

when we lower capital gains and dividends we improve the economy and we increase job creation in the economy. It makes no sense for us to move ahead, sending the signal to all of the investors in this country that we are going to punish their investment at a time when we need them to step up to the plate.

I hope my colleagues will consider this. What we are asking is that the bill be sent back to the Finance Committee so they can work on ways to keep capital gains and dividend taxes the same rather than let them explode, along with all of the other taxes that are going to go up in the next 6 months.

I hope we will have a chance to vote on this bill. I understand the majority is trying to table this motion. I strongly urge my colleagues to take up this matter, to send it back to the Finance Committee where they can figure out how to make sure we do not kill more jobs in the economy like we have done with the other failed stimulus plan.

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

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

The assistant bill clerk proceeded to call the roll.

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 I ask unanimous consent that the order for the quorum call be rescinded.

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

#### MORNING BUSINESS

Mr. REID. Mr. President, we are working to complete work on the so-called extenders bill. We thought we would be ready to do the procedural votes to get to that a couple of hours ago. But as things happen around here, there has been changes requested by a number of Senators. As a result of that, we are going to have to go back to the Joint Committee on Taxation and get some more numbers. That is probably going to take about an hour.

So we are not jammed for time, I ask unanimous consent that the Senate proceed to a period of morning business until 4:30 p.m. today, and that during that period of time Senators be allowed to speak for up to 10 minutes each. We are not going to divide the time Democrat and Republican. What we will do is, if there is a Democrat who wants to talk, talk for 10 minutes. If there is a Republican here, then it would be their turn.

We will try to work this out by a gentlemen-and-ladies agreement to go back and forth, if in fact there are people who want to talk, with 10-minute limitations alternating time, if in fact there are the Senators. If there are two Republicans and no Democrat here, then the two Republicans and vice-versa.

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 assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

#### ELENA KAGAN AS POLITICAL OPERATIVE

Mr. MCCONNELL. Mr. President, on Monday, the Senate will begin the confirmation hearings on Supreme Court nominee Elena Kagan. And I think it is safe to say most American do not know all that much about her.

But a fuller picture of this nominee is beginning to emerge.

The recent release of documents relating to Ms. Kagan's work in the Clinton White House reveals a woman who was committed to advancing a political agenda, a woman who was less concerned about objectively analyzing the law than the ways in which the law could be used to advance a political goal.

In other words, these memos and notes reveal a woman whose approach to the law was as a political advocate, the very opposite of what the American people expect in a judge.

This is the kind of thinking behind the current Democratic effort to pass the so-called DISCLOSE Act, a bill designed to respond to the Supreme Court's decision in Citizens United that they think puts them at a political disadvantage in the fall. That is why the bill was written by the chairman of their campaign committee.

And this is also the kind of thinking that seems to have motivated the Clinton White House to seek a similar legislative response the last time the Supreme Court issued a decision in this area that Democrats thought put them at a political disadvantage.

I am referring here to the case of Colorado Republican Federal Campaign Committee v. FEC, a case in which the Supreme Court essentially said that the Federal Government could not limit political parties from spending money on campaign ads called "independent expenditures" that said things like, "Vote against Smith," or "Vote for Jones."

This was not an especially controversial decision, as evidenced by the fact that it was written by Justice Breyer, one of the Court's most prominent liberals. But the decision put Democrats at a political disadvantage. So the Clinton administration did the same thing then that the Obama administration is trying to do today. They considered proposals to lessen its impact and to benefit Democrats over Republicans. And Elena Kagan worked to advance that goal as part of President Clinton's campaign finance task force.

Ms. Kagan's notes reveal that finding ways to help Democrats over Republicans was very much on her mind. According to one of her notes, she wrote: "Free TV as balance to independent expenditures? Clearly, on mind of Dems—need a way to balance this."

The "balance" Ms. Kagan is referring to was a way for Democrats to balance what they viewed as the Republicans' advantage in helping their candidates with independent expenditures. And "free TV," well, that is a reference to Democrats wanting free television to help them out in their campaigns. Providing free TV would be a "significant benefit," Ms. Kagan wrote. It was also something the Clinton administration could bring about, she suggested, by simply having the FCC issue a new regulation, or by adding such a provision to legislation the White House was helping to craft.

But this was not the only way in which Ms. Kagan thought about stacking the deck to help Democrats over Republicans at the time. Another note reveals her approach to the issue of soft money, the money political parties used to spend outside of Federal elections. Ms. Kagan's notes show that she thought banning it would hurt Republicans and help Democrats. She even seemed to delight in the prospect of finding ways to disadvantage Republicans. Here is what she wrote in her notes:

"Soft [money] ban—affects Repubs, not Dems!"

And if I had this quote up on a chart, you would see that she punctuated this sentence with an exclamation point.

So let me repeat that quote one more time:

"Soft [money] ban—affects Repubs, not Dems"—punctuated with an exclamation point.

We already knew that Ms. Kagan and her office argued to the Supreme Court at different points in the Citizens United case that the Federal Government had the power to ban political speech in videos, books and pamphlets if it did not like the speaker.

Then we learned she went out of her way to prevent lawyers at the Justice Department from officially noting their serious legal concerns with campaign finance legislation in order to help the Clinton administration achieve its political goals.

Now we learn that she thought about drafting such legislation in ways to help Democrats and hurt Republicans. And her advocacy and apparent glee at identifying some political harm to Republicans is, to my mind, another piece of her record that calls into question her ability to impartially apply the law to all who would come before her as a Justice on our Nation's highest Court.

The more we learn about Ms. Kagan's work as a political adviser and political operative, the more questions arise about her ability to make the necessary transition from politics to neutral arbiter. As Ms. Kagan herself once noted, during her years in the Clinton

administration, she spent “most” of her time not serving “as an attorney” but as a policy adviser. And her notes and memoranda reveal that all too often her policy advice and actions were based, first and foremost, on what was good for Democrats.

This kind of thinking might be okay for a political adviser. But there is a place for politics and for advocating for one’s party, and that place is not on the Supreme Court. A political adviser may be expected to seek political advantage, but judges have a different task.

We do not know how Elena Kagan will apply the law because she has no judicial record, little experience as a private practitioner, and no significant writings for the last several years. So the question before the Senate is whether, given Ms. Kagan’s background as a political adviser and academic, we believe she could impartially apply the law to groups with which she does not agree and for which she and the Obama administration might not empathize. So far, I do not have that confidence.

As the hearings progress, we will know better whether Ms. Kagan could “administer justice without respect to persons,” as the judicial oath requires.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. MURKOWSKI. I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. MURKOWSKI. Mr. President, I understand we are in a period of morning business.

The PRESIDING OFFICER. The Senator is correct.

#### HEALTH CARE

Ms. MURKOWSKI. Mr. President, I rise to speak about the health care debate that has gone on in the Congress throughout the past year. President Obama promised that the Democrats’ health care bill would reduce the spiraling cost of health care. The promise was made that if one likes their health care plan, they can keep it. Not necessarily every day but just about every other day there is yet another report released that confirms what many of us who opposed a Federal takeover of the health care system feared all along—higher costs, less access, and unsustainable spending. The President and this Democratically controlled Congress need to repeal this bill and put in place meaningful health care reform measures that will allow individuals to exercise more control over their health benefits and see their premiums actually go down instead of up.

I wish to speak to some of the reports that have been coming out. Let’s start with a government report that came out 4 weeks after the health care bill

was signed into law. It was from the President’s own Chief Actuary at the Centers for Medicare and Medicaid Services, CMS, a gentleman by the name of Rick Foster. He released his report saying that President Obama’s new health care reform law will actually increase national health care spending by \$311 billion over the next 10 years. Foster’s report also said about 14 million people would lose their employer coverage by the year 2019, largely as a result of small employers terminating coverage and workers who currently have employer coverage enrolling in Medicaid.

Mr. Foster also reports that the \$530 billion in Medicare cuts may not be what he calls “realistic and sustainable,” potentially driving 15 percent of all hospitals, nursing homes, and similar providers into the red within 10 years. This would cause providers who depend on Medicare for a substantial part of their business to be forced to drop out of the program, “possibly jeopardizing access to care”—those are Mr. Foster’s words: “jeopardizing access to care”—for our senior citizens.

The situation in my home State of Alaska is particularly dire. I have stood on this floor and I have discussed and certainly spoke to the statistics. Back in March of 2009, the Institute for Social and Economic Research at the University of Alaska reported that just 13—13—out of 75 primary care physicians in Anchorage were accepting new Medicare patients. Anchorage is our State’s largest community, and we had 13 out of 75 primary care physicians who were accepting new Medicare patients. Just 15 months after this report was done by ISER, that number has dropped to the single digits.

Further cuts to Medicare will only worsen this situation for the most vulnerable Alaskans—our senior and disabled citizens. This is one of the main reasons I simply could not support the health care bill that came forward. The issue, as it relates to access for those who are Medicare eligible, has been a crisis in our State that only continues to worsen. But there are some other reasons for my objections.

In May—so last month—the neutral government scorekeeper, the Congressional Budget Office, or CBO, revised its initial cost estimate of the bill to say that the law will likely cost \$115 billion more in discretionary spending over 10 years than the original projection. So 2 months after the law was enacted, the American people learn from yet another new government report that their Congress has passed a bill that would increase their health care costs and reduce their benefits. Again, this was something Republicans warned about over and over again during the last year as we discussed health care.

The small businesses in this country stand to lose the most under this health care bill. They were promised a pipedream, filled with tax credits to save small businesses money, but the

bill is simply not having that effect. In fact, it is having the opposite effect. The Associated Press released a “fact-check” article last month that stated point blank: The small business tax credit included in the health care reform falls short.

The story interviews a gentleman by the name of Zach Hoffman. I know this story has been repeated on the Senate floor, but it is worth repeating.

Mr. Hoffman is the owner of an Illinois furniture company. He has 24 employees. They earn an average of \$35,000 a year—clearly, a very modest wage by any standard. Yet the amount of the credit Mr. Hoffman calculated he would receive under this new law as a small business would be zero to him.

The AP article points out, the “fine print”—which many small businesses will not qualify for the credit—was left out of the administration’s press releases that touted the credit’s “broad eligibility.” But you really just need to go back to the individuals who are being impacted by this or had hoped they would be impacted positively. Go back to the Illinois small business owner and look at his comment. He says:

It leaves you with this feeling of bait-and-switch.

But thinking of how Mr. Hoffman could be eligible for the tax credit, he learned that all he needed to do was to cut his workforce to 10 employees and cut their wages. To this, the small business owner says: This does not make sense. He says:

That seems like a strange outcome, given we’ve got 10 percent unemployment.

I think we would all agree it is a strange outcome. An unacceptable outcome is what it is.

This Illinois employer’s situation is no different than any other employer regardless of what State they are in. In States such as Alaska and other particularly high-cost localities—whether it is New York City, San Francisco—where wages are higher because of the cost of living, the employers stand to lose because they will not be able to be eligible for these tax credits simply because they pay their employees higher wages than are allowed for in the health care bill.

Since enactment of the health care law, we have also heard from well-respected health care consulting firms that have released information showing that businesses fear the law’s new employer mandate penalties. According to a report, more than one in four employers—about 26 percent—and nearly two in five retailers may not be in compliance with provisions requiring coverage of all employees working over 30 hours per week. Of those, a majority—54 percent—said they would consider changing their business practices “so that fewer employees work 30 hours or more per week.” This would be a devastating blow—a devastating blow—to an already ravaged economy.

We have another well-known consulting firm, Mercer. They released a