

when the Senate could more fully evaluate the current course of our relationship with Russia.

Russia continues to cause challenges in regard to Syria, Iran, and other regions of the world where the United States and our allies are trying to do what is right in the name of human dignity and also in the name of national security. I am concerned with Russia's own human rights issues. That is why I am very glad the Magnitsky provisions are in this bill.

As ranking member of the Senate Judiciary Committee, I remain troubled by the lack of progress Russia has made on protecting intellectual property rights. Furthermore, Russian officials need to step up their efforts in combating cyber crimes. There continues to be a large number of cyber attacks that originate from within Russia's borders.

All that being said, I realize having Russia in the WTO is a very positive step. One of the goals of international trade is to build upon relationships between nations. Having Russia in the WTO fold will hopefully benefit our nations as we work together on so many issues that concern us, plus, as I have stated before, having the WTO forum available to help our businesses and farmers when disputes arise is important.

I have said I want Russia in the WTO. I have said there are good opportunities for us there. I just spoke as to why I think there are problems with Russia that need to be worked out. President Putin is not going to pay any attention to what I say, but I want him to know these are issues of the re-Sovietization of the country and I do not like it. I favor this bill; I favor working with Russia. But they are becoming more of a problem. I look forward to hearing from our trade negotiators in the not too distant future on their progress in getting Russia to remove the unjustifiable barriers to our agricultural products.

Furthermore, as President Obama looks toward other trade initiatives in the future, I hope this accession process will be a lesson. This process could have been better, in other words, using the leverage the United States has during these accession negotiations to get a lot of these disputes settled as we did with China and Vietnam that we have not fully done with Russia.

The President has called on Congress to pass this legislation for some time. But his lack of consultation with Congress and disregard for the concerns raised by this Senator and other Members has only served to delay this whole process. We cannot keep approaching trade issues in this fashion. This administration needs to have real and substantive consultation with Congress.

Furthermore, when there are opportunities to stand for American businesses and farmers against unfair trade barriers such as the sanitary and phytosanitary issues in Russia, the

President needs to seize that opportunity the same way it was seized in the case of Vietnam and in the case of China's accession.

I yield the floor.

The PRESIDING OFFICER (Mr. BROWN of Ohio). The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent to speak as in morning business.

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

#### THE FISCAL CLIFF

Mr. NELSON of Florida. I want to speak to the issue that is beginning to considerably irritate the American people, and that is they cannot believe that in Washington the two parties cannot get together to come to an agreement on avoiding the fiscal cliff. It is as if some are in denial that there was an election and the President won reelection, and that a whole bunch of us won reelection to the Senate and to the House. It is as if the ideological rigidity is still as rigid and doctrinaire and that the lessons people were telling us about bipartisanship, that they demand bipartisanship—it is as if the parties and their leaders did not understand that is what the American people were demanding.

And here as the drumbeat grows louder, we approach December 31 and falling off the fiscal cliff. There is an easy fix, whatever your ideology and your approach. It can be hammered out next year when we are doing major things such as a rewrite of the IRS Tax Code, and all that that can portend in producing revenue, by making the Code more streamlined and in the process get rid of a lot of the underbrush and loopholes, and utilize that revenue to lower rates. But that is for another day after long deliberation on reforming an issue that has gotten so complicated it is out of control, and that is the Tax Code. You cannot do that in the next few days. That is what needs to be done in the committee process of the Congress.

What easily can be done is recognize that the President won, produce revenue with the upper 2 percent paying a little more, and eliminate the sequestration, which is \$1 trillion of cuts over the next 10 years that were never intended to go into effect after the original \$1 trillion which a year-and-a-half ago went into effect. This sequestration was intended to be the meat cleaver hanging over the heads of the supercommittee to get them to come to a bipartisan agreement.

Of course, a year-and-a-quarter ago, they deadlocked six to six and thus that is why we are facing this sequestration—\$½ trillion of cuts in defense, \$½ trillion of cuts in nondefense discretionary spending. Most everybody thinks they should not go into effect. So let us, for right now, before December 31, help eliminate the sequestration. Let's reintroduce all of the tax

cuts for 98 percent of the American people, and then let's prepare, in a deliberative way, to reform the Tax Code and go about the process of streamlining and cutting spending as the new Congress unfolds. That is what I wanted to share.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I want to address the same subject and I certainly share the views of the Senator from Florida that we have got to solve this so-called sequester problem because, as the Secretary of Defense has said, it would be disastrous for the Defense Department to take another \$½ trillion hit to its budget after already committing to do so.

We have required under our Budget Act that the Defense Department reduce spending by about \$487 billion over the next 10 years. To add another ½ trillion to that would, in fact, as Secretary Panetta said, be disastrous. So I appreciate the comments of my colleague.

Let me speak to the President's proposal specifically that was made at the beginning of the so-called negotiations here. His offer would increase taxes by more than \$1.6 trillion on individuals, on investment income, small businesses, under the estate tax, farms and estates, and American energy producers.

As President Reagan said many years ago, if you tax something, you get less of it. When you have to pay more taxes to engage in certain activities, you tend not to engage in those activities.

What is happening now in the market is a perfect example. A lot of people are of the view that capital gains taxes are going to go up, so they are selling their shares of stock or property now in order to pay the tax on the gain at the lower rate this year rather than the higher rate next year.

Tax rates should not be a factor in business decisions that are made. At least, raising taxes, as we will see in a moment, is a very big wet blanket on economic activity and economic growth. When we are in a situation where economic growth is clearly less than 2 percent, it is not the time to raise taxes. As the President himself said almost exactly 2 years ago, when we decided to extend the tax policy that is currently in effect and had been for many years before that, to allow tax rates to go up would be—and this is his quotation—"a blow to the economy."

So if it was true then, it is even more true today because the GDP growth is less today than it was 2 years ago when he made that correct comment. But the result of his proposal here to raise taxes by \$1.6 trillion would, in fact, reduce the economic growth, would result in fewer jobs, would result in less investment and, therefore, slower growth in many major sectors of the economy.

To show you how unserious his offer was, when the Republican leader yesterday asked unanimous consent to have a vote on it, he said, well, the President made his offer. I have put it into legislative language. Let us have a vote on it. The Democratic leader said, no, we don't want to do that and he objected, and it is clear why, because not only would it not receive Republican votes, it wouldn't receive Democratic votes.

In particular, let us understand why. A lot of our colleagues here on both sides of the aisle appreciate the impact on small business from raising tax rates. That is why there is a lot of difference of opinion on the Democratic side, as well as the view on the Republican side that this is not the right way to raise revenues if you were going to do it. You don't raise it on the backs of small business. The plan the President has proposed would hit small businesses directly.

Why is that the case? Because unlike corporations, which pay their taxes as corporations—they pay the 35-percent corporate rate—individual rates are the basis under which most small businesses pay their taxes. These are so-called flowthrough entities. Most of the small businesses, owned by an individual and maybe a couple members of his family—for example, your local plumbing business or air conditioning business, whatever it might be—pay their taxes as individuals.

When you raise the top individual rate or the second marginal rate or you raise capital gains rates or the estate tax rates, you are directly hitting those small business people. They employ millions of Americans. In fact, about a quarter of all workers today are employed in small business.

Over half, about 53 percent exactly, of this so-called flowthrough income is the money these small businesses earn. So when you raise the top two brackets, rates, or you raise the capital gains rate, for example, you are directly impacting these small businesses' ability to capitalize their businesses to hire more workers, to buy another pickup truck or whatever it might be. That is why we have said if you want to raise more tax revenues, there is a better way to do it than by raising the rates that would directly apply to these small business people.

Let me put this in perspective for you. According to the Office of Management and Budget figures, government spending has exceeded 24 percent of the GDP since 2009. That is well above the historical average, so we are spending way more than we ever have. But, according to CBO, tax revenues, the money the government brings in, are projected by 2016 to exceed 18 percent of GDP to get to 18.6 percent of GDP by 2022. That is above the historical average of revenues. So we are spending way more than our historical average. Also, in a relatively short period of time our revenues, because of the economy, as well as our tax rates,

will produce more than the average revenue to the Federal Government.

It is clear we are bankrupt, not because we are not going to have enough revenues but because we are spending too much. The question is, is it fair to send small businesses the bill here for this excessive spending?

Even if we did believe President Obama would dedicate new revenue from tax increases to help pay down the deficit—and I don't believe that—new revenue extracted from the top two brackets would only fund the government for about a week, a little less than a week. So that is clearly not the answer.

When the President says, well, we need to ask the wealthy to pay a little more, let us parse that for a second. You are not asking them to do it; if you pass the law, the IRS will come after you if you don't. This is not a pleasant request. This is the IRS saying you have to pay more money to the U.S. Government, and the President always likes to say, a little more.

Well, it is not so little if your tax rate now goes up to almost 40 percent. If you are a small businessman and you have to pay 40 percent to Uncle Sam, you are probably not going to be able to grow your business. You might not be able to stay in business. You certainly are not going to be able to hire more people. That is not little to them. It is little to funding the U.S. Government.

What the President says these small businesses and others are going to have to pay, as I said, only funds the government for a little less than a week. It doesn't solve our deficit problem. It doesn't begin to solve our deficit problem.

Have you heard the President talk about reducing spending? No. He doesn't want to talk about that. It is as if he says the whole answer to our problem here is to ask the wealthy to pay a little bit more.

Well, in terms of the Federal budget, it is a little bit more. It is not going to help very much. Where are you going to get the rest of the savings? That is what we ought to be talking about here.

Then, as I was talking about before, it is how you do it that matters a lot. He should stop pursuing tax rate increases, as I said, and revisit the comments he made a year ago. Here is what the President said. "What we said was give us"—to "give us"—that is a nice way of saying we are going to make you pay more in taxes. "Us," I gather here, is the U.S. Government.

What we said was give us \$1.2 trillion in additional revenues, which could be accomplished without hiking taxes, tax rates, but could simply be accomplished by eliminating loopholes, eliminating some deductions and engaging in a tax reform process that could have lowered rates generally while broadening the base.

He is right about that. If you want to get \$1.2 billion or 800 billion, which is the offer the Speaker of the House has

made, in new tax revenues, you can do that without touching tax rates. What you could do is to put a cap on the amount of money the wealthy people in this country receive in the way of deductions for various things that they do, the taxes they pay to State and local government. They have got a big mortgage on a second home or something such as that. You could limit the amount of money that can be taken in special exemptions and credits and deductions and receive that revenue that way rather than by raising rates. The President said so. He is right.

Speaker BOEHNER is saying, all right, Mr. President, you won the election, you want more taxes, we are willing to do that. We don't want to do it, we think it will hurt the economy, but we are willing to do it.

But to minimize the damage on the economy, at least do it through eliminating these loopholes, these so-called deductions, credits, and special provisions. Don't try to do it by raising tax rates because that directly hits the small businesses you are trying to help create jobs right now.

Here is what small businesses care about. They spend a lot. As I say, you have a dad, his two sons, maybe mom does the accounting for the firm and so on; they have to be concerned about the estate tax. Those small businesses spend a lot of money trying to plan around paying the estate tax. On January 1, if we don't do anything, there is only \$1 million exempted. If you have a small business with a bunch of trucks and equipment and the like, you are going to have far more than \$1 million in assets in the business. The same thing for a farm.

What happens is that rate goes up to 55 percent. The amount exempted is only \$1 million. So everything above \$1 million you are paying 55 percent on.

I can personally tell you the stories of small business people in Phoenix who have had to sell their business because they didn't have the money to pay the taxes. The business, the one I am thinking of right now, a printing company, is out of business now. It used to employ 200 people. It used to make a lot of contributions to charity in our community. No more. They are out of business. The employees are gone. The contributions to charity are gone. That is what happens when you don't care about the estate tax rate. So we should care about that. It shouldn't have to go up.

On capital gains, as I said, it is the same thing. A lot of people are cashing out now because they fear there is going to be a higher rate later. For larger businesses, we see some enormous dividends being paid this month. It may not be possible to pay those dividends starting in January when the dividend rate would skyrocket—close to 40 percent if we don't do anything. These are not things that help business and job creation.

What I would ask my colleagues to think of, if you are not willing to vote

on the President's plan, at least listen to what he said a year ago when he said we can raise this tax revenue. We don't have to raise tax rates. We can do it by closing some of these loopholes.

He was right about that. If we are going to have to raise revenues, I would suggest that is the way to do it—at all costs avoid raising tax rates, which would, as he said a year ago, be a blow to our economy.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

NOMINATIONS OF MARK E. WALKER TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA AND TERRENCE G. BERG TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

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

The assistant legislative clerk read the nominations of Mark E. Walker, of Florida, to be United States District Judge for the Northern District of Florida, and Terrence G. Berg, of Michigan, to be United States District Judge for the Eastern District of Michigan.

The PRESIDING OFFICER. Under the previous order, there will be 15 minutes of debate, equally divided and controlled in the usual form.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, today the Senate will finally be allowed to vote on the nominations of Judge Mark Walker to fill a vacancy on the U.S. District Court for the Northern District of Florida and of Terrence Berg to fill a judicial emergency vacancy on the U.S. District Court for the Eastern District of Michigan. It has taken far too long for this day to come but I congratulate these nominees and their families on their confirmations.

After this vote, the Senate remains backlogged with 20 judicial nominations reported by the Judiciary Committee, including 15 nominations from before the August recess. They should be confirmed before the Senate ad-

journs for the year. If the Senate were allowed to act in the best interests of the American people, it would vote to confirm these nominees and reduce the judicial vacancies that are plaguing our Federal courts.

Senate Republicans are establishing a new and harmful precedent of stalling judicial nominees on the Senate Executive Calendar who are ready for final action by insisting that they be delayed into the succeeding year. They held up judicial nominees three years ago, they did it two years ago, they did it last year, and they are doing it again. They have found a new way to employ their old trick of a pocket filibuster. They stall nominees into the next year and force the Senate to continue work on nominees from the past year for the first several months of the new year. They delay and delay and push other confirmations back in time and then cut off Senate consideration of any nominees.

By way of example, last December, Senate Republicans refused to confirm a single nominee before the end of the year. It then took us until May of the following year to confirm the 19 nominees they stalled from the previous year's Calendar, and we achieved that only after the Majority Leader was forced to file cloture on 17 nominees. The fact is that the Senate has been allowed to confirm only 19 nominees who were reported this year by the Senate Judiciary Committee. That is by far the lowest total for a presidential election year since 1996, when Senate Republicans, who were then in the Majority, would only allow 17 of President Clinton's nominees to be confirmed.

These delays in filling judicial vacancies are harmful to our Nation's courts and to the American people they serve. The Senate should be taking action on all the pending nominees so that we can make real progress for the American people and reduce the damagingly high number of judicial vacancies. Federal judicial vacancies remain near 80. By this point in President Bush's first term we had reduced judicial vacancies to 28. There were more than 80 vacancies when the year began. There were more than 80 vacancies this past March when the Majority Leader was forced to take the extraordinary step of filing cloture petitions on 17 district court nominations. And there are still currently near 80 vacancies today.

Those who argue that it would be "unprecedented" to confirm long-stalled nominations because they have delayed them into this lameduck session are wrong. They say that because there were no lameduck confirmations in 1984, 1988, 1992, 1996, 2000, or 2008, we should therefore not confirm these nominees, and we should allow nearly a dozen judicial emergency vacancies to remain unfilled. They have omitted some important facts. What they fail to acknowledge is that they have delayed action on 17 of these nominees since before the August recess. In 1984, 1988, 1992, and 1996—the first four of

their purported examples—there were no lameduck sessions. Those are not precedents supporting their contentions seeking to justify their current obstruction.

In 2000 and 2008, in keeping with Senate tradition, the Senate had done its job and had confirmed all pending nominations and cleared the Calendar. There were no pending judicial nominees to be given a final confirmation vote by the Senate in those years. Those are not precedent for the current Republican obstruction. Following the example from those years would have meant confirming all the nominations reported before the August recess long before this post-election lame duck session.

The fact is that from 1980 until this year, when a lame duck session followed a presidential election, every single judicial nominee reported with bipartisan Judiciary Committee support has been confirmed. That is the precedent that Senate Republicans are now breaking. According to the non-partisan Congressional Research Service, no consensus nominee reported prior to the August recess has ever been denied a vote—before now. That is something Senate Democrats have not done in any lameduck session, whether after a presidential or midterm election.

Senate Democrats allowed votes on 20 of President George W. Bush's judicial nominees, including three circuit court nominees, in the lameduck session after the elections in 2002. I remember, I was the Chairman of the Judiciary Committee who moved forward with those votes, including one on a very controversial circuit court nominee. The Senate proceeded to confirm judicial nominees in lame duck sessions after the elections in 2004 and 2006. In 2006 that included confirming another circuit court nominee. We proceeded to confirm 19 judicial nominees in the lame duck session after the elections in 2010, including five circuit court nominees.

That is our history and recent precedent. Those who contend that judicial confirmation votes during lame duck sessions do not take place are wrong. I urge them to reexamine the false premises for their contentions and I urge the Senate Republican leadership to reassess its damaging tactics. The new precedent they are creating is bad for the Senate, the Federal courts and, most importantly, for the American people.

Moreover, arguments about past Senate practices do not help fill long-standing vacancies on our Federal courts, which are in dire need of additional assistance. Arguments about past Senate practice do not help the American people obtain justice. There are no good reasons to hold up the judicial nominations being stalled on the Senate Executive Calendar. A wrong-headed desire for partisan payback for some imagined offense from years ago is no good reason. A continuing effort