

issue as stimulative activity, along with the accompanying housing measure.

The reason why this is so urgent is because the end of the first quarter is here. Companies that are making these investment decisions are going to start issuing their first quarter reports, giving guidance as to the rest of the year and their investments. If we do not make it clear as a Congress that we believe in these tax credits, they are going to start canceling projects.

I know I have been to the floor and said this previously, but now have the last month's numbers as it relates to actual job loss, the 80,000 jobs that have been lost in our economy, and if you looked deeply, you would probably find some of those jobs are these energy-related jobs, where we have not given predictability to investors and, consequently, they are starting to cancel projects.

This Senator does not want to see the next quarter's numbers and see the greater job losses because Congress would not give predictability in the tax code. This is a time when our economy needs investment. It needs investment in those activities that are going to help consumers in the long run lower their energy costs, but, frankly, this is an investment we can make right now that will help our economy create much needed new jobs and investment.

What is our goal? I know many of my colleagues would say: Let's go back to the drawing board and see if we can find a pay-for way of doing this. I am sure this discussion is going to come up in the House of Representatives as well. But I remind my colleagues, we have tried that approach three times. We have tried that approach, and we have failed. The White House has issued veto threats every time we tried to pay for these measures. To now say we are going to revert back to that I think is going to leave in jeopardy the investment cycle for 2008 of that 100,000 jobs and \$20 billion of investment.

A more positive way to proceed is to get this particular legislation passed and signed into law so we do not lose the investment in the jobs, we do not see a 77-percent plunge in the investment in wind like we did last time the PTC was allowed to expire. Or see a drop off in solar or renewables or efficiency and the other areas that are just starting to take off. Instead we should get this off the table, signed into law, and we have plenty of time later this year to talk about how we are going to make green energy tax credits a priority in our Nation's tax code so this industry can take off and continue to provide the certainty and predictability we need.

What I am saying is, we should not pin a gold medal on our chest for work we should have done in 2007 to give the market predictability on green energy tax credits. This work is actually late to the game. Let's finish it and be proud we did so in a bipartisan fashion to break the logjam, but now let's get

on to the rest of the year in coming up with a funding source for what are predictable tax credits beyond the 2008 and 2009 time period that will really stimulate the millions of green-collar jobs America can have.

The urgency of this issue should not be underestimated. The opportunity for America to become a leader in green energy technology is at our doorstep today. But if the United States does not realize it needs to put its foot on the accelerator, then we are not doing our job in communicating the facts. The Europeans, the Chinese, and the rest of the world are going to move ahead in the manufacturing of green energy technology. The United States can be a leader in that new green-collar industry or it simply can be a marketplace for other countries' technology solutions.

This Senator wants the United States to be a green energy technology leader. I want us to be an exporter of the green energy technologies developed and manufactured here at home, creating jobs in the United States and leveraging the know-how we have in green energy technologies to provide much needed solutions around the globe.

To do that, the United States has to give predictability in our tax code. It has to recognize we are willing to turn our ship off the fossil fuel direction and on to green energy solutions that will help our economy, help our environment, and help shift the change we need in our foreign policy.

I hope my colleagues will take this vote on the Ensign amendment this morning with a lot of foresight into the debate that is going to continue to happen and to support the Ensign-Cantwell amendment, to sign onto the underlying bill to say it is time for us to move forward on this solution and to urge our House colleagues to work diligently to quickly put this legislation on the President's desk so we can get about the other vital energy tasks we must address.

There is much work to do, but let's vote today with enthusiasm that the United States is going to be more aggressive in turning to green energy solutions and to make the United States a leader in green energy technology.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

#### ORDER OF PROCEDURE

Mr. SPECTER. Mr. President, I ask unanimous consent that the Republican time be allocated to the following Senators for 5 minutes each: myself,

Senator HATCH, Senator CORNYN, Senator KYL, Senator BROWBACK, and Senator COBURN.

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

#### JUDICIAL NOMINATIONS

Mr. SPECTER. Mr. President, there is a strong sentiment in the Republican caucus that President Bush's nominees for judicial confirmation have not been fairly treated. We have not had a single confirmation of a Federal judge this year. I know we have some listed today, but up until this moment there has not been a single confirmation. There was no hearing for any circuit court nominee from September of last year until February 21 of this year, and only one circuit court nominee has had a hearing in over the past 6 months. This is totally unacceptable.

In the last 2 years of President Clinton's administration, 15 circuit judges and 54 district judges were confirmed; thus far in this Congress, only 6 of President Bush's circuit judges and 34 district judges have been confirmed. Even with confirmation of those on the list today, President Bush is far behind where President Clinton stood.

The Fourth Circuit is a judicial emergency. The nominations of Judge Conrad and Mr. Matthews are long overdue. Peter Keisler, a very distinguished nominee for the DC Circuit, has languished for an interminable period of time. There are not adequate reasons for failure to move the nominees in Maryland, New Jersey, and Rhode Island, and I am negotiating now with Senator CASEY on the pending nomination of Gene Pratter for the Third Circuit. Thomas Farr in North Carolina deserves confirmation to the district court, as does Davis Dugas in Louisiana, James Rogan in California, and William Powell in West Virginia.

So a number of Republican Senators will be coming to the floor today to protest what has been going on. I believe the Republican caucus is correct on this issue. I deviated from a Republican caucus position and voted to confirm qualified nominees of President Clinton, and I was prepared to stand up and to say that it is the constitutional prerogative of the President to nominate and the constitutional obligation of the Senate to consent or to dissent—to not consent—to nominees, but not to hold them in limbo and not to fail to have appropriate consideration of these judges.

There is a growing movement in the Republican caucus to hold up legislation if we cannot move in any other way to get justice on the confirmation of these judges. It is a time-honored practice in this body to put holds on legislation or holds on nominations or otherwise to delay legislation from being considered. I think that it is a very problematic tactic myself, but it is used frequently by the minority to get some action by the majority.

I think that it is only fair to note that in some quarters within the Republican caucus there is consideration at the present time to holding up the patent reform bill. Now, the patent reform bill is a very important piece of legislation—very important—to reform the patent laws and to protect intellectual property and to maintain American competitiveness—very important legislation. But the confirmation of Federal judges is also very important. Very important indeed.

Now, Senator LEAHY, Senator HATCH, and I have been engaged in very extensive discussions to try to come to agreement on the substance of a patent reform bill. We have had many conversations. Every day for the past many days—including yesterday—we have had several discussions between myself and Senator LEAHY, between myself and Senator HATCH, and yet we do not have it right, in my judgment. We are very close on a critical issue of inequitable conduct. We certainly have to stop the surge of litigation where there is no reasonable basis to do so, and I think the inequitable conduct provision, which I have been pressing for, is indispensable. Perhaps we have agreement there, but it may be conditioned on something else. The damage provision is not yet satisfactory, and I think we have to get it right even if it takes time.

Now, I am aware that the majority leader would like to move ahead with a bill, with a window which may be open in the immediate future. There is nothing to stop any other Senator from introducing the bill in its present form and to take it up and to take up the disagreements we have on damages, for example, and to vote on them. There is the issue of cloture on a motion to proceed, and I would not anticipate difficulty on that unless the Republican caucus moves ahead with a judgment that we are not going to permit the patent reform bill to move ahead, as a matter of leverage to get fair and equitable treatment on the judges. At this moment, I am not prepared to say where I would be on that issue. It would be my hope that we could work these matters out and that Senators could come to an agreement on these matters.

Mr. President, I ask unanimous consent for 1 additional minute.

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

Mr. SPECTER. I would hope that there could be agreement on the issue of judges, that we could find a way to deal with Peter Keisler, and that we could find a way to deal with the nominations of Judge Conrad and Mr. Matthews and others in the Fourth Circuit so that we do not have to resort to using leverage like withholding consent on other legislation, which would prevent moving ahead with cloture on a motion to proceed. I am available to discuss this with Members on the other side of the aisle.

So it is my hope that we will not tie up the patent bill, but that is a possibility if we can't find some equitable way to handle this judge issue. To repeat, I am available to discuss it with colleagues on both sides of the aisle to find some sensible way to deal with it.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I rise this morning to join my colleagues because I share their concerns about the immediate need to schedule hearings and then up-or-down votes on 10 highly qualified judicial nominees currently pending before the Senate Judiciary Committee.

This immediate need for judicial confirmations is especially true in the U.S. Court of Appeals for the Fourth Circuit, which serves the residents of Virginia, Maryland, North Carolina, South Carolina, and West Virginia. As a matter of fact, there are currently 19 judicial emergencies across the United States, 9 including circuit court judicial emergencies, and it is imperative that the Senate do its duty to schedule hearings and then have votes on the nominees who have been sent over by the White House.

The Fourth Circuit is currently operating without a third of its judges. The Washington Post observed that:

The Senate should act in good faith to fill vacancies, not as a favor to the President but out of respect for the residents, the businesses, defendants and victims of crime in the region the 4th Circuit covers.

I sincerely hope the distinguished chairman of the Judiciary Committee will work with Republican Members to remedy this unfortunate and untenable situation in the Fourth Circuit. Chairman LEAHY and I have a solid record of working together on a bipartisan basis on a variety of issues, ranging from open Government to public corruption, and I am hopeful we can add this to that list.

I am also grateful for his cooperation in dealing with two recent Fifth Circuit nominees. The latest of these Fifth Circuit nominees is Catharina Haynes, a distinguished member of the bar in Dallas, TX, and former State court judge. In February, the chairman held a hearing for Ms. Haynes. That hearing, by the way, was the first—and is still the only—circuit nominee hearing that has occurred since last September. Thus, the problem is painfully obvious. We need more hearings and more markups of nominees and more votes on the floor.

Later today, the Senate will vote on Ms. Haynes's nomination and, I hope, confirm her to the Federal bench. She is an outstanding circuit court nominee, well qualified in terms of her legal ability, her experience, and her judicial temperament. Her nomination has not been contentious or controversial. I am pleased our colleagues on the other side of the aisle have rejected manufactured criticism of her record and the calls from the hard-left interest groups

to stop her nomination from moving forward. I can only assume that my Democratic colleagues see these charges for what they are: reckless smears.

I am hopeful we can persuade our Democratic colleagues to reject similarly spurious claims against the many well-qualified nominees who deserve to have hearings and who deserve up-or-down votes in committee and on the Senate floor.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, one of my colleagues was recently quoted as saying that facts are stubborn things.

The facts are that the majority has virtually shut down the judicial confirmation process.

Some say that the process always shuts down in a Presidential election year, so I checked every one since I was first elected.

By today, April 10, in each of those Presidential election years, the Judiciary Committee had held hearings for multiple appeals court nominees.

But this year, only one appeals court nominee has had a hearing, and there is not another one on the schedule.

The Judiciary Committee held no confirmation hearing at all last month, and last week's hearing was yet another one with no appeals court nominee.

The facts are just as stubborn when we look at the entire 110th Congress.

Since I was first elected, there have been seven Congresses like this one that included a Presidential election year.

During each of these Presidential election Congresses, the Judiciary Committee held hearings for an average of 25 appeals court nominees.

But today, more than 15 months into the 110th Congress, the Judiciary Committee has held a hearing for only five appeals court nominees.

This amounts to just one-fifth of the average for previous Presidential election seasons.

If the partisan roles were reversed and the pace of hearings for appeals court nominees had slowed to perhaps one-half or one-third of the historic average, I can guarantee you that my friends across the aisle would be down here raising the roof about how we were failing to do our confirmation duty.

In fact, when I chaired the Judiciary Committee under the previous President and the hearing pace was actually much faster than it is today, they did complain early, loudly, and often.

But the pace today is worse than one-half, worse than one-third, worse even than one-fourth of the historic average.

The current Judiciary Committee hearing pace for appeals court nominees is the worst in decades.

In fact, there is no current pace at all.

Or look at what is going on or I should say what is not going on, here on the Senate floor.

The current Judiciary Committee chairman in the past often insisted that 1992 provides the standard for judicial confirmation progress.

Like today, his party controlled the Senate and a President Bush was in the White House.

By this time that year, by April 10, 1992, the Senate had already confirmed 25 nominees to the Federal bench.

It does not look like the Senate will confirm 25 judicial nominees for the entire rest of the year.

This afternoon we will finally have the opportunity, the first opportunity of the year, to vote on a few nominees to the Federal bench.

The majority has stalled judicial confirmation votes longer this year than in any Presidential election year since 1848.

Yes, you heard me right.

This is the latest start to judicial confirmations of any Presidential election year in 160 years.

That was the century before last. That was before Utah even became a territory, let alone a State.

The last time the Senate waited this long in a Presidential election year to confirm Federal judges, James Polk, the 11th President, was in the White House.

What could possibly explain such abject confirmation failure?

I might have missed it, but I am not aware of any domestic armed conflict today that is disrupting the Senate's business.

Yet the Civil War did not stop the Senate in 1864 from confirming seven judges before April 10.

Senators today do not have to use horses or carriages or travel on dirt roads.

Yet slow, burdensome travel did not stop the Senate in 1884 from confirming five judges before April 10.

The Great Depression did not stop the Senate in 1932 from confirming 14 judges before April 10.

The possibility of the Senate majority party capturing the White House did not stop Republicans in 2000 from confirming seven judges, including five appeals court judges, before April 10.

Today is April 10, 2008, and we will not confirm a single nominee to the Federal bench until this afternoon and even this late start was noticed only yesterday.

Facts are indeed very stubborn things.

The majority has already virtually shut down the judicial confirmation process.

The Senate has not always operated this way.

The majority is refusing to do what the American people sent us here to do because—I guess, simply—they can.

That may be the reason, but it certainly is no excuse.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, in our country over the last couple of hundred

years, you never know what party is going to control the Senate or the Presidency. As a result, in doing the people's business, both parties have operated somewhat by tradition with respect to the nomination and confirmation of judges. It is important because it happens that, more often than not, in the last 2 years of a Presidency the other party controls the Senate. That has been the case in the last three Presidencies, and this Presidency. In this case a Republican is the Chief Executive and the Democratic Party controls the Senate. That has been the tradition.

As a result, and since we do not know whether a Republican or a Democrat is going to be elected President next time or which party is going to control the Senate, it has been understood by both parties that you do not play politics when it comes to confirming judges because, while you may be able to stop the other party's President's nominations one time, they might be able to stop yours next time. Besides which, it is not good government. It is not doing the people's business. The President was elected fair and square. He has the right to submit judicial nominees and it is the Senate's obligation under the Constitution to act on those nominees.

That is why my colleagues and I have pointed out the historical record, that, for example, since the Reagan and Clinton and first Bush administrations, during the last 2 years of the administration, when the other party controlled the Senate, the average for confirmation of circuit nominees is 17. The last President was President Clinton, Republicans controlled the Senate, but we confirmed 15 of his nominees for circuit judge in his last 2 years.

If we were to do the same thing with regard to President Bush, we would have to confirm nine more circuit judges because there have only been six confirmed last year—none this year. The pace at which circuit judges are acted on ordinarily is a relatively slow pace. We would have to do two a month for the remaining time we are in session in order to achieve that. In fact, that would include the months of August and September, when we are not likely to be here in August and September is not likely to be a month where we would confirm judges. So we literally would have to confirm about three a month in order to achieve the same number as Clinton.

Why are those numbers important? Not just because it is what we should be doing. The President has made nominations. The Judicial Conference says many of these are judicial emergencies, meaning we have vacancies in the circuits that need to be filled because there are not enough judges to do the people's business. We should do it because we should do it; it is our responsibility. But even if you only look at it from a political standpoint, the reality is that if this tradition is broken—of 15, 16, 17 judges in the last 2 years of the administration—then

clearly we are going to devolve into a situation where, for political purposes, the party in power decides not to support—not even to have votes on—the nominees of the President. That is very bad.

It is important that we maintain this tradition of doing at least 15—and we should do more than that—circuit judges in the last 2 years.

My colleagues have spoken to different judges. ARLEN SPECTER, the senior Senator from Pennsylvania, who is the ranking Republican on the Judiciary Committee, specifically mentioned Peter Keisler, who has been pending the longest. He has been pending for almost 2 years. In fact, he was nominated to the District of Columbia Circuit Court in June of 2006 and received a hearing in August of that year. He is widely regarded as well qualified, fair minded, and has received support from all over the political spectrum. He is a graduate magna cum laude from Yale University. He received his law degree from Yale Law School. He clerked for a judge on the DC Circuit and for a Justice in the U.S. Supreme Court. He served in the White House Counsel's Office, has been in private practice, joined the Justice Department where he was assistant attorney general for the civil division and was even Acting Attorney General during a brief time between the time that Judge Gonzales left the Attorney General's position and Judge Mukasey took his place.

The American Bar Association has rated him "unanimously well qualified." You cannot get a higher rating than that. The Washington Post—no particular friend of this administration—editorialized in favor of Keisler, describing him as a "highly qualified nominee" who "certainly warrants confirmation."

Keisler was also the subject of an editorial from the Los Angeles Times, which called him a "moderate conservative," and supported his nomination.

There have been some who say we should not fill the last seat on the DC Circuit because it doesn't have as many cases as other circuits. There was a point in time when that was true and I even noted that. But the reality is that today its caseload is increasing. It needs to be filled and Peter Keisler is one of the nominees who should be supported.

I urge my colleagues to find a way to hold the hearings and to bring these nominees to the floor so the Senate can do its business and act on the nominees of the President for the circuit courts.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I join my colleagues in saying that this is the time for us to move. I am delighted to see the majority leader and the majority whip here on the floor as well, to talk, because there is a practical effect of what is soon to take place around here if we don't start moving judges soon, and specifically circuit court judges. This is something

I don't want to see taking place, but I think you heard from the Senator from Pennsylvania—a respected, open-minded Member of this body—that if we do not start approving some circuit court judges in some significant numbers—I think my colleague from Arizona mentioned hitting some of the historic averages, or at least getting close to it—I think you are going to see people start to jam the body down and say that unless we start approving some circuit court judges, business is not going to happen around here.

I think people will understand why. Circuit court judges are positions that are significant, that are long lasting, that are needed, and yet nominees are not being approved. Why are they not being approved? We have qualified nominees who are in the queue who have been waiting for a long period of time. I have one to talk about here, Judge Robert Conrad in the Fourth Circuit. The seat to which he has been nominated is a judicial emergency. We have a third of the positions on the Fourth Circuit that are open. It is a judicial emergency. His nomination is supported by both home State Senators. They want this position. In North Carolina, Senator BURR and Senator DOLE both support this nominee. He is highly qualified. The ABA says this is a highly qualified nominee, meeting their highest standard of "unanimously well-qualified." This is an individual who has been previously approved by this body for a Federal judgeship, and has now been nominated to move from the Federal district court bench to the circuit court bench. It is a judicial emergency. Yet Judge Conrad's nomination languishes and has languished for over 250 days.

I think clearly what we are setting up right now is for not much to happen in the Senate. I think what you are going to see starting to take place—and we are serving notice here today, if we do not start moving these nominees at some regular pace—qualified people who fit the criteria, who should move on through, business is going to slow down in this body. It may come to a complete standstill if we do not start getting some judges.

We should not go that route. I urge my colleagues, I urge the chairman of the committee and the ranking member, to sit down and say: OK, what can we work out on circuit court judges? District court judges? What can we get worked out so the business of the Senate can move forward? Without that, things are going to slow down here. Things are not going to get done. It is going to be because we are not getting anywhere close to reasonable numbers of circuit court judges approved. I want to say that clearly. That is where this is all headed.

The majority party can choose to go that route. That is what is going to end up taking place. It is going to be about judges. We are going to have a big debate then across the country on that. Meanwhile, the whole Nation wants us

to get work done and we are not getting it done because judges are not being approved.

I hope the majority party would sit up and say we are going to approve this many, that many, we are going to get these moving through in some reasonable fashion so the body can do its job. Judge Conrad is one of those who deserves a hearing. If there are challenges to him on the basis that we don't think he is qualified, we don't like what he said here or there—fine, hold a hearing so we can get those out in the air. Clearly, if we do not start moving some judges in reasonable numbers, you are going to start seeing this body start to not move much through, as we begin to protest not getting judges approved.

We should not go that route. I hope we do not have to.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I have sat here and listened and I have some outline notes from which to speak, but I am not sure we should. The very thing we are talking about is what America wants to spit out, in terms of their elected representatives. The Senate has an obligation to offer advice and consent. There is no question judges are important. That is why you are here, seeing a demonstration from the minority today, of judicial committee members, because we know it is important. It is important across the country because making law from the bench is something that is the antithesis of what most freedom-loving Americans want. The idea that we want to have judges who know their role, know the role of interpreting law rather than making law, is something with which the vast majority of Americans agree.

But I am struck by the fact that gamesmanship is taking place—not just in terms of the majority but also the minority. We are in a game now. How do we move this? How do we leverage this? How do we force it?

My disheartenment comes from the fact—why are we here in the first place? Why did we get here, when we know what the role of the Senate is in terms of advice and consent.

My hope is we do not see a devolution to parliamentary maneuvering, to raise the issue above where it should be.

I am reminded of the fact that the majority had problems with four of President Bush's nominees, starting in January. He withdrew those. In a gesture of good will, he withdraw four nominees who were not—although they were well qualified, they were not acceptable to movement down the road. Now we have highly qualified judges in districts that are judicial emergencies that get actually slandered by the chairman of the committee about supposedly an anti-Catholic statement—when they are Catholic in their faith. So we offer criticism to somebody and never offer them a venue in which to defend themselves.

That is not what America expects of this body. That is not what it expects of the Judiciary Committee. My hope is the majority leader will say: There is a deal to be struck here. Let's do what we can so we don't spend our time on the business of creating wedge issues that don't further the best interests of this country. Give President Bush five or six more, seven or eight more district court nominees, all of which are qualified, bring them to the floor. Let's get it done so it doesn't interfere with other important work. It is time for the Senate to make good on promises. It is time for it to reciprocate for what President Bush did in terms of withdrawing the four nominations. My hope is we will think about what is in the best long-term interest of the country and not the next election.

I thank the Chair.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask if the distinguished Senator from Tennessee is ready to make his remarks, we should do it now. The two managers are not here, but I am sure they would not care. Then when you complete your remarks, we will go forward.

Mr. ALEXANDER. I am prepared to go ahead.

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#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

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#### NEW DIRECTION FOR ENERGY INDEPENDENCE, NATIONAL SECURITY, AND CONSUMER PROTECTION ACT AND THE RENEWABLE ENERGY AND ENERGY CONSERVATION TAX ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3221, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3221) moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation.

Pending:

Dodd-Shelby amendment No. 4387, in the nature of a substitute.

Ensign amendment No. 4419 (to amendment No. 4387), to amend the Internal Revenue