

take-home pay, \$1,500 in the pockets of the average working family in America.

Secondly, it allows us to provide a cut as well for businesses, cutting in half the payroll tax for businesses. It is good public policy. It will create lots of jobs at a time when the American people are telling us, with one voice, they want us to do one thing here: create jobs or create the conditions for job creation so small businesses can hire. At the same time, they want us to come together in a bipartisan way.

I urge a "yes" vote.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time in opposition?

The Senator from South Dakota.

Mr. THUNE. Mr. President, there are a lot of Republicans here who agree with one of the basic principles in the Democratic bill; that is, there is no reason why people ought to suffer even more than they already are from the President's failure to turn this job crisis around.

What the Republicans have proposed is an alternative to this bill that ensures that no one sees a tax hike this year. The biggest difference is that the Republican proposal ensures that no one's taxes get raised in a down economy.

There is simply no reason that preventing a tax hike in this bad economy needs to be paid for by raising taxes on the very employers whom we are counting on to help jolt this economy back to life, which is exactly what the Democrats have put forward. So the Republican proposal would ensure that no one sees a tax increase next year. It avoids the gratuitous hit on job creators, and, even better, our plan reduces the Federal deficit by more than \$111 billion.

This is a dramatic expansion of this particular provision, which we cannot afford when we already have a \$15 trillion debt. There is a right way and wrong way to do this. This is the wrong way in the Democratic proposal. The Republican proposal is the right way.

I urge our colleagues to vote against this bill.

The PRESIDING OFFICER. The time has expired.

Mr. BROWN of Massachusetts. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. Under the previous order, 60 votes are required for adoption.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 219 Leg.]

YEAS—51

Akaka	Blumenthal	Carper
Baucus	Boxer	Casey
Begich	Brown (OH)	Collins
Bennet	Cantwell	Conrad
Bingaman	Cardin	Coons

Durbin	Lautenberg
Feinstein	Leahy
Franken	Levin
Gillibrand	Lieberman
Hagan	McCaskill
Harkin	Menendez
Inouye	Merkley
Johnson (SD)	Mikulski
Kerry	Murray
Klobuchar	Nelson (NE)
Kohl	Nelson (FL)
Landrieu	Pryor

NAYS—49

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

The PRESIDING OFFICER. Under the previous order requiring 60 votes for the adoption of this motion to proceed, the motion is rejected.

TEMPORARY TAX HOLIDAY AND GOVERNMENT REDUCTION ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, there is 2 minutes of debate equally divided on the motion to proceed to S. 1931.

The Senator from Nevada.

Mr. HELLER. Mr. President, the Senate today has an opportunity to put aside some of the partisan differences and come together and do something that will benefit all Americans. The legislation I propose is a solution, and I support solutions which Republicans, Democrats, and Independents can all support.

By supporting my legislation and imposing tax increases on employers, Congress can also preserve opportunity for job growth in the future. Increasing taxes on small businesses will not help my State overcome the highest unemployment rate in the Nation. By asking millionaires and billionaires to pay higher premiums for government health care, my proposal asks the richest Americans to do more, just like my colleagues on the other side of the aisle ask that they should.

Lastly, this proposal is the only one that has a chance of passing the House of Representatives and be signed into law. I urge all of my colleagues to support this piece of legislation and this effort to help Americans already struggling to make ends meet.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, the problem with this proposal—and I hope we are reaching the point where we are actually coming together in a bipartisan way—is that it does not help small business. What we should be doing is cutting the payroll tax in half for em-

ployees and cutting it in half for employers so we can help small businesses.

This bill does not do that. All it does is take the existing cut in the payroll tax and keep that in place.

We like that part of it. We should expand the tax cut for workers and also have a separate cut in the payroll tax for employers, so 160 million workers and lots of businesses can get the benefit of this payroll tax cut to put money in people's pockets, grow the economy, and move the economy forward. I urge a "no" vote.

The PRESIDING OFFICER. The question is on agreeing to the motion.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Under the previous order, 60 votes are required to adopt the motion to proceed.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 20, nays 78, as follows:

[Rollcall Vote No. 220 Leg.]

YEAS—20

Ayotte	Heller	Portman
Barrasso	Hoeven	Risch
Brown (MA)	Hutchison	Rubio
Collins	Lugar	Snowe
Crapo	McConnell	Vitter
Enzi	Murkowski	Wicker
Grassley	Paul	

NAYS—78

Akaka	Feinstein	Merkley
Alexander	Franken	Mikulski
Baucus	Gillibrand	Moran
Begich	Graham	Murray
Bennet	Hagan	Nelson (NE)
Bingaman	Harkin	Nelson (FL)
Blumenthal	Hatch	Pryor
Blunt	Inhofe	Reed
Boozman	Inouye	Reid
Boxer	Isakson	Roberts
Brown (OH)	Johanns	Rockefeller
Burr	Johnson (SD)	Sanders
Cantwell	Johnson (WI)	Schumer
Cardin	Kirk	Sessions
Carper	Klobuchar	Shaheen
Casey	Kohl	Shelby
Chambliss	Kyl	Stabenow
Coats	Landrieu	Tester
Coburn	Lautenberg	Thune
Cochran	Leahy	Toomey
Conrad	Lee	Udall (CO)
Coons	Levin	Udall (NM)
Corker	Lieberman	Warner
Cornyn	Manchin	Webb
DeMint	McCaskill	Whitehouse
Durbin	Menendez	Wyden

NOT VOTING—2

Kerry McCain

The PRESIDING OFFICER (Mr. COONS). Under the previous order requiring 60 votes for the adoption of this motion, the motion is rejected.

## VOTE EXPLANATION

• Mr. KERRY. Mr. President, I was necessarily absent for the cloture vote on the motion to proceed to legislation to provide civilian payroll tax relief, to reduce the Federal budget deficit, and for other purposes, S. 1931. If I were able to attend today's session, I would have opposed cloture on this bill. •

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we move to a period of morning business, with Senators allowed to speak up to 10 minutes each.

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

## EXECUTIVE SESSION

NOMINATION OF CAITLIN JOAN HALLIGAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. REID. Mr. President, I move to proceed to executive session to consider Calendar No. 43, and I send a cloture motion to the desk. In fact, it is at the desk.

## CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit.

Harry Reid, Patrick J. Leahy, Charles E. Schumer, Christopher A. Coons, Amy Klobuchar, Al Franken, Richard Blumenthal, Sheldon Whitehouse, Richard J. Durbin, Dianne Feinstein, Herb Kohl, Kirsten E. Gillibrand, Tom Udall, Ron Wyden, Robert P. Casey, Jr., Sherrod Brown, Jeanne Shaheen.

Mr. REID. Mr. President, I ask unanimous consent that on Tuesday, December 6, 2011, at 11 a.m., the Senate proceed to executive session to consider Calendar No. 43; that there be 1 hour for debate, equally divided in the usual form prior to the cloture vote; further, that the mandatory quorum under rule XXII be waived.

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

## LEGISLATIVE SESSION

Mr. REID. Mr. President, I now ask unanimous consent to resume legislative session.

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

The Senator from Kansas.

## PAYROLL TAX HOLIDAY

Mr. MORAN. Mr. President, just a few moments ago we cast several votes in regard to the so-called payroll tax holiday. I opposed both the Republican amendment and the Democratic amendment.

There were significant differences between these two versions of this legislation; in part, the differences at least included the way that the provisions were paid for. While I may support the pay-fors, I objected to what the pay-fors are paying for.

I support freezing the pay of Members of Congress, the elimination of certain benefits to millionaires, and reducing the Federal workforce. But wouldn't we be better using the proceeds of these reductions in spending to reduce the debt and deficit rather than a short-term change that reduces the revenues going to the Social Security and Medicare trust funds? When are we going to admit we are broke?

I am reminded of a plan approved by Congress just several years ago where we borrowed money to give citizens a \$600 rebate, all in the name of a stimulus. We wanted to stimulate the economy and, in my view, what we did was we stimulated little and increased the debt a lot.

Many of us have expressed support for the concepts contained in the Bowles-Simpson deficit reduction plan. Their recommendations are very important and we have paid a lot of attention to them and expressed our desire to proceed in that way. Many times we have said that. But the legislation we just voted on uses many of their suggested reductions in spending, not for deficit reduction but for another stimulus plan. The Bowles-Simpson plan has been hijacked once again in the name of stimulating the economy.

These proposals also undermine the foundation of Social Security. We are reducing the payments into the trust fund. We should leave the trust fund alone and cut spending and use those savings to pay down our annual deficits and live within our means. Once again, we are putting off difficult decisions and leaving it up to our children and grandchildren to pay for our irresponsibility.

Finally, let me, once again, on this floor make the case for certainty in our Tax Code. Congress is tinkering tonight with the Tax Code, creating greater uncertainty. In almost every conversation I have with a business owner, they ask for certainty in the Tax Code and certainty in the regulatory environment. But instead, tonight we are changing or attempting to change the Tax Code one more time, for a short period of time, claiming some benefit for doing so. Instead, we should focus on long-term tax policy and a Tax Code that is simpler and certain. Certainty is something that will create jobs.

I expect there to be some criticism of the votes I just cast, and I can hear the

campaign sound bites. But we have to get beyond the next election and get to the next generation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

## DEFENSE AUTHORIZATION

Mr. MERKLEY. Mr. President, tonight, I voted against final passage of the Defense authorization bill, and I rise now to explain why I voted against it and the considerable concerns I have about the vast expansion of the powers of detention of American citizens that were contained in that bill.

These provisions related to the detention of American citizens—without the standard rights of the fifth and sixth amendment—have been an object of intense debate on the floor of the Senate over the last several days.

As a Senator who has now been here 3 years, I can say unequivocally that this debate was extremely valuable. Folks came from both parties on both sides of this issue and shared their insights, both from their life experiences, from their scholarly knowledge of the law, and certainly from their philosophy, and I commend all who participated in that debate. I listened to a great deal of that debate on both sides. I thought this was extraordinarily important; issues surrounding our Bill of Rights and the rights of American citizens, protection from the abuse of power.

Some came to this floor and said that essentially the detention provisions in this bill simply clarify existing law and will enhance our national security, and they did so with sincere hearts and sharp minds. Others came, equally sincere, equally learned, and argued the opposite side; that the detention provisions in this bill constitute a devastating circumvention of the fifth amendment right to due process and the sixth amendment right to a speedy trial by impartial jury, as well as a sixth amendment right to confront the witnesses against him or her. Maybe it is useful to take a look at what the fifth and sixth amendments actually say.

One of the last clauses of the fifth amendment notes that:

No person shall be deprived of life, liberty, or property without due process of law.

I think we all grow up in this country absolutely believing in this fundamental value that the government cannot take from you your life, your liberty or your property without the process of law.

The sixth amendment notes that, in prosecutions, the accused shall enjoy the right to a speedy and public trial—and I emphasize public trial—by an impartial jury of the state. It goes on to note that the accused shall be able to confront the witnesses against him and to have the assistance of counsel. So these basic issues of speedy and public trial, an impartial jury, the assistance of counsel, and the ability to confront