a promise made to our side to set hearings and confirm judges to the Federal bench. The fact is, there does appear to be a distinct difference in the philosophy of the people nominated to serve on the Federal bench between the two political parties. I believe our side believes judges should not be roving activists imposing or substituting their views for what is good for us but, rather, judges should have the very important role, the unique role of interpreting what the law is and enforcing and applying the law as written.

Judges, of course, are not elected, by and large, certainly not to the Federal bench. They are not representatives of the people, they are representatives of the law, and they serve a very important function. But when judges decide to take the law onto themselves and impose their own will rather than to enforce the will of the elected representatives of the people, they become lawless as a result.

Of course, we have seen recent examples of this, whether it be in California, where the California Supreme Court after some 200 years has decided now that the Constitution enshrines a right to same sex marriage, against the overwhelming views of the people of that State—I guess they will have another chance to vote on that in a proposition that will come before the people of that State.

We have seen it most recently by the U.S. Supreme Court in a decision where they afforded foreign terrorists precisely the same rights as an American citizen would have even though we are at war with a determined enemy that celebrates the murder of innocent civilians, as they did on September 11, to pursue their own goals. And to have judges, including the five Justices on the U.S. Supreme Court, say that for the first time in the history of our Republic, foreign terrorists have the same constitutional rights to the writ of habeas corpus in civilian courts is not only a dramatic change in the law—and it does represent change, but it is not the right kind of change.

We need to make sure social policies are made by the elected representatives of the people where we can debate these policies right here in front of the people on TV and in front of those folks who come to the gallery, but then once we make those decisions, once we have those votes, that they are honored and respected by the unelected judges.

The fact is, Senator OBAMA, the Senator from Illinois who is running for President of the United States, says he want judges who would put their heart and convictions above the letter of the law. That sounds pretty good at first blush, but the fact is, if each judge is going to decide what their heart tells them or what their personal convictions tell them as opposed to what the law is, including what the Constitution of the United States says, that is not law at all. That is sort of an impressionistic way of deciding how to impose your views, because you happen to be a Federal judge, on the people of this great country.

We know there has been an effort to drag feet in terms of confirming judicial nominees, presuming, I guess, that the election will provide another opportunity for our Democratic colleagues to then see a Democratic President nominate judges to the Federal bench, at which time they would expect us to forget the foot-dragging and obstruction we have experienced when we have had a Republican in the White House, and somehow they believe that would not be reciprocated. I hope we will rise above the temptation to reciprocate the kind of treatment this President has received if a Democratic candidate was elected President of the United States. But it is the same sort of tit-for-tat retaliatory mindset that has gotten us into this quagmire we need to get out of, and my hope would be that our friends on the other side of the aisle would rethink this issue and sort of get out of this rut.

My constituents back in the State of Texas tell me they are pretty disgusted with what they see happening in the Congress. Thirteen percent, according to the latest Rasmussen poll I saw, said they gave Congress an ''excellent'' or ''good'' rating. The vast majority of the American people look to Washington and they do not see a Congress that is being responsive to their needs and their wishes. They don't see us trying to solve problems. They don't see us having hearings on judicial nominees, asking those nominees questions about the qualifications and experience and then having a vote on the Senate floor. That is the kind of change we need as we address these issues that are important to the American people. I would hope that if our colleagues on the other side of the aisle are really desirous of change, they would work with us to help change this broken, dysfunctional Senate.

When the majority leader calls up a bill and he denies an opportunity for the minority to offer amendments or to have full and fair debate, as he did last week on the climate change bill, what he called one of the most important issues facing the planet today, it does not speak of a seriousness of attitude in terms of trying to solve problems but, rather, speaks more to an attitude of gamesmanship and political point scoring that, frankly, is beneath the honor and dignity of this institution and of our responsibilities to our constituents.

The PRESIDING OFFICER. The Senator from Utah is recognized.

## EUROPEANIZING U.S. LABOR AND EMPLOYMENT LAW

Mr. HATCH. Madam President, on the campaign trail this election year one hears a lot about change and helping the middle class. But what do the professed ''change agents'' have in mind by change, and what would such changes mean for our economy and creating middle class jobs?

Pending legislation in Congress sponsored by the change agents would more closely conform America's labor and employment laws to the failed European model which has saddled the French and Germans with 30 years of higher unemployment, stagnant job growth, and lower productivity. French President Nicolas Sarkozy has said workplace regulations in France are ''unjust, discourage work and job creation,'' and ''fail to bring equal opportunity'' to the middle class. German Chancellor Angela Merkel has called for reform of Germany's labor regulations for the same reasons.

At a time when leaders in France and Germany are trying to reform their workplace laws and move closer to the U.S. system, do we really want to infect our country with European-style workplace regulations that could cost middle class jobs and curtail economic growth? Do we really want to become another France?

For more than 70 years, union representation elections in the workplace have been supervised by career employees at the National Labor Relations Board to ensure the elections are conducted fairly and privately. The deceptively misnamed Employee Free Choice Act pending in Congress would deny employers the ability to petition for private ballot elections among their employees to determine whether or not the employees, voting by secret ballot just as in political elections, desire to be represented by a labor union.

The bill would scrap our current system of private voting in secret ballot elections and replace it with a forced card check certification in which employees can be pressured by union organizers into signing union petitions, or union authorization cards at work, at home, in a bar or on the streets. Union leaders boast that this change would lead to millions of new union members, but at what cost to workplace democracy?

Even worse, the bill would turn over a business's financial competitiveness to federal Government-appointed arbitrators to set wages, pension and health care benefits, work hours and other terms and conditions of employment. If, after only 90 days of bargaining, the parties themselves have not agreed on the terms of an initial union contract, the bill would mandate interest arbitration through which a federally-appointed outside arbitrator would be vested with virtually unchecked authority to impose a contract binding for 2 years on the parties, without even a ratification vote among the employees to approve its terms. Such determinations imposed on the parties will be affected by the arbitrator's own economic or social theories, often without the benefit or understanding of practical, competitive economic forces.

Is that the change we need to help the middle class?

Consider further the misnamed RESPECT Act, sponsored by the same

professed change agents, which would impede private sector employers' ability to manage their operations through first-line supervisors. The bill would reclassify supervisors who assign or direct the work of others, and expose them to the same union contracts and work rules, union discipline, strikes and other work stoppages, as the employees they supervise, thereby creating the types of conflicts of interest that the 1947 Taft-Hartley Act wisely sought to avoid. The legislation should be renamed NO RESPECT, since it would deny supervisors the status and supervisory authority they worked hard to attain, as well as eliminating employers' right to expect the undivided loyalty of these supervisors as their agents in labor-management relations.

Other bills pending in Congress, all cosponsored by change agents on the campaign trail, would radicalize U.S. employment law, resulting in the type of European paralysis that has impeded middle class job creation and economic growth in France and other countries. These bills would, however, expand one industry where unfortunately the U.S. greatly outpaces Europe: the plaintiff trial bar, which has an unsurpassed world record of bringing lawsuits, many frivolous, against employers.

One bill would remove any time limits on the filing of pay discrimination claims against an employer, thus creating open-ended liability years. Another would provide unlimited employer liability for punitive damages by removing the caps on damage awards which were wisely set by the 1991 Civil Rights Act at $300,000 in exchange for amendments allowing jury trials for employment discrimination claims. Open-ended liability and unlimited damages: a plaintiff trial lawyer's dream.

A third bill would undermine congressional intent with regard to the Americans with Disabilities Act by classifying virtually any physical impairment as a disability for purposes of bringing claims and lawsuits against employers. I helped lead the fight for the Americans with Disabilities Act. The courageous pioneering members of the disability community responsible for passage of the legislation were not interested in protecting temporary illnesses such as the flu, or minor impairments which could be corrected by prescription eyeglasses or medication. Now, however, by preventing consideration of mitigating factors as an affirmative legal defense, and no longer requiring that the disability affect a major life activity such as working, the new legislation would treat such minor impairments as disabilities. The effect is to trivialize the law and promote frivolous lawsuits against employers. The problem with the bill's sophistry is that if everyone is considered legally disabled, even those with easily correctable impairments, then no one is truly protected.

Another pending bill is an unprecedented Federal mandate regulating an employer's decision-making. It is the closest thing to the type of workplace regulatory paralysis that has stymied the Europeans. In fact, it reportedly was modeled directly from European laws.

Any time an individual employee requests a change in work schedules, including when, how long, and where the employee is scheduled to work, the so-called Working Families Flexibility Act would require employers to meet with the employee within 14 days, and thereafter, within 14 days, to provide a detailed written decision with company information. The employer's written decision would have to include, among other things the identifiable cost of the change in a term or condition of employment requested in the application, including the costs of loss of productivity, of retraining or hiring employees, or of transferring employees from one facility to another facility, and the overall financial resources involved.

If the employee is dissatisfied with the employer's decision, the employee may request reconsideration and the employer must schedule another meeting, again within 14 days, with the employee accompanied by any designated representative. If the representative is unavailable, the meeting must be postponed. Thereafter, the employer must respond to the request for reconsideration in writing, stating sufficient grounds to justify the decision.

But that's not all. The employee may trigger a Federal investigation, which must be undertaken by the U.S. Department of Labor and a subsequent Federal administrative hearing to review the employer's decision. This could lead to Federal enforcement actions, monetary fines against the employer, Federal court injunctions and other legal orders for employment, reinstatement, promotion, back pay, and other changes in terms and conditions of employment.

How many times in a workweek does an employee ask a supervisor for a change in working hours or work schedule? For example, ''Hey, boss, I want to only work a 35 hour week'' or ''I want Fridays off in hunting season'' or ''I would prefer to work closer to home.'' If this European style, so-called right to request law were to be adopted in the United States, it would bog down the workplace with mandatory negotiation of potentially any decision affecting working hours, work schedules, or location of work with every individual employee—a union of one—and with the threat of federal investigations and legal actions.

Is that the type of change we want?

Labor leaders and their allies frequently point to Europe when they lobby for changes in U.S. labor and employment laws. But even a cursory look at comparative economic indicators shows that the adoption of a French or German-style labor regime actually reduces workers' job options and diminishes wages while bogging down economies and discouraging enterprise.

Flexibility is a key factor in the economic dynamism of the U.S. labor market. The ease with which employers can build and rebuild their workforces provides great flexibility in innovation and response to market changes. The United States is the easiest country in the entire world in which to employ labor, according to The World Bank, and the third best country in which to do business overall.

Meanwhile, U.S. labor productivity far outpaces that of France and Germany, and also Canada, Japan and the United Kingdom. The United States has not only been the most productive country in the world but has also grown in productivity at a greater rate than other developed nations. In 2006, U.S. productivity per employed person was nearly $65,000 compared to $49,000 for France and $43,000 in Germany.

The U.S. has been an engine of job creation for the past 35 years despite temporary recessions, gas shortages and even terrorist attacks. Compared to workers in most of Europe, U.S. workers have more job and career options, greater upward mobility, and employment growth.

Consider unemployment rates. France's jobless rate is Europe's highest. This chart shows unemployment rates for the past 15 years or so. Notice that the United State's highest unemployment rate—6.1 percent in 1994—doesn't come close to the lowest unemployment rates for France, which was 8.4 percent in 2001. For the past 15 years, the U.S. average unemployment rate was 5.1 percent, while France's was double that at 10 percent.

Looking at the past few years in France, nearly 70 percent of those unemployed have been looking for work for more than six months and nearly 45 percent of them were still looking for work after a year. In Germany, about 55 percent of the unemployed is out of work for at least that long.

In the United States, workers stand a better chance of getting another job and sooner. Less than 20 percent of those unemployed have been looking for a job for 6 months or longer, and only about 10 percent were looking for more than a year.

For centuries, people from all over the world have been drawn to the United States for economic opportunity. While the unions and some in Congress believe that European-style labor law is what is best for workers, leaders in France and Germany know better. They understand that regulatory economic rigidities that hold out the false hope of job security often limits workers' options for finding better opportunities, makes it harder for the unemployed to find work, and discourages entrepreneurs from creating new middle class jobs. Congress cannot mandate that employers create jobs, stay in business, or even that they do not conduct business elsewhere. But in the name of change, ostensibly to help the middle class, Congress can mandate

the types of harmful employment regulations that will reduce or even eliminate middle class jobs in the United States.

''Europeanization'' of U.S. labor and employment laws is not the type of change the middle class really needs.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

## CHANGE IN IRAQ

Mr. BOND. Madam President, there is no doubt that right now American families are being squeezed on all sides. Gas prices are sky high and climbing. The cost of food is going up. So is the cost of college tuition and health care. So it is no surprise that ''change'' is the word everyone is talking about.

My colleagues on this side of the aisle and I want change, too, but we want commonsense solutions. We are the party of economic security. We think we should keep more of the money we earn. We favor more private sector solutions to health care. We want America's energy future to be here in America, not the Middle East. We want to change the disastrous policy that has been implemented and kept by our fellow colleagues on the other side of the aisle for the last 30 years, a nonenergy policy, no production. As a Washington Post editorial pointed out today, Congress cannot repeal the laws of supply and demand. Demand worldwide has gone up but supply has not.

We have the answer to that problem right here in America. We want to change it and use the resources we have. We also want a strong commitment in the war on terror. Changing back to the policies of the 1990s is not the way to win the war on terror. Senator OBAMA has said we should go back to the 9/11 days, when terrorism was treated as just another law enforcement matter. He pointed to the prosecution of the World Trade Center bombers as the example to follow. That is precisely the type of policy that led to attacks on American embassies and the USS *Cole*. That is the kind of change that will make the Nation less safe again.

If the Democrats wish to talk about change, let's talk about change, change that matters and change that they have been unwilling to acknowledge, a change when we started executing the war on terror by going after the terrorists in the safe havens. We have kept our country safe from attack since 9/11. Under the leadership of GEN David Petraeus, Iraq has changed and changed dramatically. So why can't my colleagues on the other side of the aisle change with it. Why can't they change their stance and get behind our service men and women who want to succeed and have had tremendous successes?

President Bush announced the surge and the new counterinsurgency in 2007. Iraq was a violent place at the time. Al-Qaida in Iraq held large swaths of territory. Shiite death squads roamed much of Baghdad, and the Iraqi political leadership appeared helpless. So President Bush, understanding the consequences of failure and withdrawal, changed. He changed military leadership. General Petraeus changed to a new strategy, a strategy for victory, of counterinsurgency or COIN that involves getting out among the Iraqi people, working directly with Iraqis committed to a peaceful, stable Iraq. That is a change my son saw in Al Anbar, when his Marine scout sniper platoon helped clear Al Anbar and turn it over to Sunni citizens and police. We still face big challenges in Iraq but with a far more optimistic picture emerging. Al-Qaida has been almost, if not completely, routed in Al Anbar, once declared the center and base of operations for al-Qaida in Iraq.

On May 12 of this year, a prolific terrorist sympathizer by the name of Dir'a Limen Wehhed posted a study on the Internet in which he laments ''the dire situation that the mujaheddin find themselves in in Iraq.'' He is talking about his guys, the bad guys. He cites the steep drop in the number of insurgent operations conducted by various terrorist groups, most notably al-Qaida's 94 percent decline in operational ability over the last 12 months. In Sadr City, Iraqi forces, the forces of the Iraqi Shiite leader al-Maliki, have rolled through huge Shiite enclaves relatively unopposed. Iraqi forces did the same in April in the southern city of Basra, where the Iraqi Government advanced its goal of establishing sovereignty and curtailing the powers of the militias.

When General Petraeus returned to Washington in September of last year, even at that time he reported that the number of violent incidents, civilian deaths, ethnosectarian killings and car and suicide bombings had declined dramatically from the previous December. But despite all this positive change, many on the other side of the aisle are too vested in political defeat to see it. In fact, most Democrats opposed the surge, claiming it is more of the same and would neither make a dent in the violence nor change the dynamics in Iraq. The Democratic leader proclaimed ''This war is lost'' and that U.S. troops should pack up and come home, a disastrous change that even many thoughtful scholars and commentators who opposed going into Iraq initially say now is not the way to go. It would be a disaster. General Petraeus returned again to Washington in April this year, and violence has been reduced further. American casualties have declined significantly. Al-Qaida was virtually eliminated in the northern city of Mosul, as verified by the terrorists themselves. There are more Iraqi security forces. The Iraqi Government has passed a variety of laws promoting reconciliation. Prime Minister al-Maliki continues to demonstrate he can stand up to fellow Shiites supporting violence and Iranian-backed special groups. There is every reason to embrace the positive change we have seen and not abandon it and not force a withdrawal. For that is not change but, rather, a policy that would put Iraq back on the path toward violence, terrorism, and chaos.

The change we have made has made our country safer, going after terrorists, helping Iraq stabilize their country, turning control over to them, and moving our forces back from the front lines of offense to a support role. That is the change we need to keep our country safe for the future from terrorist attacks.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

## ENERGY

Ms. MURKOWSKI. Madam President, so much discussion has taken place of late about the high price of energy and what it is doing to family budgets. We don't need to tell the American consumer what is going on with high prices. They are living it directly in each and every one of our States.

At today's prices, Americans are paying $1.6 billion daily to buy fuel. This is about twice what they paid 2 years ago. The national average price of gasoline passed the $4.08-per-gallon mark, and fuel is consuming about 6 percent of the typical household budget. This eats up the money families need for food, clothing, medicine, education, 6 percent of the average U.S. household budget.

In my State of Alaska—you hear me say this all the time—our statistics are a little bit different. I need to let you know what kind of a hit Alaska's families are taking when it comes to high energy prices.

Right now, in Anchorage, the State's largest community, it is about 10 percent of the typical household budget that is directed toward energy costs. In the southeastern part of the State, where I was born and spent my early years, they are seeing about 14 percent of their family budget going toward energy costs. In the community of Fairbanks, up in the interior, where I spent my growing-up years in high school and years as a young adult, 22 percent of the household budget is going toward their energy costs. Nearly a quarter of the family budget is going into home heating fuel, into gas at the pump, into keeping their home warm during the long winter months—22 percent of the family budget.

As I have said before, people in Alaska are no longer angry about their energy prices. They are very afraid. You cannot continue on a trend such as this with this much of the family budget being dedicated to your energy prices and still survive.

There has been great debate on this floor about, How do we fix it? How do we reduce the price of energy for the American family? There are some who