

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 I ask unanimous consent that the order for the quorum call be rescinded.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