

Let me review quickly these seven core areas and then turn it back to my colleague from Tennessee.

We do need to focus on the fiscal situation, as we have talked about, to be able to help the economy. Our Tax Code needs to be reformed to create economic growth. We can do that. We know there is a way to do it without raising taxes and by reforming the code and making it more progrowth; the regulations we talked about that are stifling so many small businesses in this country; the competitive workforce, retraining is critical, and we can do a much better job taking the existing Federal resources and directing them toward retraining for jobs that are actually there; expanding exports, we just talked about; of course, powering America's economy by using more of our own domestic resources—renewable but also traditional uses of energy; and, finally, getting health care costs down, as Senator BARRASSO talked about.

If we do these things, we will create more hope and opportunity at a time when it is so desperately needed. We should be able to do it because they are commonsense ideas.

I thank my colleagues.

#### NOMINATION OF JOHN MCCONNELL

Mr. ALEXANDER. Madam President, we have a vote at noon. I know there are a number of Senators who wish to speak. I will take about 5 minutes, I suspect Senator CORNYN wants to speak, and I know Senator GRASSLEY wants to speak. I also see Senator REID.

The Senate is a body of precedent. One important precedent is that never in the Senate history has a President's district court nomination, reported by the Judiciary Committee, been defeated because of a filibuster; that is, because of a cloture vote. Once a nominee for Federal district judge has gotten to the floor, the majority of Senators have made the decision in an up-or-down vote.

Therefore, I will vote for cloture in order to allow an up-or-down vote on the President's nomination of John McConnell, then I will vote "no" on confirmation because I believe he is a flawed nominee.

I know most of my Republican colleagues are going to register their opposition to Mr. McConnell by voting to deny an up-or-down vote. I respect their decision. I understand how they feel. I also was outraged in 2003 when Democratic Senators filibustered President Bush's circuit court nominees simply because they disagreed with their philosophies. I made my first speeches on the floor of the Senate arguing against such a change in precedent.

On February 27, 2003, I said on this floor:

When it comes time to vote, when we finish that whole examination, I will vote to let the majority decide. In plain English, I will

not vote to deny a Democratic President's judicial nominee just because the nominee may have views more liberal than mine. That is the way judges have always been selected. That is the way they should be selected.

That is what I said in 2003.

In 2005, Republicans grew so upset with the Democrats' continued filibustering of President Bush's circuit nominees, the Republican majority leader threatened to eliminate the right to filibuster in connection with judicial nominations. That proposal was called the nuclear option because it was said if Republicans succeeded in abolishing the filibuster, their actions would "blow the place up." I suggested, in two Senate speeches, that a small group of Senators, equally divided by party, agree to oppose the filibustering of judges. The result of those remarks was the creation of the Gang of 14—the Gang of 14 Senators who preserved the tradition of up-or-down votes by agreeing to use the filibuster only in extraordinary cases. I have amended my own views to subscribe to the Gang of 14's standard for Supreme Court and circuit court judges.

It is true the Gang of 14 agreement didn't explicitly distinguish between circuit and district judges. But the debate then clearly was only about Supreme Court and circuit judges, and the Senate always thought of district judges differently. District judges are trial judges. Circuit judges also must follow precedent but have broader discretion in interpreting and applying the law. Circuit judges' jurisdictions are broader. Their attitudes and philosophies are much more consequential in the judicial process.

That is why the Senate has never allowed a Federal district court nomination to fail by denying cloture. According to the Congressional Research Service, in the history of the Senate—

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. ALEXANDER. I ask unanimous consent for 1 additional minute.

The ACTING PRESIDENT pro tempore. Is there objection?

There being no objection, it is so ordered.

Mr. ALEXANDER. I thank the Chair. According to the Congressional Research Service, in the history of the Senate, only three cloture motions have ever been filed on district judge nominations. In each case, the nomination eventually was confirmed.

In 1986 cloture was invoked by a vote of 64–33 on Sidney Fitzwater despite opposition to the nomination by Democratic senators. Mr. Fitzwater was then confirmed 52–42.

In 1999 cloture was not invoked by a vote of 55–44 on Brian Theodore Stewart's nomination because of Democrat opposition. He was confirmed two weeks later by a vote of 95–3.

In 2003 a cloture motion was filed on Marcia G. Cook's nomination but it was withdrawn and she was confirmed 96–0.

I certainly wish President Obama had nominated someone other than Mr. McConnell. During his confirmation hearings, questions arose about a possible role in stolen corporate documents, in soliciting contingency fee legal contracts, and about his judicial temperament. Some senators even feel misled by some of his statements. It was even said he is the only district judge to be opposed by the U.S. Chamber of Commerce in its 99-year history.

Well, the Senate has more than a 200-year history. And that history is not to use the filibuster to defeat a district judge nomination.

I am comfortable with the Gang of 14 precedent in the case of circuit justices and Supreme Court justices. I will continue to reserve the right to vote against allowing an up-or-down vote in an extraordinary case. I also understand the strategy of "They did it to us, so we will do it to them." Unfortunately, that strategy, I am afraid, will lead us to a new and bad precedent, one which will weaken the Senate as an institution and come back one day to bite those who establish it.

I thank the Chair and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. CORNYN. Will the Senator yield for a quick question?

Mr. SCHUMER. I will yield.

Mr. CORNYN. I know there are a number of us who would like to speak on the upcoming cloture vote at noon on the McConnell nomination. I know Senator GRASSLEY would; I presume the Senators from New York and Rhode Island would. I wonder if we could reach some unanimous consent agreement that would allow at least 5 minutes for each of us to speak.

I would pose that as a unanimous consent request; that for the Senators who are currently on the floor, the five of us, we be given up to 5 minutes to speak preceding the cloture vote.

Mr. SCHUMER. Might I ask a question of the Chair? What is the time status? There is 35 minutes until noon; is that divided?

The ACTING PRESIDENT pro tempore. Yes, the time is equally divided. The Democrats control 19 minutes, the Republicans control 18½ minutes.

Ms. LANDRIEU. Madam President, reserving the right to object, I wish to remind the Senators this isn't the only debate on the floor. We are having a cloture vote on SBIR, and we would like some time to close that debate as well. So I am open to work with the other Senators.

Mr. REED. Madam President, reserving my right to object, I would suggest, according to the request of the Senator from Texas, that the Senator from New York be recognized for 5 minutes, the Senator from Texas be recognized for 5 minutes, that I be recognized for 5 minutes, and then Senator GRASSLEY be recognized for 5 minutes.

The question then would be, Is there sufficient time for Senator LANDRIEU and, of course, Senator LEAHY?

Mr. SCHUMER. Could I ask unanimous consent—

Ms. LANDRIEU. I don't know how to do this, but if we could do 3 minutes each and reserve at least 15 minutes for closure.

The ACTING PRESIDENT pro tempore. Time has been consumed during this debate.

The Senator from New York.

Mr. SCHUMER. Madam President, I believe we have 37 minutes remaining; is that right, 19 and 18?

The ACTING PRESIDENT pro tempore. Correct.

Mr. SCHUMER. I know Senator LEAHY wants to close with 5 minutes.

So what we could do, equitably, is give each of the six Members on the floor 5 minutes.

Ms. LANDRIEU. I have to object to that.

Mr. SCHUMER. OK. Madam President, I have the floor and I ask to be recognized.

The ACTING PRESIDENT pro tempore. The Senator from New York.

#### COURT VACANCIES

Mr. SCHUMER. Madam President, I rise to talk about a serious crisis in the third branch of government; that is, the rate of vacancies in the U.S. district courts.

There is a crisis that is unlike almost all the other issues we grapple with on a daily basis. It has a very simple solution. My colleagues and I deal with a lot of very difficult and very divisive problems every day. Not many of them lend themselves to solutions that are both politically and economically costless, but this one is easy: confirm these judges.

Take the district court nominees who were passed out of committee with bipartisan support, schedule votes on the floor, and confirm them. It sounds easy. Apparently, it is not. It is not easy because my colleagues on the other side of the aisle have slowed the confirmation of district court judges to a trickle, even those nominees who were passed out of the Judiciary Committee with no objection from Republicans.

This Congress, I am grateful for the hard work of Chairman LEAHY, Ranking Member GRASSLEY, Majority Leader REID, and Minority Leader MCCONNELL in beginning to unplug the pipeline, but we still have a long way to go. To go the rest of the distance, to restore the pace of judicial confirmations before the Federal judiciary faces the worst vacancy crisis in history, we need the consent of our Republican colleagues.

Here are the facts: The targeting of district court nominees is unprecedented. Five of the nineteen district court nominees who have received split votes in the last 65 years have been President Obama's nominees. We have only confirmed 61 of his district court nominees. By this time in their Presidencies, we had confirmed 98 of Presi-

dent Bush's and 114 of President Clinton's.

Judicial vacancies affect nearly 100 Federal courtrooms across the Nation. One in nine seats on the Federal bench is vacant. So we should approve these nominees.

As for the current nominee pending on the floor, he is somebody who deserves nomination. When we ask about nominees, we are concerned the standard used by my colleagues is, would I have nominated this person, rather than is this person whom I might not have nominated in the mainstream? Jack McConnell is clearly in the mainstream. He has more than 25 years' experience as a lawyer in private practice. Leading Republican figures in Rhode Island have endorsed him. But he has garnered opposition not because of his qualifications but because of his clients. That is not fair, that is not right, and that is not how we do judicial nominees.

He has chosen his work as a private lawyer, and that has no bearing on his judicial temperament, his interpretive philosophy or his legal acumen. In the interest of my colleagues who require more time, I would urge, at the very least, that people take the standard of the Senator from Tennessee—don't block cloture on this nominee. If you think he is not qualified, vote against him.

Jack McConnell deserves to be on the bench. I am glad Leader REID has called him, and Senators REED and WHITEHOUSE have taken the lead. I urge, at least on cloture, that my colleagues let this nominee be voted upon.

I yield the remainder of the time I have been allotted so others of my colleagues might speak.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, I have been conferring with the Senator from Rhode Island and other Senators who want to speak. Maybe if we could try another attempt at a unanimous consent request that would allow all of us a chance to speak.

Since I have the floor, I assume I can speak for up to 10 minutes under the standing order. I am willing to yield some of that time so everybody can have an opportunity.

Ms. LANDRIEU. Madam President, I object to any unanimous consent request.

Mr. CORNYN. Madam President, I have the floor. The Senator is out of order.

The ACTING PRESIDENT pro tempore. The Senator from Texas has the floor.

Mr. CORNYN. I ask unanimous consent that the Senator from Rhode Island, the Senator from—

The ACTING PRESIDENT pro tempore. Is there objection?

Ms. LANDRIEU. I object.

Mr. CORNYN. I will proceed, then, under the standing order which gives me up to 10 minutes, as I understand.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. CORNYN. I regret that the Senator from Louisiana is unwilling to cooperate and provide everybody a chance to be heard, but I will proceed.

I wish to speak to the nomination of Jack McConnell to the Federal district bench. I spoke on this nomination yesterday. I have authored an op-ed piece in the Washington Times expressing my concern. I wish to summarize my concerns for my colleagues' benefit and their consideration.

I serve as a member of the Judiciary Committee, as does the Senator from Iowa, Mr. GRASSLEY. Before the Senate Judiciary Committee, this nominee was asked about allegations of theft of corporate documents arising out of some lead paint litigation that his law firm was pursuing in the State of Rhode Island. That has been the subject of some discussion.

I will ask unanimous consent to have several documents printed in the RECORD at this time.

First, I ask unanimous consent that after my comments, the complaint of the Sherwin Williams Company v. Motley Rice and others be printed in the RECORD.

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

(See exhibit 1.)

Mr. CORNYN. I ask one further unanimous consent, and that would be that an article from Legal Newsline about a discovery dispute still delaying the resolution of the theft case against Motley Rice be printed in the RECORD.

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

(See exhibit 2.)

Mr. CORNYN. What I think these documents demonstrate is that not only did Mr. McConnell intentionally mislead the Senate Judiciary Committee with regard to his possession of these stolen documents, but now there has been for some years—even after the lead paint cases have been essentially dismissed by the Rhode Island Supreme Court with the State and Mr. McConnell and his law firm having lost—ongoing litigation by one of the defendants in that case suing for tortious interference with their property; also conversion—in other words, theft, as the Presiding Officer knows—of their private, proprietary documents, including their litigation strategy, including their trade secrets and the like.

The article, dated April 21, 2011, that I have made part of the record shows that dispute over the theft of these documents remains unresolved. In other words, Mr. McConnell and his law firm's participation in this ongoing dispute remains unresolved. I don't know why the majority leader would choose to bring up a nomination of somebody for a lifetime appointment to the Federal bench when serious allegations about his law firm's participation and his personal participation in the theft of corporate documents in pursuit of litigation remains unresolved. I think it is a terrible mistake.