on the Republican side. If somebody comes, I will, of course, yield the 4 minutes.

The latest report is that there are no further speakers until we move on to the judicial nomination.

I wished to use the time remaining to respond to two of the points that have been made. Before I do that, let me just say that as I have kept track during the debate, the minority party has discussed debt, bureaucracy, Presidential appointments, punishment of success, ObamaCare, jobs, fuel prices, picking winners and losers, campaign contributions, out-of-control spending, equal opportunity, and massive new tax increases.

The subject at hand is actually much smaller than this; that is, the indisputable fact that at the very high end of the American income spectrum, people are paying lower tax rates than regular American families—whether it is Warren Buffett's self-proclaimed example of paying only 11 percent in total taxes or the average of all the 400 highest income earners in the country being only 18.2 percent. These are people earning—in the case of the 400—over one-quarter of a billion dollars each in 1 year and paying the rate equivalent to what a single Rhode Island truckdriver pays. That is the issue.

We should have a progressive Tax Code. One of the speakers said we do have a progressive Tax Code and that the income tax generates 31.2 percent of the total income tax revenue from high-income folks versus 14.2 percent from the middle as their rate. But it is worth focusing on the fact that when my Republican colleagues talk about taxes and they focus on income taxes, they leave out the payroll taxes, which virtually every American pays or a great number of Americans—more pay payroll taxes than income tax, I believe.

If we look at all those taxes and put them together, we find that the top 1 percent of Americans do indeed pay 28.3 percent of the taxes. One percent pays 28.3 percent of the taxes. That sounds pretty progressive, until we realize the top 1 percent in America controls more than one-third of the Nation's wealth; the top 1 percent holds more than one-third of the Nation's wealth but pays only 28 percent of the taxes. That is not progressive, if we are measuring in what we are usually taxing, which is income and wealth, not just the existence of a human being on the planet.

If we go to 5 percent, then the top 5 percent pays 44.7 percent of all our taxes, which again is a lot. It is progressive but not when we consider that 5 percent owns or controls more than 60 percent of the Nation's wealth. We are a country in which more than half the wealth of the country—more than 60 percent of it is concentrated in the hands of one-twentieth of the population, the top 5 percent. So for them to pay a higher rate makes a lot of logical sense. What we find is that they actually pay a lower rate all too often.

The other point I wish to address is the argument that this will take money from the pockets of small businesses. If we look at the Office of Taxation and Treasury's definition of a small business and look at how many would be affected by this bill, it would be 3.3 percent; nearly 97 percent of small businesses would have zero effect from this bill. Of the 3.3 percent that would be affected, it is hard to know how many of those are high-income individuals who incorporated themselves for tax purposes but don't fit the ordinary definition of a small business.

When we look at the fact that Americans across the country have spent the last week sitting down going through their receipts, filing their tax returns, sitting at the kitchen table trying to make sense of it all and get it filed on time, for a great number of those folks, what they know from Warren Buffett and others is that the people making one-quarter of a billion dollars a year are paying lower rates than they are, and it is not right. It is not just me saying that is not right; it is Ronald Reagan saying that is not right. He said it was ''crazy''—his word—that a millionaire should pay a lower tax rate than a busdriver pays.

The PRESIDING OFFICER. The Senator from Rhode Island has exhausted his time. The Senator from Tennessee is here to speak.

Mr. WHITEHOUSE. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee has 1 minute.

Mr. CORKER. Mr. President, this last March, 64 Senators—32 on each side—wrote a letter to the President asking for real tax reform and real entitlement reform.

I think most of us know today's exercise is a political exercise. It is not intended to deal with deficits. It is intended to divide.

Last week, I heard the President speaking at a college in Florida about the Buffett tax. In that speech, he was talking about spending all that money on things they were interested in. In other words, this money is not being used, per the President's speech, in any way to reduce deficits.

I encourage all those on both sides of the aisle—32 Senators on each side—who have spoken earnestly and sincerely about progrowth tax reform and entitlement reform to not follow this folly of division but to hold together, as we need to do something that is great for our country.

It is my hope that by later this year—possibly in a lameduck, although I hope something happens sooner than that—all of us who truly care about solving problems, not about scoring political points, which this bill is about, will come together and do something great for our country.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF STEPHANIE DAWN THACKER TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The legislative clerk read the nomination of Stephanie Dawn Thacker, of West Virginia, to be United States Circuit Judge for the Fourth Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes of debate equally divided and controlled in the usual form.

The Senator from Vermont.

Mr. LEAHY. Mr. President, let me make sure I understand. The time is now divided for an hour until the vote?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I thank the distinguished Presiding Officer, and I welcome him back after the break and all Senators on both sides of the aisle.

The Senate is going to consider the nomination of Stephanie Dawn Thacker, of West Virginia, to fill a judicial vacancy of the Fourth Circuit Court of Appeals, and I know the distinguished Senator from West Virginia, Senator MANCHIN, will be coming to speak in a few moments.

I would note this is a judicial vacancy on which the Senate Judiciary Committee voted unanimously more than 5 months ago, as the distinguished Presiding Officer will recall, in favor of this nomination. After thorough debate and background, we voted for her unanimously. That was 5 months ago. She should not have had to wait this long.

She should have been confirmed last year. With nearly 1 in 10 judgeships across the Nation vacant and the judicial vacancy rate remaining nearly twice what it was at this point in the first term of President George W. Bush, the Senate needs to do more to reduce judicial vacancies so that all Americans can have the quality of justice that they deserve.

The Federal Judiciary has been forced to operate with the heavy burden of 80 or more judicial vacancies for more than 3 years now. There is nothing to justify this extended period with years of vacancies numbering more than 80 around the country. Congress has not created scores of new judgeships, as we did in a bipartisan fashion during the Republican administration of Ronald Reagan and George Herbert Walker Bush. Indeed, when the Senate was confirming 205 circuit and district court nominees during the first term of President George W. Bush, we lowered vacancy rates more than twice as quickly.

I will include for the RECORD at the conclusion of my remarks a copy of the Internet article entitled, ''1000 days,''

by Doug Kendall and Ryan Woo of the Constitutional Accountability Center, on this point.

I also remind the Senate of the study by the Congressional Research Service on the historically high vacancies for record amounts of time about which I spoke earlier this year. This level of vacancies has been perpetuated for the entire Presidency of President Obama because Senate Republicans have adopted ''new standards'' and refused to enter into prompt agreements to schedule votes on qualified, consensus nominees.

Today's vote is pursuant to the agreement reached by the majority leader and the Republican leader last month. This is the first Court of Appeals nominee to receive a vote pursuant to that agreement. This is only the second Court of Appeals nominee to receive a Senate vote all year. Both were qualified, consensus nominees who should have been confirmed last year and would have been but for Republican filibusters.

It should not have taken 4 months and 2 days after being reported by the Senate Judiciary Committee for the nomination of Judge Adalberto Jordan to be considered by the Senate. Judge Jordan of Florida was finally allowed to fill a judicial emergency vacancy on the Eleventh Circuit. Finally, after a 4-month Republican filibuster that was broken by an 89 to 5 vote, and after Republicans insisted on 2 additional days of delay, the Senate voted to confirm him 94 to 5. A superbly-qualified nominee, he is the first Cuban-American to serve on the Eleventh Circuit. His record of achievement is beyond reproach. Judge Jordan is by any measure the kind of consensus nominee who should have been confirmed without such delay. Despite the strong support of his home state Senators, Senator NELSON, a Democrat, and Senator RUBIO, a Republican, Senate Republicans filibustered and delayed his confirmation in October, in November, in December, and in January. It should not have taken another 2 days after the Senate voted overwhelmingly to bring the debate to a close to have the confirmation vote.

The nomination of Stephanie Thacker is similar, and Senate Republicans have acted in a similar, all too familiar pattern. When confirmed, Stephanie Thacker will be the first woman from West Virginia to serve on the United States Court of Appeals for the Fourth Circuit. She, too, is strongly supported by both her home state Senators. She, too, is a qualified, consensus nominee. She has been forced to wait 5½ months for Senate consideration, with no good purpose. Hers is not a nomination that should have been delayed and filibustered by Senate Republicans after it was reported unanimously by the Senate Judiciary Committee last November 3.

Ms. Thacker is the kind of qualified, consensus nominee who in past years would have been considered and confirmed by the Senate within days of being reported unanimously by the Judiciary Committee. She is an experienced litigator, who, in her 21-year career as a Federal prosecutor and private defense attorney, has tried nearly two dozen cases to verdict or judgment and argued appeals before the Fourth Circuit and the West Virginia Supreme Court. Much of her career has been dedicated to public service. She served as an Assistant U.S. Attorney for the Southern District of West Virginia for 5 years and participated in the first prosecution in this country under the Violence Against Women Act—an important piece of legislation that I am working with Senator CRAPO to reauthorize.

She continued her career as a Federal prosecutor for another 7 years in the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice. There, she focused on prosecuting cases dealing with child pornography, child sexual exploitation, sex trafficking, sex tourism, obscenity, and criminal nonsupport offenses. She rose to Deputy Chief of Litigation and then to Principal Deputy Chief. While at the Justice Department, Ms. Thacker was awarded the Attorney General's Distinguished Service Award.

Why would any Senator stall confirmation of this consensus nominee? What purpose did it serve? Must all nominees of President Obama be delayed and obstructed and stalled?

I thank the majority leader for scheduling this vote. He has secured an agreement to vote on the long-delayed nomination of Judge Jacqueline Nguyen of California to fill one of the judicial emergency vacancies plaguing the Ninth Circuit, the busiest circuit in the country. She, too, is a consensus nominee who could and should have been confirmed last year. Her consideration has been delayed more than 5 months and will not occur until May 7. But there are two more Ninth Circuit nominees to fill judicial emergency vacancies who are before the Senate awaiting final consideration. Paul Watford of California was reported favorably by the Senate Judiciary Committee in early February. His nomination should be scheduled for a confirmation vote without further delay. Justice Andrew Hurwitz of Arizona was reported favorably by the Senate Judiciary Committee in early March. His nomination should also be scheduled for a confirmation vote. There is no good reason for delay. The 61 million people served by the Ninth Circuit are not served by this delay. The Circuit is being forced to handle double the caseload of any other without its full complement of judges. The Senate should be expediting consideration of the nominations of Judge Jacqueline Nguyen, Paul Watford, and Justice Andrew Hurwitz, not delaying them.

The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, have written to the Senate emphasizing the Ninth Circuit's ''desperate need for judges,'' urging the Senate to ''act on judicial nominees without delay,'' and concluding ''we fear that the public will suffer unless our vacancies are filled very promptly.'' The judicial emergency vacancies on the Ninth Circuit are harming litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly 5 months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of September 2011, the Ninth Circuit had 14,041 cases pending before it, more than three times that of the next busiest circuit.

If caseloads were really a concern of Republican Senators, as they contended last year when they filibustered the nomination of Caitlin Halligan to the D.C. Circuit, they would not be delaying the nominations to fill judicial emergency vacancies in the Ninth Circuit. If caseloads were really a concern, Senate Republicans would consent to move forward with all three of these Ninth Circuit nominees to allow for a final up or down vote by the Senate without these months of unnecessary delays.

None of these nominees should be controversial. They are all mainstream nominees with bipartisan support. Judge Nguyen, whose family fled to the United States in 1975 after the fall of South Vietnam, was confirmed unanimously to the district court in 2009 and the Senate Judiciary Committee unanimously supported her nomination to the Ninth Circuit last year. When confirmed, she will be the first Asian Pacific American woman to serve on a U.S. Court of Appeals in our history.

Paul Watford was rated unanimously well qualified by the ABA's Standing Committee on the Federal Judiciary, the highest rating possible. He clerked at the United States Supreme Court for Justice Ruth Bader Ginsburg and on the Ninth Circuit for now Chief Judge Alex Kozinski. He was a Federal prosecutor in Los Angeles. He has the support of his home state Senators and bipartisan support from noted conservatives such as Daniel Collins, who served as Associate Deputy Attorney General in the Bush administration; Professors Eugene Volokh and Orin Kerr; and Jeremy Rosen, the former president of the Los Angeles Chapter of the Federalist Society.

Justice Hurwitz is a respected and experience jurist on the Arizona Supreme Court. He also received the ABA Standing Committee on the Federal Judiciary's highest rating possible, unanimously well qualified. This nomination has the strong support of both his Republican home state Senators JOHN MCCAIN and JON KYL.

Chief Justice Roberts and the Attorney General have both spoken about the serious problems created by persistent judicial vacancies. More than

160 million Americans live in districts or circuits that have a judicial vacancy that could be filled today if Senate Republicans would just agree to vote on the nominations now pending on the Senate calendar. The Senate should act to bring an end to the harm caused by delays in overburdened courts and we should start with the Ninth Circuit. Senate Republicans should consent to votes on the Ninth Circuit nominees without more delay and obstruction.

I ask unanimous consent that the article to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Constitutional Accountability Center, Mar. 27, 2012]

1000 DAYS

(By Doug Kendall and Ryan Woo)

Today marks the 1000th consecutive day during which our judicial system has been operating with the burden of 80 or more vacancies on the federal bench. Aside from a completely anomalous period following the creation of 85 new judgeships in 1990, this is far and away the longest period of time during which the federal courts have been forced to operate at such an understaffed level. Across the country, these vacancies have translated into rising caseloads for overworked judges and unacceptable delays for the countless Americans seeking justice in the courts. While it is possible that the vacancy total will dip below 80 in the coming days due to a slow drip of confirmations secured by a recent and hard-fought-for deal in the Senate to allow confirmation votes on 14 judicial nominees, this slow trickle is not anywhere close to the decisive action that is needed to resolve the vacancy crisis that has been plaguing the country for nearly three years.

Although much has changed over the past 1000 days, one thing that has remained constant is the partisan obstruction by Republicans in the Senate that has kept the judicial confirmation process moving at a crawl. While a backlog in vacancies is typical at the beginning of a presidential term, the vacancy rate is usually brought down to a more manageable level well before a president's fourth year in office. Indeed, by this point in the first terms of Presidents Bill Clinton and George W. Bush, the vacancy totals were 55 and 45, respectively, and the Senate had already confirmed 181 of President Clinton's nominees to the lower federal courts and 172 of President Bush's. By comparison, the Senate has only confirmed 134 of President Obama's nominees.

The glacial confirmation pace that has kept the vacancy number so high for the past 1000 days can be traced back to Republican obstruction at all levels of the judicial confirmation process. Most important, even uncontroversial nominees are facing unprecedented cloture votes before they can be confirmed. The process of delaying floor votes for nominees has resulted in an average wait time of 111 days between the Judiciary Committee vote and Senate confirmation vote for President Obama's nominees. In sharp contrast, President George W. Bush's nominees waited an average of just 22 days.

There should never again be a period when the federal judiciary faces such a high number of vacancies for so long; if the vacancy total dips below 80 in the coming days, it will hardly be a cause for celebration. Rather, it will be a reminder that even in an election year, the Senate must put partisan wrangling aside and continue to staff the federal judiciary. The Senate owes nothing less to the judges and everyday Americans who bear the brunt of this politically-inflicted judicial vacancy crisis.

VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2011

Mr. LEAHY. Mr. President, speaking of the Senate Judiciary Committee, as we begin to work now after the Easter/Passover recess, I wish to thank all Senators who have come to the floor in recent weeks to express their bipartisan support of the Violence Against Women Reauthorization Act and who have emphasized, and I agree, the need for the Senate to take up and reauthorize this landmark legislation.

For almost 18 years, the Violence Against Women Act—called VAWA—has been the centerpiece of the Federal Government's commitment to combating domestic violence, dating violence, domestic assault, and stalking. The impact of this landmark law has been remarkable. It has provided lifesaving assistance to hundreds of thousands of men, women, and children, and the annual incidence of domestic violence has dropped by 50 percent since the act was passed.

Support for the Violence Against Women Act has always been bipartisan, and I appreciate the bipartisan support this reauthorization bill has already received. Senator CRAPO and I introduced the reauthorization of the Violence Against Women Act in November. With Senators HELLER and AYOTTE joining as cosponsors in March, we now have 61 cosponsors in the Senate from both sides of the aisle. I hope the Senate will take up and pass this bill soon.

The Violence Against Women Act is about responding to domestic and sexual violence. Its programs are vitally important. Our legislation has looked at and learned from the experiences and needs of survivors of domestic and sexual violence from all around the country. We have also heard the recommendations of those tireless professionals who work every single day—I might say virtually every single night—to serve. It builds on the progress that has been made in reducing domestic and sexual violence and makes vital improvements to respond to unmet needs, as we have each time we have reauthorized the Violence Against Women Act.

The provisions that a minority on the Judiciary Committee labeled controversial are, in fact, modest changes to meet the genuine, unmet needs that service providers have told us they see every day as they work with victims all over the country. This is what we have done on every single VAWA reauthorization. We have looked at what we have learned since the last one and then taken steps to recognize those needs of victims that are not being met and find ways to meet them. That is nothing new or different. It is what we have always done. Because we have improved it each time, it is one of the reasons domestic violence has dropped. This should not be a basis for a partisan division or delay.

The legislation also improves important changes to respond to current economic realities. We all know while the economy is now improving, these remain difficult economic times, and we have to be responsible in how we spend the taxpayers' money. That is why in our bill we consolidate 13 programs into 4. We remove duplication and bureaucratic errors. It is another thing we do each time we reauthorize to make it better. It would cut the authorization level for VAWA by more than $135 million a year. That is a decrease of nearly 20 percent from the last reauthorization.

The legislation also includes significant accountability provisions, including audit requirements, enforcement mechanisms, and restrictions on grantees and costs. Again, we are saying we want to do the right thing in the Violence Against Women Act, but we also want to protect the taxpayers' dollars. That is why it is a bipartisan bill. It is a product of careful consideration, and that is why it has widespread support.

There is no reason not to take it up and debate it and pass it. The Judiciary Committee passed this bill after considering a number of amendments, including a substitute offered by the minority. I have reached out to the distinguished ranking member, Senator GRASSLEY, and asked about possible amendments and time agreements for consideration. We should do what we have always done ever since the first VAWA years ago and pass it with strong bipartisan support. These problems are too serious for us to delay.

Any one of us who has served in law enforcement has gone to a scene where somebody has been severely battered, sometimes killed. I know when I have gone to the scenes I never heard a police officer say: Is this a Republican or a Democrat? They say, is this a victim? What do we do to help them? That is what this is. It is not a Republican or Democratic bill; it is a sensible bill to help the victims of violence.

This is crucial, commonsense legislation. It has been endorsed by more than 700 State and national organizations, numerous religious and faith-based organizations, as well as our law enforcement partners. The last two times the Violence Against Women Act was reauthorized, it was unanimously approved by the Senate. It seems sometimes that partisan gridlock has become the default in the Senate in recent years. We are better than that. We should rise above gridlock. There is no reason we should delay considering this bill. It has the support of 61 cosponsors across the aisle. Let us pass it.

As I have said before, domestic and sexual violence know no political party. Violence happens to too many people in this country. Its victims are Republicans and Democrats. They are rich and poor, young and old. They are male and female. They are straight and gay. Nobody falls into a category where they are immune to this kind of violence. So let us work together and

pass this strong VAWA reauthorization legislation and let us do it without delay. It is a law that has saved countless lives. For my fellow Senators, I would say this is an example of what we in the Senate can accomplish if we work together.

PAYING A FAIR SHARE ACT

Lastly, before I came to the floor, I heard the strong support for the Paying a Fair Share Act. It has been called the Buffett rule. The Buffett rule is a commonsense bill, ensuring that taxpayers at the top of the economic ladder pay at least the same tax rate paid by hard-working middle-class families in my State of Vermont and all other States. No longer should handsomely compensated CEOs or those who live off trust funds pay a lower effective tax rate than the people who work for them.

Frankly, I think it is remarkable and regrettable that such a principle of tax fairness should evoke controversy. It is more regrettable still that opponents have erected a supermajority barrier in an effort to prevent debate on this straightforward principle. We should debate whether the wealthiest should pay at least the same rate of taxes as hard-working middle America and then vote for it or vote against it. If a Senator wants to vote to protect the wealthiest Americans, fine, stand and vote that way or vote to protect hard-working American families. But when we filibuster, what we are doing is voting maybe. That is voting maybe.

Let's have the courage to vote for the millionaires and protect them from any kind of a tax such as ordinary Americans pay or vote for ordinary Americans and say everybody should pay the same kind of tax. Vote one way or the other, but don't duck it by having a filibuster, where we can say: I looked at it and I voted maybe. We are not elected to vote maybe.

I am pleased to join Senator WHITEHOUSE and others as a cosponsor of the bill which calls for a minimum 30-percent tax rate for taxpayers with adjusted gross incomes above $1 million. This just says they are going to pay at least the tax rate paid by middle-class families, and it also will reduce the deficit by $47 billion over the next decade.

While hard-working Vermont families and small businesses are struggling to make ends meet in a difficult economy, tax fairness has continued to erode, benefiting the wealthiest 1 percent at the expense of the rest of the country. Right now, a very large proportion of millionaires pay a smaller percentage of their income than do a larger share of moderate-income taxpayers.

Warren Buffett, one of the wealthiest people in the world, noted in a New York Times op-ed article last year that he paid taxes of only 17.4 percent on his taxable income—a lower percentage than paid by any of his 20 employees. They paid from 33 to 41 percent. In fact, the nonpartisan Congressional Research Service studied these claims and confirmed Mr. Buffett's assertion that a large proportion of millionaires pay a smaller percentage of their income than average working Americans and Vermonters do.

Let us end the loopholes. Tax day is upon us. Let us stand and say we are going to end the loopholes, we are going to end these special provisions that allow some of the wealthiest to pay less than hard-working Americans. It is simply a matter of fairness.

Again, let us vote yes or no. If someone wants to vote to protect the millionaires, then, fine, vote no. If someone wants to say have it be fair, then vote yes. But let us vote. Having a filibuster means we vote maybe. None of us get elected or paid to vote maybe.

Mr. President, I see the distinguished senior Senator from West Virginia on the floor and I see his distinguished colleague.

I am sorry, I now see the Senator from Pennsylvania. Before I yield the floor, I ask unanimous consent, if there are quorum calls during this hour, the time be divided equally.

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

Mr. LEAHY. Mr. President, I ask unanimous consent when the time goes back to this side, that first the distinguished senior Senator from West Virginia be recognized and then his distinguished colleague from West Virginia, Senator MANCHIN, be recognized, both to speak for the time remaining to the Senator from Vermont.

I ask unanimous consent that when time is yielded back to me, the time remaining to the Senator from Vermont, which will be approximately 15 minutes, be divided between the two Senators from West Virginia.

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I ask unanimous consent to speak as though in morning business.

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

TAX FAIRNESS

Mr. TOOMEY. Mr. President, I rise this afternoon to speak against the so-called Buffett rule. This is a gimmick. It is a political gimmick. This is not a serious effort to deal with a ridiculously broken Tax Code. This is not a serious effort to deal with a completely broken budget. And, frankly, it is very disappointing to me that we are wasting time on this instead of dealing with both of those things.

We have a Tax Code that is ridiculous, impossible to understand, counterproductive to economic growth, and that badly needs a complete overhaul that would simplify the Code, get rid of much unfairness, lower marginal rates, broaden the base, and encourage strong economic growth. Instead, we have this little gimmick because we don't have the political leadership to deal with the underlying real problem of a badly flawed Tax Code.

Likewise on budget policy, this does nothing meaningful for our massive budget deficits that we have been running. In fact, this body chooses again for the third consecutive year not to even have a budget. It is unbelievable. Instead, we are going to waste time arguing about this political stunt.

The President proposed a budget, at least. Unfortunately, it was not a serious budget, not a serious attempt to deal with the massive deficits we are running. It is the fourth consecutive year of trillion dollar deficits. Instead of dealing with that, we have this gimmick.

Let's be clear. This is not a serious attempt to deal with tax reform or the budget. This so-called Buffett rule, this tax increase, would raise less than $5 billion a year. That amounts to about one-half of 1 percent of the $1 trillion deficit the President has proposed that we run. In fact, it would cover about 2 days' worth of the deficits we are running for 2013.

Here is a chart that illustrates the deficit we will have under the President's policies without the Buffett tax. Here is the deficit we will have if we pass the Buffett tax. If you can't tell the difference, it is because there is no meaningful difference.

Folks, we ought to be dealing with the real tax reform that we need to encourage economic growth and help reduce this deficit. Instead, we are wasting time with this.

Since we are not doing what we ought to do, why are we having this argument? Unfortunately, it looks as though it is an effort on two fronts. One is to simply engage in class warfare, generate envy and resentment, and try to use that for political gain. And, secondly, it is an effort to distract from the underlying mismanagement of economic policy and fiscal policy we have seen from this administration.

I know what the claim is from the other side. We hear this is all about making sure the rich pay their fair share. I have to say I have a little trouble taking lectures on fairness from folks who think taxpayers ought to be made to put $500 million into a solar energy company that does not have a competitive product, which drives it into bankruptcy at the cost to the taxpayers, from the same folks who want to force taxpayers to continue subsidizing plug-in cars people don't want to buy. That kind of crony capitalism and distorting of our economy at the expense of taxpayers doesn't strike me as fairness, so I have a hard time taking a lecture on fairness from people who advocate those things.

But let's look at this Tax Code. If we want to talk about fairness, that is fine. How about the fact that, according to the Joint Committee on Taxation, almost half of all Americans today pay no income tax at all or actually receive money through the income tax code? The other half pays all of the taxes. We are hearing from our friends

that that is not enough; they need to pay still more.

My second chart will illustrate the point that according to the CBO, if we look at all Federal taxes, the middle quintile, the middle 20 percent of wage earners in America, pays about 14 percent as an average tax when you combine all the kinds of Federal taxes that are paid. The top 1 percent pays 30 percent. So it is more than twice as high—29.5, actually.

If we look at just the income tax, the disparity is even bigger. If we look at the income tax alone, the middle quintile, the middle class, the middle 20 percent, when it comes to income tax alone on average pays about 3.3 percent as an effective average income tax rate. The top 1 percent pays 19 percent; that is, on average, almost 6 times as high.

The fact is we have a very progressive tax system, not just by the historical measures of our own previous tax systems, but look everywhere else in the world. In fact, the United States, according to the OECD, has the most progressive tax system in the industrialized world.

This is a chart that measures progressivity. Greater progressivity is in this direction; less is in this direction. As you can see, this ranking shows all the countries around the world that have less progressivity than the United States, which means that higher income Americans pay a greater share of income taxes and taxes generally than in any other country in the world. But again, we are told this is not enough.

Clearly there is something else going on here, and here is what concerns me the most. The real consequence of this so-called Buffett rule, this tax increase, are that it is meant to be a tax on investment returns. It is a tax on capital gains and dividends. It is a tax that would upend decades of established law with respect to the differentiation we have put in place with respect to dividend income versus wage income. And it disregards the very sound reasons why we have created that distinction, one of which is that investment returns are taxed multiple times.

We don't hear so much about that during this debate from my friends who are advocates for this new tax increase. But the fact is, first of all, it is only aftertax income that can be invested in the first place. So someone had to pay taxes on their earnings, and then after they have spent what they need to for their cost of living and if they have managed to save something which they then invest, they have already paid tax on that. Now the investment they have made—and let's say this is an investment in a corporate stock. Let's keep in mind that that corporation has to pay tax before they have an opportunity to provide a return on the investment that is made. And as it happens, in the United States, our corporations pay the highest corporate tax in the entire industrialized world, 35 percent.

We have got a terrible corporate Tax Code that needs to be reformed in many ways. One of them is to lower this top marginal rate, but right now it is 35 percent. And what the proponents of this rule are saying is that after a corporation pays that 35 percent tax on whatever income they can earn, and when they then choose to dividend some of that remaining aftertax income to the people who own that company, they want those owners to pay yet another tax that is even higher than we pay now.

We have a chart here that illustrates what the net effect of this is. Given that we have a 35-percent top corporate tax rate, and if we were to adopt this proposal to impose this 30-percent minimum tax, for an individual who has dividend income, first the company in which they invest pays a tax. Not all companies pay the 35-percent rate, but that is the top rate and it is in effect on many companies. Well, if the company has to pay 35 percent of a given $100 of income, they are left with $65 in corporate aftertax income. If that company then decides that the people who own it ought to get a dividend reflecting their ownership on that $65 that is available to be paid out as a dividend to investors, the proponents of the Buffett rule would have those investors pay another 30 percent. That is $19.50, leaving the investors with $45.50 out of the $100 of income. In other words, the government takes the lion's share of the income from this investment.

The net effect of that, of course, is that it diminishes the incentive to make these investments in the first place. It makes other countries more attractive places to invest capital, to invest in a business to try to generate a return.

There is another aspect that is disturbing about this which is, if you ask me, it is very reminiscent of the alternative minimum tax. We tried that once. In 1969, Congress decided there were some people who weren't paying enough in tax, and they said we are going to target a handful. Literally, it was 15 people—not 155,000 but 155 people who were subject to the alternative minimum tax, which was this confession of the absurdity of the Tax Code in the first place. Right? Junk the entire existing Tax Code and have yet a second parallel Code that will apply to just those rich 155 people. Well, guess what. Today that applies to tens of millions of Americans, and every year Congress has to do a temporary fix because it wasn't intended to do that.

I would suggest if we go down this road, we are going to find that this tax—which we are told today would only apply to millionaires and billionaires, well, pretty soon the hard cold reality of the fact that it doesn't generate any revenue to speak of if you apply it just to millionaires and billionaires, means it is going to be expanded to the middle class and far more people, very much to our detriment.

Finally, let me say that it is a bad idea to confiscate the capital which is the lifeblood of an economy. This next chart illustrates the critical role that investment plays in economic growth and in job creation.

A couple of squiggly lines. But one thing you notice if you take a quick look is there is an inverse relationship here. When the black line goes up, the red line is going down. The black line is investment as a percentage of our economy. And when investment climbs—the red line is unemployment—you see, unemployment goes down. This is very well understood. It is capital invested in the economy that creates growth and creates jobs. What this rule would do is it would impose a new layer of additionally higher taxes on that very lifeblood of our economy.

It is capital also that drives wages higher. We should never forget that fact. It is capital that allows the hunter-gatherer to have a hoe and become a farmer. It is capital that allows the farmer with a hoe to cast aside the hoe and drive a tractor and become far more productive. It is capital that allows the laborer who is digging with the shovel to put aside the shovel and drive a backhoe. And as I think everybody understands or should understand, the farmer who is using a tractor is producing more and has a higher income than the poor guy who is using a hoe. And the guy who is operating a backhoe has far more income and is far more productive than the guy who is using a shovel. It is capital that makes that possible.

There is a metaphor I like about this, and I am not sure who to credit it to, but certainly I didn't invent it. I may not do it justice, but the gist of it is this:

The comparison to the economy is that of a fruit tree.

A farmer who has a fruit tree cultivates that tree so it will produce fruit, and the fruit is the income the farmer earns from the work he puts into cultivating that tree.

If the government comes along and takes some of the fruit as a tax, as long as it doesn't take too much it still makes sense for the farmer to cultivate that tree so he can have that aftertax income. And as long as the government only takes a portion of the fruit, then the government is not diminishing the ability of the tree to produce that fruit.

But if the government comes along and says in addition to taking a whole lot of the fruit, we want to saw off a branch because we want some firewood, that is a whole different matter. Because whatever you think of how many of those apples or whatever portion of that fruit you wish to take from the farmer, once you start cutting at the tree you are diminishing the ability of the tree to produce income for the good of the farmer and for society.

That is what happens when we restrict capital, and I am afraid this is the path we would be going down if we

adopt this. This is bad economic policy. We already have the most progressive Tax Code in the world, and very progressive by our own historical standards.

For the sake of job growth, economic growth, and in the hopes that we will instead have a meaningful discussion about budget policy and tax reform, I urge my colleagues to vote no today on the cloture motion on the Buffett rule.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, 1 year ago last month our Nation lost an esteemed public servant and an outstanding human being, Judge M. Blane Michael, who served on the U.S. Court of Appeals for the Fourth Circuit for a number of years.

With his passing, we were therefore left with a great void not only on the Federal judiciary but also in the hearts of his family and his many friends. So it is with a profound sense of obligation to the people of West Virginia and America that I set out to find a nominee to fill his vacancy. My duty to provide advice and consent took on, to me, additional significance.

In West Virginia, we are fortunate to have many talented and worthy lawyers who are capable of serving—and willing to serve—on the Federal bench.

But the nominee before the Senate today, Stephanie Dawn Thacker, completely stood out to me—and (in turn) to President Obama—as someone who is uniquely qualified to carry on in her own way, Judge Michael's legacy of independence, humility, and intellectual honesty as a Federal judge.

There is no question that Stephanie Thacker has reached the heights of the legal profession, both as an award-winning public servant and as an esteemed lawyer in private practice.

Her rise is all the more impressive because of the challenges she overcame The circumstances of Stephanie Thacker's early life were not easy. Her home town, Hamlin, WV, is in one of the poorest counties in the nation—a place where nothing is taken for granted and where every success is hard-earned.

Stephanie credits a supportive family and community, and the influence of two strong women who assumed her ability to achieve against the odds.

While still in the crib, Stephanie's mother and grandmother told her every day that she would go to college, and then in college they told her she would succeed in law school. They instilled in her the value of education and a strong sense of public service and duty to her country, which we fulfill again today.

Ms. Thacker heeded their advice, graduating magna cum laude from Marshall University and second in her class from the West Virginia University College of Law, where she was an editor of the Law Review.

Over the next 21 years her passion and respect for the law, along with her drive to seek justice for her clients, resulted in an illustrious career. Ms. Thacker's reputation is as a compassionate yet tough attorney who makes thoughtful, very well-researched, and therefore confident arguments that are always based on the law and facts of her cases.

These skills and character are evident in her 12 years of service as a federal prosecutor, where she rose to be Principal Deputy Chief of the Department of Justice's Child Exploitation and Obscenity Section. Among her accomplishments are prosecuting the first federal Violence Against Women Act case and helping to develop the nationwide Innocence Lost initiative to combat child sex trafficking, which to date has led to the rescue of more than 1,600 children and the conviction of more than 700 sex offenders.

She co-authored the Federal Child Support Prosecution handbook, worked reviewing and amending West Virginia's domestic violence laws, prosecuting notorious child sex offender Dwight York, and training national and international law enforcement officials on the prosecution of child exploitation crimes.

This body of work has rightfully earned her bipartisan praise over the years from United States Senators, FBI Director Mueller and former Attorney Generals Gonzales and Ashcroft, who awarded her the Distinguished Service Award, which is among the Department's highest commendations.

These accomplishments are illustrative of the experience and qualifications that Stephanie Thacker offers in service to the U.S. Court of Appeals for the Fourth Circuit.

She has the courage to make tough decisions, and will not back down from a challenge.

She has the superior intellect necessary to analyze the complex legal issues that come before the Federal appeals courts. She will look at every case with a fair and open mind and will issue opinions that are guided by our Constitutional principles and always grounded in the law and she will never forget her solemn duty to uphold fairness and justice for everyone, regardless of social status or economic means.

In conclusion, it is with great optimism, pride, and a renewed spirit that I look to the future, knowing that this important appellate vacancy will be filled with such a qualified nominee as Stephanie Dawn Thacker.

I yield the Floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. MANCHIN. Mr. President, I rise today first of all to thank the senior Senator, my friend Senator ROCKEFELLER, for nominating such a qualified jurist upon the passing of our dear friend, Judge Blane Michael.

Stephanie Dawn Thacker is a native of Hamlin, WV. We are awaiting her confirmation this afternoon with a vote which I know will be in the affirmative. It is my privilege and my honor to speak on her behalf also.

Stephanie Thacker's impressive background and extensive list of accomplishments in both the public and private sectors make her an exceptional judge for the 4th Circuit. She is renowned in our state for her mastery of the law and of the courtroom, and I have no doubt that she will make a highly successful federal judge.

Ms. Thacker has dedicated much of her career to fighting some of the worst offenses in our society. As a trial attorney, Deputy Chief of Litigation, and Principal Deputy Chief, she spent several years prosecuting cases, as you have heard, on Child Exploitation and Obscenity at the Department of Justice. Her outstanding work and leadership earned her a number of honors at the Department of Justice, including four ''Meritorious'' Awards and two ''Special Achievement'' awards.

Her impressive performance in prosecuting the case of United States v. Dwight York earned her the Attorney General's ''Distinguished Service'' award, one of the Department's highest honors. She was also a recipient of the Assistant Attorney General's awards for ''Special Initiative'' and ''Outstanding Victim and Witness Service.''

Prior to her service at the Department of Justice, Ms. Thacker worked with the U.S. Attorney's Office for the Southern District of West Virginia, where she prosecuted a wide variety of criminal cases, including money laundering and fraud. While at the U.S. Attorney's Office, Ms. Thacker participated on the trial team prosecuting United States v. Bailey, the first case ever brought under the Violence Against Women Act.

Since 2006, Ms. Thacker has been a partner at the law firm of Guthrie & Thomas in Charleston, West Virginia. There, she has concentrated on cases involving product liability, environmental and toxic torts, complex commercial defense, and criminal defense.

Ms. Thacker was a model student in both her undergraduate and legal studies. She earned her Bachelor's degree in Business Administration, magna cum laude, from Marshall University, and her J.D., Order of the Coif, from West Virginia University College of Law. While at West Virginia University she was a recipient of the Robert L. Griffin Memorial Scholarship and Editor of West Virginia Law Review's Coal Issue. She has also recently been named ''Outstanding Female Attorney'' by WVU Law's Women's Caucus.

Ms. Thacker's wide-ranging expertise in civil and criminal matters, her impressive track record in the courtroom as both a prosecutor and a defense attorney, and her outstanding academic accomplishments will make her a first-rate addition to the 4th Circuit. I am proud to call her a fellow West Virginian and I am pleased that she will finally be confirmed.

THE BUFFETT RULE

Mr. MANCHIN. Mr. President, I had the enormous privilege to spend the

last 2 weeks traveling around my great State to hear from the people of West Virginia.

It is always so refreshing to get a dose of commonsense from people who are working hard every day to balance their family budget, put food on the table and give their kids a better life.

And I can tell you that the people of West Virginia are so frustrated and losing confidence in this government, especially when it comes to our broken tax system.

Whether it was in Beckley, Ravenswood or Wheeling, I heard the same thing from the people of my great State.

We just don't understand why hard-working, middle income people are paying a much higher tax rate than some of the wealthiest people in this country. Take our coal miners, who go to the mine every single day to make a living for themselves, for their families, but who are paying a higher tax rate than some people making a million dollars a year. Where I come from, that's not fair. Where I come from, that doesn't make any sense.

Where I come from, that means our system needs to be fixed—in a real, responsible and fiscally sound way that reduces our debt.

Now, let me be clear: I am not begrudging anyone who's worked hard, who has taken a risk or who has done well. But we have to have a solid country under us to achieve those goals. And we need to put fairness back in the tax system to get this country on solid ground again. And if we want a fair system, that means that there should not be privileges that allow the very wealthy to pay a lower rate than hard-working, middle class Americans.

Right now, the average person does not have those opportunities or privileges. But when people believe the American Dream is in reach, they will all pull harder.

Today I rise to speak about my support for the Buffett Rule, which would take a small step toward fixing this unfair system and paying down this country's nearly $16 trillion debt.

A lot of people here believe that this bill will fail because of politics on a mostly party line vote. That is a shame because the only line we should vote is the American line.

For a year-and-a-half, I have been coming to the Senate floor to urge my colleagues to put party and politics aside and vote for the good of the next generation, whether it is a Democratic idea or a Republican idea.

But even though this vote on the Buffett Rule might fail today on party lines, we cannot give up—we have to find a way to come together for the next generation.

I have said before that the Buffett Rule alone does not address the full scope of the problem. All it does is nibble around the edges of our broken tax code. We still have too many corporations that can take advantage of too many loopholes, credits and exemptions. We are pushing $16 trillion dollars in debt and we are still spending more than a trillion dollars more than we take in every year. That does not make sense.

We have to fix the whole thing so that we can start reducing our deficit, paying down our debt and putting our fiscal house back in order for the next generation.

To do that, we have a plan with bipartisan support—the Bowles-Simpson framework, which would reduce loopholes, exemptions and credits across the board, lower tax rates and get everyone to pay their fair share. Just as importantly, it would cut spending and start paying down our debt.

I can't tell you how important that is to the people of West Virginia, the taxpayers in every single income bracket who don't trust the government to spend their tax dollars wisely.

Just like all Americans have the responsibility to pay their fair share, Washington has the responsibility to show the people of this country—no matter how much money they make—that we are using their tax dollars wisely and effectively—just as we did in West Virginia.

That is why I believe we must—and I will continue to fight—to cut back on our spending. We have to eliminate the $125 billion dollars that we spent in waste, fraud and abuse last year alone. And most importantly, we have to pay down the nearly $16 trillion dollar debt hole that has been dug for the next generation.

The Buffett Rule would take a small step to show the American people that we are trying to correct those problems and—most importantly—put some basic fairness back into our tax system.

Even though this vote might fail, in West Virginia we will continue to work hard. We will continue to pay our taxes. And we will continue to fight to make sure that when our coal miners send in their taxes, that people who bring in a million dollars a year aren't getting away with paying less.

The future of this country depends on those of us here in Washington working together to restore confidence in this great nation because when people believe that everyone is paying their fair share, they are all willing to pull their load a little harder. And if people start believing in this country again, there's no stopping us.

I yield the floor.

Mr. GRASSLEY. Mr. President, again we are moving forward under the regular order and procedures of the Senate. This year we have been in session for about 37 days, including today. During that time we will have confirmed 15 judges. That is an average of better than one confirmation for every 2½ days we have been in session. With the confirmations today, the Senate will have confirmed nearly 75 percent of President Obama's article III judicial nominations.

Despite this progress, we still hear complaints about the judicial vacancy rate. We are filling those vacancies. But again, I would remind my colleagues that of the 82 current vacancies, 50 have no nominee. That is over 60 percent of vacancies with no nominee.

Another complaint we hear, which is a distortion of the record, is the so-called delay in confirming nominees. Those who raise this complaint only focus on the time a nominee is reported out of committee until confirmation. But the confirmation process is more than just Senate floor action.

For those who may not be familiar with the confirmation process, let me review. Once a nomination is received, the committee takes an appropriate amount of time to review the nominee's Senate questionnaire and background and review written materials. The Committee holds a hearing on judicial nominees and then holds the record open for additional written questions. Of course there is debate on the nomination in committee, then the nomination is reported to the floor. All of this takes time. Every step is important. Not all nominees make it through each step.

The average time for this process for President Bush's circuit judge nominees was 350 days. That means it took, on average, nearly 12 months from the time a nomination was received in the Senate until final confirmation.

For President Obama's circuit nominees the average time from nomination to confirmation is 243 days. That means President Obama's circuit nominees are being confirmed faster than those of President Bush. So to those who ask What's different about this President? I would respond that one thing that is different is that this President's circuit nominees are being treated much more fairly than President Bush's nominees were treated.

As I stated, not all nominees make it through every step of the process. In the case of our nominee today, she completed that process in about 220 days, below the average for President Obama and much quicker than the average for President Bush. She will likely be confirmed and take her place on the Court of Appeals for the fourth circuit.

This was not the outcome for many of President Bush's nominees to the fourth circuit. Let me review just a few of the highlights from those failed nominations.

I wonder if my colleagues remember William Haynes, President Bush's nominee to sit on the fourth circuit. In the 108th Congress, my Democratic colleagues held up his nomination for 638 days on the Senate calendar alone before it was returned to the President. All in all, he put his life on hold for 1,173 days and never received an up-or-down vote.

Later, at a point during the 110th Congress, the fourth circuit had a vacancy rate of 33 percent and desperately required judges. The President

did his duty and submitted four nominations. Unfortunately, all of them were needlessly delayed.

Judge Robert Conrad was nominated to a seat on the fourth circuit which had been designated as a judicial emergency, Both home State Senators supported his nomination. Furthermore, he had received unanimous support from the Senate on two prior occasions—first when he was confirmed to be a United States Attorney and again when he was confirmed by voice vote to be a United States District Judge for the Western District of North Carolina. The American Bar Association's Standing Committee on the Federal Judiciary unanimously gave him a rating of well qualified.

Judge Conrad met every standard to be considered a well qualified, noncontroversial, consensus nominee. Yet, his nomination stalled. He was nominated on July 17, 2007. Despite his extensive qualifications, a hearing was never scheduled. On October 2, 2007 Senators BURR and Dole sent a letter to the chairman asking for a hearing for Judge Conrad. On April 15, 2008 they sent a second letter to the chairman requesting a hearing for Judge Conrad.

Their request was never granted. After waiting 585 days for a hearing that never came, Judge Conrad's nomination was returned on January 2, 2009.

Steve Matthews was another nominee to the fourth circuit, nominated on September 6, 2007. He was a graduate of Yale Law School and had a distinguished career in private practice in South Carolina. He also had the support of his home State Senators. On April 15, 2008 Senators GRAHAM and DEMINT sent a letter to the chairman asking for a hearing for Mr. Matthews. Despite his qualifications, Mr. Matthews waited 485 days for a hearing that never came. His nomination was returned on January 2, 2009.

Rod Rosenstein was nominated to a fourth circuit seat designated as a judicial emergency on November 15, 2007. The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated him well qualified. Previously, in 2005 he had been confirmed by a noncontroversial voice vote as U.S. Attorney for Maryland. Prior to his service as U.S. Attorney, he held several positions in the Departm6nt of Justice under both Republican and Democratic administrations.

On June 24, 2008 Senator Specter, the ranking Republican Member, sent a letter to Mr. Rosenstein's home State Senators pointing out that the seat to which Mr. Rosenstein had been nominated had been vacant since August 2000—at the time nearly 8 years. He requested they return their blue slips on his nomination. That request was declined, reportedly because the nominee lacked ties to Maryland and was doing too good of a job as the U.S. Attorney for Maryland. I find that rationale somewhat perplexing, if not inconsistent.

Nevertheless, despite his stellar qualifications, Mr. Rosenstein waited 414 days for a hearing that never came. His nomination was returned on January 2, 2009.

Judge Glen Conrad was another failed nomination to the fourth circuit. Nominated on May 8, 2008 he had the support of his home State Senators, one a Republican, the other a Democrat. Judge Conrad had previously been supported by the full Senate when he was confirmed to be a United States District Judge for the Western District of Virginia by a unanimous, bipartisan vote of 89–0 in September 2003. Despite his extensive qualifications, Judge Glen Conrad waited 240 days for a hearing that never came. His nomination was returned on January 2, 2009.

What was the reaction to this Democratic obstruction to President Bush's fourth circuit nominees? A December 2007 Washington Post editorial lamented the dire straits of the fourth circuit writing: ''[T]he Senate should act in good faith to fill vacancies—not as a favor to the president but out of respect for the residents, businesses, defendants and victims of crime in the region the 4th Circuit covers. Two nominees—Mr. Conrad and Steve A. Matthews—should receive confirmation hearings as soon as possible.''

In 2008, another Washington Post editorial stated that ''blocking Mr. Rosenstein's confirmation hearing . . . would elevate ideology and ego above substance and merit, and it would unfairly penalize a man who people on both sides of this question agree is well qualified for a judgeship.''

I would note that the seat to which Mr. Rosenstein was nominated went vacant for over 9 years. When President Obama made his nomination to that vacancy, the nominee fared far better. He received a hearing a mere 27 days after his nomination and received a committee vote just 36 days later.

So today, as we confirm another of President Obama's nominees to the fourth circuit, I hope my colleagues understand, recognize, and acknowledge that President Obama's nominees are being treated in a fair manner.

Stephanie Dawn Thacker is nominated to be United States Circuit Judge for the fourth circuit. She graduated with honors from West Virginia University College of Law in 1990 and received her B.A., magna cum laude, from Marshall University in 1987. Ms. Thacker began her legal career as an associate in the Pittsburgh office of Kirkpatrick & Lockhart, now K&L Gates. There she worked on complex commercial and asbestos defense litigation.

In 1992, she worked for a brief period as an assistant attorney general in the Environmental Division of the Office of the West Virginia Attorney General. There she represented the State of West Virginia on environmental issues involving permitting and compliance. She then joined King, Allen & Betts—now Guthrie and Thomas—as an associate, where she worked from 1992 to 1994 on cases involving commercial litigation defense, white collar criminal defense, and legal malpractice and professional responsibility defense.

In 1994, she joined the United States Attorney's Office for the Southern District of West Virginia as an assistant United States attorney in the General Criminal Division. As an assistant United States attorney, she prosecuted cases on a wide range of criminal matters including money laundering, fraud, firearms, and tax evasion matters. She eventually developed a niche in domestic violence, child support enforcement, and coal mine safety.

In 1999, she became a trial attorney with the Department of Justice's Child Exploitation and Obscenity Section. She was promoted to deputy chief for litigation in 2002 andl principal deputy chief in 2004. As a trial attorney, she prosecuted cases around the country involving child pornography, child sexual exploitation, sex trafficking, and obscenity. As deputy chief and principal deputy chief, she was responsible for the management and professional development of the section trial attorneys.

In 2006, she became a partner at Guthrie and Thomas—formerly King, Betts & Allen—where she previously worked basis as an associate. She has specialized in complex litigation, environmental and toxic tort litigation, representing large companies, as well as handling some criminal defense cases representing individuals.

A substantial majority of the ABA Standing Committee on the Federal Judiciary gave her a rating of well qualified; a minority of that committee rated her as qualified.

The PRESIDING OFFICER. Under the previous order, the question is on the nomination.

Mr. ROCKEFELLER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Stephanie Dawn Thacker, of West Virginia, to be United States Circuit Judge for the Fourth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Colorado (Mr. BENNET), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Wyoming (Mr. ENZI), the Senator from Utah (Mr. HATCH), and the Senator from Illinois (Mr. KIRK).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 3, as follows:

[Rollcall Vote No. 64 Ex.]

YEAS—91

Alexander	Graham	Murray
Ayotte	Grassley	Nelson (NE)
Barrasso	Hagan	Nelson (FL)
Baucus	Harkin	Paul
Begich	Heller	Portman
Bingaman	Hoeven	Pryor
Blumenthal	Hutchison	Reed
Blunt	Inhofe	Reid
Boozman	Inouye	Risch
Boxer	Isakson	Roberts
Brown (MA)	Johanns	Rockefeller
Brown (OH)	Johnson (SD)	Rubio
Burr	Johnson (WI)	Sanders
Cantwell	Kerry	Schumer
Cardin	Klobuchar	Sessions
Carper	Kohl	Shaheen
Casey	Kyl	Shelby
Chambliss	Landrieu	Snowe
Coats	Lautenberg	Stabenow
Coburn	Leahy	Tester
Cochran	Levin	Thune
Collins	Lugar	Toomey
Conrad	Manchin	Udall (CO)
Coons	McCain	Udall (NM)
Corker	McCaskill	Warner
Cornyn	McConnell	Webb
Crapo	Menendez	Whitehouse
Durbin	Merkley	Wicker
Feinstein	Mikulski	Wyden
Franken	Moran	
Gillibrand	Murkowski	

NAYS—3

DeMint	Lee	Vitter

NOT VOTING—6

Akaka	Enzi	Kirk
Bennet	Hatch	Lieberman

The nomination was confirmed.

The PRESIDING OFFICER (Mrs. HAGAN). Under the previous order, the motion to reconsider is made and laid upon the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

IMPOSING A MINIMUM EFFECTIVE RATE FOR HIGH-INCOME TAXPAYERS—MOTION TO PROCEED

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I ask unanimous consent there be 2 minutes equally divided prior to the cloture vote on the motion to proceed.

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

The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, many Americans sat down last week to prepare their taxes, knowing from Warren Buffett and others that the highest income Americans very often are paying a lower tax rate than they have to. The 400 highest income Americans, the most recent data shows, paid an all-in tax rate of 18.2 percent, on average. Some paid a lot less. One year Warren Buffett paid an 11-percent tax rate.

Reuters reported today that about 65 percent of taxpayers who earn more than $1 million face a lower tax rate than the median tax rate for moderate-income earners making $100,000 or less a year. This bill will raise between $47 and $162 billion that could go for deficit reduction or hundreds of thousands of infrastructure jobs or to keep student interest rates at 3.4 percent and end the absurd inequity in our Tax Code that lets a hedge fund billionaire pay a lower tax rate than a Rhode Island truckdriver. I hope my colleagues will vote yes.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Arizona.

Mr. KYL. Madam President, everyone knows this is not going to pass. This is a political exercise. I urge my colleagues to vote no. The fact is on average the people in the upper two brackets pay more than twice as much in their income tax rates as the people we call the middle-class taxpayers.

So the basis, the factual basis upon which this is allegedly founded is incorrect. The truth is this legislation will do nothing with regard to job creation, with regard to gas prices, with regard to economic recovery, or any of the other matters the American people care about. As a result, to focus attention on something like this is to try to draw attention away from the issues about which the American people are most concerned.

I urge my colleagues to vote no.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill 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, hereby move to bring to a close debate on the motion to proceed to Calendar No. 339, S. 2230, a bill to reduce the deficit by imposing a minimum effective tax rate for high-income taxpayers.

Harry Reid, Sheldon Whitehouse, John D. Rockefeller IV, Barbara Boxer, Patrick J. Leahy, Jeff Bingaman, Richard J. Durbin, Daniel K. Akaka, Al Franken, Jack Reed, Mark Begich, Sherrod Brown, Carl Levin, Richard Blumenthal, Bernard Sanders, Debbie Stabenow, Charles E. Schumer, Patty Murray.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 2230, a bill to reduce the deficit by imposing a minimum effective tax rate for high-income taxpayers, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. AKAKA) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Utah (Mr. HATCH) and the Senator from Illinois (Mr. KIRK).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted ''nay.''

The PRESIDING OFFICER (Mr. MERKLEY). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 51, nays 45, as follows:

[Rollcall Vote No. 65 Leg.]

YEAS—51

Baucus	Gillibrand	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bingaman	Inouye	Reed
Blumenthal	Johnson (SD)	Reid
Boxer	Kerry	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Collins	Levin	Udall (CO)
Conrad	Manchin	Udall (NM)
Coons	McCaskill	Warner
Durbin	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden

NAYS—45

Alexander	Enzi	Moran
Ayotte	Graham	Murkowski
Barrasso	Grassley	Paul
Blunt	Heller	Portman
Boozman	Hoeven	Pryor
Brown (MA)	Hutchison	Risch
Burr	Inhofe	Roberts
Chambliss	Isakson	Rubio
Coats	Johanns	Sessions
Coburn	Johnson (WI)	Shelby
Cochran	Kyl	Snowe
Corker	Lee	Thune
Cornyn	Lugar	Toomey
Crapo	McCain	Vitter
DeMint	McConnell	Wicker

NOT VOTING—4

Akaka	Kirk
Hatch	Lieberman

The PRESIDING OFFICER. On this vote, the yeas are 51, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LIEBERMAN. Mr. President, I know there are many who dismiss the President's proposal of the so-called Buffett rule as an election year tactic which has no chance of being enacted. But, for me, it must be taken as a serious proposal because it touches important economic principles at a very difficult economic time for our country. Although I was unable to be present for this afternoon's vote, I would have voted against the motion to proceed to the Paying a Fair Share Act of 2012, S. 2230, and I want to explain why.

I am not opposed to the Buffett rule because I am opposed to raising income taxes on the wealthiest Americans. I am opposed to the Buffett rule because it would double to 30 percent the capital gains tax on one group of investors and therefore reduce exactly the kind of capital investments we need to get our economy growing again and create jobs. To protect America from being drowned in public debt we will eventually have to raise revenues, hopefully through broad tax reform, and, of course, we will also have to cut expenditures, particularly the rate of increased spending on so-called entitlement programs. But that is different from the question of how to tax gains on capital investments. I have long believed in the value of having a lower tax on capital gains than on regular income because capital investments are