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Senate

The Senate met at 2 p.m. and was called to order by the Honorable BENJAMIN L. CARDIN, a Senator from the State of Maryland.

PRAYER

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

Let us pray.

Eternal God, our provider, give to our lawmakers provisions for their daily needs. Give them grace to keep Your commandments, to accept Your guidance, to stay on Your path, and to walk in Your light. Lord, give them stamina to run until they reach their goal and to be true to You until the very end. Make them this day wise with Your wisdom and strong with Your strength. Help them to believe in Your power so that they may be certain that You are able to do for them more than they can ask or imagine.

We pray in Your merciful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable BENJAMIN L. CARDIN 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. INOUYE).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 21, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BENJAMIN L. CARDIN, a Senator from the State of Maryland, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

FOOD AND DRUG ADMINISTRATION SAFETY AND INNOVATION ACT—MOTION TO PROCEED

Mr. REID. Mr. President, I now move to Calendar No. 400, S. 3187.

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

The legislative clerk read as follows:

Motion to proceed to Calendar No. 400, S. 3187, a bill to amend the Federal Food, Drug, and Cosmetic Act to revise and extend the user-fee programs for prescription drugs and medical devices, to establish user-fee programs for generic drugs and biosimilars, and for other purposes.

SCHEDULE

Mr. REID. Mr. President, we are now on the motion to proceed to the FDA user fees bill. At 4:30 the Senate will proceed to executive session to consider the nomination of Paul Watford to be U.S. Circuit Judge for the Ninth Circuit. At 5:30 there will be a cloture vote on the Watford nomination. If we are able to confirm his nomination, we should expect a second vote on the motion to proceed to the FDA user fees legislation.

OBSTRUCTIONISM REPEATED

Mr. President, this week the Senate must complete work on legislation that will enact crucial reforms that will prevent drug shortages and bring lifesaving medicines to market more quickly. Senators HARKIN and ENZI, a Democrat and a Republican, worked very hard to bring this legislation to the floor. I am cautiously optimistic that the spirit of bipartisanship will continue because Democrats cannot pass this legislation without the cooperation of our Republican colleagues. I certainly hope they will allow us to advance this bill this evening without additional delay caused by another filibuster. I would like Senators from both parties to be free to offer relevant amendments to improve a worthy bill, but before we can get to work on this legislation in earnest, I urge my Republican colleagues to stop their filibuster. Americans living with cancer and other life-threatening illnesses are watching closely to see whether the Senate is capable of moving to quick action to ease shortages of crucial medicines or whether we will once more be paralyzed by Republican obstructionism.

Americans have seen that obstruction time and time again this Congress. They are frustrated with the slow pace of Senate action to reauthorize the Violence Against Women Act, Iran sanctions, and on legislation to stop interest rates from doubling on student loans. Earlier this month Republicans blocked an attempt to keep higher education affordable for 7 million students. But Democrats have not given up. I hope our Republican colleagues will come to their senses and allow us to prevent this crisis that affects 7 million young men and women before it is too late.

Republican obstruction and infighting has also stalled critical new sanctions on Iran. For 2 months Democrats have worked to resolve Republican objections to this bipartisan measure which passed out of the Banking Committee unanimously. The stakes couldn't be higher. Sanctions are a key tool to stopping Iran from obtaining a nuclear weapon, threatening Israel, and jeopardizing U.S. national security. We cannot afford more delays to putting stronger sanctions in place. I hope my Republican colleagues will see

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

how important it is to advance these important measures and prevent Iran from obtaining a nuclear weapon.

Republicans have also needlessly blocked progress on reauthorization of the Violence Against Women Act. This helps law enforcement effectively combat and prosecute domestic crimes against women. Although both Chambers have passed a version of this legislation, House Republicans have refused to go to conference with the Senate. Their excuse—a hypertechnical budget issue called a blue slip—isn't much of a figleaf to hide their blatant obstruction. The truth is that they are looking for any excuse to stall or kill this worthy legislation, but American women have not been fooled. If Republicans really want to give police the tools they need to prosecute domestic abusers, they will drop this facade. If Republicans really care about protecting women and families, they will abandon these hypertechnical objections and join us in conference.

There are differences between the House and Senate bills that could be worked out easily. American women and families are counting on our action. But in this Congress it seems the Republicans are more interested in inaction than action; they are more interested in blocking worthy legislation for partisan gain than in working together. Their infighting and partisan games have stopped reauthorization of the Violence Against Women Act, Iran sanctions, and the student loan fix—stopped them right in their tracks. These are just a few of their ways of stopping legislation, a few important measures they have stopped over the past few weeks. But the FDA bill, which will prevent drug shortages and make lifesaving medicines available more quickly, must not become another victim of this partisanship. I hope Republicans seize this opportunity to be cooperative rather than be combative.

Mr. President, would you announce the business of the day?

RESERVATION OF LEADER TIME

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

The motion to proceed is now pending.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that the cloture votes which were scheduled this afternoon on Watford be vitiated, all of the provisions of that order remain in effect.

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

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the call of the quorum be rescinded.

The PRESIDING OFFICER (Mr. COONS). The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I come to the floor to lend my voice to asking my colleagues to vote for the motion to proceed to the FDA Safety and Innovation Act. Like the Presiding Officer, who is from Delaware, where its excellent private sector and public sector have been the hallmark of innovation, I represent a State that is absolutely critical to the innovation economy.

Those of us from Maryland know life science innovation is one of the important economic engines in our economy both today and in the future. We are the home to flagship government agencies such as the National Institutes of Health, the FDA, and iconic internationally branded universities that do research and move it into clinical practice at Johns Hopkins and the University of Maryland. There are also lots of thriving biotech companies and some medical devices. So for us life science is part of the lifeblood of the Maryland economy, and it is also part of the lifeblood of the American economy.

Think of what we do. We come up with new biological products, new pharmaceuticals, new medical devices that not only save and improve lives but also enable them to help people in our own country. Because they are FDA approved—the gold standard for safety and efficacy—they can sell these products around the world, often to countries that will never be able to afford an FDA.

We have worked very closely on a bipartisan basis to be able to create the legislative framework called PDUFA, the Pharmaceutical Drug User Fee Act, and there will be a lot of other UFAs, user fees, in this. As I said, we have worked together on a bipartisan basis to bring this legislation to the floor.

I note on the Senate floor at this moment is the ranking member of the Health, Education, Labor, and Pensions Committee, the Senator from Wyoming, Mr. ENZI, who has been a leader in fashioning legislation where we can continue the mission of what we want at FDA: safety and efficacy, moving drugs into clinical practice, regulations that are sensible, regulate but not strangulate the innovation economy or the potential for saving and improving lives. The bill before us is integral to achieving this shared goal.

This is not new legislation. PDUFA was enacted in 1992. At that time we were almost facing a crisis in our country. There was an unduly long wait for patients to have access to new medicines and technologies. For FDA, it often took 2 or 3 years to review a drug application. Materials were submitted manually in a very costly fashion. It cost manufacturers to the tune of almost $10 million a month.

So we decided to come together in the era when Bill Clinton said big government was over—not to make government to be bigger but for government to be smaller—and we came up with a public-private partnership called the PDUFA, the pharmaceutical user fee legislation. PDUFA supports drug review, so that those who make the products pay a fee to be able to have their drugs reviewed. They also expect their government to reduce the time it takes to move reviews expeditiously yet safely.

Let's be clear: This is a public-private partnership. For FDA, as it looks at its—remember, FDA has two jobs, which are food safety and then the safety of drugs and medical devices. More than 60 percent of funding for drugs and medical devices comes from industry fees—$712 million. The remainder comes from Federal appropriations—$473 million. So the private sector carries a big part of this responsibility. The kind of staffing, expertise, and modernization we have at FDA could not have happened without this public-private partnership. It has been a success.

More than 1,500 new medicines or technologies have been approved since 1992 for everything from the dread ''C'' words such as cancer or cardiovascular disease, to infectious disease, to the dread ''A'' words such as Alzheimer's, which we are working on, and others. It has allowed the FDA to have more scientists and staff, and for that it is giving value to the private sector to be able to decrease review times. We reduced review times from 2 years in 1992 to 1.1 years today.

We had excellent hearings. They were very civil, very content rich. But I also launched a listening tour in Maryland where I went out to the major biotech companies and heard from over 25 different companies about what they thought we needed to do. I asked them where their government helped them and where their government hurt them, where should their government get out of the way, and where did they need a more muscular government, meaning moving things ahead. They had great ideas. It was fantastic.

What I heard was we have to reauthorize PDUFA quickly, and we must make the improvements to the programs. We need to improve the drug review process; we need to increase communication in order to speed the drug review process. We have made sure we have increased a number of mandatory performance requirements between FDA and the life science product sponsors. I say life science because it is bio, it is pharma, it is medical devices, and some things that are both. PDUFA V, which this is—it is the fifth time—allows us to use biomarkers to decrease development time by helping to demonstrate therapeutic benefit more quickly. It requires FDA to develop a dedicated program for drug development and training of staff.

We face a turnover, and there are a lot of reasons for that which I will come back to. But we want to make sure those young people who are so smart in science know how to work to have the science evaluated in a timely way. This is absolutely critical.

We have also incentivized the development of drugs for rare diseases. Particularly for parents of children with very unique and poignant, heart-breaking diseases, we would require FDA to develop guidance related to advancing and facilitating increased outreach to patient representatives, not only to the industry but to those who represent the patient advocacy groups. Again, we seek to develop training and certificate programs within FDA on how to review drugs for rare diseases.

I could go through the many benefits of PDUFA. We have done also in here MDUFA, the medical device act, and we do generic PDUFA. So there are several bills in this bill. But we have to act. There has to be a sense of urgency. This is a different bill than many others. If we don't reauthorize many other bills, they keep on going, but with the PDUFAs and the other user fee legislation, they actually will be sunsetted if we do not pass them by October. One might say, Well, we will wait until October. We will deal with it on the cliff.

We can't do that, because of the impact on both the people in the private sector and those in the public sector. Failure to reauthorize in a timely manner would have catastrophic effects on FDA's ability to carry out its important role. If the user fee agreement expires, patients, public health, and industry will suffer. This isn't Senator BARB speaking, this is what our leading business and public health advocates are telling us. If we don't reauthorize, the user fees sunset, so that means U.S. pharmaceutical industries, which support 4 million jobs, would be adversely affected. There would be no FDA to work with.

In 2010, Maryland private life science companies supported over 25,000 jobs. These companies are true innovators. On average, it takes a new medicine 10 to 15 years to develop. If we fail to reauthorize PDUFA, which ensures an efficient, consistent, and predictable regulatory environment, our private sector will lose out. We are going to lose out to Europe and we are going to lose out to China. China is stealing our patents as we speak. It will have a terrible consequence on patients as tens of millions of them rely on drugs and biologics and medical devices.

We know we have legislation that works, we have a legislative framework that works and now we need to get to work. If we do not pass this bill, and reauthorize these major programs, what will happen is we will need to send out RIF notices. We won't do it, but Dr. Mary Hamburg, the FDA CEO, the Commissioner, will have to, starting in July and August, send out RIF notices to 4,000 Federal employees at FDA, from the Ph.D. and the M.D. to the important lab techs and others who keep FDA going. This is no fooling around, I say to my colleagues. This isn't: Let's wait for the cliff. We will come to the brink if we do not reauthorize. Think about the role of FDA. If one thinks one is going to lose their job, that is what they are going to be preoccupied with. They are not going to be occupied with looking at these clinical trials and moving their advances forward.

We have worked so hard on this legislation. The private sector has worked hard to find a sensible center, and so has Dr. Mary Hamburg and her team. Our committee has worked so well. We can do this. We have to have the will. If we want to stay ahead in the global economy, it has to include passing this legislation.

Everybody talks about stopping China. I don't know what China is going to do, but I know we can stop ourselves if we don't pass legislation that promotes innovation in our country and private sector jobs in a partnership with government.

I conclude by urging my colleagues to vote for the motion to proceed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Maryland, Ms. MIKULSKI, for her passion and understanding and intense work on this particular bill. Of course, she extends her passion and intense work on any bill she is involved in. I am so pleased this bill has gone to committee and has had the time for the committee to work on it. We have a very bipartisan approach on the bill and a very reasonable way to do it.

I rise to support S. 3187, the Food and Drug Administration Safety and Innovation Act of 2012, and I appreciate Senator MIKULSKI making the opening statement. This bill will reauthorize FDA's drug and medical device user fee programs, authorize new user fees for generic drugs and biosimilars, and make a small number of targeted bipartisan policy reforms at the same time.

This legislation represents over a full year of work by the HELP Committee. Fridays have been dedicated to coming up with solutions on this for over a year, and it has paid off. It reflects the information we have learned from hundreds of meetings with patients, with advocates, with stakeholders, with outside experts, and with the FDA. More importantly, it reflects both the ideas and the feedback we have gotten from every member of the HELP Committee and a lot of people outside the HELP Committee. The HELP Committee approved this bill by a voice vote on April 25 and reported the bill out of committee on May 7.

This bill will make important changes to how FDA does business. Thanks to the efforts of Senators BURR and COBURN, the bill now includes new requirements that will make FDA more accountable and transparent. A fundamental principle of effective management is that one has to be able to measure performance if one wants to improve it. The ideas of Senators BURR and COBURN will help provide those measurements and, as a result, Americans are going to get better access to safe, innovative medical devices and medicines.

The bill will also modernize how the FDA inspects foreign facilities to better account for the global nature of drug manufacturing. It will allow FDA to prioritize and target riskier oversized facilities, which will help prevent the recurrence of the problems with drugs such as heparin.

It will also improve how FDA regulates medical devices. For the past several years, FDA premarket review of medical devices has involved significant delay and unpredictability. This has threatened American manufacturing jobs which have started to migrate overseas because of the unfavorable regulatory environment here in the United States. It has also threatened patient access to new therapies. I believe this bill will reverse those trends.

The bill reflects the concerns I have heard in my meetings with committee members regarding the current shortages of vital and lifesaving drugs. Senators BLUMENTHAL, ROBERTS, CASEY, ALEXANDER, BENNET, and HATCH should be thanked for all the work they put into the drug shortage proposal. The new notification and coordination requirements are important steps that will help prevent future drug shortages.

The bill also enjoys broad support. We have received numerous letters of support from industry, patient groups, consumer groups, and a whole raft of other stakeholders.

We also worked to guarantee that any mandatory spending generated by the bill would be fully offset. Over the past several weeks, we have developed offsets to pay for those provisions that produce mandatory spending. As a matter of fact, according to the Congressional Budget Office, this bill will reduce the Federal deficit.

Chairman HARKIN and I have worked very hard to make this bill as bipartisan and uncontroversial as possible. We tried to avoid controversy because we understand this bill needs to get done. If we don't reauthorize the drug and device user fee programs before they expire this fall, the FDA will be forced to lay off 2,000 to 4,000 key employees. This will cause FDA's review of new drugs and devices to grind to a halt. This, in turn, will threaten biomedical industry jobs, patient access to new medical therapies, and America's global leadership in biomedical innovation. We are talking about 4 million jobs overall and 2,000 to 4,000 that will have to be chopped off because the money runs out when this bill expires, the previous bill expires, so it is critical that we get that done.

Another important thing with those 2,000 to 4,000 people who will have to be laid off at FDA is those are key technicians, scientists, informed people who have been working on this for a long time. If we lose this, they will still have jobs, it just will not be where we can get drugs on the market faster, devices on the market faster, generic drugs out faster, and all of the other things this bill covers.

So in conclusion, I would like to thank Chairman HARKIN and all the other members of the HELP Committee, FDA, industry, and many other groups for working with us on this important legislation.

I particularly want to point out the cooperation Senator HARKIN has provided, the leadership he has provided on the bill, and the way his staff members and mine have worked together for at least a year in regular meetings with all members of the committee. So I think a lot of the controversy that could come up with a bill like this has been taken care of. I am hoping it has so we can get this done expeditiously.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

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

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

THE ECONOMY

Mr. KYL. Mr. President, what I would like to talk about this afternoon is a bit about the President's economic record. I am sure Americans have noticed the President barely mentions this economic record when he is out on the campaign trail, and I can well understand why. It is not a very impressive record, especially if you are a taxpayer or a business owner.

Our national debt creeps closer to $16 trillion each day. It is now more than $5 trillion more than it was when the President took office. It now adds up to about $50,000 per person in the United States, and that is exclusive of interest payments. By way of contrast, the median yearly household income—in other words, all the people in the house—is less than $50,000. It is $49,445.

Unemployment recently dropped, but it did so for the simple reason that fewer people are searching for work.

The President's signature legislative items—the stimulus bill, ObamaCare, and Dodd-Frank—have not only been unhelpful in boosting growth, but they have left a trail of crushing debt, uncertainty, and new regulations in their wake. I want to make a few points about each of those bills because I think they paint a fair picture of the President's economic record.

First, let me talk about the stimulus. We have not forgotten about the stimulus, even though I suspect the President might like to—$1.2 trillion. It, obviously, failed to achieve the promised results. An Associated Press reporter wrote shortly before it was signed into law:

> They call it ''stimulus'' legislation, but the economic measures racing through Congress would devote tens of billions of dollars to causes that have little to do with jolting the country out of recession.

Of course, that is exactly what happened. It seemed more designed to shower taxpayer dollars on certain favored constituencies and pet interests than to actually jump-start the economy. Much of it was simply wasteful Washington spending. Many investors must have asked themselves why they should put their money to risk on new job-creating ventures when they have to compete with well-connected firms that can simply wring taxpayer-provided stimulus dollars out of Congress or the Obama administration.

A Washington Post poll released just last week showed that 48 percent of Americans have an unfavorable view of the stimulus—and this was, after all, the President's signature effort to spur the economy.

Indeed, as Jeffrey Anderson notes in a recent issue of the Weekly Standard magazine, the administration does seem to be downplaying the law. Not only has the stimulus failed to create robust growth, the costs have become more outrageous. He writes:

> It has now been five months since the Administration last put out a report card on [the stimulus.]. . . . the December report marked the sixth straight quarterly report showing that stimulus's cost per job is rising: In reports spanning January 2010 to December 2011, the stimulus's cost per job more than doubled, rising from $146,000 (in January 2010) to $317,000 (in December 2011). With each passing quarter, the stimulus has become an even worse deal for taxpayers.

So this is the administration's own report card on the stimulus, concluding in the last report, $317,000 per job. Think about that for a moment. To create each job, the taxpayers shell out $317,000.

Numbers like these remind me of a quip from writer Christopher Buckley. He said writing political satire these days can be difficult because it has to compete with reality—$317,000 for one job under the President's stimulus.

Well, second, ObamaCare. The $2.6 trillion bill is not aging very well. Since its passage, the act has imposed an estimated $14.9 billion in private sector burdens, approximately $7 billion in costs to the States, and 58.6 million annual paperwork hours, according to a weekly regulatory report.

The April Kaiser health tracking poll showed that more Americans have an unfavorable view of the law than favorable. It is 43 to 42 percent. More than half of Americans oppose its central provision, the so-called individual mandate. All told, the new taxes in ObamaCare would add up to $½ trillion over 10 years. Many of these taxes will coincide with the biggest tax increase in history—the one scheduled for the end of this year. So at the very time the income tax rates are scheduled to go up, the new taxes from ObamaCare will hit—$½ trillion worth of new taxes over the next 10 years.

Finally, there is the Dodd-Frank financial regulatory reform bill. When it comes to financial regulatory reform, I think most Americans believe there should be two simple goals: preventing new crises from happening and making sure the taxpayers are not on the hook for Wall Street's mistakes.

Well, the Dodd-Frank bill did not achieve either goal. It is a complex web of regulations that institutionalized ''too big to fail'' and has served to increase uncertainty, increase moral hazard, and increase economic distortions, all the while adding 52.9 million paperwork hours since its passage.

So, as I said, President Obama does not seem to be running for reelection on this record of the stimulus package, ObamaCare, or Dodd-Frank regulatory reform. Instead, he is going to be sending—or maybe he has already sent it—to Congress a to-do list, things he would like for Congress to do, most of which are tax credits and other very short-term proposals that are not likely to have a big effect on jobs or growth because the business sector is not impressed with a one-time-only, short-term proposition. It wants to know that when it invests money, that investment is going to be for the long term. Apparently, he is going to campaign on this most recent list when he goes out to Iowa later this week.

Well, this happens to be Small Business Week, and one would think the President would turn to something that businesses have actually said they would like to do; that is, to prevent this tax tsunami coming at the end of this year—as I mentioned, the biggest tax increase in the history of the country, which automatically would take effect on January 1 of next year, unless Congress does something about it and the President can sign the legislation.

The NFIB, the National Federation of Independent Business, recently released a list of the top five uncertainties in the Tax Code that they say would harm small businesses. Let me just mention three of these uncertainties.

One is the pending increase in marginal tax rates, which will devastate the estimated 75 percent of small businesses that file as individuals. Every one of the five tax rates in the IRS Code will be increased as of January 1. Since most of the businesses now pay—especially small businesses—as individuals—so-called passthrough entities—these rate increases directly will impact small businesses.

Secondly, they are concerned about the death tax. That is going to ensnare 900 times more small business owners and 2,200 times more family farmers if the rate increases to 55 percent and the exemption falls to $1 million, as is scheduled to occur on January 1.

Third is the alternative minimum tax which will hit 27 million more

Americans—including many small businesses—if it is not patched or repealed. Well, small business cannot afford this, what has been called ''taxmageddon'' and its devastating consequences.

I would hope, instead of this to-do list the President is sending us, he would take up the cause of preventing this big tax increase at the end of the year and help the small businesses and families that need that help.

Finally, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a piece in National Review Online by Larry Kudlow dated May 17 called ''Extend the Bush Tax Cuts Now.''

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

(See exhibit 1.)

Mr. KYL. In this piece, Larry Kudlow, a noted economist, notes that with respect to this ''taxmageddon''—the increase in everybody's taxes at the end of this year—it is the uncertainty of it all that is preventing the investment by business which would create the jobs we would all like to see. I would just like to quote three paragraphs and a couple sentences in a fourth. He says:

The uncertainty over the Bush tax cuts already has caused a number of business leaders to threaten a hiring freeze and a dampening of investment until they can figure out the after-tax cost of capital and rate of return on investment. Hiring has slowed noticeably in recent months. And a number of Wall Street economists are marking down the anemic recovery even more, suggesting that the 3 percent growth at the end of last year, which faltered to 2 percent growth in the first quarter, could be even less in the period ahead.

Then he goes on to say:

A bunch of CEOs have even formed their own march on Washington. Eighteen of them just wrote to Treasury man Timothy Geithner, begging him to oppose tax-rate hikes on dividends—

Which would go from 15 to 45 percent—

and capital gains (from 15 to near 30 percent. . . .)

''Equity capital is the life blood of investment and job creation for U.S. companies.''

That is what these CEOs wrote in the letter to Treasury Secretary Geithner.

Kudlow goes on to say:

And they argued that the administration's tax-hike plans would do great harm to American competitiveness and capital formation.

Then he quotes the Ernst & Young firm to say this:

. . . the top U.S. integrated tax rate on corporate profits and dividends is on course to hit 68.6 percent, significantly higher than all other OECD countries—

Those are the developed countries of the world—

as well as Brazil, Russia, India, and China. Capital gains would rise to 56.7 percent.

In other words, he is pointing out that not only would these higher tax rates hurt the small businesses and the families because of the individual tax rate, marginal rate increases, but raising the dividends and capital gains taxes would be even more detrimental because we are asking companies in America to compete with firms all over the world, and their rate would be much higher with this tax increase than the rate in all of the other developed countries, as well as countries such as Brazil, Russia, India, and China. How can American businesses compete in that situation?

Then, finally, Kudlow notes the effect of all of this uncertainty on what matters most to most Americans; that is, the fact that they cannot get work. He says:

Bizarrely, some 25 million people have vanished from the labor force—from unemployment, underemployment, or simply dropping out all together. And half of U.S. households are now on some form of federal-transfer-payment assistance. So as we pay so many people not to work, we're sapping the vitality of the economy.

This is absolutely true. With half of the people in the country on some form of Federal assistance, with 25 million people having just vanished from the labor force not even looking for work anymore, businesses sitting on the sidelines because they cannot calculate what kind of return on investment they could get because of the potential for the huge tax increase that is going to occur on January 1, it is no wonder we cannot move forward with an economic recovery.

So I would just say to President Obama that providing long-term tax rate certainty would go a long way toward establishing a sound economy in this country, putting Americans back to work, and, ironically, establishing a better record on which the President could run. A year and a half ago, the President actually proposed—and I think Congress was very happy to go along with—a continuation of the existing tax rates because, as he said at the time, not to do so would be very damaging to the economy. I would submit it is equally damaging for that to happen at the end of this year.

So I would ask the President, help give the American people and American businesses the certainty they need to invest, to create jobs, to advance our economic growth, and create prosperity for our future.

EXHIBIT 1

[From National Review, May 17, 2012]

EXTEND THE BUSH TAX CUTS NOW

(By Larry Kudlow)

House Speaker John Boehner is playing a heroic role right now. In his efforts to prevent the Bush tax cuts from expiring, Boehner is aggressively taking on President Obama's leadership ineptitude on the economy. In essence, Boehner is pushing a Republican policy to wrap up a debt-limitation bill and extend the Bush tax cuts in one fell swoop before the election—and before all the last-minute, crisis-oriented, political machinations that would come in a lame-duck Congress, threatening another credit downgrade and leading to a business-hiring freeze and plunging stock market, all of which happened last year.

Tax-cut certainty is so vital right now because the anemic economic recovery may be moving towards deflation. That's the message of a gold price that has collapsed by near 20 percent, falling from around $1,900 an ounce to the mid-$1,500s. With a risk-averse economy at home, and with the Greek and European financial crises abroad, the demand for dollars seems to exceed the dollar supply printed by the Fed. This could be solved by more quantitative easing. But a better approach for a system already oversupplied with unused liquidity would be the extension of tax-rate growth incentives, not more monetary pump-priming.

The uncertainty over the Bush tax cuts already has caused a number of business leaders to threaten a hiring freeze and a dampening of investment until they can figure out the after-tax cost of capital and rate of return on investment. Hiring has slowed noticeably in recent months. And a number of Wall Street economists are marking down the anemic recovery even more, suggesting that the 3 percent growth at the end of last year, which faltered to 2 percent growth in the first quarter, could be even less in the period ahead.

A bunch of CEOs have even formed their own march on Washington. Eighteen of them just wrote to Treasury man Timothy Geithner, begging him to oppose tax-rate hikes on dividends (from 15 to 45 percent) and capital gains (from 15 to near 30 percent, taking the ''Buffett Rule'' into account). ''Equity capital is the life blood of investment and job creation for U.S. companies,'' they wrote. And they argued that the administration's tax-hike plans would do great harm to American competitiveness and capital formation.

According to accounting firm Ernst & Young, the top U.S. integrated tax rate on corporate profits and dividends is on course to hit 68.6 percent, significantly higher than all other OECD countries, as well as Brazil, Russia, India, and China. Capital gains would rise to 56.7 percent.

And Speaker Boehner knows this. So he's begun a valiant fight to get supply-side tax reform at the top of the congressional agenda well before the election. Similarly, House budget chairman Paul Ryan is suggesting at least a six-month extension of the Bush tax cuts, so as not to disrupt business. (By the way, the Ryan tax-and-spending-reform budget got 41 votes in the Senate, while Obama's budget got none.)

In a recent interview, former top Obama economic adviser Larry Summers told me the U.S. recovery is going ''ahead of schedule.'' Really? But former Obama economist Austan Goolsbee gives a more realistic assessment by referring to a subpar 2 percent forecast that is way too slow to spark faster job creation.

Bizarrely, some 25 million people have vanished from the labor force—from unemployment, underemployment, or simply dropping out all together. And half of U.S. households are now on some form of federal-transfer-payment assistance. So as we pay so many people not to work, we're sapping the vitality of the economy.

Mitt Romney recently gave a fine speech, blasting Obama's profligate spend-and-borrow policies. He described ''a prairie fire of debt sweeping across Iowa and the nation,'' and he tied our newfound debt to the ''tepid recovery.''

But lower spending alone, while important, is not going to solve the economic-growth problem. Yes, moving spending to 20 percent of GDP from 24 percent will free up private resources. But lower tax-rate incentives on the extra dollar earned and invested is a more powerful economic-growth tool. Romney should push his 20 percent tax-rate-reduction plan. That would add liquidity to fight deflation, and would provide new economic-growth incentives.

As for John Boehner's goal of an early extension of the Bush tax cuts, it's going to be an uphill climb. Democrats want to raise taxes, not cut them. But at least the GOP will have a coherent growth-and-jobs message. They can tell the public how important it is to avoid falling off the massive tax cliff which looms ahead. Deflationary fears can ease. And they can make it plain to voters that the GOP has a growth message in these perilous economic times, while the Obama Democrats do not.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I was not here to hear all of my colleagues' remarks. I know there is a lot of concern about the end of the year and what might happen to try to balance our budget and give us a solid platform on which this economy could grow. But one of the things that is holding us up is the Republicans' refusal to put any new revenues on the table. They have been adamant and wrong and hard-headed and stubborn.

They have been very obstructionist in this way—by not being willing to put a penny of new revenue on the table. As a result, we have come to a standstill because the income coming into the Federal Treasury to support this government is at the lowest level since President Eisenhower was President. So they can come to the floor all day long and criticize the President, criticize the Democrats, but in the last 2 years Democrats have put over $2 trillion of cuts and reductions to some very important programs on the table.

Some of us have even been willing to say, yes; we know we have to reform Social Security and Medicare and Medicaid. We have also been willing to speak those words which are not easy. Yet not one single Republican leader, not one on either side, the House or the Senate, not one has come to this floor in public. Now, I have heard them say it in private. I have been in meetings when they have said it. But not one has come to this floor to say: We are willing to put revenues on the table so we can match the cuts and move this country forward.

So I am a little tired of hearing them beat up on either President Obama or the Democrats when they are more to blame for the situation we are in. The American people are getting tired of it too because they can understand it is not 100 percent President Obama's fault. In fact, when he took office, the Titanic had already hit the iceberg because they had run right smack into it with the economic philosophies and policies they had. The ship was already sinking. But all they want to do is—either MITCH MCCONNELL or JON KYL, one day the Senator from Arizona or the Senator from Kentucky—every day come to the floor and talk about how it is the President's fault there is no way forward, there is no sure path forward, when they are the ones who have put boulders in the way every day.

So I hope the people can see through it. I came to the floor to talk about something else, but I am getting a little tired of hearing it myself. So I am sure everyone else is as well.

Again, Democrats have put $2 trillion of cuts before this body, and we have implemented some of them already. But we cannot run a government on 14 percent of the GDP. The average has been about 20 to 21 percent. So until they are willing to put some more revenues on the table, we are not going to get anywhere, and we are not going to be able to extend the tax cuts that cost people money.

I hope we can do something so we can extend some tax cuts to small businesses, which I came to talk about—and you, Mr. President, know this well. Instead of giving some of the biggest tax breaks to companies that are the biggest in the world and put all of their jobs overseas, I wish the Republicans would start talking about tax relief to businesses right here at home on Main Street. That is what I want to talk about today.

(The further remarks of Ms. LANDRIEU are printed in today's RECORD under ''Morning Business.'')

Ms. LANDRIEU. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

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

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

THE INTERNET

Mr. WYDEN. Mr. President, I believe the development of the Internet, its networks, and the digital economy are one of the great achievements of our age.

The Internet links humanity together, facilitating economic growth, bringing education and health resources to remote regions, reshaping societies and advancing human rights.

While networks foster innovation, job creation, and political and social progress, networks can also be used by actors with nefarious motives. It is in our national interest to deter, detect, and destroy real and viable cyber threats, to protect Americans and preserve the benefits of the Internet. Americans must not be afraid to go online.

The Internet works not just because it is open to all but because it is founded on the principle of trust. Users trust that their browsers are visiting real Web sites, not replicated ones. Internet commerce succeeds because people trust that their transactions are private and their financial information won't be shared with others. People trust the Internet because they believe their service providers work for them, not for their advertisers, not for scammers, and not for the government.

Congress's effort to develop a comprehensive approach to cybersecurity must not erode that trust. When Americans go online to consume digital services and goods, they must believe and know with some certainty that their privacy is adequately protected. The content that Americans consume must be at least as private as their library records, their video rentals, and book purchases in the brick-and-mortar world. Our law enforcement and intelligence agencies should not be free to monitor and catalog the speech of Americans just because it is online.

But the legislation passed by the other body, known as CISPA, would erode that trust. As an attempt to protect our networks from real cyber threats, CISPA is an example of what not to do. CISPA repeals important provisions of existing electronic surveillance laws that have been on the books for years, without instituting corresponding privacy, confidentiality, and civil liberty safeguards. It creates uncertainty in place of trust, it erodes statutory and constitutional civil rights protections, and it creates a surveillance regime in place of the targeted, nimble, cybersecurity program that is needed to truly protect our Nation.

Unfortunately, S. 2105, the bill before the Senate, shares some of these defects. Currently, Internet services and service providers have agreements with their customers that allow them to police and protect their networks and users. Rather than simply allowing these Internet companies to share information on users who violate their contracts and pose a security threat, the House and Senate proposals regrettably authorize a broad-based information-sharing regime that can operate with impunity. This would allow the personal data of individual Americans to be shared across a multitude of bureaucratic, military, and law enforcement agencies. This would take place regardless of the privacy agreements individual Americans have with their Internet service providers.

In fact, both the House and Senate bills subordinate all existing privacy rules and constitutional principles to the poorly defined interests of what is called cybersecurity.

These bills would allow law enforcement agencies to mine Internet users' personal data for evidence of acts entirely unrelated to cybersecurity. More than that, they would allow law enforcement to look for evidence of future crimes, opening the door to a dystopian world where law enforcement evaluates your Internet activities for the potential that you might commit a crime.

In establishing this massive new regime, these bills fail to create the necessary incentives for operators of critical networks to keep their networks secure.

It is a fundamental principle of cybersecurity policy that any network whose failure could result in a loss of