to the Senate Judiciary Committee, his liberal judicial philosophy, including his public antipathy toward private enterprise, and his strong political activism. For these reasons, I will not support his nomination.

Shaping the judiciary through the appointment power is one of the most important and solemn responsibilities a President has and certainly one that has a profound and lasting impact. The President is entitled to nominate those whom he sees fit to serve on the Federal bench, and unless the nominee rises to ''extraordinary circumstances,'' I have provided my constitutional duty of ''consent'' for most nominees.

While I would not have chosen Mr. McConnell as a nominee to the Federal bench if I were in a position to nominate, I respect the President's ability to do so and therefore will vote for the cloture motion on Mr. McConnell's nomination, but will strongly oppose his nomination to the Federal bench.

SBIR/STTR REAUTHORIZATION ACT OF 2011

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Calendar No. 17, S. 493, the SBIR and STTR Reauthorization Act of 2011.

Harry Reid, Mary L. Landrieu, John F. Kerry, Robert P. Casey, Jr., Michael F. Bennet, Al Franken, Jon Tester, Patrick J. Leahy, Carl Levin, Tom Harkin, Charles E. Schumer, Jack Reed, Maria Cantwell, Kirsten E. Gillibrand, Benjamin L. Cardin, Bill Nelson, Sheldon Whitehouse, Ron Wyden.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 493, a bill to reauthorize and improve the SBIR and STTR programs, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN) and the Senator from Kentucky (Mr. PAUL).

Further, if present and voting, the Senator from Kentucky (Mr. PAUL) would have voted ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 44, as follows:

[Rollcall Vote No. 64 Leg.]

YEAS—52

Baucus	Harkin	Nelson (FL)
Begich	Inouye	Pryor
Bennet	Johnson (SD)	Reed
Bingaman	Kerry	Reid
Blumenthal	Klobuchar	Rockefeller
Boxer	Kohl	Sanders
Brown (OH)	Landrieu	Schumer
Cantwell	Lautenberg	Shaheen
Cardin	Leahy	Stabenow
Carper	Levin	Tester
Casey	Lieberman	Udall (CO)
Conrad	Manchin	Udall (NM)
Coons	McCaskill	Warner
Durbin	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murray	
Hagan	Nelson (NE)	

NAYS—44

Alexander	Enzi	McConnell
Ayotte	Graham	Moran
Barrasso	Grassley	Murkowski
Blunt	Hatch	Portman
Boozman	Hoeven	Risch
Brown (MA)	Hutchison	Roberts
Burr	Inhofe	Rubio
Chambliss	Isakson	Sessions
Coats	Johanns	Shelby
Cochran	Johnson (WI)	Snowe
Collins	Kirk	Thune
Corker	Kyl	Toomey
Cornyn	Lee	Vitter
Crapo	Lugar	Wicker
DeMint	McCain	

NOT VOTING—3

Akaka	Coburn	Paul

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

EXECUTIVE CALENDAR

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of John J. McConnell, Jr., of Rhode Island, to be United States District Judge for the District of Rhode Island.

Harry Reid, Patrick J. Leahy, John F. Kerry, Dianne Feinstein, Frank R. Lautenberg, Jack Reed, Sheldon Whitehouse, Robert Menendez, Amy Klobuchar, Barbara Boxer, Daniel K. Inouye, Mark Begich, Mark R. Warner, Kent Conrad, John D. Rockefeller, IV, Richard J. Durbin, Ron Wyden.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on the nomination of John J. McConnell, Jr., to be U.S. District Judge for the District of Rhode Island, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Oklahoma (Mr. COBURN).

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 63, nays 33, as follows:

[Rollcall Vote No. 65 Ex.]

YEAS—63

Alexander	Graham	Murkowski
Baucus	Hagan	Murray
Begich	Harkin	Nelson (NE)
Bennet	Inouye	Nelson (FL)
Bingaman	Isakson	Pryor
Blumenthal	Johnson (SD)	Reed
Boxer	Kerry	Reid
Brown (MA)	Kirk	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Snowe
Casey	Leahy	Stabenow
Chambliss	Levin	Tester
Collins	Lieberman	Thune
Conrad	Manchin	Udall (CO)
Coons	McCain	Udall (NM)
Durbin	McCaskill	Warner
Feinstein	Menendez	Webb
Franken	Merkley	Whitehouse
Gillibrand	Mikulski	Wyden

NAYS—33

Ayotte	Enzi	Moran
Barrasso	Grassley	Paul
Blunt	Hoeven	Portman
Boozman	Hutchison	Risch
Burr	Inhofe	Roberts
Coats	Johanns	Rubio
Cochran	Johnson (WI)	Sessions
Corker	Kyl	Shelby
Cornyn	Lee	Toomey
Crapo	Lugar	Vitter
DeMint	McConnell	Wicker

ANSWERED ''PRESENT''—1

Hatch

NOT VOTING—2

Akaka	Coburn

The PRESIDING OFFICER. On this vote, the yeas are 63, the nays are 33, with one Senator responding present. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

EXECUTIVE SESSION

NOMINATION OF JOHN J. McCONNELL, JR., TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I wish to express my appreciation to my friends on the other side of the aisle for allowing cloture to be invoked on this nomination. It is so important that we not get into a position where we have to file cloture on all these district court judges. If there are real problems, there is the hearing process. That is where, when problems arise, it comes out in the committee, and there is ample time to make a case if you don't like them personally for whatever reason. But this is a good man. The biggest problem he had is he is a trial lawyer—a very fine trial lawyer.

But I express my appreciation to those on the other side of the aisle who

did the right thing. This is going to make the atmosphere around here so much more pleasant. I am disappointed we weren't able to get cloture on the small business jobs bill. That was an important piece of legislation. I thought we had been so very fair on this legislation in allowing amendments, and we are going to continue allowing amendments. There will be rare occasions, as Senator MCCONNELL said when we started this new Congress, when he will not, without a cloture vote, allow us to proceed to a bill. But generally speaking, we have been able to move legislation, and that is important. I have said the same thing about filling the tree. I will still fill the tree, but it will be a rare occasion that we will do that. I think that is going to make things around here a lot better.

Again, I say thank you very much for allowing this to go forward. This is very important that we are able to move on and have the nomination process, as relates to judges, move forward expeditiously. There is a lot of blame to go around as to what has transpired in years past. We are past that. Let us move on. There are things that probably we as Democrats could have done a little differently, and there are things the Republicans could have done differently as it relates to judges. But let us start now, as we have been today, with a new day.

Again, I say for the fourth time, this is a good day for the Senate.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I wish to thank all my colleagues, particularly those who supported this motion to invoke cloture. Everyone brought to this floor very vigorous arguments and very clear positions.

I think what has been confirmed today is not just moving forward on the confirmation of one judge but reaffirming a practice in the Senate that if the home State Senators submit a District Court nominee who is then put forth by the President, and if that person—that man or woman—receives the appropriate evaluation by the bar association, the appropriate vetting by the FBI, the appropriate scrutiny of the committee, and then the vote of the committee is to bring that District Court nominee to the floor, that we will move to an up-or-down vote on the merits of the individual District Court nominee.

There were extraordinary individuals engaged in this discussion, and they may view—in fact, I think they do view—the merits quite differently than I. But what they had firmly in mind was not just this moment but the Senate as an institution going forward. I particularly wish to commend Senator ALEXANDER, Senator GRAHAM, Senator COLLINS, Senator BROWN of Massachusetts, Senator MURKOWSKI, Senator MCCAIN, Senator SNOWE, Senator THUNE, Senator SAXBY CHAMBLISS, Senator JOHNNY ISAKSON, and SENATOR KIRK, as well as all my other colleagues who joined.

This vote, I think, to many of my colleagues, was less about an individual and more about whether the Senate would conduct its business in a time-honored tradition with respect to District Court nominees; whether the viewpoints not just of individual Senators from a particular State but the community of that State—the business leaders, the civic leaders, the members of the bar—whether their views and their evaluation would be weighed successfully.

I thank everyone for the opportunity to move forward on this nomination. Again, I appreciate and respect the principled debate and thoughtful debate of those who took a different position. But I think today is not just a case of an individual nomination; I hope it sets the standard going forward—again, a standard that we as Democrats must respect. If a person is nominated to be a District Court judge, if that person passes through the close scrutiny of the bar association, of the FBI, of the Judiciary Committee, and comes to the floor, that District Court nominee deserves an up-or-down vote. That is something we all have to expect. It cannot be a device of convenience for the moment; it has to be a practice of this institution. I think today we went a long way to institutionalize that.

I yield the floor for my distinguished colleague from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, I planned to present some similar words—if my senior Senator would stay just for one moment with me on the floor. He spoke so eloquently that I am simply going to associate myself with his remarks, but I also want to add one additional point, which is how much I appreciate his leadership and how hard he worked and the extent to which the credibility he has built over years with his colleagues in this institution has helped to get us to this point. This was not preordained.

There are times here when it feels as if the interest groups that seek our attention and our good wishes control the day around here and there is not much of an institution. Today was a day in which the institution stood up for itself in all the ways Senator REED mentioned. Again, I associate myself with his remarks and add my gratitude and respect for him for his leadership through this process.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I ask unanimous consent to speak as in morning business and that my time be counted against cloture.

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

Mr. SCHUMER. Mr. President, I wish to add my kudos to Senator REED and Senator WHITEHOUSE from Rhode Island for their persistence and their success today in getting a fine person to the bench.

I also thank my Republican colleagues, those who voted for cloture. Maybe that will help break some of the logjams here. I think it is very meaningful to us on this side of the aisle for that to happen. It should happen, of course, but the fact that it did happen maybe says something—that this is a day, after what happened over in Pakistan, that we can come together. It is meaningful.

I thank Senator MCCONNELL as well. He had his strong views, but obviously we know the respect his colleagues have for him and thank him as well for understanding that there will be differing views within both sides of the aisle as well as on both sides of the aisle.

DEATH OF OSAMA BIN LADEN

I rise to speak on a different subject today, and that is about what happened in Pakistan and the aftermath.

First, of course, the killing of Osama bin Laden, the evil mastermind of the world's bloodiest terrorist organization, was a thunderous strike for justice for the thousands of my fellow New Yorkers and citizens from all over the world who were murdered on 9/11. It took almost a decade, but the world's most-wanted terrorist finally met his fate 4 days ago. New York's heart is still broken from the tragedy of 9/11, but at least this brings some measure of closure and consolation to the families and victims.

When I spoke to the families, one of the things that they said galled them almost every day when they woke up was that their father or mother, brother or sister, son or daughter, husband or wife was gone and bin Laden still lived. That kind of galling knowledge is no longer in their hearts and minds because bin Laden, at least, has met his deserved fate.

We owe a massive debt of gratitude to our military. They have done an amazing job. I sat in on the briefings. Your jaw drops at their professionalism, their excellence, their sacrifice, their courage, their dedication—unbelievable.

That is also true of our civilian intelligence. The CIA, led by Leon Panetta, should be incredibly proud. We know they are. It is an agency that gets too little of the acclaim their accomplishments deserve.

Finally, the job President Obama did should not be forgotten. His steely courage, his quiet courage was incredible. All one had to do was look at some of the films from the Situation Room and learn a little bit of the history to know what an amazing feat this was for our President. He could have taken the easy way out, in a certain sense. He didn't. The easy way out probably would have been an air bombardment, but we never would have known certainly that bin Laden is gone, and there might have been—probably would have been many unnecessary civilian casualties. The President chose the right path.

I want to say something about this President. He is not a chest thumper.

He is not somebody who involves himself in a lot of rhetorical flourishes. He is serious, he is focused, he is factually driven. But let no one mistake the fact that he is fact-driven and often quietly contemplative for a lack of steel or a lack of courage or a lack of strength. This incident showed the true strength of the man. His speech Sunday night—modest but forceful, proud but understated—was President Obama. There has been a lot of talk of lack of determination or taking a side or focus. I think the people who do that mistake the President's steel—often low key, often fact-based, often without chest thumping or big slogans—for a lack of strength. They are so wrong. The actions show it. I think every American, regardless of political party, regardless of political attitude and conviction and ideology, should be proud of our military and of our country but also of our President.

I want to say one more thing about this. I read today's newspapers, and there was a great deal of talk about how some of the facts that were reported in the early moments after this great victory were not exactly correct. There is certainly reason to correct facts, and they certainly are news, but they should not displace the importance of what happened. For critics to dwell on the early discrepancies and over-exaggerate their importance would be an injustice to the magnitude of what really happened. It is only 2 days after we learned early Monday morning of what happened, and all of a sudden, it seems, oh, they messed up this or they didn't do that right or this and that. There were discrepancies and they should be made public, but to dwell on them, to listen to the morning news shows or to look at the headlines blaring, may have us miss the main point, which is that a superb, professional, well-practiced, and almost flawless military mission and civilian accompaniment got rid of the greatest terrorist in the world.

Let's keep our priorities straight. Let's acknowledge, let's find the facts and watch as they come out, let's make sure some of the early comments that were not right are corrected, but let's not let that in any way detract from the greatness and magnitude of what happened. Our focus should be on the successful mission and on the message it sends to the world, which is, to those who would test the resolve of the people of the United States of America: Do not doubt our resolve. If you do us harm, we will find you, we will mete out justice, and we will prevail. That is where our focus should be and should stay.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I would like to take a few minutes to acknowledge the steady efforts of our Armed Forces and our intelligence community to eliminate the leader of al-Qaida and to help bring some peace and relief to our Nation and to those who lost loved ones in the tragedy on 9/11.

I have heard some people say justice has been done because the leader of this terrorist organization has finally been killed. I am not one who is going to say justice has been done. I do not consider taking out the leader of a terrorist organization who killed thousands of Americans who just went to work one day to do their jobs, to add to their quality of life and the lives of their families, an even trade. I do not consider it is enough. However, it is a first step to righting the wrong that was done by not only the leader of al-Qaida but all of those he trained through the years to give up their own lives in order to kill innocent people. He ruined the lives of so many Americans, and he also ruined the lives of so many young Muslim followers who gave up a productive life for one of terrorism and murder.

I thank President George W. Bush for his relentless efforts to put this accomplishment in motion. He is the President who received the shock on 9/11, who had to deal with the immediate aftermath, and he put in place the organizations, the military control, and the intelligence gathering that have brought us to this point today.

I commend President Obama for carrying these principles through to completion. As things are unfolding more and more we know President Obama made a very tough and very decisive and correct decision. I think both President Bush and President Obama deserve praise today.

I also especially say I am proud of the Navy SEALs who knowingly went into harm's way to take down Osama bin Laden. Those are the troops who probably thought there was a chance they might not come back home, but they are among the most highly trained forces in the world. They operate in sea, air, and on land. Each and every day they volunteer for some of the most dangerous missions under the most difficult circumstances, and without recognition. Normally, it is something we never hear about that takes us one step closer to wiping out the terrorism we know in the world today. They are truly our Nation's heroes.

While much praise, deservedly, goes to the two dozen Navy SEALs who raided the terrorist stronghold using surprise and lethal speed, we should not think that they went there alone because they did not. Shortly after the world saw the brutality of Osama bin Laden's savage plan unfold on American soil nearly 10 years ago, President Bush took the decisive steps to launch an aggressive campaign to hunt down those responsible, including Osama bin Laden.

One such step occurred on October 26, 2001, when President Bush signed into law the PATRIOT Act. It provided the law enforcement and the intelligence community greater authority to track and intercept communications among suspected terrorists. This law has proven to be immeasurably valuable to the intelligence community. It has enhanced our ability to find and capture terrorists. I hope we will be able to reach a bipartisan agreement to extend the provisions of the PATRIOT Act that are set to expire at the end of this month.

As we have seen from various media reports—and I look forward to getting more details—the ability to monitor communications was a crucial lead used by analysts to determine the eventual location of Osama bin Laden. As my colleagues are aware, the provisions that are set to expire include the authorization for the FBI to use roving wiretaps on surveillance targets because at the time we took up the PATRIOT Act, we were still having to get permission from authorities to wiretap a telephone number—not keeping up with the technology advances that allow you to have a cell phone and never have a landline and throw away a cell phone every 15 minutes if you think you are in danger of being under surveillance.

It also has a ''lone wolf'' provision that allows for the investigation of individuals who are acting alone but who have been radicalized and are sympathetic to terrorist organizations and pose a significant national security threat.

These are just two of the provisions that have enhanced our capabilities to obtain information that has been crucial in capturing not only terrorists we know have already plotted against us but also to uncover their plots before they are able to do harm.

We must not allow the provisions of the PATRIOT Act to expire, especially at a time when al-Qaida is reeling from the death of their leader and could be plotting revenge. Stepping back our intelligence efforts now could allow al-Qaida to regroup and launch additional attacks against our Nation.

Another very important step was taken when President George W. Bush signed the Intelligence Reform and Terrorism Prevention Act in December 2004. This act created the National Counterterrorism Center. This center is the primary organization in the U.S. Government for integrating, analyzing, and sharing all intelligence from the CIA, FBI, Department of Defense, and others which pertains to counterterrorism. This is a very important tool for compiling the various information that was being gathered by many of the intelligence organizations and putting it through one grid and analysis. It was

that painstaking analysis through the last 10 years that allowed actionable intelligence to be the instigator of the effort to take out Osama bin Laden.

Within our military, we have a small group of Tier 1 units that are specially selected and highly trained for this exact type of mission. They have gained fame in the last few decades through books and movies. But these heroes are real.

I wish to point out that the commander of these elite warriors, VADM William McRaven, is a proud Texan from San Antonio, who is also an alumni of the University of Texas. Admiral McRaven is a highly decorated Navy SEAL who lives by the SEAL code and ''earns his trident every day.'' Vice Admiral McRaven has been nominated by the President to receive his fourth star and, if confirmed, will lead U.S. Special Operations Command. I can think of no one better qualified to lead our special operations than he is. I look forward to supporting his confirmation on the Senate floor.

While these highly skilled commandos deserve every accolade that is bestowed upon them, we cannot forget those who guided them to the target: the direct and indirect support personnel, the technicians, the analysts, the pilots and crews, and all those who have worked meticulously and attentively for years to finally put together all the pieces to get the SEALs to the right place at the right time.

We have seen many changes in the past 10 years. Departments and agencies have been consolidated or created, military commanders have retired, and administrations have changed hands. Most of the soldiers who conducted that first raid in Afghanistan in October of 2001 are no longer wearing uniforms, just as most of those in the military today were still in school in September of 2001. Many of those signed up to go into the military after 9/11 because they felt so much loyalty to our country.

I wish to acknowledge those who devoted so many years to pursuing Osama bin Laden. To those who have retired or moved on to other professions, I want you to know we appreciate you and your work was not in vain.

Our leaders said from the beginning, after September 11—that fateful day—that we would get Osama bin Laden. Through the efforts of thousands, we did. We have the most professional, the best trained, the best equipped military and intelligence agencies in the world.

While there are sighs of relief now from the public, our work is clearly not done. Al-Qaida is still plotting against our freedom. Other groups are just as zealously dedicated to the mission of destroying our way of life. So while taking down the head of al-Qaida was a victory, it is also a stark reminder that we must remain vigilant.

As we speak right now, our intelligence experts are employing, analyzing, and disseminating the information gleaned from the bin Laden raid, and our special operators are preparing for their next mission, whatever it may be. I believe our country is united in the commitment to protecting what makes America great: our freedom and our way of life.

I look forward to a day when we will not have to walk through a body scan or put our shoes on an x-ray machine to get on an airplane. I look forward to a day when we will not have to fight against an enemy who is living among us, an enemy who is plotting against us in our own country, an enemy who is willing to kill itself in order to kill innocent people and destroy our way of life. I look forward to a day when we never see a casket at Dover, DE—one of our military elite coming home having made the ultimate sacrifice.

That day will only come if we as a nation remain willing to fight to protect the ideals of America—the foundation that was laid by our Founding Fathers and has been protected by every generation since that time. Today is a day we reflect on those principles. It is a day we renew our commitment to uphold them at all costs.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be allowed to speak for up to 10 minutes as in morning business.

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

THE ECONOMY

Mr. BINGAMAN. Mr. President, the country faces two large economic challenges. The first is growing our economy, creating jobs, getting the economy back on track. The second major challenge is cutting the deficit. I wish to briefly talk about both of those.

I have four charts—one that relates to jobs and growing the economy and three that deal more specifically with the deficit.

Unfortunately, in Washington, the debate has shifted almost entirely to a discussion of the deficit. Too many people in Washington are pretending our efforts to generate growth in the economy have been accomplished, that it is a done deal, that we have recovered from the recession, and we can now focus full time on how to cut the deficit.

The fact is, this is simply not true. Professor Alan Blinder, an economist at Princeton and former Deputy Chair of the Federal Reserve, testified before the Senate Finance Committee a couple weeks ago. He made the following statement:

> The economic recovery is mediocre at best and unemployment remains high. To me, those conditions describe a bad time to put the economy on a diet of either spending cuts or tax increases.

Let me point to the first chart to underscore the point professor Blinder made. The recession we have just gone through created a very deep hole. If you look at the number of private sector jobs that were lost between November of 2007 and the end of March of 2010, you can see—it is February of 2010—8.8 million jobs were lost as a result of the recession. While things are getting better, it is clear they have not gotten better enough. We have now created 1.8 million new jobs since we began adding private sector jobs. So we still have a shortfall of about 7 million jobs that need to be created in order to get back to where we were in November of 2007. Of course, there have been a lot of new people who came into the job market since then, so we need to create more jobs than that.

We are encountering some strong headwinds in our effort to dig out of the recession. The strongest headwind is the high price of oil and gas, which is a tax on consumers, a tax on our businesses, and it comes at a very bad time. We are all looking for ways to try to deal with that. Frankly, it is difficult to legislate a solution.

Another headwind is one of our own creation; that is, the constant drumbeat we hear to cut spending at all levels of government—cut it in Washington, cut it at the State level, cut it at the local level. My own strong view is we should heed Professor Blinder's advice. We need to continue to work to keep investing in those things that will help us create good-paying jobs. Timing is important. We clearly need to reduce the deficit, but we should adopt policies this year that will put us on a long-term path to reduce the deficit. I hope these policies will delay major cuts in spending and major increases in taxes, until we can come out of this recession some additional distance.

Let me talk about the deficits, the second challenge I talked about before. We have a chart called ''Federal Revenues and Outlays as a Percentage of Gross Domestic Product.'' This is for a 40-year period, from 1970 to 2010. It is a chart the Congressional Budget Office prepared and presented to us.

Clearly, there are some important points you can take away from this chart. No. 1, on average, over the last 40 years, the Federal Government has accounted for 20.7 percent of gross domestic product—spending by the Federal Government—on average. Over that same period, on average, we have raised 18.1 percent of GDP in the form of revenues. So, on average, we have been running a deficit of about 3 percent of GDP each year during this 40-year period. Today, that 3 percent of GDP is about $450 billion.

The one time during this 40 years when we achieved a balanced budget—and even ran a surplus for a 4-year period—was at the end of the 1990s and in the year 2000. How did we manage to do that? Well, beginning in 1990, the Congress passed, and President George H.W. Bush signed, a bill that both restrained spending and raised taxes. Again, in 1993 and again in 1997, Congress passed and, in that case, President Clinton signed, budget plans that

did even more to do what had been done in 1990; that is, both of those plans restrained spending and raised revenues.

We enjoyed a strong economy during those years in question and that, of course, helped to bring more revenue into the government and get us to a balanced budget and a surplus.

What went wrong that caused us to, once again, fall into deficit? I will cite three factors:

First, the tax cuts Congress enacted in the last decade. Beginning in 2001 and then again in 2003, Congress passed what have come to be known as the Bush tax cuts. These fairly drastically reduced the revenue coming to the Federal Government. At the same time we were cutting taxes, we ramped up Federal spending, primarily for defense, and that is a result of the Afghanistan war and the Iraq war. The estimate there is that something like $1.3 trillion has gone into those efforts. In addition to defense, we ramped up spending on health care primarily by including a prescription drug benefit in Medicare. All of that increased spending occurred without any increase in revenues to pay for it. I repeat that none of this spending was offset with increased revenues.

The third factor, of course, that has brought us into the very serious deficit we now face is the slowdown of economic activity. This contributed substantially to increased expenses for the government and some of the entitlement programs—Medicaid, food stamps, and a variety of them—but also the decreased revenues. When people are earning less money, they pay less in taxes and less revenue comes to the government to pay for those services that the government is providing.

The deficit, of course, has worsened substantially in the last 2 years because of, first, reduced Federal taxes being collected, largely a result of the recession; second, increased Federal spending—both because there is more demand for government services as a result of the recession and also because we passed the Recovery Act to stimulate the economy. I think most economists would conclude it has helped stimulate the economy.

The Pew fiscal analysis initiative analyzed the policies and legislation that have caused the surpluses of the late 1990s to become the deficits we see today. They produced a list showing their conclusions. That list is on this chart. We can see these are in the order of importance, the order in which they contributed to the current deficit situation.

The top two drivers on this list are the 2001 and 2003 tax cuts—they account for about 13 percent of what we face today in deficits—and the Iraq and Afghanistan wars, which account for about 10 percent of what we face.

All told, tax cuts caused 21 percent of deficits since 2001; increased defense spending caused 15 percent of deficits. Two-thirds of that was due to Iraq and Afghanistan. Increased nondefense spending caused 10 percent of the deficits we currently face; the Recovery Act caused 6 percent; Medicare prescription drug caused 2 percent.

The final chart I have shows how these policies have affected the deficit over time. This is a chart which is labeled ''Why CBO's debt projections changed between 2001 and 2011,'' the specific policies and drivers. I know this is very difficult for anyone to see on a television. Let me make the main points.

The main points are that the changes caused by the legislation make up the large segments at the top of the chart, including interest charges. They caused 65 percent of the deficits when we look at these policy changes. The remaining 35 percent of deficits are due mainly to the economic and technical adjustments to CBO's projections primarily to reflect the lower revenue we have enjoyed because of the recessions.

How do we dig out of the hole we are in? I say simple obvious things. No. 1, we need to keep the focus on growing the economy. As Professor Blinder said, do not put the economy on a diet. This is not the right time to do that.

Second, we need to agree, as we did in 1990 and 1993 and 1997, to a balanced package of spending cuts and tax increases that will, once again, put us on a path to a balanced budget. We have some serious proposals to work from in achieving this deficit reduction plan. Of course, the President's deficit reduction commission, the Simpson-Bowles commission, and Senator Domenici and Alice Rivlin, the former head of the Congressional Budget Office, put out a bipartisan commission report which is very constructive. The President himself has given the framework for a plan. There is a bipartisan group of Senators, the Gang of 6, who are working to come up with a proposal. And, of course, Senator CONRAD, who chairs the Budget Committee, is putting together a proposed budget plan for that committee's consideration.

All of these plans I have mentioned follow the model used in the 1990s of combining both spending cuts and revenue increases. The only proposal that does not follow this model of a balanced package of spending cuts and tax increases is the budget that was passed by the House Republicans 2 weeks ago. Rather than raising revenue while cutting spending, it would cut revenue while cutting spending. In my view, this cannot lead us to a lower deficit.

There is a lot of political polarization in Washington. I remain hopeful that we can get a critical mass of right-thinking people to do what is responsible, to come together on a balanced package of spending cuts and revenue increases that we can commit to going forward. We should be able to agree on policies that grow the economy and shrink the long-term deficit.

I pledge my best efforts to achieve these objectives. I urge my colleagues to work to do so as well.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MERKLEY). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

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

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

NET NEUTRALITY

Mr. FRANKEN. Madam President, I rise today to talk about the effort of the House last month to repeal the Federal Communications Commission's net neutrality rules. Net neutrality is the very simple idea that all content and applications on the Internet should be treated the same regardless of who owns the content or the Web site. This is not a radical concept, in large part because it is what we see and experience every time we use the Internet. But the House wants to change all of that and effectively turn control of the Internet over to a handful of very powerful corporations.

I want to take a few moments today to tell you why I think the House's vote was a mistake, and why I am going to do everything in my power to make sure we don't make the same mistake in the Senate. But before I get into those details, I think it is important to take a step back and talk about the Internet we have today.

Let's be clear. The Internet we have exists because it is free and open, because we have always had net neutrality throughout the entire existence of the Internet. I have to give credit to my opponents on this issue who have done a masterful job of manipulating the American public into believing that net neutrality is something that it is not.

Net neutrality is not about a government takeover of the Internet. It is simply the idea that all content, whether it is a Web page, an e-mail, or a movie we are downloading can load onto our computers at home at the same speed, regardless of who owns or controls that content.

This is not a radical idea. It is what we experience today when we use the Internet. Right now, if we buy Rihanna's latest song from iTunes, it downloads as quickly as a song from a friend who started a band in his or her garage.

If you send an e-mail to your mother, it arrives in her inbox just as quickly as the e-mail she gets from President Obama. If you start a Web site for your small business, your customers are able to access your Web site and place orders for your products just as quickly as if they were buying from a multinational corporation.

I like to talk about YouTube's early days as a startup because it is such a

powerful example of why net neutrality is so critical and how this simple concept helped create a billion-dollar company practically overnight. YouTube's early headquarters were situated in a tiny space above a pizzeria and Japanese restaurant in San Francisco, CA. But just 6 months after the site was activated, over 100 million people were using YouTube to watch videos every day. Less than 2 years after it started, YouTube sold their business to Google for $1.6 billion. Isn't that incredible?

Well, I am here to tell you it would not have been possible without net neutrality. At that time, Google had a competing product, Google Video, which was the standard at the time but was widely seen as inferior. If Google had been able to pay Comcast or Verizon or any of the others large amounts of money to make its Web site faster than YouTube's, YouTube would still be floundering over that pizzeria or most likely it would have ceased to exist at all. Fortunately, Google couldn't pay for priority access, and the rest is history.

What I am saying is, we take, and have taken, this equality that YouTube enjoyed—this basic fairness or neutrality—for granted in large part because that is how the Internet has always been. Unfortunately, many Members of the House have twisted this concept and are misleading the American public into believing that the government wants to take over the Internet. That is simply not true.

One Member of the House actually got up on the House floor and said this:

> Over the last 10 years, over $500 billion—billion with a ''b''—of private investment has been made to develop broadband throughout the country. This is without any kind of taxpayer money.

He is wrong on that point, but let's put that aside for now. He went on to say:

> This is private sector money being put into the marketplace to go and create jobs, to go and create the kinds of technologies that allow you to view and use all kinds of apps that are available on these kinds of devices. That was done without net neutrality. They would tell you that they need net neutrality in order to have this innovation. Of course, they fail to point out that net neutrality was not in place when all this innovation happened.

Yes, it was; it was in place. That is the whole point. All of this innovation occurred while net neutrality was in place. We are not trying to change anything. We are keeping the Internet the way it has been during this explosion in innovation.

Now, my fervent hope is that this Member of Congress was just horribly, egregiously misinformed because not only is his statement untrue, it is the opposite of true. It is 180 degrees opposite of the truth.

Please, everyone understand this, I beg you. Net neutrality has been in place since the beginning of the Internet.

From the very beginning, during all of that explosive growth, the Internet operated with an understanding that network providers must treat all content the same and must interconnect the pipes they have to customers' homes with the pipes that are owned by other operators. This was a fundamental design principle that was established by academics, engineers, and computer scientists who designed the earliest protocols for Internet traffic.

The fact is, the Internet started and grew because everyone realized they needed to cooperate and work together for customers to be able to have access to the content they wanted. They realized that is what consumers needed to create demand for Internet service, and they realized that is what would lead to the most innovation on the Internet.

The FCC isn't trying to change that. It has no interest in derailing free enterprise. Quite the contrary. The FCC is interested in protecting the innovators and entrepreneurs who have made the Internet what it is today. Because of the Internet, you no longer need a major studio to like your film or a television show you produce in order to have people see it. You no longer need a major record deal to start distributing your music. You no longer need a high school diploma or a fancy degree to launch a small business and sell your products online. We don't want to change that. We want to preserve that.

The FCC's only goal is to make sure the Internet we know and love does not become corrupted and altered by a small number of large corporations controlling the last free and open distribution channel we have in this country.

As telecom companies have grown larger and fewer and started owning not just the pipes but also the content, their incentives have changed. They are starting to care more about giving their own content a competitive advantage rather than promoting innovation and competition on the Internet.

The fight for net neutrality isn't about changing the Internet, it is about creating a few rules of the road to keep it open and free, to keep it the same, and to continue the innovation and growth that is such a creator of jobs and wealth.

The fight for net neutrality is about making sure large corporations are not allowed to put tollbooths on the information superhighway. This fight is about making sure that the Internet stays the way it is—free, open, equal, available to everyone regardless of how much they can pay to get their content.

There was a time not so long ago when net neutrality was a bipartisan issue that was not incredibly controversial. Three years ago, Mike Huckabee was talking about the need to keep the Internet a level playing field. In 2006, 11 House Republicans voted in favor of net neutrality on the floor. Rarely do you have the Gun Owners of America and the Christian Coalition joining with moveon.org and the ACLU to advocate for the same policy of nondiscrimination on the Internet. But they all agree on net neutrality. And so do the Catholic bishops.

Later today, I will receive 87,000 letters opposing the House's effort to undo the FCC's open Internet rules. These letters came from Americans across the United States, including 2,000 letters from Minnesotans who are worried about this issue. They want the Internet to stay the way it is—open and free from corporate control.

I am confident as more Americans realize what is at stake, we will hear from more and more constituents who will ask us to protect them from corporate takeover of the Internet.

What is most striking about this issue, which seems to have gotten lost in the rhetoric that my opponents use, is that experts from Bank of America, Merrill Lynch, Goldman Sachs, Citibank, Wells Fargo, and Raymond James have all stated they do not believe the FCC's current rules will hurt investment. Citibank has called the rule ''balanced'' and Goldman Sachs said it is ''a framework with a lot of wiggle room'' that is a ''light touch'' by the FCC. Despite this broad and diverse coalition of businesses and interest groups, we are still arguing about something that should have been settled long ago.

Why is that? A lot has changed in the last couple of years. Control of the Internet has been placed in the hands of a small number of players. Media consolidation has raised the stakes for certain mega conglomerates which have a lot more to gain in a world without net neutrality. I was last year on the Senate floor talking about net neutrality back in December when the NBC-Comcast merger had not yet been approved by the FCC or the Department of Justice. At the time, I warned this would be the first in a cascade of media consolidation deals. Wouldn't you know it, 2 months later, AT&T announced another record-breaking $39 billion deal with T-Mobile.

That merger, which Wall Street applauded, is almost assuredly going to be a raw deal for consumers. If approved, we will have a duopoly in wireless telecommunications in this country. Eighty percent of the wireless space will be controlled by two companies—AT&T and Verizon.

I look forward to the hearing next week in the Antitrust Subcommittee of the Judiciary Committee so we can further explore the details of this deal. But I think it is fair to say I am very skeptical because it is likely to raise prices and it certainly will reduce choice for consumers. I have always been skeptical of media consolidation because at the end of the day, when corporations have tremendous amounts of power to control prices and cripple competitors to benefit their bottom line, everyone loses.

But the impact of media consolidation in telecommunications is about more than just consumer prices. We

have always known that large corporations have the power to influence elections. Last year, the Supreme Court's decision in Citizens United took a situation that was already terrible and made it worse—much worse. Now AT&T, Verizon, Time Warner, and Comcast can spend unlimited amounts of money to support the candidate or campaign they care most about or try to weaken or kill net neutrality. It does not take a rocket scientist to realize that when a single corporation—in this case AT&T—spends $15.3 million in a single year to influence Congress and has 93 full-time lobbyists on its roster, Congress might churn out legislation that AT&T likes.

How can American consumers, stuck with rising cable, Internet, and cell phone bills, ever be expected to counter that type of lobbying power?

With media consolidation, we have seen a shift in the net neutrality talking points of Members of Congress who are also receiving large checks from Verizon, AT&T, and Comcast. Yet the irony here is that the open Internet rules passed by the FCC earlier this year are actually pretty weak and riddled with loopholes. Actually, I think that is the ''wiggle room'' to which Goldman Sachs was referring.

These rules are, let's be honest, a mediocre compromise drafted to appease a handful of powerful Internet service providers.

I was not happy with these rules and thought the FCC should have done more, particularly to cover wireless Internet networks. But it did not. It did not in part because the Commission wanted companies such as AT&T to get on board with its plan, and AT&T did—more or less. AT&T did not think the rules were ideal, but it acknowledged the framework is a compromise that gives its investors certainty.

That has not changed how the House is framing its rhetoric about this rule, which is one of the reasons I think the vote last month was a political stunt designed to misinform Americans and appease a small number of very vocal critics. This is not what most Americans, entrepreneurs, or small businesses want. They and I want a world where the future Twitters, eBays, and Amazons of the world can grow and thrive without interference from big, mega conglomerates.

Finally, regardless of how one feels about the FCC's rules, I think we can all agree this issue requires thoughtful debate and discussion, not the kind of uninformed rhetoric I quoted earlier from the House debate. By forcing an up-or-down vote through the Congressional Review Act, the House leadership short circuited the normal legislative process and ignored the FCC's work on this issue.

The FCC spent months examining this topic and meeting with tons of stakeholders and Internet companies. It carefully considered and compromised on a range of issues that I, frankly, wish they had not budged on. To claim that the FCC engaged in a power grab is unfair and far from the truth.

The White House has said the President will veto this resolution, but I will be working hard in the coming months to make sure that we have enough votes to stop this before it reaches the President's desk.

We are at a pivotal moment. If we do not act to preserve the FCC's open Internet rules, the Internet as we know it today may cease to exist. I hope my colleagues will recognize this and will join with me in voting down the House's resolution of disapproval.

Madam President, 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. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THE BUDGET

Mr. HARKIN. Madam President, everyone in this body agrees that we must take aggressive action to reduce the deficit, but we have to do it right. Frankly, the best way to bring down the deficit is to help 15 million unemployed Americans get good middle-class jobs again. Those hard-working Americans would be delighted to be on the tax rolls and to be taxpayers once again. But, regrettably, the tea party budget passed by the House Republicans last month takes us in the opposite direction—it would weaken our economy and destroy jobs.

I have spoken previously on the Senate floor about the grave flaws in the Republican budget. But beyond the misguided priorities in that budget, I object to its premise. The premise of the tea party Republican budget coming over from the House is that America is poor and broke and we can no longer afford the investments that make possible a strong middle-class and world-class economy. Indeed, some House Republicans take the radical view that government has no business investing in the middle class, period. I emphatically reject the defeatist premise of this Republican budget. The United States of America is a wealthy Nation—the wealthiest Nation in world history. The problem is how that wealth has been shared or not shared among the American people, with income inequality that is the highest among developed countries. Let me repeat that. Right now, income inequality in America is the highest among developed countries. So the problem is how our wealth has been invested or misinvested, with trillions of dollars squandered by money manipulators on Wall Street or funneled to those at the top through tax cuts.

Unfortunately, the tea party budget, authored by Congressman RYAN, would make these problems far worse. It lavishes yet more tax cuts on corporations and the wealthy even as it slashes investments that undergird the middle class in this country—everything from education funding to Medicare and Medicaid. Let me state the obvious: If working people in the middle class are going to take a hit in tough times, it shouldn't be to take a hit to pay for tax breaks for millionaires and billionaires.

Let's look at some of the particulars in this so-called deficit reduction plan of the House Republicans. For starters, never before have I heard of a deficit reduction plan that begins by demanding trillions of dollars in new tax cuts, largely for corporations and the wealthy. In addition to allowing the very wealthy to keep all of the benefits of the Bush-era tax cuts and to keep them permanently, the Republican budget would cut the top tax rate from 35 percent down to 25 percent. Let's again state the obvious: This doesn't reduce the deficit; it digs the deficit hole much deeper.

Next, the Republican budget dismantles Medicare and Medicaid and lays the groundwork for deep cuts to Social Security—changes that will devastate the economic security of the middle class in this country.

The Republican budget says we cannot cut one additional dime from the Pentagon budget because I guess to them there is no waste in the Pentagon, there are no unnecessary weapon systems, no troops based in Japan or Europe or elsewhere who could be brought home. Meanwhile, this tea party Republican budget slashes Federal investments in everything from education to infrastructure to law enforcement back to the levels of the 1920s. Again, let me repeat that. It slashes Federal investments in everything from education to infrastructure to law enforcement back to the levels of the 1920s.

It also repeals Wall Street reform that we passed here, as well as the consumer protections in the affordable care act, including the ban on denying coverage for preexisting conditions. What has that got to do with the deficit?

Their budget cuts funding for food safety, workplace safety, environmental protection, and guts the commonsense regulation of corporate America. It tells Wall Street bankers and speculators, health insurance companies, credit card companies, and mortgage lenders: You are free to go back to the reckless abusive practices of the past. We will just trust you to do what is right for the American people.

To appreciate just how extreme and ideological this budget is, look more closely at the blueprint for replacing Medicare with a voucher system. The nonpartisan Congressional Budget Office estimates that by 2030, future seniors would have to pay two-thirds of the cost of their private health insurance. Their out-of-pocket costs would average in excess of $12,000 per person, per year—more than double the current

cost to seniors. Yet this would pay for private plans that would provide only half of current Medicare coverage. How many seniors can afford to pay $12,000 annually out of pocket for health insurance that only gives them half the coverage they have right now for Medicare? And good luck finding affordable coverage if you are a 70-year-old with a preexisting condition, such as heart disease. Good luck fighting endless battles with your private health insurance company over that one.

Madam President, does this tea party Republican budget reflect our values and priorities as Americans? Is this the kind of country we want to live in, the kind of country we want to pass on to our children? Of course not. Americans don't want or expect a handout, but they rightfully expect a government that lends a helping hand, not one that stands in their way and not one that destroys the essence of the middle class. The American people want a government that helps them to achieve retirement security, a government that makes sure that when we put money away for retirement, it is going to be there when we retire. The American people want to maintain strong investments in education and infrastructure.

To reduce deficits, the American people want shared sacrifice, including an increase in revenues from those who can most afford it. They want an end to taxpayer subsidies to oil and gas companies, and they want to cut Pentagon spending. Yet the Republican budget does exactly the opposite in every single respect.

Make no mistake, this tea party Republican budget puts us on a course of disinvestment, drift, and decline. This budget wreaks of pessimism and gloom and doom. As I said, its defeatist premise is that the United States is poor and broke and we can no longer afford a strong and secure middle class, we can no longer afford to prepare our young or care for our elderly. Yet, bizarrely, the Republicans insist that we can afford—we can absolutely afford—another enormous tax cut for millionaires and billionaires.

I totally reject their premise. I reject this defeatist Ryan budget—the premise that America is poor and broke.

Here is the truth: The United States is recovering from the largest economic downturn since the Great Depression and from the damage caused by very unwise budget decisions made over the last decade, and we are growing wealthier by the day. Our entrepreneurial economy, our technology, our universities and the arts are the envy of the world. Americans are still the best educated and most productive people on Earth.

Most importantly, Americans continue to be an optimistic, can-do people. We have faced national trauma, including depressions and wars and national disasters, many times before, and we have always rebounded stronger and better than ever. We can overcome our current challenges without sacrificing our great middle class and without abandoning our seniors or people with disabilities and the less fortunate among us.

There is one important point of agreement on both sides of the aisle here in the Senate: We agree the current budget deficits are unacceptable. We must bring these deficits under control.

However, deficits are by no means our only urgent economic challenge. An even greater challenge—a greater challenge—is our fragile economy and the jobs crisis. Addressing this successfully will help reduce the deficit. Now, the unofficial unemployment rate is 8.8 percent, but the real unemployment rate, including people who are underemployed or who have dropped out of the job market in frustration and are no longer working, is a staggering 16 percent.

Meanwhile, our middle class is under siege. Our middle class is being dismantled as fast as big corporations can shift our manufacturing jobs overseas. People are losing their savings, their health care, their pensions, and in many cases losing even their homes. With good reason, the American people feel they are losing the American dream for themselves and for their children.

That is why we cannot look at the deficit reduction challenge in isolation. We cannot just take a slash-and-burn approach to the budget. Smart countries do not just turn a chainsaw on themselves. Instead of this tea party Republican budget, which is being sold through fear and fatalism, we need a budget that reflects the hopes and aspirations of the American people. We need a budget that brings deficits under control in a way that allows us to continue investments that boost competitiveness, create jobs, and strengthen the middle class.

I would add this: We need a deficit reduction plan that actually attacks the sources of our current deficits. What are those sources? Well, a remarkable article from the front page of Sunday's—May 1—Washington Post by Lori Montgomery documented clearly how the huge budget surpluses of the Clinton years were turned into the $1 trillion budget deficit President George W. Bush passed on to President Obama. The article states:

> Voices of caution were swept aside. Political leaders chose to cut taxes, jack up spending, and, for the first time in U.S. history, wage two wars solely with borrowed funds.

The article cites a new analysis by the nonpartisan Congressional Budget Office which determined that ''routine increases in defense and domestic spending account for only about 15 percent of the financial deterioration. The biggest culprit, by far, has been an erosion of tax revenue, triggered largely by two recessions and multiple rounds of tax cuts.''

The article also notes that Federal tax collections now stand at their lowest level as a percentage of the economy in 60 years.

Let me repeat that—their lowest level in 60 years.

Of legislation passed since 2001, when George W. Bush became President, about half of the negative impact on deficits came from reductions in revenue and nearly a quarter came from increases in defense spending. One-half came from reductions in revenue.

I am talking now about what are the sources. What are the sources of the deficit hole we are in? In 2001, we had huge surpluses. CBO said if we maintained the same budget policies that by 2010 we would have paid off the entire national debt. 10 years later, in 2011, we have a $1.4 trillion deficit. What happened? What decisions were made in those 10 years that put us in that hole?

As I said, the article by Lori Montgomery in the Washington Post clearly points out, and the CBO clearly points out, that half of the hole we are in came from reductions in revenue, one-quarter came from increases in defense spending, and one-quarter from everything else.

As the CBO analysis makes clear, we do not just have a spending problem, we have a revenue problem. The main source of our current deficit problem is not the modest increase in domestic spending beyond the one-time spending in the Recovery Act—which is rapidly coming to an end. The principal source of our deficits is the deep tax cuts and the surging Pentagon budget, 75 percent of our current problems.

Yet now the tea party Republican budget calls for trillions of dollars and yet more new tax cuts, largely for those at the top. It refuses to cut Pentagon spending in any significant way. It places almost the entire burden of deficit reduction on programs that support the middle class, seniors, people with disabilities, and those of low income.

Americans are rightly asking some commonsense questions. If a principal source of our deficit problem has been deep tax cuts largely benefitting those at the top, shouldn't a big part of our deficit reduction plan include allowing those unaffordable tax cuts to expire? If ongoing domestic spending increases are only a minor source of our deficit problem, why does this Republican budget take a slash-and-burn approach to these programs which are so important to the middle class and to working Americans? The answer, of course, is the tea party Republican budget is not principally a deficit reduction plan. It is an ideological manifesto that encompasses the entire party wish list, everything from more tax breaks for the rich to dismantling Medicare and Medicaid.

I have a simple test for judging any budget plan. What does that plan do to give hope and opportunity to middle-class Americans who have been hardest hit by the economic downturn?

To speak in terms specific to my State of Iowa, what did it do for Webster City? Webster City is a community

like thousands of others across the United States. It is a town where middle-class families work hard, play by the rules, sacrifice for their children. But it is also a town where a decent middle class way of life is threatened. Recently, in Webster City, IA, the Electrolux plant that has been the town's economic engine for over 80 years closed its doors. Production was moved to Juarez, Mexico. In the final round of layoffs in March, 500 Iowans lost their well-paying, middle-class jobs.

This most recent factory closing comes on the heels of 222 plant closings just in Iowa last year, destroying nearly 12,000 well-paying, middle-class jobs. As we all know, each of these plant closures reverberated on Main Street, with many local stores and restaurants falling on hard times or going out of business themselves. Let's be clear, the wrong kind of budget plan, one that indiscriminately slashes funding for education and job training, infrastructure and research, will deepen the plight of Webster City and similar communities across America. Indeed, by accelerating the erosion of the middle class in this country, such a plan will make our fiscal situation even worse. There can be no sustainable economic recovery in the United States without the recovery of the middle class. There can be no sustainable solution to our budget challenges without a strong middle class, a middle class that is getting its fair share of rising national income.

As I said earlier, we are growing wealthier by the day in America. We are the wealthiest country in world history, and we are growing wealthier by the day. But what we ought to make sure is that the middle class will get its fair share of that rising national income.

Again, I think the test of a budget plan is this: Will it strengthen the middle class in America? Will it require shared sacrifice with a promise of shared prosperity in the long run? I have applied this test to the tea party Republican budget and it comes up woefully short.

This tea party Republican budget cuts the top tax rate for millionaires and billionaires from 35 percent down to 25 percent. How will that help laid-off workers in Webster City?

The Republican budget dismantling Medicare and replacing it with an absurdly inadequate voucher system, will that strengthen the retirement security of seniors in Webster City?

This budget of the Republican tea party people guts Medicaid. Will that improve the lives of seniors and people with disabilities who depend on Medicaid to pay for nursing home care and home health care assistance?

The tea party Republican budget slashes funding for Pell grants. Will that improve the prospect for kids in Webster City who plan to go to college but whose parents are now unemployed and without resources?

The tea party Republican budget makes Draconian cuts to everything from food safety and law enforcement to environmental protection. How will that improve the quality of life in Webster City and communities across America? We know the answer to these questions. The bottom line is, the Republican's budget offers more pain and no gain to the people of Webster City. Instead of increasing opportunity, it sends a message of surrender and defeat. Indeed, let's speak the plain truth. With this tea party budget, Republicans have taken their class warfare to a new level. They have launched an unprecedented assault on middle-class and working Americans. Their message to struggling folks in Webster City and communities like it across America is brutally clear: Tough luck. I have mine. You are on your own.

This Republican tea party budget would drive down our standard of living, shred the economic safety net, reduce access to health care and higher education, and do damage to our public schools' ability to prepare our kids for the jobs of the future. We can and must do better.

I have come to the floor to propose an alternative approach to the Federal budget, a planned approach that will discipline the Federal budget and bring deficits under control while continuing to make critical investments in a stronger America. Best of all, we know this approach can work because it is consciously modeled on the successful budget policies of the 1990s.

Under President Clinton's leadership, Congress passed a bold economic plan that combined tough-minded spending cuts with smart investments and, yes, revenue increases. This created large budget surpluses and put us on a track to completely eliminate the national debt within a decade. It created a brief era of shared prosperity for the middle class, with 22 million new jobs and 116 consecutive months of economic expansion, the longest in American history.

I say to the people across America, we can do this again. The key to renewing America and restoring our economy is to revitalize the middle class. This means reducing deficits while continuing to invest in education, innovation, and infrastructure, boosting American competitiveness. It means restoring a level playing field with fair taxation, an empowered workforce, and a strong ladder of opportunity to give every American access to the middle class.

We have the resources, both financial and human, to do these things. I repeat what I said earlier, the central falsehood in the tea party Republican budget is its assumption that America is poor and broke; its assumption that we can no longer afford to invest in a prosperous and secure middle class. Again, I say emphatically, we are not poor and we are not broke. We have the highest per capita income of any major country. As I said earlier, the problem is how our wealth is distributed, how it is managed, and how it has been invested—or should I say ''misinvested.''

Income inequality in the United States has reached levels not seen since immediately before the Great Depression. Middle-class Americans are working harder than ever, but they are falling behind. Real average incomes have not gone up since 1979, more than three decades ago. Let me repeat that: Average real incomes haven't gone up since 1979, more than three decades ago. In fact, over the last decade, the average income of working Americans has actually declined while those in the top 10 percent of income earners and wealthy in America, their incomes and their wealth has soared to new levels. Vast wealth because of tax breaks and other government preferences have flowed to millionaires and money manipulators who pay a tax rate that is lower than that paid by their chauffeurs and secretaries.

In 2007, the top 25 hedge fund managers took home an average income of $892 million—yes, you heard that right, $892 million each, average income for 1 year. Over the last decade, the average income of the top 1 percent in America increased by an average of more than one-quarter of a million dollars a year. Again, let me repeat: The top 1 percent of income earners in America, their income increased by an average of more than one-quarter of a million dollars a year for 10 years. I ask, who in their right mind believes these people need another giant tax cut?

People do not hate the rich. To the contrary, most Americans aspire to do well and to achieve financial independence. That is a big part of the American dream. But Americans do resent it when the wealthy and powerful manipulate the political system to reap huge advantages at the expense of working people and the middle class. Ordinary people think the game is rigged and unfair, and you know what? They are right. Yet this tea party Republican budget says to middle-class Americans again: Hey, tough luck. I have mine. You are on your own. Your retirement security is expendable. Your access to health care and college is expendable. Your desire for quality public schools is expendable. Your quest for a modernized transportation system is expendable. All these things, according to the Republican budget, are expendable in order to create a Tax Code even more favorable to the rich and the powerful and the privileged.

This is deeply wrong. The middle class is the backbone of this country, and it is time our leaders showed the backbone to defend it. We need an alternative, a budget that invests in education and opportunity for all Americans, a budget that invests in the retirement security of the middle class and, yes, a budget that does not abandon the less fortunate among us, including seniors and people with disabilities.

As we saw in the 1990s, we can do these things at the same time we are bringing deficits under control. This will require smart, prudent reductions

in spending, and it will require reform of the Tax Code to make it fairer and more equitable, a Tax Code that asks more from those at the top whose incomes have skyrocketed in recent decades.

Let me speak first about spending cuts. I hope I have set an example with my own appropriations subcommittee, the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the Appropriations Committee. The fiscal year 2011 spending bill that was enacted last month cuts spending in these areas by almost $6 billion and eliminates dozens of individual programs. I also serve on the Appropriations Subcommittee on Defense. Of course, I believe we can make major spending cuts without harming our national security. I agree with Secretary Gates, who has urged us to terminate the additional C–17 cargo planes and a new amphibious fighting vehicle. I would also save $12 billion by terminating the V–22 Osprey, which even Dick Cheney labeled a turkey and tried to cancel it.

I would also save $80 billion over the next decade by reducing the number of Active-Duty military personnel stationed in Europe and Japan.

Most importantly, it is time to save hundreds of billions of dollars by speeding up the return of our troops from Iraq and Afghanistan. It costs an estimated $1 million a year to deploy and support each soldier deployed in those wars. That is an extravagance we can do without.

We can also make cuts close to home. I represent a farm State, and I have a strong record of supporting a true farm income safety net. However, in this time of strong commodity prices, record levels of net farm income, the USDA—the Department of Agriculture—is still paying out nearly $5 billion a year in direct payments to farmers, having no relationship to farm income or commodity prices or to what they are even planting. No question, we can save some money here while still making sure farmers have a good solid income safety net protection system.

We also must find additional deficit reduction in the area of health care. Once again, the tea party Republican budget flunks the test. It does not reduce spending on health care, it just shifts costs. It shifts the costs to seniors and others by making them pay most of the bills themselves.

By contrast, the new health reform law actually cuts health care costs. Again, according to CBO, it reduces the deficit by hundreds of billions in the first decade and by more than $1 trillion—the health reform bill cuts the deficit by more than $1 trillion in the second decade, while preserving and strengthening Medicare, not dumping it on the backs of seniors. It does so by rewarding health care providers for the quality of care, not the quantity. It does so by placing a sharp new emphasis on wellness and prevention, keeping people out of the hospital in the first place. It does so by creating an independent commission of doctors, nurses, medical experts, and consumers, to examine patient data and recommend the best ways to reduce wasteful spending and ineffective procedures, while preserving the quality of care.

We can and must build on the health care savings in the Affordable Care Act. But my friends on the other side of the aisle want to repeal the Health Reform Act. But they do not say where they are going to get the money to make up the $1 trillion hole it will blow in the budget in the next decade.

The enormously successful deficit reduction campaign of the 1990s insisted on a balanced approach: spending cuts and revenue increases. Revenue increases were concentrated on the most affluent Americans, those who could most easily afford it, and who benefited the most from the strong economy and the stock market that followed. This must be our template as we raise necessary revenues to reduce future deficits.

By all means, we must allow the Bush era tax breaks for the wealthiest 10 percent of Americans to expire immediately. To put it bluntly, they do not need it, and we cannot afford it. The fact is, high-income Americans did extremely well in the 1990s under the higher rates of the Clinton years, and they will continue to do very well in the future, while contributing their fair share to bringing deficits under control.

I also strongly agree with President Obama's proposal to limit itemized deductions for the wealthiest 2 percent of Americans, a reform that would reduce the deficit by $320 billion over 10 years. We need to end the outrageous gimmicks in our Tax Code. Just one example. The ''carried interest'' loophole allows many hedge fund managers to pay taxes at just a 15-percent rate on part of their bonuses, a far lower rate than middle-class Americans pay.

As I said earlier, in one recent year, the top 25 hedge fund mangers took home an average income of $892 million a year each. Let's tax this income the same way we tax the income of teachers and truckdrivers.

In addition, I strongly favor a modest speculation tax on certain types of financial transactions, a .25-percent tax—that is one-quarter of 1 percent tax—on each stock transaction, and a similar tax on options, futures, and swap transactions.

In order to minimize the impact on ordinary American investors, this would exclude transactions in tax-benefited pension accounts such as 401(k)s and IRAs and defined benefit plans.

Some might say, well, this sounds kind of a pie in the sky. Well, Great Britain currently levies a tax on stock transactions that is twice as high as what I am proposing—twice as high as what I am proposing. There is no question that Wall Street can easily bear this modest tax.

John Bogle, the legendary founder of the Vanguard Mutual Fund Group, has long advocated such a speculation tax, a transaction tax, in order to ''slow the rampant speculation that has created such havoc in our financial markets.''

We also should be working to eliminate the tax provisions which promote the shifting of jobs to other countries. The President's budget proposes the elimination of over $100 billion in international tax breaks in this area.

A prudent but aggressive mix of spending reductions and tax increases, combined with stronger economic growth and an end to the wars in Iraq and Afghanistan, will bring Federal deficits under control. This will restore the fiscal discipline that was squandered in the years after President Clinton left office.

Best of all, this restored fiscal foundation will allow us to continue making critical investments in transportation and infrastructure, education and energy, investments that will put Americans back to work, strengthen our global competitiveness, and prepare our workforce for the future.

Make no mistake, we have no time to waste. While the United States has been distracted and weakened by foolish wars and speculative bubbles, our competitors have been charging ahead. We have lost major ground to China and to other rapidly growing economies, including Brazil, South Korea. We are playing catchup and the stakes are enormous.

Across America, roads are crumbling, bridges are collapsing. Our formerly world-class interstate highway system is increasingly overwhelmed. Mass transit systems, including Washington's once proud Metro system, have fallen into disrepair. We have a backlog of nearly $300 billion in school construction and modernization.

In infrastructure, we currently invest less than one-third of what Western Europe does as a percentage of GDP. China has tripled its investment in education, and is building hundreds of new colleges and universities at a time when we are slashing school budgets and laying off teachers.

The tea party Republican budget makes this investment gap far worse. It proposes to cut funding for transportation by 25 percent, and for education by 25 percent, and in future years would cut those investments even more deeply. Congressman RYAN has the audacity to tell us this is ''a path to prosperity.'' Common sense tells us it is a bridge to nowhere.

These statistics are not abstractions. Investments in education, infrastructure, and innovation directly translate into more and better jobs, higher incomes, stronger economic growth. That is why we need to get America moving again.

For starters, we need a massive new commitment to infrastructure expansion and modernization, truly a Marshall plan for America. The first step is to adopt a solid 6-year surface transportation reauthorization bill that will allow us to modernize our transportation system.

We also need robust new investments in clean, renewable, domestically produced energy. This will lower our energy costs in the long term, and will reduce our dependence on some of the most unstable countries in the world.

Early in the 20th century, we provided the emerging oil energy with subsidies to accelerate its growth. Today, we must provide similar policies to accelerate America's transition to a clean energy economy, including long-term tax credits for a renewable energy generation, and for infrastructure investments for biofuels, as well as smart grid technologies to enable broader renewable energy use. The goal should be 25 percent of our energy from renewable resources by 2025.

In the field of education, we need major new investments. This begins with Federal support for universal preschool education to ensure that every child is ready to learn and succeed in school. It means an ambitious reauthorization of the elementary and secondary education bill that close the gap between world-class schools in affluent suburbs, and struggling schools in poor urban and rural communities. It means providing resources to ensure that the goal of graduating students who are college and career ready applies equally to students with disabilities.

In closing, in my remarks today I have offered not just an alternative approach to bringing deficits under control but an alternative vision of the role of the Federal Government. Going back to the 1930s, the American people have supported and strengthened an unwritten social contract. That social contract says we will prepare our young and care for our elderly. That social contract says if you work hard and play by the rules, you will be able to rise to the middle class or even beyond. That social contract says a cardinal role of government is to provide a ladder of opportunity, so every American can realistically aspire to the American dream.

In one fell swoop, this tea party Republican budget rips up that social contract. It replaces it with a winner-take-all philosophy, again, that tells struggling, aspiring people and communities across America: I have got mine. You are on your own.

As I said at the outset, the Republican budget is premised on the idea that America is poor and broke, that our best days are behind us, that we have no choice but to slash investment required in order to keep our middle class strong. I totally disagree.

America remains a tremendously wealthy and resourceful nation. We are an optimistic, forward-looking people. We are a purposeful and can-do people, and we expect our government to be on our side, the side of the middle class. We expect it to be an instrument of national greatness and purpose, allowing us to come together to achieve the big things we cannot achieve as individuals, things such as building an interstate highway system, mapping the human genome, one day discovering a cure for cancer.

Through our government, we come together to provide a ladder of opportunity to give every citizen a shot at the American dream, a ladder of opportunity that includes quality public schools and universities, Pell grants, the GI bill, job training. Through our government, we come together to ensure that our citizens have a secure retirement with guaranteed access to health care, and to ensure that the less fortunate among us are not abandoned to the shadows of life.

I am convinced that the great majority of Americans share this positive can-do vision. We refuse to be dragged backward into a winner-take-all society where the privileged and the powerful seize even a greater share of the wealth, as the middle class struggles and declines.

Americans are a tough and resilient and optimistic people. We can and will work together to meet the great challenges of our day. We can and will, indeed we must, restore the middle class as the backbone of a stronger, richer and fairer America.

I yield the floor.

The PRESIDING OFFICER (Mr. MANCHIN.) The Senator from Texas.

Mr. CORNYN. Earlier today we had a cloture vote on the nomination of Jack McConnell to be a United States District Judge for Rhode Island, and 63 Senators voted to cut off debate and to move then to a final vote on confirmation which will occur, I am told, around 5:30, shortly.

But first I wanted to come to the floor and expand a little bit on some of my earlier comments with regard to this nomination and why I am so strongly opposed to it just to make a few other comments.

Thirty-three years ago I became a lawyer, a member of the legal profession. While I have heard as many lawyer jokes as a person can stand in a lifetime, I am actually proud of the legal profession. What attracted me to it was study of the law, the rule of law, and the majesty of law being made by elected representatives of the American people speaking for the American people themselves; a profession that observes a rule of ethics, that is not just who can get the most the fastest but one that actually requires lawyers to practice according to a standard of ethics.

Third, the obligation and the responsibility that comes with representing a client; in other words, it is not the lawyer who is speaking on his or her own behalf but a lawyer who is speaking on behalf of a client, whether they have been arrested and charged with a crime, whether they have been injured in an accident and seeking compensation for some wrongdoing and to deter future acts, similar actions in the future, whether it is a commercial dispute over a contract or some other relationship. I believe it is the rule of law and our adherence to ethical standards and the fact that the legal profession serves the interests of clients who need help, many of whom don't have a voice themselves, or certainly the capability of representing themselves, who need somebody who can help them.

But I have to tell my colleagues that it is because of my respect and admiration for the legal profession that it makes me angry when I see people making a mockery out of the foundational principles I just mentioned: the rule of law, ethics, and the fiduciary duty owed to a client.

After I practiced law for a while, I had the great honor of being elected to and serving as a district judge in my home city of San Antonio. So not only did I represent clients as an advocate in court, I had the responsibility of presiding over trials and making sure people were treated impartially, the same, and according to the rule of law; that it was not a matter of who they were or how much money they had but that everybody could have access to our system of justice.

Later I was honored to be elected to serve on the Texas Supreme Court for 7 years where I was an appellate judge and I wrote legal opinions, basically grading the papers of some of those trial judges and making sure that indeed we had equal justice under the law. Then I served as attorney general for 4 years before I came here, during which time I became acquainted with a certain class of entrepreneurial lawyers whom I think threatened the very rule of law I have been talking about.

I previously talked about my objections to Jack McConnell's nomination and confirmation to serve as a Federal judge because I believe he intentionally misrepresented certain facts before the Senate Judiciary Committee. Mr. McConnell and his firm have been sued in Ohio for stealing and maintaining custody of certain stolen documents in a lead paint lawsuit which I will speak about in a moment. As a matter of fact, earlier today I introduced an article which demonstrates that legal dispute still is raging and is not yet resolved. Yet the Senate is moving ahead and will likely confirm someone to a life-tenured job as a Federal judge who may ultimately be found responsible. I don't know, he could be vindicated. But why are we taking the risk that this individual who will be given a lifetime job as a Federal judge might ultimately be found culpable in something that is certainly disqualifying if he is responsible for it?

But I wish to speak just a little bit more about—well, I wish to tell a story. I think it helps make the point I wish to convey.

Once upon a time there was an enterprising lawyer and some of his law partners who were trying to figure a new way to make a lot of money. One of them said:

''Well, I have a plan to do that. First, we have to pick a product or sector of

the economy that is unpopular, even though it is legal. For example, tobacco.''

''Exactly,'' one of the lawyers said. ''We pick a product like tobacco, and we sue the manufacturer and make a lot of money.''

''The problem is we have already tried to do that in individual lawsuits that are designed to compensate victims and deter wrongdoing, but we lost all of those lawsuits.''

''Well,'' the enterprising young lawyer who suggested this plan said, ''we did, but now we have a new legal theory. We have a new approach. And it is a legal theory that has never actually been embraced or accepted by the courts.''

One of the other lawyers said, ''Well, how does that work? What is the theory?''

To which the other responded, ''Well, the theory really doesn't matter because this case will never be tried, but it will be settled for billions of dollars.''

That takes us to the second part of the plan. The truth is, the client or the person who would be represented is not an individual victim who was harmed as a result of some wrongdoing by the manufacturer of the product, but instead of that it is the State—a State. How do you get hired to represent a State? Well, you have to get the attorney general—my former job. You have to get the attorney general, who is the chief law enforcement officer of the State, to basically hire you and then to delegate to you the sovereign law enforcement power of the State—in this case to sue the makers of a product. Part of this scheme is you sue not just for damages to one individual or a group of individuals, you sue for essentially everyone in the State, alleging billions of dollars in damages.

The key reason this is so important to this scheme, of course, is because this is a break-the-company lawsuit. By that I mean it is an existential threat to the existence of this company, far bigger than any legal threat they may have faced in the past, because the damages are enormous. Every potential juror who would sit in judgment of the case being a constituent, a resident of that State, would stand to benefit in some way or another by any judgment rendered against this company. Then, of course, there is the power of the State itself to launch, perhaps, a negative publicity campaign against this company or sector to erode the stock value of this company in order to compel them or force them into a settlement posture.

Well, part of this scheme is that even though the chances of winning in court are very slim, even a small risk of losing everything—wiping out shareholders, retirees, pension funds, and employees—even that small risk is enough to cause the defendant to consider coming to the settlement table. True, even if you have a chance—liability is very thin and you think you aren't responsible—you still have to navigate the maze of litigation through the trial and the appellate and the Supreme Court. You know you might just win if you can outlast their adversaries. But in the meantime, as I indicated earlier, the stock price takes a beating, management is consumed with defending the lawsuit rather than running the business, and millions of dollars are being spent on their own lawyers in order to defend this case.

Well, in this story the law partners of this enterprising young lawyer say: That sounds like a great plan. We could earn a lot of money.

The lawyer proposing this says: Well, we can earn more than you can possibly imagine because our compensation may well exceed $100,000 an hour.

Well, how do you do that? No one can charge $100,000 an hour as a legal fee.

Well, this is the best part from their perspective. They would not actually negotiate an hourly fee under the supervision of a judge that reflects prevailing ethical standards. Instead, they will negotiate a deal with this attorney general for the State on a contingency fee basis in a no-bid, noncompetitive contract. So then they would get a percentage of any amount of money recovered in this bet-the-company lawsuit. Since there are no costs up front for the taxpayer, the State attorney general would look like a hero, even if the lawsuit was unsuccessful. But if he succeeds, these lawyers would get a significant percentage of an astronomical sum of money. No funds would be appropriated by the legislature to finance the litigation, so the State official can make the ethically fallacious and ethically dubious claim that no tax dollars will be used to pay legal fees. The official enters into this no-bid contract for legal services with lawyers whose future political support, including campaign contributions, is assured. The official can expect to be lauded as a popular hero in the press by his willingness to take on an unpopular industry.

Now, as part of this scheme and story, to leverage the chances for success, these lawyers then cherry-pick the court where the lawsuit is filed, a court well known for being friendly to these sorts of claims. Seeing the handwriting on the wall, ultimately as part of this scheme, the plan would be that the defendants, even though they are not—the chances of proving them responsible are very thin, the risk of losing and losing the company are so huge that they decide to go to the settlement table.

Well, here is the deal. The plaintiff's lawyers say—under this scheme, and in some ways it turns out to be a lifeline to the defendants—first, the good news: The defendants will survive. They won't be at risk of losing the company—the employees, the stock price, the pensioners, the retirees who depend on the existence of the company.

Secondly, the business will continue to operate and—here is the best part—the judgment that will be entered will ultimately, from the standpoint of the company, bar any future lawsuits. The defendants agree rather than paying a lump sum settlement out of their current assets to pay hundreds of billions of dollars to these lawyers and the State out of future profits.

How do you make sure you don't have to dip into your current assets? Well, basically, the defendants agree under this arrangement to raise the price of their product for consumers. So, ultimately, the consumers pay, and the defendants will pay the attorney's fees out of this same income stream.

Now, these lawyers in this story believe this is really a stroke of genius. While no person who has allegedly been injured by this product will receive a penny—and, indeed, as a result, the defendant will not be deterred from engaging in that sort of conduct, nor will, as I say, any victim be compensated—the State recovers a windfall of damages without having to appear to raise taxes, although the increased price for the product is passed along to consumers.

As a result of this deal, the defendant's stock price rebounds, they can stay in business essentially as a partner with this law firm whose legal fees will be paid out of future sales revenue, and the State official who agrees to this ingenious scheme is elected to higher office in part on the strength of this David v. Goliath story. The only problem with this story is that it is no fairy tale.

So who are these lawyers who dreamed up this ingenious scheme to partner with a State official to be able to be delegated the sovereign power of the State and collect fabulous wealth in the form of attorney's fees that no judge will award and no jury will award because it is part of this settlement? Jack McConnell, the nominee, and his law firm.

His Web site says: McConnell played a central role in the historic litigation against the tobacco industry in which $246 million in all was recovered, it says, on behalf of the State attorneys general, serving as a negotiator and primary drafter of the master settlement agreement. As a result, Mr. McConnell told us in the Judiciary Committee, he expects to collect between $2.5 million and $3.1 million a year from now through 2024. What is more, Jack McConnell now finds himself nominated to be a Federal judge in whose court future ingenious but ethically dubious schemes can be expected to have a warm reception.

This is the type of thing Stuart Taylor—a well-respected legal commentator—called, he said: The rule of law has now morphed into these sorts of schemes into the rule of lawyers. He has talked about the sequel to this litigation I have described in this story which was the lead paint lawsuit, which we have talked about a little before, which was unanimously rejected by the Rhode Island Supreme Court—frivolous litigation.

As a matter of fact, Mr. McConnell and his law firm were assessed fees of over $200,000. But Mr. Taylor said: It is litigation of this type which has perverted the legal system for personal or political gain at the expense of everyone else. Strong words, hard words, but I think the Senate needs to know the type of nominee we are voting on, and the American people need to know what the record of this nominee is, so then they can hold the Senators who vote for his confirmation accountable.

But this is not a partisan issue. It is not. This is not even about ideology. This is about ethics. This is about upholding the rule of law.

Mr. President, I ask unanimous consent that after the close of my remarks, a Wall Street Journal article, dated January 12, 2000, by Robert B. Reich, be printed in the RECORD.

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

(See exhibit 1.)

Mr. CORNYN. Mr. Reich was Secretary of Labor during the Clinton administration, and he wrote an article in the Wall Street Journal that I think is particularly appropriate to what I am talking about. The lead of the article from this prominent Democrat, a Cabinet Secretary under Bill Clinton, is: ''Don't Democrats Believe in Democracy?'' That is the title. I will not read all of it, but I will read just a few sentences.

In talking about this kind of government-sponsored litigation by outsourcing the responsibilities of the sovereign government and the elected officials to contingency fee lawyers, whose only motive is maximizing their personal profit, he said:

> . . . the biggest problem is that these lawsuits are end runs around the democratic process. We used to be a nation of laws, but this new strategy presents novel means of legislating—within settlement negotiations of large civil lawsuits initiated by the executive branch. This is faux legislation, which sacrifices democracy to the discretion of administration officials operating in secrecy.

Well, I agree with Secretary Reich. I think this is a threat to our democracy. Again, I do not think it should be viewed as a partisan issue, even though he has that provocative headline and he is talking about members of his own party who have endorsed and initiated some of this type of litigation.

We had an earlier vote, as I said, where 63 Senators voted to close off debate, and we will have a vote here in short order. I know some Senators have indicated they voted to close off debate because they felt that was the appropriate vote to make, but they were going to vote against Mr. McConnell's nomination. So we will see how many votes he gets. But we know if it is a party-line vote, there are 53 Democrats in this body and 46 Republicans. If it is a party-line vote, Mr. McConnell is going to be a Federal judge. But I think it is important to make the RECORD crystal clear as to the type of nominee Senators are voting on. I think it is my responsibility to my constituents, it is my responsibility to the Senate, to express the strong objections I have to this nominee. Surely—well, I know there are better people for the President to nominate in Rhode Island. Two of them serve in the Senate. There are other qualified people who could be nominated, and I believe this ethically challenged nominee—who, according to the words of Stuart Taylor, is among a class of lawyers who have perverted the legal system for personal and political gain at the expense of everyone else—is the wrong person for this job. So I will be voting against the nomination.

I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Jan. 12, 2000]

DON'T DEMOCRATS BELIEVE IN DEMOCRACY?

(By Robert B. Reich)

If I had my way there would be laws restricting cigarettes and handguns. But Congress won't even pass halfway measures. Cigarette companies have admitted they produce death sticks, yet Congress won't lift a finger to stub them out. Teenage boys continue to shoot up high schools, yet Congress won't pass stricter gun controls. The politically potent cigarette and gun industries have got what they wanted: no action. Almost makes you lose faith in democracy, doesn't it?

Apparently that's exactly what's happened to the Clinton administration. Fed up with trying to move legislation, the White House is launching lawsuits to succeed where legislation failed. The strategy may work, but at the cost of making our frail democracy even weaker.

The Justice Department is going after the tobacco companies with a law designed to fight mobsters—the 1970 Racketeer Influenced and Corrupt Organizations chapter of the Organized Crime Control Act. Justice alleges that the tobacco companies violated RICO by conspiring to create an illegal enterprise. They did this by agreeing to a ''concerted public-relations campaign'' to deny any link between smoking and disease, suppress internal research and engage in 116 ''racketeering acts'' of mail and wire fraud, which included advertisements and press releases the companies knew to be false.

A few weeks ago, the administration announced another large lawsuit, this one against America's gun manufacturers. Justice couldn't argue that the gun makers had conspired to mislead the public about the danger of their products, so it decided against using RICO in favor of offering ''legal advice'' to public housing authorities organized under the Department of Housing and Urban Development, who are suing the gun makers on behalf of their three million tenants. The basis of this case is strict liability and negligence. The gun makers allegedly sold defective products, or products they knew or should have known would harm people.

Both of these legal grounds—the mobster-like conspiracy of cigarette manufacturers to mislead the public, and the defective aspects of guns or the negligence of their manufacturers—are stretches, to say the least. If any agreement to mislead any segment of the public is a ''conspiracy'' under RICO, then America's entire advertising industry is in deep trouble, not to mention health maintenance organizations, the legal profession, automobile dealers and the Pentagon. And if every product that might result in death or serious injury is ''defective,'' you might as well say goodbye to liquor and beer, fatty foods and sharp cooking utensils.

These two novel legal theories give the administration extraordinary discretion to decide who's misleading the public and whose products are defective. You might approve the outcomes in these two cases, but they establish precedents for other cases you might find wildly unjust.

Worse, no judge will ever scrutinize these theories. The administration has no intention of seeing these lawsuits through to final verdicts. The goal of both efforts is to threaten the industries with such large penalties that they'll agree to a deal—for the cigarette makers, to pay a large amount of money to the federal government, coupled perhaps with a steep increase in the price of a pack of cigarettes; and for the gun makers, to limit bulk purchases and put more safety devices on guns. In announcing the lawsuit against the gun makers, HUD Secretary Andrew Cuomo assured the press that the whole effort was just a bargaining ploy: ''If all parties act in good faith we'll stay at the negotiating table.''

But the biggest problem is that these lawsuits are end runs around the democratic process. We used to be a nation of laws, but this new strategy presents novel means of legislating—within settlement negotiations of large civil lawsuits initiated by the executive branch. This is faux legislation, which sacrifices democracy to the discretion of administration officials operating in secrecy.

It's one thing for cities and states to go to court (big tobacco has already agreed to pay the states $246 billion to settle state Medicaid suits, and 28 cities along with New York state and Connecticut are now suing the gun manufacturers; it's quite another for the feds to bring to bear the entire weight of the nation. New York state isn't exactly a pushover, but its attorney general, Eliot Spitzer, says the federal lawsuit will finally pressure gun makers to settle. New York's lawsuit is a small dagger, he says. ''The feds' is a meat ax.''

The feds' meat ax may be a good way to get an industry to shape up, but its a bad way to get democracy to shape up. Yes, American politics is rotting. Special-interest money is oozing over Capitol Hill. The makers of cigarettes and guns have enormous clout in Washington, and they are bribing our elected representatives to turn their backs on these problems.

But the way to fix everything isn't to turn our backs on the democratic process and pursue litigation, as the administration is doing. It's to campaign for people who promise to take action against cigarettes and guns, and against the re-election of House and Senate members who won't. And to fight like hell for campaign finance reform. In short, the answer is to make democracy work better, not to give up on it.

Mr. GRASSLEY. Mr. President, I rise today to speak in opposition to one of President Obama's most controversial nominees, Mr. Jack McConnell, who has been nominated to be U.S. district judge for the District of Rhode Island.

He has dedicated his professional career, and enriched himself in the process, by bringing dubious mass tort litigation. I believe he has demonstrated a result-oriented view of the law. He has repeatedly demonstrated that he is highly partisan. And given his history of intemperate and highly partisan remarks, I do not believe he is capable of being an impartial jurist.

First, Mr. McConnell is an active partisan, a little more so than most nominees recently before the Senate. Mr. McConnell and his wife have donated at

least $700,000 to elect Democrats, over $160,000 in 2008 alone. He has served as treasurer of the Rhode Island Democratic State Committee. He is a member of Amnesty International USA and has served as a director at Planned Parenthood of Rhode Island. Partisan political activity is not disqualifying on its own. My concern is that Mr. McConnell is so steeped in political activity and ideology that it may be impossible for him to be an impartial jurist—even if he earnestly believes that he can.

We can legitimately question whether his partisanship will influence his judicial philosophy. He has made a number of sharp partisan political statements, including one in which he indicated that only Democrats fight for ''economic and social justice and opportunity for all.'' He has called for a more ''active government'' and redistribution of wealth, and claimed that ''health care should be a right of citizenship.'' When Republican Gov. Lincoln Almond kept the Rhode Island government open during a snowstorm in 1996, Mr. McConnell commented to the press that the decision was ''typical of the cold-hearted Republican attitude of disregarding workers' needs.'' He went on to argue against the Governor's appeal to the cost efficiency of keeping agencies open by saying that ''[we] could bring child labor back, which would be cheaper, too.''

Mr. McConnell has often portrayed his mass tort cases as movements against societal injustices. He has said that these cases represent ''wrongs that need to be righted and that is how I see the law.'' He has said that he is ''an emotional person about injustice at any level—personal, societal, global.'' These statements indicate an activist viewpoint. This is not what I want in a Federal judge.

Second, Mr. McConnell has a view of the law that I believe is outside the mainstream of legal thought. Much of McConnell's career has been devoted to bringing some of the most controversial mass tort litigation of recent years. He has pursued the manufacturers of asbestos, tobacco, and lead paint, whose actions he believes to be ''unjust.'' In bringing many of these cases, Mr. McConnell has often stretched legal argument beyond its breaking point. An example is the ''public nuisance'' theory he pursued in the Rhode Island lead paint case. Well-respected attorneys have said Mr. McConnell's theory ''just [did not] mesh with centuries of Anglo-American law'' and a former attorney general called the lead-paint cases ''a lawsuit in search of a legal theory.''

The Rhode Island Supreme Court unanimously ruled against him in State v. Lead Industries Associates, Inc. In a well-reasoned opinion, the court found that there was no set of facts that he could have proven to establish that the defendants were liable in public nuisance.

Mr. McConnell's reaction to that opinion illustrates my third major concern—that he lacks appropriate judicial temperament. Although the opinion was based firmly in the law, Mr. McConnell saw fit to publicly and harshly criticize the court's decision in a Providence Journal editorial. But his criticism made little reference to points of law. Rather, his major complaint was simply that, in his view, ''justice was not served.'' His op-ed lambasted the court for ''let[ting] wrongdoers off the hook.'' Not only were these statements intemperate, even for an advocate, but they reflect a results-oriented view of judging. Mr. McConnell did not focus on the court's analysis or argue that it wrongly applied the law. He argued that the ''wrongdoers'' weren't punished. In other words, the result didn't fit with his notion of justice, so it was the wrong result.

Mr. McConnell was also deeply involved in State lawsuits against tobacco companies. However, beyond litigation, he has shown an open hostility to tobacco companies. He told the press in 1999 that he would ''like Congress to put the Cigarette makers out of business.'' He has even gone so far as to compare people who opposed smoking bans in restaurants to the supporters of racial segregation, saying ''some people might like having all-White restaurants so they don't have to sit with Blacks, but we don't allow it.''

A fourth concern relates to the manner in which Mr. McConnell conducts his business. I am not suggesting illegal or unethical behavior, but it is a bit unseemly. He and his firm, Motley Rice, have often brought these controversial mass tort litigations cases while representing State attorneys general on no-bid contingency fee contracts. According to an April 24, 2009, Wall Street Journal editorial:

> Mr. McConnell and his firm helped pioneer the practice of soliciting public officials to bring lawsuits in which private lawyers are paid a percentage of any judgment or settlement. The law firms front the costs of litigation and are compensated if the suit is successful. But such contingency-fee arrangements inevitably raise questions of pay to play. And private lawyers with state power and a financial stake in the outcome of a case can't be counted on to act in the interest of justice alone.

There are numerous examples of campaign contributions by Mr. McConnell and/or his wife in States where he or his firm was conducting or soliciting litigation. These include Rhode Island, Ohio, Washington, Vermont, and North Dakota.

In another instance, as part of a settlement in the Rhode Island lead paint case, DuPont was to pay $2.5 million to the International Mesothelioma Program at a Boston hospital, which is run by a former Motley Rice expert asbestos witness, Dr. David J. Sugarbaker. According to press reports, the payment was intended to satisfy a $3 million pledge previously made by Motley Rice to Dr. Sugarbaker to secure a seat on the executive advisory board of the program.

My problem with this is the way the facts have dribbled out and the spin that Mr. McConnell has tried to put on this payment. Although both Rhode Island and DuPont claimed that the agreement was not a legal settlement, the agreement involved a commitment by DuPont to contribute over $12 million to charity and a commitment by the State of Rhode Island to dismiss the case against DuPont. DuPont refused to pay any attorneys' fees because they were disputing the permissibility of the State's use of private counsel on a no-bid contingency-fee contract. Nonetheless, DuPont agreed to make a sizeable donation to charity to settle the case.

In my view, the donation to the Boston hospital is highly suspect. Settlement money that was supposed to help reduce lead poisoning in Rhode Island in effect was diverted to offset a debt of Mr. McConnell's law firm. The chairman of the Rhode Island Republican Party described the problem as follows: ''McConnell's law firm had a $3 million obligation to a Boston hospital, and so as part of the settlement, $2.5 million of that obligation was paid by DuPont.''

Mr. McConnell does not dispute this characterization of the $2.5 million payment. Despite claims by Attorney General Lynch that the payment would not satisfy Motley Rice's obligation to the hospital, he said ''I don't see why it shouldn't, and I don't see anything nefarious or wrong with that.'' The controversy regarding the settlement intensified when attorneys from another firm who had worked on the case on a contingency fee basis disputed the payment, claiming it was a ''legal fee'' that they were not being allowed to share in.

Fifth, I am concerned that Mr. McConnell has approached this confirmation process with either a lack of diligence or a lack of candor. I am particularly troubled by the way Mr. McConnell handled himself before the committee. I believe Mr. McConnell, at best, misled the committee when he testified about his familiarity with a set of stolen legal documents that his law firm obtained during the lead paint litigation. When asked about these documents during his committee hearing, he testified that he saw the documents ''briefly,'' but that he was not familiar with them ''in any fashion.''

But several months after his hearing, Mr. McConnell was deposed, under oath, about those same documents. In his sworn deposition, Mr. McConnell testified that he was the first lawyer to receive the documents. He drafted a newspaper editorial citing information that came directly from those documents. He testified that he reviewed and signed a legal brief that incorporated the stolen documents. And, even though he told the committee that he was not familiar with the documents ''in any fashion,'' during his deposition he testified that he did not see any indication on the documents that

they were confidential or secret. How could he know the documents were not confidential or secret, if, as he testified before the committee, he was not familiar with them ''in any fashion''? Given these facts, it is hard to square Mr. McConnell's testimony before the committee with his sworn deposition testimony a couple months later.

The litigation over these documents remains ongoing. We do not know how it will conclude. We do not know whether Mr. McConnell and his law firm will be held liable for the theft of these documents. But what is the Senate going to do if we confirm this individual, and at some later date he or his law firm is found liable for theft? At that point, it will be too late. Members will not be able to reconsider their votes. The Wall Street Journal recently opined that Mr. McConnell's ''changing story about his lead paint advocacy is enough by itself to disqualify him from the bench.'' I could not agree more.

In another instance, I asked in written questions the degree of awareness or notification that he or his law firm had regarding rallies that were held outside or near the Superior Court in Providence during the lead-paint trials in September 2002. He replied ''None.'' However, there is email traffic that indicates Mr. McConnell was, in fact, aware of the demonstrations. This email was produced in the lead paint litigation as part of Sherwin Williams's motion for a new trial. In other words, Mr. McConnell and his firm had this in their possession when he was asked about it by the committee.

Inconsistent answers were provided with regard to Mr. McConnell's relationship with the ACLU as well. In response to the question ''Did you, in fact, represent the ACLU in the matter?'' Mr. McConnell said ''I entered an appearance as counsel.'' Yet in response to another question regarding any matters in which he provided legal services to the ACLU or any affiliate thereof, he replied, ''I have never provided legal services to the ACLU or any affiliate thereof.'' I find this answer confusing at best.

These types of responses indicate, at a minimum, a careless approach in his response to the legitimate inquiries of this committee. They could also be viewed as indicating a lack of candor. Either way, they do not reflect the standard we should expect from an individual who seeks confirmation to the Federal judiciary.

These concerns lead me to believe this nominee is not qualified to serve as a U.S. district judge. Finally, I note Mr. McConnell received a low rating from the ABA—a rating of substantial majority qualified, minority not qualified.

My concerns are shared by the U.S. Chamber of Commerce, and I take their views very seriously because the Chamber only rarely takes positions on judicial nominations. In a letter to this committee, the Chamber wrote:

> Mr. McConnell's actions during his career as a personal injury lawyer and past statements demonstrate his disregard for the rule of law, an activist judicial philosophy and obvious bias against businesses.

For the reasons I have articulated—one, his active partisanship which I believe he will carry with him into the judiciary; two, his legal theories being outside the mainstream; three, his lack of judicial temperament; four, his questionable business practices; and five, his lack of candor with the committee—and other concerns which I have not expressed today, I shall oppose this nomination.

I will conclude by saying this. I have supported the overwhelming majority of President Obama's judicial nominees. If it were up to me, I would not have nominated many of those individuals, but I supported them nonetheless. Mr. McConnell is in an entirely different category. I believe he misled the committee when he testified before us. For that reason alone, I do not think he should be rewarded with a lifetime appointment to the Federal bench. Even if I did not have that concern, I could not support this nominee.

Mr. LEAHY. Mr. President, earlier today, the Senate took a step toward restoring a longstanding tradition of deference to home state Senators with regard to Federal District Court nominations. The Senate turned away from what Senator REED rightly called a precipice. Eleven Republican Senators joined in voting to end a filibuster of the nomination of Jack McConnell to the District Court for the District of Rhode Island. A supermajority of the Senate came together to reject a new standard, which I believe is being unfairly applied to President Obama's district court nominees. Now, more than a year after his nomination, nearly a year after his confirmation hearing, and after having had his nomination reported positively by a bipartisan majority of the Judiciary Committee three times, the nomination of Jack McConnell will finally have an up-or-down vote in the Senate.

The Senate should have debate on judicial nominations, and Senators should be free to vote for or against any nomination. A few hours ago the Senate voted to invoke cloture and now we are proceeding to hold a final confirmation vote on this nomination.

There was no need for cloture to be filed on this nomination. There were no ''extraordinary circumstances'' that held up this nomination for over a year. Why was the Senate not able to reach a time agreement to debate and vote on this nomination last year? It was the obstruction that prevented us from doing so. It was wrong for the Senate to knuckle under to business lobbies and it was right for the Senate to reject that opposition.

In fact, in the days leading up to the filibuster vote and in the hours since, no great number of Senators has spoken in opposition to this nomination. Only a handful of Senators from the minority leadership spoke at all. Only one such Senator has spoken in opposition since cloture was invoked.

With judicial vacancies at crisis levels, affecting the ability of courts to provide justice to Americans around the country, we should be debating and voting on each of the 13 judicial nominations reported favorably by the Judiciary Committee and pending on the Senate's Executive Calendar. No one should be playing partisan games and obstructing while vacancies remain above 90 in the Federal courts around the country. With one out of every nine Federal judgeships still vacant, and judicial vacancies around the country at 93, there is serious work to be done.

I will support the nomination of Jack McConnell, just as I have each of the three times it was before the Judiciary Committee. Mr. McConnell is an outstanding lawyer. He is supported by his home State Senators, Senator REED and Senator WHITEHOUSE. Each has spoken passionately and persuasively in support of his nomination.

As I noted earlier, Mr. McConnell's nomination has been reported by a bipartisan majority of the Judiciary Committee three times. His nomination also has bipartisan support from those in his home State. Leading Republican figures in Rhode Island have endorsed his nomination. They include First Circuit Court of Appeals Judge Bruce Selya; Warwick Mayor Scott Avedisian; Rhode Island Chief Justice Joseph Weisberger; former Rhode Island Attorneys General Jeffrey Pine and Arlene Violet; former Director of the Rhode Island Department of Business Barry Hittner; former Rhode Island Republican Party Vice-Chair John M. Harpootian; and Third Circuit Court of Appeals Judge Michael Fisher.

The strident opposition to this nomination has been fueled by the corporate lobby, who oppose Jack McConnell because he is a good lawyer. They oppose him because he successfully represented plaintiffs, including the State of Rhode Island, in lawsuits against lead paint manufacturers. Some in the Senate may support the lead paint industry. Some in the Senate may oppose those who wish to hold lead paint companies accountable for poisoning children. That is their right. But as I said earlier in opposing the filibuster of this nomination, nobody should oppose Mr. McConnell for doing what lawyers do—vigorously represent clients.

I also hope no Senator opposes this nomination based on what I believe to be a distortion of Mr. McConnell's testimony before the committee. As chairman of the Judiciary Committee, I take seriously the obligation of nominees appearing before the Committee to be truthful. I would be the first Senator to raise an issue if there were any legitimate question as to the accuracy of Mr. McConnell's testimony. But there is not.

Far from establishing that Mr. McConnell was untruthful with the committee, the deposition transcript

cited by some who oppose his nomination in fact validates Mr. McConnell's testimony to the committee. There has been no inconsistency in Mr. McConnell's testimony, either to the committee or in sworn testimony in a deposition. Jack McConnell is not a party to the lawsuit. He has been accused of no wrongdoing. There is no basis to believe that Mr. McConnell did not answer questions from members of the committee truthfully. Some Senators may feel strongly that Mr. McConnell and his firm were wrong to sue lead paint companies, but there is simply no basis for believing that Mr. McConnell was untruthful with the committee. I hope other Senators will reject those conclusions.

With more than 25 years of experience as an outstanding litigator in private practice, Mr. McConnell has been endorsed by The Providence Journal, which wrote: ''In his legal work and community leadership [he] has shown that he has the legal intelligence, character, compassion, and independence to be a distinguished jurist.'' This debate should focus on Mr. McConnell's qualifications, experience, temperament, integrity, and character. Any fair evaluation of his qualifications would reveal a nominee worthy of confirmation.

I congratulate Jack McConnell and his family on his confirmation today. I commend Senator REED and Senator WHITEHOUSE for their steadfast support and all they have done to ensure that the Senate vote on this nomination.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent that the remaining time postcloture be yielded back and the Senate proceed to vote on the confirmation of the nomination of John J. McConnell, Jr., to be a U.S. District Judge for the District of Rhode Island; that the motion to reconsider be considered made and laid upon the table with no intervening action or debate; that no further motions be in order to the nomination; that the President be immediately notified of the Senate's action; the Senate then resume legislative session and proceed to a period of morning business for debate only until 7:30 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is, Will the Senate advise and consent to the nomination of John J. McConnell, Jr., of Rhode Island, to be United States District Judge for the District of Rhode Island?

Mr. WHITEHOUSE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from California (Mrs. BOXER), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

I further announce that, if present and voting, the Senator from Hawaii (Mr. AKAKA) and the Senator from Washington (Mrs. MURRAY) would each vote ''yea.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN) and the Senator from Kansas (Mr. ROBERTS).

The PRESIDING OFFICER (Mr. BENNET). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 44, as follows:

[Rollcall Vote No. 66 Ex.]

YEAS—50

Baucus	Harkin	Nelson (FL)
Begich	Inouye	Pryor
Bennet	Johnson (SD)	Reed
Bingaman	Kerry	Reid
Blumenthal	Klobuchar	Rockefeller
Brown (OH)	Kohl	Sanders
Cantwell	Landrieu	Schumer
Cardin	Lautenberg	Shaheen
Carper	Leahy	Stabenow
Casey	Levin	Tester
Conrad	Lieberman	Udall (CO)
Coons	Manchin	Udall (NM)
Durbin	McCaskill	Warner
Feinstein	Menendez	Webb
Franken	Merkley	Whitehouse
Gillibrand	Mikulski	Wyden
Hagan	Nelson (NE)	

NAYS—44

Alexander	Enzi	McConnell
Ayotte	Graham	Moran
Barrasso	Grassley	Murkowski
Blunt	Hatch	Paul
Boozman	Hoeven	Portman
Brown (MA)	Hutchison	Risch
Burr	Inhofe	Rubio
Chambliss	Isakson	Sessions
Coats	Johanns	Shelby
Cochran	Johnson (WI)	Snowe
Collins	Kirk	Thune
Corker	Kyl	Toomey
Cornyn	Lee	Vitter
Crapo	Lugar	Wicker
DeMint	McCain	

NOT VOTING—5

Akaka	Coburn	Roberts
Boxer	Murray	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, the President will be immediately notified of the Senate's action, and the Senate will resume legislative session.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate is now in a period for the transaction of morning business for debate only until 7:30 p.m., with Senators permitted to speak for up to 10 minutes each.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak for a much longer period of time, for 45 minutes. I may not use all that time, but I would like to have permission to speak for that time.

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

ETHANOL

Mr. GRASSLEY. Mr. President, it is not going to surprise any of my colleagues or the public at large that a lot of times I come to the Senate floor to speak about agriculture and to speak about ethanol. What brings me to the floor today is the ongoing crusade by the Wall Street Journal, in an intellectually dishonest way, to put out a lot of facts about ethanol that are not true.

The latest barrage comes from an interview published last Saturday in the Wall Street Journal with C. Larry Pope, CEO of Smithfield Foods. In this article, there are a lot of misstatements about ethanol and about ethanol causing the price of food to rise dramatically. I take the floor now to rebut some of those misstatements and also to set the record straight so that when a very fine CEO such as Mr. Pope, even though I disagree with him on this article—he is a decent person, and he is a good corporate executive—the next time, he will not speak. But I can also say I do not like to have confrontations with Smithfield Foods because they do provide a lot of good-paying jobs in the Middle West, and they do a good job of adding value to agriculture.

There has been a tradition at Smithfield to kind of not appreciate American agriculture. It goes back to some conversations I had with the previous CEO by the name of Joe Luter. I remember Joe Luter coming to my office to try to explain to me some things he thought I had misinterpreted of what he was really talking about regarding the family farmer and about the production of hogs and whether he was wanting to put the family farmer out of business.

I remember just as if it was said to me yesterday a statement he made when I said: You are running the family farmer, the family producer, the independent producer out of the hog business, and you want to control everything. He said to me something along the lines: I do not want to put your farmers out of business; I just want them feeding my pigs. He was basically saying he wanted the family farmer to be an employee of Smithfield and not be an independent producer.

Another point he tried to argue with me—and I am referring to Mr. Pope's predecessor, Mr. Luter—he also argued that Iowa farmers in a sense were not smart enough to run a packing plant. In fact, he offered to give a plant to a group of farmers and guaranteed it would be out of business within 6 months.

I do not know whether I have fault with Mr. Pope as CEO of Smithfield and ethanol in this case as opposed to Mr. Luter, his predecessor, and who is going to raise pigs, but there may be an institutional bias within the corporation of Smithfield.