

Any additional tinkering with the Tax Code should only be done as part of a comprehensive reform package designed to return Federal revenues to their 60-year average of 18 percent of the economy.

In closing, I tell my colleagues and constituents that I valued my status last year, while I was running for reelection, as a deficit hawk. I have always placed fiscal responsibility at the top of my agenda and never supported spending or tax cuts unless I thought they were necessary and affordable.

The legislation I have introduced will help us more effectively determine what fiscal policies really are necessary and affordable. I encourage Senators to support this legislation. I also encourage them to show patience regarding making the tax cuts permanent. With all the uncertainties facing us, it does not make sense to deal with the issue now.

I will finish with these words: One of the requirements I have used during my political career to decide whether we should do something is the issue of fairness. How in the world can we ask the American people to flat fund domestic discretionary spending, deal with the problem of Medicaid and many of these other issues, and at the same time say to them, and by the way, we are going to extend these tax cuts we have had? It does not make sense. It is not fair. It is not right. It is not acceptable.

I am hoping that my colleagues understand that to put ourselves in the position where we are going to have probably one of the most stingy budgets we have had since I have been in the Senate, at the same time we cannot continue these tax cuts and extend them or, for that matter, make them permanent.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### ORDER OF PROCEDURE

Mr. VOINOVICH. Mr. President, I ask unanimous consent that at 2 p.m. today the Senate proceed to votes in relation to the next two amendments; provided further that all votes after the first be limited to 10 minutes each. The amendments are Leahy amendment No. 83 and Durbin amendment No. 112.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. VOINOVICH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

#### BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005—Continued

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

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

Mr. LEAHY. Mr. President, I understand there will be a vote on the Leahy-Sarbanes amendment at 2 o'clock; is that correct?

The PRESIDING OFFICER. The Senator is correct.

#### AMENDMENT NO. 83

Mr. LEAHY. Mr. President, this amendment Senator SARBANES and I have pending is going to moderately preserve the current conflict-of-interest standards for investment banks. They might safeguard the integrity of the bankruptcy process. Senators understand that well before I was born we have had in bankruptcy law provisions to cover conflicts of interest of investment bankers. For some reason this was taken out in the pending legislation. The pending legislation would eliminate the now 67-year-old conflict-of-interest standards that prohibit investment banks which served as underwriters of a company's securities from playing a major advisory role in the company's bankruptcy process.

In other words, it means if you had an investment bank that advised or underwrote securities for WorldCom or Enron at a time when, as we now know, they were cooking the books—they were the ones who advised them how to do this before bankruptcy—then they could be hired to represent the interests of the defrauded creditors during the bankruptcy proceeding.

It is kind of the fox guarding the chicken coop. You advise one of these companies how to cook the books, make a lot of money—it is going to defraud a lot of people—but if the bubble breaks and you go into bankruptcy and the people who have been defrauded try to get a little bit of money back—try to get back some of the money they are owed, even though it is going to be cents on the dollar, people who had their pensions built into this, had their retirement built into this—you could have the very same investment banker saying, "We will represent you. We are the guys who got you in the problem in the first place, where you lost all your pension and the money you are owed, but we will help you get it back."

It is ironic that firms that had a part in the company's deception could stay on the payroll in bankruptcy and profit handsomely from their own fraud.

For 67 years we said, wisely: Enough. You can't do that. Nobody seemed to

have a problem with it, but for some reason, that prohibition was dropped here. I have to ask what kind of message are we sending to investors and pensioners who are suffering from corporate misdeeds and ensuing bankruptcies if we allow this to happen. They deserve better.

What we have suggested, what a lot of people seem to support, is: All right, we won't put the total blanket prohibition in, but we will at least say that if you were involved within 5 years of this bankruptcy you cannot come back and handle the rights of the creditors. In other words, if you are the one who lost all the money of the creditors, you lost all the money of the pensioners, you lost all the money of the investors, you are not the one who is going to come back in and say now you can pay us to get back what little bit is left.

The National Bankruptcy Review Commission, agreeing with us, strongly recommended that Congress keep the current conflict-of-interest standards in place. They said:

Strict disinterestedness standards are necessary because of the unique pressures inherent in the bankruptcy process.

Of course there are. Of course there are pressures. The larger the bankruptcy, the greater the pressures. Which assets do you sell? Which assets do you keep? Which assets should go to the creditors? What we want to do is monitor section 414. I would like to go back to the blanket prohibition, but we said at least make it 5 years. In fact, Fifth Circuit Court of Appeals Judge Edith Jones, well respected, very conservative member of the Fifth Circuit and member of the Bankruptcy Commission, urged Congress to remove section 414. She said:

If professionals who have previously been associated with the debtor continue to work for the debtor during a bankruptcy case, they will often be subject to conflicting loyalties that undermine their foremost fiduciary duty to the creditors. Strict disinterestedness, required by current law, eliminates such conflicts or potential conflicts. . . . Section 414, in removing investment bankers from a rigorous standard of disinterestedness, is out of character with the rest of this important legislation and should be eliminated.

Then the chairman of the Securities and Exchange Commission wrote to us. He said, speaking for the Commission:

We believe that it would be a mistake to eliminate the exclusion in a similar one-size-fits-all manner at a time when investor confidence is fragile.

Think of what he said. A lot of investors, since Enron and WorldCom, have lost confidence. If we perpetuate the things that perpetuate that lack of confidence, loss of confidence, then shame on us. We can easily go in with a very commonsense exclusion of conflicts of interest.

How can any one of us go back and say to our constituents: We were in favor of keeping the people who advised and got the enormous bankruptcy