 26,000 Michigan families will lose their benefits under the inadequate provisions of this bill, but that number would grow to more than 100,000 by Spring without passage of this legislation. Michigan residents would lose eligibility for 73 weeks of emergency unemployment compensation if we do not act today, instead of the 20 weeks we would lose if we pass this bill.

Mr. President, my State would suffer in other ways if this bill does not pass. It extends the so-called doc fix that is important to health care providers in Michigan and elsewhere. And this bill continues an adjustment to the Medicare Program that provides crucial aid to nearly half of all Michigan hospitals. This so-called section 508 fix is technical and complicated, but extending it is vitally important to Michigan

hospitals. Without it, their ability to continue providing care to Michigan's people would be hampered.

The method Republicans have demanded to pay for this legislation is also badly misguided. It uses fees paid to Fannie Mae and Freddie Mac to offset its costs. Those fees should be going to repair what we all, on both sides of the aisle, acknowledge is a massive financial problem at those enterprises. If we increase these fees, the money should be used to help stabilize the value of Americans' homes by reforming these enterprises.

The very fact that we have had to find ways to pay for middle-class tax relief is a remarkable acknowledgement by Republicans, given that it has been an article of faith among many of our Republican colleagues that tax cuts pay for themselves. Repeatedly, for decades, they have pushed for massive tax cuts for the wealthy and sold them with the promise that they will pay for themselves. Now, when we face the expiration of tax relief that overwhelmingly benefits middle-class families, they tell us that this tax cut must be paid for. Hopefully this inconsistency will not escape the notice of the American people.

It didn't have to be this way. Republicans had the chance to accept a fair alternative one that extended the payroll tax cut, unemployment insurance and other important tax and Medicare provisions, and that did so in a way that provides what our constituents demand from us: a balanced approach that asks all Americans to share in the sacrifices necessary to address our challenges.

That approach would ask Americans making more than \$1 million a year to pay slightly more in taxes. A solid majority of Americans see this as common sense: The wealthiest among us have done extraordinarily well in recent decades even as middle-class incomes have stagnated, and asking those fortunate few to contribute along with middle-class families is only fair. Yet Republicans again rejected that equitable option out of hand. We will continue to press for it in the challenging year that awaits us.

Over the last few months, Republicans have been willing to risk the full faith and credit of the United States, the continued functioning of the government, tax relief for middle-income Americans, adequate funding for our military, health care for our seniors, and an economic lifeline for the unemployed, all in an effort to protect the interests of the wealthiest, most fortunate Americans. None of these threats would loom so large if Republicans would simply acknowledge what roughly two-thirds of our constituents now acknowledge: that the solutions to our fiscal problems must include a balanced approach that asks the wealthiest Americans to sacrifice along with working families. Today, they have demonstrated that they have not yet received that message, and they have

once again forced us to choose between the unacceptable and the catastrophic.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, just a brief comment on Keystone. I was the first elected official to write a letter opposing that. I know how I feel about this. I know how my friend, the Republican leader, feels about it. I was responsible for putting it in this bill. That is how legislation works.

I would also say we are thankful that we have worked together to make sure that 160 million people have not a tax increase but a continued tax break. I am also thankful that the lifeline for unemployed people is going to continue for at least 60 days.

I ask the Chair to report the legislation.

#### MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2011

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of H.R. 3630, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 3630) to provide incentives for the creation of jobs, and for other purposes.

AMENDMENT NO. 1465

Mr. REID. Mr. President, I have an amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for himself and Mr. MCCONNELL, proposes an amendment numbered 1465.

The amendment is printed in today's RECORD under "Text of Amendments."

The ACTING PRESIDENT pro tempore. Under the previous order, the question is on agreeing to the amendment, which is subject to a 60-vote threshold.

Mr. REID. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. PAUL).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 10, as follows:

[Rollcall Vote No. 232 Leg.]

YEAS—89

Akaka	Boozman	Coats
Alexander	Boxer	Coburn
Ayotte	Brown (MA)	Cochran
Barrasso	Brown (OH)	Collins
Baucus	Burr	Conrad
Begich	Cantwell	Coons
Bennet	Cardin	Cornyn
Bingaman	Carper	Crapo
Blumenthal	Casey	Durbin
Blunt	Chambliss	Enzi