staff, doorkeepers, Capitol Police officers, and the maintenance workers. They work very long hours, nights, mornings, and weekends—with no regard to a government closure, dangerous snowstorms, or the need to complete their holiday shopping. If we are here, they are here. They deserve our thanks.

I want to express my gratitude to every one of them and to my own staff as well. It hasn't been an easy time. You should all know we are deeply appreciative of your service.

I, for one, am strongly supportive of bringing this debate to a close so that each one of you can be home with your families enjoying some well-deserved time off for the holidays.

I yield the floor.

FURTHER CHANGES TO S. CON. RES. 13 PURSUANT

Mr. CONRAD. Mr. President, section 301(a) of S. Con. Res. 13, the 2010 budget resolution, permits the chairman of the Senate Budget Committee to adjust the allocations of a committee or committees, aggregates, and other appropriate levels and limits in the resolution, and make adjustments to the pay-as-you-go scorecard, for legislation that is deficit-neutral over 11 years, reduces excess cost growth in health care spending, is fiscally responsible over the long term, and fulfills at least one of eight other conditions listed in the reserve fund.

I have already made two adjustments pursuant to section 301(a). The first adjustment was on November 21, for S.A. 2786, the Patient Protection and Affordable Care Act, an amendment in the nature of a substitute to H.R. 3590. The second adjustment was on December 1, for S.A. 2791, an amendment to S.A. 2786 to clarify provisions relating to first dollar coverage for preventive services for women.

The Senate today adopted S.A. 3276, an amendment to S.A. 2786 to improve the bill. I find that in conjunction with S.A. 2786, as modified, that this amendment also satisfies the conditions of the deficit-neutral reserve fund to transform and modernize American's health care system. Therefore, pursuant to section 301(a), I am further revising the aggregates in the 2010 budget resolution, as well as the allocation to the Senate Finance Committee. Along with those adjustments, I have also adjusted the aggregates and committee allocation to reflect changes to the original score of S.A. 2786 as a result of a provision included in H.R. 3326, the Department of Defense Appropriations Act, 2010. That provision uses savings also counted in the score of S.A. 2786. In total, as a result of Congress clearing H.R. 3326 on December 19, the amount of savings in S.A. 2786 is $1 billion lower over the 2010–2014 period.

I ask unanimous consent to have printed in the RECORD the following revisions to S. Con. Res. 13.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 301(a) DEFICIT-NEUTRAL RESERVE FUND TO TRANSFORM AND MODERNIZE AMERICA'S HEALTH CARE SYSTEM

[In billions of dollars]

Section 101	
(1)(A) Federal Revenues:	
FY 2009	1,532.579
FY 2010	1,614.258
FY 2011	1,936.811
FY 2012	2,140.785
FY 2013	2,321.087
FY 2014	2,563.018
(1)(B) Change in Federal Revenues:	
FY 2009	0.008
FY 2010	−51.728
FY 2011	−151.820
FY 2012	−219.608
FY 2013	−194.250
FY 2014	−70.640
(2) New Budget Authority:	
FY 2009	3,675.736
FY 2010	2,905.487
FY 2011	2,845.236
FY 2012	2,835.568
FY 2013	2,988.308
FY 2014	3,206.647
(3) Budget Outlays:	
FY 2009	3,358.952
FY 2010	3,017.021
FY 2011	2,965.551
FY 2012	2,867.235
FY 2013	2,993.112
FY 2014	3,184.357

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 301(a) DEFICIT-NEUTRAL RESERVE FUND TO TRANSFORM AND MODERNIZE AMERICA'S HEALTH CARE SYSTEM

[In millions of dollars]

Current Allocation to Senate Finance Committee:	
FY 2009 Budget Authority	1,178,757
FY 2009 Outlays	1,166,970
FY 2010 Budget Authority	1,249,836
FY 2010 Outlays	1,249,342
FY 2010–2014 Budget Authority	6,824,817
FY 2010–2014 Outlays	6,818,925
Adjustments:	
FY 2009 Budget Authority	0
FY 2009 Outlays	0
FY 2010 Budget Authority	−5,220
FY 2010 Outlays	−6,670
FY 2010–2014 Budget Authority	20,950
FY 2010–2014 Outlays	3,720
Revised Allocation to Senate Finance Committee:	
FY 2009 Budget Authority	1,178,757
FY 2009 Outlays	1,166,970
FY 2010 Budget Authority	1,244,616
FY 2010 Outlays	1,242,672
FY 2010–2014 Budget Authority	6,845,767
FY 2010–2014 Outlays	6,822,645

Mr. LEAHY. Mr. President, the urgent need for comprehensive reform of our health care system has not stopped opponents from launching spurious attacks. I understand that the junior Senator from Nevada recently raised a constitutional point of order against the pending health care reform bill. As chairman of the Senate Judiciary Committee, I would like to respond to those who have called into question whether Congress has the authority under the Constitution to enact health insurance reform legislation. The authority of Congress to act is well-established by the text and the spirit of the Constitution, by the long-standing precedent established by our courts, by prior acts of Congress and by the history of American democracy. The legislative history of this important measure should leave no doubt with respect to the constitutionality of our actions.

The Constitution of the United States begins with a preamble that sets forth the purposes for which ''We the People of the United States'' ordained and established it. Among the six purposes set forth by the Founders was that the Constitution was established to ''promote the general Welfare.'' It is hard to imagine an issue more fundamental to the general welfare of all Americans than their health.

The authority and responsibility for taking actions to further this purpose is vested in Congress by article I of the Constitution. In particular article I, section 8, sets forth several of the core powers of Congress, including the ''general welfare clause,'' the ''commerce clause'' and the ''necessary and proper clause.'' These clauses form the basis for Congress's power, and include authority to reform health care by containing spiraling costs and ensuring its availability for all Americans. The necessary and proper clause of the Constitution provides that ''The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof.''

Any serious questions about congressional power to take comprehensive action to build and secure the social safety net have been settled over the past century. According to article I, section 8, ''The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.'' This clause has been the basis for actions by Congress to provide for Americans' social and economic security by passing Social Security, Medicare and Medicaid. Those landmark laws provide the well-established foundation on which Congress builds today by seeking to provide all Americans with access to quality, affordable health care.

The Supreme Court settled the debate on the constitutionality of Social Security more than 70 years ago in three 1937 decisions. In one of those decisions, Helvering v. Davis, Justice Cardozo wrote that the discretion to determine whether a matter impacts the general welfare ''is not confided in the courts'' but falls ''within the wide range of discretion permitted to the Congress.'' Turning then to the ''nation-wide calamity that began in 1929'' of unemployment spreading from State to State throughout the Nation, leaving older Americans without jobs and security, Justice Cardozo wrote of the Social Security Act: ''The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that

such a lot awaits them when journey's end is near.''

The Supreme Court reached its decisions upholding Social Security after the first Justice Roberts—Justice Owen Roberts—in the exercise of good judgment and judicial restraint began voting to uphold the key New Deal legislation. He was not alone. It was Chief Justice Hughes who wrote the Supreme Court's opinion in West Coast Hotel v. Parrish upholding minimum wage requirements as reasonable regulation. The Supreme Court also upheld a Federal farm bankruptcy law, railroad labor legislation, a regulatory tax on firearms and the Wagner Act on labor relations in National Labor Relations Board v. Jones & Laughlin Steel Corporation. The Supreme Court abandoned its judicially created veto over congressional action with which it disagreed on policy grounds and rightfully deferred to Congress's constitutional authority.

Congress has woven America's social safety net over the last three score and 12 years. Congress's authority to use its power and its judgment to promote the general welfare cannot now be in doubt. America and all Americans are the better for it. Growing old no longer means growing poor. Being older or poor no longer means being without medical care. These developments are all due to congressional action.

These Supreme Court decisions and the principles underlying them are not in question. As dean Erwin Chemerinsky of the University of California Irvine School of Law wrote in a recent op-ed in The Los Angeles Times: ''Congress has broad power to tax and spend for the general welfare. In the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress' power. The ability in particular of Congress to tax people to spend money for health coverage has been long established with programs such as Medicare and Medicaid.'' I will ask that this article be printed in the RECORD following my remarks.

The right-wing opponents of health care reform are so intent on partisan warfare that they are even calling into question the constitutionality of America's established social safety net. They would leave American workers without the protections their lifetime of hard work have earned them. They would turn back the clock to the hardships of the Great Depression, and thrust modern American back into the conditions of Dickens' novels. That is what some extremists will be urging another Justice Roberts—Chief Justice John Roberts—to do. That path should be rejected now, just as it was when another inspiring President led the effort to confront the economic challenges facing Americans. To strike down principles that have been settled for nearly three quarters of a century would be wrong and damaging to the Nation.

For months now, we have been debating whether or not to pass health care reform. We can debate whether to control costs by having all Americans be covered by health insurance. In fact, we have been having that debate for months and months in this Congress, through extensive public markups in two committees in the Senate, as well as in the House of Representatives, and now for weeks on the Senate floor. We have considered untold numbers of amendments in committees and several before the Senate. That is what Congress is supposed to do. We consider legislation, debate it, vote on it and act in our best collective judgment to promote the general welfare. Some Senators will agree and some will disagree, but it is a matter for the full Senate to decide. I wish we could do so by a majority but Senate Republicans abhor majority rule now that they are not in control. So it will take an extraordinary majority for the Senate's will to be done.

Tomorrow, we will vote on a point of order challenging the pending bill's constitutionality. The fact that Senate Republicans disagree with the majority's effort to help hardworking Americans obtain access to affordable health care does not make it unconstitutional. As Justice Cardozo wrote in upholding Social Security, ''whether wisdom or unwisdom resides in the scheme of benefits set forth . . . it is not for us to say. The answer to such inquiries must come from Congress, not the courts.'' I agree. Justice Cardozo understood the separation of powers enshrined in the Constitution and the Supreme Court's precedent. In 1803, our greatest Chief Justice, John Marshall, upheld the constitutionality of the Judiciary Act in Stuart v. Laird noted that ''there are no words in the Constitution to prohibit or restrain the exercise of legislation power.'' That is true here, where Congress is acting to provide for the general welfare of all Americans.

I believe that Congress can and should decide whether the problems of the lack of availability and affordability of health care, and the rising health care costs that burden the American people, is a problem, ''plainly national in area and dimensions,'' as Justice Cardozo wrote of the widespread crisis of unemployment and insecurity during the Great Depression. I believe that it is right for this Congress to determine that it is in the general welfare of the Nation to ensure that all Americans have access to affordable quality health care. But whether other Senators agree or disagree with me, none should argue that we should take steps that turn back to clock to the Great Depression when conservative activist judges prevented Congress from exercising its powers to make that determination. As Chief Justice Marshall wrote in his landmark decision in McCulloch v. Maryland: ''Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.''

In seeking to discredit health care reform, the other side relies on a resurrection of long-discredited legal doctrines used by courts a century ago to tie Congress's hands by substituting their own views of property to strike down laws such as those guaranteeing a minimum wage and outlawing child labor. They have to rely on such cases of unbridled conservative judicial activism as Lochner v. New York, Shechter Poultry Corporation v. United States, Reagan v. Farmers Loan and Trust and the infamous Dred Scott case. Those dark days are long gone and better left behind. The Constitution, Supreme Court precedent, our history and congressional action all stand on the side of Congress's authority to enact health care legislation including health insurance reform.

Under article I, section 8, Congress has the power ''to regulate Commerce with foreign Nations, and among the several States.'' Since at least the time of the Great Depression and the New Deal, Congress has been understood and acknowledged by the Supreme Court to have power pursuant to the commerce clause to regulate matters with a substantial effect on interstate commerce. The Supreme Court has long since upheld laws like the Fair Labor Standards Act against commerce clause challenges, ruling that Congress had the authority to outlaw child labor. The days when women and children could not be protected, when the public could not be protected from sick chickens infecting them, when farmers could not be protected and when any regulation that did not guarantee profits to corporations are long past. The reach of Congress's commerce clause authority has been long established and well settled.

Even recent decisions by a Supreme Court dominated by Republican-appointed justices have affirmed this rule of law. In 2005, the Supreme Court ruled in Gonzales v. Raich that Congress had the power under the commerce clause to prohibit the use of medical marijuana even though it was grown and consumed at home, because of its impact on the national market for marijuana. Surely if that law passes constitutional muster, Congress's actions to regulate the health care market that makes up one-sixth of the American economy meets the test of substantially affecting commerce. Conservatives cannot have it both ways. They cannot ignore the settled meaning of the Constitution as well as the authority of the American people's elected representatives in Congress.

The regulation of health insurance clearly meets the test from Raich, whether the activities ''taken in the aggregate, substantially affect interstate commerce.'' Addressing these problems is at the core of Congress's powers under the commerce clause. In

fact, the Supreme Court expressly addressed this issue 65 years ago, ruling in 1944 that insurance was interstate commerce and subject to Federal regulation. Congress responded to this decision in 1945 with the McCarran-Ferguson Act, which gave insurance companies an exemption from antitrust laws unless Federal regulation was made explicit under Federal law. It is the immunity from Federal antitrust law enacted in McCarran-Ferguson that I have been working to overcome with my Health Insurance Industry Antitrust Enforcement Act of 2009 and the amendment I have sought to offer to the current health insurance reform legislation. Why would this exemption have been necessary if insurance was not interstate commerce? I strongly believe that the exemption in McCarran-Ferguson is wrongheaded but would anyone seriously contend that it is unconstitutional? Of course not. That is why I am working so hard to pass legislation to repeal it.

The legislation and amendment I have sponsored will prohibit the most egregious anticompetitive conduct—price fixing, bid rigging and market allocations—conduct that harms consumers, raises health care costs, and for which there is no justification. Subjecting health and medical malpractice insurance providers to the Federal antitrust laws will enable customers to feel confident that the price they are being quoted is the product of a fair marketplace. The lack of affordable health insurance plagues families throughout our country, and my amendment would take a step toward ensuring competition among health insurers and medical malpractice insurers. The need for Congress to repeal the out of date Federal antitrust law exemption only further demonstrates the tremendous impact of health care on our economy and congressional power to act.

The third clause of article I, section 8, to which I have referred, is the necessary and proper clause, as a basis for congressional action. This clause gives Congress the power ''to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the United States.'' The Supreme Court settled the meaning of the necessary and proper clause 190 years ago in Justice Marshall landmark decision in McCullough v. Maryland, during the dispute over the National Bank. Justice Marshall wrote that ''the clause is placed among the powers of Congress, not among the limitations on those powers.'' The necessary and proper clause goes hand in hand with the commerce clause to ensure congressional authority to regulate activity with a significant economic impact.

We face a health care crisis, with millions of Americans uninsured and with uncertainty and high costs for Americans who are insured. We need to ensure that Americans not risk bankruptcy and disaster with every illness. Americans who work hard their whole life should not be robbed of their family's security because health care is too expensive. During the New Deal we charted a path for America where growing old did not mean being poor, or being without health care. Americans should not lose their life savings because they have the misfortune of losing a job or getting sick. That is not America.

The success of the last century was the establishment of a social safety net for which all Americans can be grateful and proud. Through Social Security, Medicare and Medicaid, Congress established some of the cornerstones of American security. They are within the constitutional authority of the Congress just as health insurance reform is. No conservative activist court should overstep the judiciary's role by seeking to turn back the clock and deny a century of progress. The authority of Congress is well settled and well established by the Constitution, judicial precedent, and our history of legislation promoting the general welfare and protecting the economic security and health of Americans.

The cumulative economic effects on the Nation of the rising costs of health care are significant, with those costs making up a large percentage of our economy and with American businesses struggling to provide benefits to their employees. As set forth in a paper by Georgetown University and the O'Neill Institute for National and Global Health Law, the requirement for individuals to purchase health insurance would address the problem of free riders, millions of Americans who refuse to buy health insurance and then rely on expensive emergency health care when faced with medical problems. This shifts the costs of their health care to people who do have insurance, which in turn has a significant effect on the costs of insurance premiums for covered Americans and on the economy as a whole. A requirement that all Americans have health insurance—like requirements to be vaccinated or to have car insurance or to register for the draft or to pay taxes—is within congressional power if Congress determines it to be essential to controlling spiraling health care costs. Requiring that all Americans have health insurance coverage, and preventing some from depending on expensive emergency services in place of regular health care, can and will help reduce the cost of health insurance premiums for those who already have insurance.

Whether Senators agree or not on the necessity to reform our health care system and health insurance, I trust that all Senators, Republican, Democratic and Independent, agree that it is our responsibility to act and within Congress's constitutional authority to legislate for the general welfare of all Americans.

Mr. President, I ask unanimous consent to have printed in the RECORD the Los Angeles Times op-ed to which I referred.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Los Angeles Times, Oct. 6, 2009]

THE CONSTITUTIONALITY OF HEALTHCARE

(By Erwin Chemerinsky)

Are the healthcare bills pending in the House and Senate unconstitutional?

That's what some of the bills' critics have alleged. Their argument focuses on the fact that most of the major proposals would require all Americans to obtain healthcare coverage or pay a tax if they don't. Those too poor to afford insurance would have their health coverage provided by the state.

Although the desirability of this approach can be debated, it unquestionably would be constitutional.

Those who claim otherwise make two arguments. First, they say the requirement is beyond the scope of Congress' powers. And second, they say that people have a right to be uninsured and that requiring them to buy health insurance violates individual liberty. Neither argument has the slightest merit from a constitutional perspective.

Congress has broad power to tax and spend for the general welfare. In the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress' power. The ability in particular of Congress to tax people to spend money for health coverage has been long established with programs such as Medicare and Medicaid.

Congress has every right to create either a broad new tax to pay for a national healthcare program or to impose a tax only on those who have no health insurance.

The reality is that virtually everyone will, at some point, need medical care. And, if a person has certain kinds of communicable diseases, the government will insist that he or she be treated whether they are insured or not. A tax on the uninsured is a way of paying for the costs of their likely future medical care.

Another basis for the power of Congress to impose a health insurance mandate is that the legislature is charged with regulating commerce among the states. The Supreme Court has held that this means Congress has the ability to regulate activities that have a substantial effect on interstate commerce. A few years ago, for example, the court held that Congress could prohibit individuals from cultivating and possessing small amounts of marijuana for personal medicinal use because marijuana is bought and sold in interstate commerce.

The relationship between healthcare coverage and the national economy is even clearer. In 2007, healthcare expenditures amounted to $2.2 trillion, or $7,421 a person, and accounted for 16.2% of the gross domestic product.

The claim that individuals have a constitutional ''right'' to not have health insurance is no stronger than the objection that this would exceed Congress' powers. It is hard to even articulate the constitutional right that would be violated by requiring individuals to have health insurance or pay a tax.

Since the 19th century, the Supreme Court has consistently held that a tax cannot be challenged as an impermissible taking of private property for public use without just compensation. All taxes, of course, are a taking of private property for public use, and a tax to pay for health coverage—whether imposed on all Americans or just the uninsured—is certainly something Congress could impose.

The claim that an insurance mandate would violate the due process clause is also

specious. Most states have a requirement for mandatory car insurance, and every challenge to such mandates has been rejected. More important, since 1937, the Supreme Court has constantly held that government regulations of property and the economy will be upheld as long as they are reasonable. Virtually every economic regulation and tax has been found to meet this requirement. A mandate for health coverage would meet this standard, which is so deferential to the government.

Finally, those who object to having health coverage on freedom-of-religion grounds also have no case. The Supreme Court has expressly rejected objections to paying Social Security and other taxes on religious grounds. More generally, the Supreme Court has ruled that individuals do not have a right to an exemption from a general law on the ground that it burdens their religion.

There is much to debate over healthcare reform and how to achieve it. But those who object on constitutional grounds are making a faulty argument that should have no place in the debate over this important public issue.

Mrs. FEINSTEIN. Mr. President, I rise to discuss an amendment to create a medical insurance rate authority and rate review process that I filed to the Patient Care and Affordable Choice Act.

Unfortunately, because of the objections of one of my colleagues, my amendment was not included in the final bill before us today.

I am profoundly disappointed. I would like to take a few minutes to discuss why I believe this proposal is so important and why, without it, we can expect to see skyrocketing health insurance premiums.

I am very concerned that health insurance companies will seek to exploit the time between passage of the bill, and 2014, when reforms are fully in place.

Credit card companies provide a useful example. Earlier this year, Congress approved major credit card reform legislation. However, the consumer protections it contains will not be fully effective until February 2010.

Credit card companies have taken full advantage of this interim period to raise rates, with many card interest rates increasing 20 percent over the last year.

I am very worried that health insurance companies will do the very same thing. And I believe the rate authority amendment is essential to stopping them.

In some States, insurance commissioners have the authority to review rates and increases and block rates that are found to be unjustified. According to a 2008 Families USA report, 33 States have some form of a prior approval process for premium increases.

The same report describes several notable successes among States that use this process, including . . . regulators in North Dakota were able to reduce 37 percent of the proposed rate increases filed by insurers. Maryland used their State laws to block a 46-percent premium increase after a company charged artificially low rates for 2 years. The decision was upheld in court. New Hampshire regulators were able to reduce a proposed 100 percent rate increase to 12.5 percent.

But in other States, including California, insurance commissioners do not have this ability.

And Some states have laws like this on the books, but do not have sufficient resources to review all the rate changes that insurance companies propose.

Consumers deserve full protection from unfair rate increases, no matter where they live.

The amendment I have proposed would ensure that all Americans have some level of basic protection. The amendment will strengthen a provision included in the underlying bill, which already requires insurance companies to submit justifications and explain increases in premiums. They must submit these justifications to the Secretary of Health and Human Services, and they must make these justifications available on their Web site.

I believe we must do more.

The amendment asks the National Association of Insurance Commissioners to produce a report detailing the rate review laws and capabilities in all 50 States. The Secretary of HHS will then use these findings to determine which States have the authority and capability to undertake sufficient rate reviews to protect consumers.

In States where insurance commissioners have authority to review rates, they will continue to do so.

In States without sufficient authority or resources, the Secretary of HHS will review rates and take any appropriate action to deny unfair requests.

This could mean blocking unjustified rate increases, or requiring rebates, if an unfair increase is already in effect.

This will provide all American consumers with another layer of protection from an unfair premium increase.

The amendment would also require the Secretary of Health and Human Services to establish a medical insurance rate authority as part of the process in the bill that enables her to monitor premium costs.

The rate authority would advise the Secretary on insurance rate review and would be composed of seven officials that represent the full scope of the health care system including: at least two consumers; at least one medical professional; and one representative of the medical insurance industry.

The remaining members would be experts in health economics, actuarial science, or other sectors of the health care system.

The rate authority will also issue an annual report, providing American consumers with basic information about how insurance companies are behaving in the market. It will examine premium increases, by plan and by State, as well as medical loss ratios, reserves and solvency of companies, and other relevant behaviors.

This data will give consumers better information. But more importantly, it will give the newly created insurance exchanges better information.

Under the amendment, the Secretary of Health and Human Services, and the relevant insurance commissioner, will recommend to exchanges whether a company should be permitted to participate in the exchanges.

So companies should be put on notice: unfair premium increases and other unfair behaviors will come with a price. Millions of Americans will receive tax credits to purchase coverage in the exchange beginning in 2014. Insurance companies will need to demonstrate that they are worthy of participating in this new market, and receiving Federal money to cover uninsured Americans.

This concern about premium increases stems from the fact that we are the only industrialized nation that relies heavily on a for-profit medical insurance industry to provide basic health care. I believe, fundamentally, that all medical insurance should be not for profit.

The industry is focused on profits, not patients. And it is heavily concentrated, leaving consumers with few alternatives when their premiums do increase.

As of 2007, just two carriers—WellPoint and UnitedHealth Group—had gained control of 36 percent of the national market for commercial health insurance.

Since 1998, there have been more than 400 mergers of health insurance companies, as larger carriers have purchased, absorbed, and enveloped smaller competitors.

In 2004 and 2005 alone, this industry had 28 mergers, valued at more than $53 billion. That is more merger activity in health insurance than in the 8 previous years combined.

Today, according to a study by the American Medical Association, more than 94 percent of American health insurance markets are highly concentrated, as characterized by U.S. Department of Justice guidelines. This means these companies could raise premiums or reduce benefits with little fear that consumers will end their contracts and move to a more competitive carrier.

In my State of California just two companies, WellPoint and Kaiser Permanente, control more than 58 percent of the market. In Los Angeles, the top two carriers controlled 51 percent of the market.

Record levels of market concentration have helped generate a record level of profit increases.

Between 2000 and 2007, profits at 10 of the largest publicly traded health insurance companies soared 428 percent from—$2.4 billion in 2000 to $12.9 billion in 2007. This is Health Care for America Now, Premiums Soaring in Consolidated Health Insurance Market, May 2009, citing U.S. Securities and Exchange Commission filings.

The CEOs at these companies took in record earnings. In 2007, these 10 CEOs

made a combined $118.6 million. The CEO of CIGNA took home $25.8 million; The CEO of Aetna took home $23 million; The CEO of UnitedHealth took home $13.2 million; and the CEO of WellPoint took home $9.1 million.

I am very concerned that this profit seeking behavior will only worsen, now that insurance companies know that health reform will change their business model.

Insurers know that come 2014, they will be playing by new rules: No discriminating based on preexisting conditions. No cherry picking and choosing to cover only the healthy. No charging women or older people astronomical rates. No dropping coverage once someone gets sick.

Insurers know these changes are coming. Listen to a comment made by Michael A. Turpin, a former senior executive for UnitedHealth. He is now a top official at an insurance brokerage firm, and he said that insurers were ''under so much pressure to post earnings, they're going to make hay while the sun is shining.''

''Make hay while the sun is shining.'' That means these companies will try to make as much money as they possibly can, for as long as they can.

That is why a rate review amendment is so important.

Frankly, I wish the health reform bill before us would go further and eliminate the for-profit health insurance industry.

But since this bill chooses to maintain a for-profit industry, we must do the next best thing and ensure that it is thoroughly regulated. Insurance companies should not be able to take advantage of the fact that affordable health care is a basic life need. In effect, they have the power to increase their prices at will, knowing that people will continue to pay as long as they can afford to do so.

This amendment certainly will not fix all of the ills of a for-profit insurance industry, but I believe it makes a needed improvement in the underlying bill and will help protect consumers from unfair increases. Without it, I worry that consumers in far too many States will see major premium increases.

I will continue to work to see that this amendment is included in the final version of health reform legislation. Without it, too many Americans will still lack protection from unfair rate increases.

I ask unanimous consent that a copy of a support letter from California organizations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECEMBER 17, 2009.

Hon. HARRY REID,
Majority Leader of the U.S. Senate, Hart Office Building, Washington, DC.

Re Support of amendment to HR. 3590 to improve rate review of increases in health insurance premiums.

DEAR SENATOR REID: Thank you for your leadership in advancing health reform this year. We, the undersigned organizations, support a proposed amendment by Senators Feinstein, Rockefeller and others that would provide greater specificity in terms of rate review of increases in health insurance premiums.

The proposed amendment:

Creates a rate review authority that could deny or modify unjustified rate increases or order rebates to consumers,

Defines potentially unjustified rate increases as increases which exceed market averages,

Gives priority to rate increases that impact large numbers of consumers,

Creates market conduct studies of health insurance rate increases,

Exclude from State Exchanges insurers that have a pattern of excessive premium increase, low medical loss ratios or other market conduct,

Allows a State to conduct the rate reviews.

We support the provisions of health reform which make health insurance more affordable for individuals and businesses. This amendment is consistent with the stated intention of the ''Patient Protection and Affordable Care Act'' and provides greater specificity to the provisions on ''ensuring that consumers get value for their dollars.''

The proposed amendment prevents anticipatory price increases by health insurers in advance of full implementation of health reform. Scrutiny of rate increases will have a deterrent effect on increases in premiums that are out of line.

For these reasons, we support the proposed amendment.

Sincerely,

ANGIE WEI,
Legislative Director, California Labor Federation.

MARTY MARTINEZ,
Policy Director, California Pan-Ethnic Health Network.

MICHAEL RUSSO,
Health Care Advocate and Staff Attorney, California Public Research Interest Group (CALPIRG).

SONYA VASQUEZ,
Policy Director, Community Health Councils, Inc.

GARY PASSMORE,
Director, Congress of California Seniors.

ANTHONY WRIGHT,
Executive Director, Health Access California.

BILL A. LLOYD,
Executive Director, Service Employees International Union California State Council.

REV. LINDI RAMSDEN,
Executive Director, Unitarian Universalist Legislative Ministry Action Network—California.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. WICKER. Mr. President, I ask unanimous consent that several Republican colleagues and I be allowed to engage in a colloquy for the next hour.

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

Mr. WICKER. Mr. President, I thank my friend from Washington for commending and complimenting the staff. That is a bipartisan sentiment for this Christmas season. I am sure every Senator on the floor feels the same way and expresses that appreciation to the hard-working staff.

I want to start off by saying there is still an opportunity for this bill to be amended to change some of the very harmful ways that this will affect our people back home and, particularly, our State governments.

I was on the Senate floor several days ago pointing out the objections that most of the State Governors have with regard to the Medicaid mandates. I want to read from a letter dated December 10, from my Governor, Haley Barbour of Mississippi, who reminds Senators that:

This bill continues to place a huge unfunded mandate on States, while harming our small businesses and seniors through budget gimmicks and increased taxes.

And he says this:

If the current bill, which would expand Medicaid up to 133 percent of the Federal poverty level, were enacted into law, the number of Mississippians on Medicaid would increase to 1,037,606, or 1 in 3 citizens, in Mississippi. Over 10 years, this bill would cost Mississippi taxpayers $1.3 billion.

I was on the Senate floor a few days ago also with this map, which shows in red the number of States that are facing this unfunded mandate because of the increased Federal mandate for Medicare coverage coming from this bill, should it be enacted into law. I was pointing out that only the two States—Vermont and Massachusetts—because of a formula that has been worked out, would be exempt. Every other State will have to come up with the extra money either through cutting education programs, cutting mental health programs or other vital services or by raising taxes. They will have to come up with the extra money under this legislation so that half of the people covered by this new act will be covered by Medicaid.

I want to make an amendment to that chart today and add one other State. I think it has become quite a well-known fact that we need to put one other State up there in yellow, and that is the State of Nebraska.

We know pursuant to an agreement that was made before Senator NELSON announced his support as the 60th vote for cloture on this very important legislation, a deal was cut—the minority leader said a cheap deal, and I agree—that the State of Nebraska would be exempt in perpetuity from its requirement to pay the State match. The Federal Government, according to this legislation that we will be asked to vote on in the next 2 days, will pick up all of the extra expenditures for the State of Nebraska.

The poverty level in Nebraska is not quite as bad. I don't know how the powers that be felt they should or could justify this expenditure, but I will tell you the people in the State of Mississippi are going to have to come up

with another $1.3 billion over the next 10 years to pay for what we are going to be required to do by Congress—in its wisdom.

How is it fair that one Senator from Nebraska goes behind closed doors with the majority leader and cuts this deal so that his citizens don't have to pay this extra tax, and they don't have to do without services in other State programs to come up with the money? No one in this building—nobody within the sound of my voice—can come in here and explain why that is fair.

The fact is, the majority leader needed that vote, and that was part of the deal that was cut. Now citizens in Arizona, citizens in Wyoming, citizens in Mississippi, in Arkansas, and in Louisiana—we will have to come up with the extra Federal tax money on our part, but the Federal Government can cover all of the additional costs—State and Federal—in Nebraska.

Mr. MCCAIN. If the Senator will yield, on that map, I wonder should there not be a sticker for the State of Florida? According to a published report by one of my favorite columnists, Dana Milbank, of the Washington Post:

> Gator Aid: Senator Bill Nelson inserted a grandfather clause that would allow Floridians to preserve their pricey Medicare Advantage program.

So maybe we should have one of those stickers for Florida there. By the way, that will cost my constituents more money because they will not have that same deal. Should there be a sticker for Montana?

Again, according to Dana Milbank:

> Handout Montana: Senator Max Baucus secured Medicare coverage for anybody exposed to asbestos—as long as they worked in a mine in Libby, Montana.

Should there be a sticker there?

Continuing, Dana Milbank says:

> Iowa pork and Omaha Prime Cuts: Senator Tom Harkin won more Medicare money for low-volume hospitals of the sort commonly found in Iowa. . . .

Maybe there should be a sticker for that. I don't know if you have North Dakota in there. Dana Milbank says:

> Meanwhile, Senators Byron Dorgan and Kent Conrad, both North Dakota Democrats, would enjoy a provision that would bring higher Medicaid payments to hospitals and doctors in ''frontier counties'' of states such as—let's see here—North Dakota!

Should there be one for Hawaii? Mr. Milbank goes on to say:

> Hawaii, with two Democratic senators, would get richer payments to hospitals that treat many uninsured people.

Should there be a sticker there for Michigan? Mr. Milbank says:

> Michigan, home of two other Democrats, would earn higher Medicare payments for some reduced fees for Blue Cross/Blue Shield. Vermont's Senator Bernie Sanders held out for larger Medicaid payments for his state. (neighboring Massachusetts would get one, too).

I guess there are a number of States that maybe should have stickers on them so that the American people can see where these special deals were cut out, and the majority of the population of this country can see where they were not. They are going to pay while those States pay less because of not just their location but because they happen to have been behind closed doors and cut special deals.

Mr. BAUCUS. I wonder if the Senator would yield briefly.

Mr. MCCAIN. Sure. I ask that Senator BAUCUS be recognized.

Mr. BAUCUS. I am pointing out, as the Senators know, for example, under this legislation, the Federal Government pays all the costs of eligible enrollees through 2016. In this legislation, we are talking about the so-called expansion population. That is those between 100 percent of poverty on Medicaid and 133 percent of poverty, and under the underlying statute——

Mr. MCCAIN. Does that mean all these States are being treated the same?

Mr. BAUCUS. In 2016, all States are treated the same.

Mr. MCCAIN. This happens to be 2009. What happens between now and 2016?

Mr. BAUCUS. Beginning next year, when this goes into effect, 2010 through 2016, all States will get 100 percent payments for that expansion coverage.

Mr. WICKER. What would happen, then, after 2016 under current legislation?

Mr. BAUCUS. Afterward, under current legislation—one sentence of background. Today, as the Senator well knows, different States receive different Federal contributions to Medicaid. It varies according to States. The average is about 57 percent Federal. The average for all States on average is 57 percent of the cost of Medicaid is paid for——

Mr. MCCAIN. If that is the case——

Mr. BAUCUS. Let me finish.

Mr. MCCAIN. If that is the case, we will be glad to have the same provision inserted for the State of Arizona that was inserted for the State of Florida. You don't have a problem with that, do you?

Mr. BAUCUS. Let me answer the question.

Mr. MCCAIN. Do you have a problem with that?

Mr. BAUCUS. I can answer only one question at a time. The first question is from the Senator from Mississippi. Then, after 2017, all States get 90 percent—we are talking about expansion of population.

Mr. WICKER. The Senator yielded to me the other day, and I appreciate that. We have a number of Republicans who want to speak during our hour.

The fact is, after 2016, every State in red has to tax their own citizens and pay their State share, except Vermont, Massachusetts, and Nebraska. And I still challenge any colleague in this Senate to come before this body and say that is fair. I do not believe they will say that is fair.

Mr. MCCAIN. My question to the Senator from Montana is this: Would the Senator from Montana be willing to have the same provision that Senator NELSON, according to these reports, inserted, a grandfather clause that would allow Floridians to reserve their price in the Medicare Advantage Program? Would he accept a unanimous consent request right now that same provision apply to every State in America?

I ask unanimous consent that the same provision that was put in for the State of Florida by Senator NELSON would apply to every State in America.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Reserving the right to object, I think it would be highly imprudent for me not to object, so I will object to that request. I also point out that on average, Uncle Sam pays 90 percent of the Medicaid payments for this expansion of population after the year 2016.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCAIN. I think the fact that an objection was heard resolves the case. Those are comforting words on the part of the Senator from Montana, whom I appreciate, but the fact is, there are special deals for special people. It is well known. It is very well known.

May I mention to my colleagues—sort of a personal privilege here—the Senator from Louisiana came to the floor this morning and said:

> Recently, just yesterday, Senator John McCain, our colleague from Arizona, has claimed that the American people are opposed to reform and he speaks about the will of the majority. I would like to remind, respectfully, my colleague from Arizona that the will of the majority spoke last year when they elected President Obama to be President and they decided not to elect him, and the President is carrying out the will of the majority of the people to try to provide them hope and opportunity.

I say in response to that, I really did not need to be reminded. I had not forgotten. Sometimes I would very much like to. But I appreciate the reminder.

The fact is that the Senator from Louisiana and other Senators should know that poll after poll, public opinion, partially because of what the Senator from Mississippi is pointing out—the latest being ''U.S. Voters Oppose Health Care Plan by Wide Margin.'' A Quinnipiac poll finds 3 to 1 that the plan should not pay for abortion. And it says American voters mostly disapprove of the plan 53–36 and disapprove 56–38 percent President Obama's handling of the health care issue.

If I can remind my friend and colleague from Louisiana, I did carry her State.

Mr. BAUCUS. The Senator carried my State too.

Mr. MCCAIN. And the State of the Senator from Montana.

Mr. JOHANNS. If I may jump in here, probably like every Senator here, I read the newspapers back home every morning as I start my day. There was an editorial in the Lincoln Journal Star on December 21 that speaks to this issue of special deals. I thought it

was excellent. The Lincoln Journal Star has covered me for a long time. Sometimes I agree with them, sometimes I do not. Sometimes they agree with me, sometimes they do not. But I have always respected the work they do.

Here is what they said in their editorial:

Since when has Nebraska become synonymous for cynical ''what's in it for me''-type politics?

The term ''Cornhusker kickback'' is already a favorite of television's talking heads.

They go on to say:

That's how the rest of the country sees [this] deal.

The editorial continues:

Under its provisions, the federal government would pay all additional Medicaid costs for Nebraska ''in perpetuity.'' The Congressional Budget Office has estimated the deal may be worth $100 million over 10 years.

They go on to say I think in very powerful language:

The deal is the embodiment of what is wrong in Washington.

Instead of thoughtful, careful work on real problems, Washington lawmakers cobble together special deals, dubious financial accounting and experimentation on a grandiose scale.

They devote a paragraph to the many special deals cut, and the Senator's chart illustrates one.

Mr. MCCAIN. If the Senator will——

Mr. JOHANNS. If I may finish, I say to Senator MCCAIN, and then you can ask me.

They say this:

It's time to push the reset button on health care reform.

The effort has gone awry.

Mr. MCCAIN. But also, doesn't this bring up a larger issue—I ask all my colleagues to comment on this—whether our job here is to do whatever we can to just simply help our State, even if it is at the expense of other States, as the Senator from Mississippi pointed out, or is our title U.S. Senator, Arizona, Nebraska, Mississippi, et cetera? My title is not Arizona Senator, U.S.; it is U.S. Senator, Arizona. So of course I am here to represent the people of my State. But is a U.S. Senator's job to go out and do something which would then be at the expense of the citizens of another State simply by virtue of their clout and influence? Is that what we were sent here by our constituents to do?

Is it true what the majority leader said yesterday:

''I don't know if there is a Senator that doesn't have something in this bill that was important to them,'' Senate Majority Leader HARRY REID reasoned when asked at a news conference Monday about the cash-for-cloture accusation. ''And if they don't have something important in it to them, then it doesn't speak well of them.''

Does it speak well of us when we do something like the Senator from Mississippi pointed out, that favors Libby, MT, and not the rest of the country, that helps the seniors in Medicare Advantage in Florida and not in Arizona? Is that what we were sent here to do? That has never been my view of what our obligations to our citizens are, but also to the citizens of this country.

I ask my colleagues to comment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Mr. President, here is what this has come to. In the next 48 hours, this 2,400-some page bill is going to pass the Senate. But how did we get there? Was it done the way things are usually done in this body? Not at all. One party has been able to gather 60 votes for this. Not one person from the other party is going to vote for it. How did they get those 60 votes? Did they get it by arguing this out? They did not do that. They have bluntly, boldly, and on the front of virtually every newspaper in this country bought the votes to pass this bill, to get to the 60. They bought the last handful of votes, and they did not even buy it with their money, they bought it with the American people's money. Now, that is wrong.

The explanation I heard from the majority leader the other day is: Well, that is the way this is done. That may be the way this is done in banana republics, that may be the way this is done in Third World countries, but this is America. The American people are outraged over this. The other party ought to be outraged.

I heard one Member quoted as saying: Well, I was too stupid to get any money for my State in there. I heard the majority leader say: You are not doing your job if you don't have something in there for you. Where is the outrage from the other side, not only about the process but how they are getting snookered by some other members of their party? Where is the outrage?

I watched the debate on the other side and have seen Members come down and say: The American people want this. Are they living in a cave? Sure, there are a handful of American people who want this. Let me tell you who does not. The U.S. Conference of Bishops does not want it. The National Right to Life people do not want this. Not one Republican wants this. The Democrats do not want it.

Listen to what Howard Dean, the former leader of the Democratic Party, said:

At this point, the bill does more harm than good.

Ask any Democratic Governor in America. This bill transfers $25 billion in costs in unfunded mandates to the Governors and to their taxpayers. They have to come up with $25 billion. They don't want it.

I have stood here and listened to the other side say: This is wonderful for small business. Small business is going to come out so well on this. Then why does the National Federation of Independent Business—small businesses—say:

The Senate bill fails small businesses.

The National Association of Wholesale Distributors. The Small Business Entrepreneurship Council says:

Small business group say Reid health bill more of the same—more taxes, mandates, big spending, and nothing to help lower insurance costs.

Associated Builders and Contractors is against it. The National Association of Manufacturers is against it, the Independent Electrical Contractors, the International Franchise Association. Even the labor unions have said: Don't tax our health care benefits. We agree with them. We are on the side of the labor unions. We should not be taxing health care benefits.

But set all that stuff aside. These are all people who have an ax to grind. The American people do not want this bill. These people who are coming out here saying the American people want this bill, I don't know whether they are not reading the newspapers, whether they are not reading their own e-mails at their office. The Quinnipiac poll that was out this morning, Tuesday through Sunday, says: 36 percent of the American public support the health care spending bill; 53 percent oppose. That is an 18-percent difference. Gallup says 61 percent of the American people don't want this bill.

Stop coming out here saying the American people want this bill. The American people do not want it. You want it, but the American people do not want it. Leaders in your own party do not want it. The labor unions do not want it. Nobody wants this thing, and most of all small business does not want this bill.

I have listened to anecdote after anecdote from the other side. There are some very touching stories, and everybody over here is empathetic with them. But you don't legislate using anecdotes because you are only hearing one side of the story, you are not hearing all the facts dealing with the anecdotes, and to then pat this 2,400-page bill and say this will solve that, that is not the way you legislate, and it is certainly not the way you argue a point.

I heard the other side come out here and pat the bill and say: When we pass this bill, 94 percent of American people will have insurance, will be covered by health insurance. In court, they say you have to tell the truth, the whole truth, and nothing but the truth, and that is exactly why. You cannot pat this bill and say now 94 percent of the American people are going to be covered.

Somebody listening to that will say: Gosh, what a wonderful bill. What is it going to cost? It costs $2.5 trillion to cover 94 percent of the American people. But they don't say the bill only adds another 7 percent. The fact is, they don't tell you that 87 percent of Americans are already covered by some kind of health insurance. So don't say this is a grand and glorious victory because we are now going to cover 94 percent when 87 percent are already covered.

This is gimmickry at its worst, to tax for 4 years without giving any major benefits. Giving some minor benefits but holding off the major benefits

until later is plain gimmickry. They say: Oh, look how wonderful this is. It is not going to add to the national deficits because we are going to collect taxes for 4 years, and only then are we going to start the benefits.

What do we have here? When all is said and done and you strip it away, you have $2.5 trillion and 2,400 pages that most people do not understand, higher taxes, and higher insurance premiums.

I can give you one fact that is the best reason to vote against this bill; that is, it cuts $½ trillion out of Medicare benefits. If you are a senior watching, $½ trillion of Medicare benefits is going to disappear. I heard the President say and I heard my friends on the other side say: Look, if you like your program, if you like your insurance plan, you are going to be able to keep it. Try to tell that to the people who are on Medicare Advantage. It is being stripped. It is being eliminated under this bill. Indeed, if you read the rules and regulations under this bill, the plan you have will not even exist when it is done.

You know, I have heard the other side say: Oh, you Republicans are just playing on fears of the American people. Let me tell you something. The American people are frightened. They are afraid. It isn't just this health care bill, they have sat here for the last year, and they have watched stimulus packages costing $1 trillion. They have watched multibillion-dollar bailouts. They have seen buyouts. They have seen trillion-dollar deficits running up. They have seen the national debt now running into the trillions. And, yes, they are afraid.

But it isn't us that is doing it to them, it is you that have done it to them. It is you that have committed the actions that have put the fear into the hearts of the American people. Don't do this. Stop this nonsense. You have the opportunity still to stop this. You can do it. The American people don't want this. Stop the insanity.

I yield the floor.

Mr. WICKER. I will say to my friend, I am afraid. I am afraid for my country. We are going to have a vote sometime between now and Christmas Eve on raising the debt limit. It will just be a short-term thing. I doubt if a single Republican will vote for that. Then we will have to come back again in February and do the same thing.

The debt that is piling up on our country is something to be frightened about. It is something we need to fight against and be resolute about. We are not shedding crocodile tears, but I am frightened by this debt, and we should be, if we want our economy to stay strong. The fact we are adding $2.5 trillion in an entitlement program, which apparently the majority has the votes for, is simply going to add to this enormous debt.

So it is no wonder, when you add the Medicare cuts, the taxes that most States are going to have to pay—unless they cut a special deal—on top of the tremendous national debt that we are facing, the American people are frightened. They have a right to be frightened and worried.

Mr. BARRASSO. I don't know how many of my colleagues have seen the editorial in today's Investors Business Daily.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I am going to refer.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LOUISIANA PURCHASE AND OMAHA STAKES

Politics: Mary Landrieu's payoff was the new ''Louisiana Purchase.'' Ben Nelson got Uncle Sam to pick up Nebraska's future Medicaid tab. Maybe we should just put Senate votes up on eBay.

Nelson, the 60th vote in the middle-of-the-night Senate party line vote on health care reform, will go down in American political history as the inventor of the permanent earmark. His seemingly principled stand against including federal funding for abortion evaporated like the morning dew as he decided to take what was behind door No. 1.

The deal for Nelson includes special Medicaid funding for Nebraska, along with Vermont and Massachusetts, which has a special election to fill the seat of the late Sen. Ted Kennedy coming up in January. Under the Senate bill every state is equal, but some are more equal than others. The other states and their taxpayers—that means you—will pick up this tab.

This came just three days after Sen. Bernie Sanders, I–Vt., said on Neil Cavuto's Fox Business show that he was prepared to vote against the bill after the recent decision to strip the public option and the Medicare buy-in provision from the legislation to get the vote of Sen. Joe Lieberman, I–Conn.

Nelson won a permanent exemption from the state share of Medicaid expansion for Nebraska. Uncle Sam will take the hit for 100% of the Medicaid expansion for Nebraska—forever. The world's greatest deliberative body has now become the most corrupt.

The Congressional Budget Office (CBO) informed lawmakers Sunday night that this section of the manager's amendment to the Senate's health bill would cost $1.2 billion over 10 years.

Nebraska actually receives the least of the three, some $100 million over the first 10 years. Vermont will receive $600 million over 10 years, while Massachusetts will get $500 million.

Nelson, like most other senators, doesn't know what's really in this bill or what it costs, except for the scoring that involves comparing a decade of taxes with six or seven years of ''benefits.''

This includes gutting Medicare by half a trillion dollars. The abortion language he accepted may not survive conference or the Stupak amendment supporters in the House. The Medicaid bribe he accepted will.

Senate Majority Leader Harry Reid, the Boss Tweed of our time, defended how this sausage was made. ''You'll find a number of states that are treated differently than other states. That's what legislating is all about. It's about compromise,'' he said.

On the contrary, sir, it's about bribery—about what has been dubbed the ''Cornhusker kickback,'' and about politics done the ''Chicago Way.''

A $100 million item for construction of a university hospital was inserted in the Senate health care bill at the request of Sen. Christopher Dodd, D–Conn., who faces a difficult re-election campaign.

Presumably there's a wing where taxpayers can go to get their wallets removed.

The Democrats insist that their Medicare cuts will not lead to rationing. So why did, as HotAir.com reports, Sen. Bill Nelson, D–Fla., insist on language that exempted three heavily Democratic counties in his home state from the cuts? If those massive cuts to the program won't hurt people on Medicare Advantage, why did Nelson fight to get exemptions for Palm Beach, Dade and Broward counties?

After all this wheeling and dealing, we will still have a cost-raising tax-increasing, Frankenstein monster of a bill hurriedly stitched together behind closed doors that will lead to doctor shortages and rationed care.

Mr. BARRASSO. The article is headlined: ''Louisiana Purchase and Omaha Stakes.'' The editorial says:

Politics: Mary Landrieu was the new ''Louisiana Purchase.'' Ben Nelson got the federal government to pick up his state's future Medicaid tab.

And the article continues:

Maybe we should just put Senate votes up on eBay. . . . Nelson won a permanent exemption from the state share of Medicaid expansion for Nebraska—forever. The world's greatest deliberative body has now become the most corrupt.

So Uncle Sam is taking the hit for 100 percent of the Medicaid expansion for Nebraska forever. That is what this says. It goes on to say this is not what legislating is about; that this is not compromise, rather, it is about bribery.

Mr. President, this is horrible for us as a nation to have these things written about this institution, when we should be way above any of these sorts of claims.

I look at that map that my colleague from Mississippi has up, with just Nebraska on there as the special deal, and I do not believe that is the way legislation should be written. We should be looking at ways to improve health care for all Americans, improve the quality, make it more affordable, make it more available to people, and give them the access they need.

I brought four amendments the other day, after Senator REID brought his massive amendment to the floor, and each was rejected. They were things that would actually improve this bill and make it better for Americans.

So I stand here, looking at this, and reading headline after headline and editorial after editorial about just how very bad is the way this bill is being pushed forward. We certainly wouldn't want any young child to know how this is happening in their country, as we try to get them involved in this process and learn and study and feel that maybe they should become involved in this. This isn't what legislating in America is all about. We are better than this.

If you have to do these sorts of things to get a 60th vote, then the bill isn't good enough to pass. If the ideas aren't good enough to get the votes, then it shouldn't pass. In this country, we look for bipartisan solutions to the big issues of the day. That is what we did

in the Wyoming Legislature. Major issues passed with overwhelming numbers. That is what has happened in this country throughout the course of history. The big bills have come forth with large numbers of supporters, and that is how you get the country to follow you, not by trying to force through a vote, buying a vote here and buying a vote there to just squeak by with the minimum amount of support. That is not the way to change policy that is going to affect everyone in the United States personally and affect one-sixth of our economy. That is not the way to do it.

It has not been the way, it shouldn't be the way, and it should never be the way again. I am looking for some Democrat to stand up and say: This isn't the way, and I am going to not vote for this bill.

Mr. MCCAIN. A Senator from Colorado came to the floor and proudly stated that he had not asked for anything or gotten anything, and I will ask the Senator from Nebraska a question because his State seems to be at the center of a lot of attention. But, first of all, there is a little booklet that is put out by the Government Printing Office that talks about how our laws are made. We give it to our constituents and send it to schools all over America. I have never seen anything in that little booklet—it is a very interesting booklet—that says you get behind closed doors and you cut deals.

I know we are all a little cynical about politics and campaign promises, but the negotiating behind closed doors is especially so, particularly after your President says during the campaign, time after time: I am going to have all the negotiations around a big table. We will have doctors and nurses, hospital administrators, insurance companies, drug companies, they will get a seat at the table. They just would not be able to buy every chair. But what we will do, we will have negotiations televised on C–SPAN so that people can see who is making arguments on behalf of their constituents and who is making arguments on behalf of the drug companies.

Of all people he recognized, the drug companies—who got the best deal of all? PhRMA. Who has spent the most money lobbying? Who has spent the most money on advertising? PhRMA. Who is going to cost the American consumer $100 billion, that could have been saved by the consumer if we had been able to reimport prescription drugs?

But I would ask my friend from Nebraska because along with the ''Louisiana purchase'' and probably the Florida deal this Nebraska deal has probably gotten the most publicity and visibility. Maybe because it was the 60th vote. I don't know if it is the biggest or not, in terms of money, because we will be finding deals in this 2,700-page bill for months. For months, we will be finding provisions, even though our staffs have carefully read it. It is not 2,700 pages for nothing.

So I would ask the Senator from Nebraska: How does this go over in the heartland of America? How do the people in Nebraska, who see that they have gotten some kind of special deal, a special provision—certainly reported as so in the media—that would come at the expense of other taxpayers in America? I am curious about the reaction the Senator from Nebraska gets.

Mr. JOHANNS. It doesn't go over. It just simply doesn't. In every way possible, over the last 4 or 5 days, I have been asked: Do you support this special deal for Nebraska? I don't. I think it is wrong.

I could read through all the special deals because we have all got the list—it is Florida, Louisiana, and Montana, and on and on and on. But I came to the floor this morning and I asked unanimous consent that all the special deals be taken out, and I listed a long list of them. Of course, there was an objection to that request for unanimous consent. Why? Why would we want to try to pass legislation with all of this? It makes no sense to me.

But let me take a step back. We all remember a few months ago there was a big story that Nevada was going to get a special Medicaid deal. It was right about that time that we took a few days off. I went back home, and I did townhall meetings, as I have done for years and years and years. But we really invested time and effort, and we identified six principles of health care which are on my Web site for people to look at. I literally had a PowerPoint presentation. I did four townhall meetings—Carnie, Grand Island, Lexington, and Lincoln. I put up these principles.

One of the principles was no carve-out. No backroom deals. No special deals. I presented that to the people who were at those townhall meetings. I did tons of interviews. I explained why I felt the way I did. People were so irate at the possibility that Nevada was going to get this special deal.

Since then, I think that has fallen by the wayside, but all these other things have come along. That is why I read the Lincoln Journal Star editorial. This is an editorial page that sometimes likes what I am doing and sometimes it does not. Over the years, they have not hesitated to take me to task. They looked at this and they said:

> Since when has Nebraska become synonymous for cynical ''what's in it for me''-type politics?

They said it is time to hit the reset button. We are not getting this right at all. We simply aren't getting it right. They talked about the issues of cost containment, they talked about the Actuary's report, which I had spent a little time talking to them about, and other folks around the State. After looking at all of that, they just said: Look, this isn't going the way it needs to go for the American people.

Here is what I would say to all of my colleagues in the Senate. I love my State. I love the people there. They are such honest, decent people. In many parts of our State, people believe you seal a contract not by putting things in writing but by shaking hands and giving your word. They don't want this kind of attention. They don't want to be on the evening news every night with the talking heads talking about the ''cornhusker kickback'' or whatever the latest terminology is. They just want to be treated fairly.

They asked me to come here and represent them as fervently as I can, to try to do all I can to get fair treatment for them. But not a single person at any townhall I have ever had stood up and said: MIKE, I disagree with that principle. I want you to go back there and give me a special deal or get our State a special deal.

So I appreciate Senator MCCAIN asking me the question. I feel very strongly about this. I wish the other side would consider my request for a unanimous consent agreement that just says: Time out, everybody. Let's pull out the special deals, whether it is Nebraska or Montana or whatever. It doesn't matter to me. Let's pull those out and let's take a step back and let's work for what Senator RISCH talks about and the rest of us have talked about. We can get 80 votes on a health care reform bill. I guarantee you. But not on this bill.

Mr. WICKER. I would echo what the Senator from Nebraska has just said. I know my friend from Arizona has been one of the most outspoken critics of special deals and special earmarks. This is not some catchall appropriations bill to get us through the end of the year. This is one of the most major pieces of legislation on which any Member of this Senate currently serving will ever vote. This is one-sixth of the American economy, and the American people are learning about these special carve-outs where the citizens of one State will be treated differently not because of a formula, not because of the poverty level, but because of political power.

It would just seem to me that one Member of the majority party, in these next 2 days, might step forward and say: You are right, and I will not be a party to this.

Mr. MCCAIN. Let me make one additional comment. I have seen reform go through the Congress of the United States. The first one I saw was when we saved Social Security—a major reform of Social Security. There was no backroom dealing. It was a straightforward proposal as to how to fix Social Security. We fixed welfare, it was welfare reform—again, open, honest, bipartisan negotiations and bipartisan agreement. Welfare reform, Social Security reform, the efforts we made at tobacco reform, at campaign finance reform, at immigration reform and many others—the Patients' Bill of Rights. Every reform I have ever been involved in has had two major and sole components: No. 1, it is bipartisan; No. 2, there were no special favors or deals cut, provisions in thousands of pages of legislation.

Again, we know where the train is headed. We know what is going to happen a short time from now, but they will make history. You will make history. You will have rammed through ''reform'' on a strictly partisan basis, without the participation of the other party, over the objections of a majority of the American people, done in closed negotiations, with results that are announced to the American people without debate or discussion and to this side without debate or discussion.

The American people do not like it. They do not like for us to do business that way. I am sure this peaceful revolution that is going on out there already—because as the Senator from Idaho pointed out, because of the involvement of the car companies, the stimulus, the bonus, the generational theft we are committing, this, all on top of that, is going to give great fuel to the fire that is already burning out there, where they want real change, real change which they were promised in the last Presidential campaign and certainly did not get.

Mr. RISCH. I say to Senator MCCAIN, probably one of the great ironies of all this is going to be at 8 o'clock on December 24—when this bill passes with the 60 votes, all Democrats—immediately following that vote is going to be a vote, again all 60 Democrats and only Democrats, raising the national debt. What an irony, to put $2.5 trillion in spending of a new social entitlement program, adding it to the three already huge entitlement programs that are in the process of bankrupting America, adding this to it and then turning right around and increasing the debt ceiling. When they increase it, it is going to be—nobody knows exactly how much it is going to be, hundreds of billions. But that is only in the last 2 months. They are going to have to come back again in February and increase the national debt ceiling again. What irony.

Mr. MCCAIN. Of course, this legislation turns everything we know about budgeting on its head, although it has been done before and it has been done by Republicans, to our shame. Today, if you go out and buy an automobile, you can drive it for a year before you have to pay for it. Under this bill, it is the opposite. You pay the taxes, you have the reductions in benefits, and then 4 years later you start having whatever benefits would accrue from this legislation. So for 4 years small businesspeople, people all over America, will see their health care costs increased before there is a single, tangible result from it—remarkable.

Mr. WICKER. The Senator mentioned the Florida carve-out. Perhaps I should have it on my map. The reason I did not is it involves Medicare Advantage and not Medicaid. The map was about Medicaid, but he makes a good point about the Florida carve-out.

I had a discussion with some of the leadership on the Democratic side on the floor of the Senate the other day about Medicare Advantage. The strong assertion over on that side is, Medicare Advantage is not Medicare. As a matter of fact, some of the leadership in this very body said the booklet the Government puts out that says Medicare Advantage is part of Medicare should be changed. Those words should be stricken from the handout because it is not part of Medicare. The Web site the Federal Government has saying Medicare Advantage is part of Medicare, that should be changed because it is just an insurance company masquerading as Medicare.

Let me just take a second. This is Betty. Betty represents—she is from Louisiana. I don't know if she was one of the 60 percent of Louisianans who voted for Senator MCCAIN in Louisiana, but she enjoys Medicare Advantage. She was told during the election that if you like your coverage, under any plan that the Obama administration would approve, you get to keep that coverage. She gets hearing aids, vision coverage, dental care, and she likes her Medicare Advantage.

If Betty is 1 of the 150,000 seniors in the State of Louisiana who enjoy this benefit, she is at risk of losing it. But if she happens to be in the State of Florida, in any of these counties with the $100 million carve-out, she is fortunate enough to be able to keep her Medicare Advantage.

In other words, it may not be guaranteed, but she sure likes it. Obviously, one of the Senators from Florida believes his constituents like it—again, a carve-out so this nonguaranteed, non-Medicare benefit that is not very good, they can keep it in Florida. That is in the bill and no one can deny that special treatment is given to that one State under Medicare Advantage. Again, I challenge any American to come onto the floor of this Senate and tell me how that is fair.

Mr. BARRASSO. It is not. There have been a number of references to our friend and colleague, the late Senator Ted Kennedy. Let's take a look at the book his brother, John Kennedy, wrote, ''Profiles in Courage.'' As we have seen all this, it is time for one courageous Democrat to stand and say: This is about our country. This is about our country, not about a kickback. This is about health care, not about a hand in the cookie jar.

That is what we need. We need one courageous Democrat to stand and say: I don't want to be part of this editorial that talks about the Louisiana Purchase and Omaha Stakes. I don't want to be a part of this that says this, the world's greatest deliberative body, has now become corrupt. I don't want to be a part of this that says this is about bribery.

It needs one courageous Democrat, 1 out of 60, to stand and say: I am going to vote no; we need to back up; we need to think about this. We have 100 Members of the Senate who want to reform health care in this country, who want to get the costs under control, who want to improve quality, who want to improve access—100 Senators want to do that. That is the goal of each and every one of us here.

We need one courageous Senator to say it is time, time now, to take a step back, let us go home over Christmas, let us think about this, let us talk to our constituents at home, let us hear what they have to say about this looking out for No. 1—$100 million. Dana Milbank's column in the Washington Post today, that is what we need now in the Senate. We need the kind of courage John Kennedy wrote about in ''Profiles in Courage.''

Mr. RISCH. I say to Senator BARRASSO, you know there are already some courageous Democrats stepping up. I hope every Democrat on the other side calls their Governor and says: Governor, what do you think about this? Help me out here. I am in caucus, they bought enough votes to get to the 60. But I have to tell you I don't like the way they did it, No. 1; and, No. 2, what about the rest of us? We didn't get the $300 million. We didn't get the X number of million. Help me out, Governor. They say they are going to shift $25 billion to the States that you are going to have to come up with. What do you think? Do you think I ought to vote for this—or maybe if one of us steps forward and says I am going to vote no and I want to set the reset button and I want to put people back to the table and say let's do this right, we can do this right.

We are Americans. We know how to do this. We are the most innovative people in the world. All we have to do is get together and do it. But to jam this down the throats of the American people—and make no doubt about it, this is being jammed down the throats of the American people on the eve of Christmas, in the middle of the night, in the face of poll after poll that says don't do this to us.

That is what is happening. There are courageous Democrats out there. Not one of them is sitting here.

Mr. WICKER. Let me tell my friend from Idaho about some courageous Democrats. When the House version of this was being considered at the other end of this building, a number of Democrats stepped forward and said: I can't vote for this. It was very close. They have a huge majority, 40 votes over there. As a matter of fact, one Member of the House today basically said: I can't take any more. He switched parties. A Member from Alabama is now joining the Republican conference. But there are a number of loyal Democrats who have no intention of switching parties and they have stepped forward and said: I can't vote for it. Don't count me in on this.

BART STUPAK is a Representative, a courageous pro-life Representative from Michigan. He did vote for the bill. I do not impugn his motives. He did what he thought was right. But before he voted for it, he made sure legislation was included in the House version to make sure the Hyde language, which

has been the law of the land for almost two decades, was included.

Here is what Representative STUPAK said yesterday or the day before yesterday about this so-called pro-life compromise that was included in the version we will have to vote on in the Senate. He said it is ''not acceptable . . . a dramatic shift in Federal policy that would allow the Federal Government to subsidize insurance policies with abortion coverage.''

That is a release actually on December 19.

I appreciate the courage of someone from a Democratic State, from a district that has long been Democratic, who is a member—chairman of a committee and a member of the leadership over there—stepping forward and saying: I can't go this far. Unless this language is changed—and we are told by Members of the Senate there better not be much of a conference. What we vote on, on Christmas Eve, it better sort of stay like it is or it will not be passed by the Senate when it comes out of conference.

BART STUPAK is stepping forward and saying, if that is the case, then I am switching from a yes to a no. I appreciate that kind of courageous Democrat.

Mr. MCCAIN. Can I say, I appreciate the Senator from Mississippi bringing this important aspect to this issue and continuing to do so.

I would like to pick up on what Dr. BARRASSO mentioned about the Kennedy family. It is well known I had a very close relationship, developed over the years, with Senator Ted Kennedy and that we worked together on a variety of issues. So there is a great irony in the constant, over there on the other side of the aisle, references to Senator Kennedy, who always began legislation by getting bipartisan, by getting Members of the other side of the aisle committed and working together—whether it be on immigration reform, whether it be on health care reform, whether it be on one of the great achievements of President Bush 2, No Child Left Behind.

In other words, every dealing I ever had with Senator Kennedy was to reach out, establish a fundamental base for agreement, and then move forward with legislation in a bipartisan fashion, which I think was one of the major reasons why he had such an impressive legislative record.

How did the other side do it? Without a bit of serious negotiation, without bringing anyone on board before moving forward—no one—which ends up, now, with a 60-to-40 vote, which is a pure partisan vote and outcome when there has never been, in history, a single reform that was not bipartisan. That is why the American people are rejecting this. That is why the American people are seeing through it. To hear the constant refrain that the American people want this: Read any poll. It is just a matter of difference because the American people have figured this out. It is going to be one of the great historic mistakes—not historic—but historic mistakes made by the Congress of the United States.

Mr. MCCONNELL. If I may say to my friend from Arizona, he is absolutely right. I have had an opportunity to observe Senator Kennedy over the years. That is exactly the way he operated.

If I may, just to make a point with regard to the observation of the Senator from Mississippi about Congressman STUPAK, as I understand it, Congressman STUPAK was not asking for some special deal for Michigan in return for his vote. He was, rather, trying to establish a principle that would apply to all Americans. Is that not the case?

Mr. WICKER. That is exactly correct. I commend my former House colleague for taking that principled stand.

Mr. MCCONNELL. Could not be same thing be said for our colleague, Senator LIEBERMAN from Connecticut? I am sorry he ended up voting for this 2,700-page monstrosity, but you have to stay, as I understood his position—and Senator MCCAIN certainly knows him very well—his position was, if the government goes into the insurance business, I can't support this bill, not: I am open for business and what you can you do for Connecticut.

Mr. MCCAIN. There may be on the floor a unanimous consent request to remove the Nebraska Medicaid deal. I would hope, if there is any unanimous consent agreement at any time, that the whole bill will be fixed, which means every special provision would be removed, whether it be from Nebraska or any other State. We still have the Louisiana Purchase of $300 million. We still have the Florida Medicare grandfather clause, $25 to $30 billion. The list goes on and on. The Connecticut hospital—I guess it is the Connecticut hospital. It is always in legislation, so you have to do research to see who qualifies. I would hope we could have, again, agreement that all these special provisions that affect certain specific States would be removed as well. That would go over rather well with the American people.

I want to say to my colleagues, thank you for your passion. I know a lot of people don't watch our proceedings on the floor. It has played a role in educating the American people as to what we are facing. The media played a role, advocacy groups, grassroots organizations all over America. But I have had the great privilege of engaging in these colloquies with my colleagues. To me, it has been both helpful to my constituents, and, frankly, it has also been helpful to me to work with people who have been involved in these issues, former Governors and others. We have made some kind of contribution, which I think is what we are all sent here for.

Mr. WICKER. How much time remains?

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Senator has 2 minutes.

Mr. WICKER. Unless my colleagues want to join in, I thank them for joining us and certainly thank Senator MCCAIN, one of the most distinguished public servants, someone who sacrificed for his country and who has been on this floor hour after hour.

The bill we will be asked to vote for on Christmas Eve by the administration's own Chief Actuary increases health care costs, threatens access to care for seniors, forces people off their current coverage, and actually increases the amount of the gross domestic product that will be spent on health care rather than decreasing it. These are not statements I have made; these are assessments made by the Chief Actuary for the Obama administration.

There is still time. Even if this bill passes, we will go home for Christmas, for the holidays. We will hear from our constituents. I hope we listen to that over 60 percent of Americans who say: We advise you not to vote for this legislation.

Mr. BARRASSO. It is time for a new chapter to be written in ''Profiles in Courage.'' One of the Members of this body can be that profile. All they have to do is stand up and say: No, I will not be part of what has been called corruption in the Senate. I will not be part of what has been called, in the editorials, bribery in the Senate. I will be that courageous person and vote no. It is time for a new chapter in ''Profiles in Courage.''

I yield the floor.

The PRESIDING OFFICER. It is the understanding of the Chair that the Senator from Mississippi had the floor.

Mr. WICKER. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I have several points to make. First, as a matter of personal privilege, on behalf of the people of Libby, MT, the Senator from Arizona made it sound as if the folks in Libby were getting some kind of a sweetheart deal. I wish the Senator would not leave so he can hear what is actually going on. I think the Senator from Arizona would agree with me that he would not want his constituents to suffer an environmental calamity. He would not want his constituents to not get some redress because of a declaration of public emergency due to contamination of asbestos. I assume the Senator from Arizona would very much stand up for his constituents.

Let me explain. Congress passed a law in 1980 called CERCLA. That legislation said that whenever there was a declaration of a public emergency because of contamination at a Superfund site, the government has an opportunity to declare a public emergency and help those people get medical care because of contamination of asbestos; in this case especially, something called tremolite, which causes even greater damage than ordinary asbestos. I would assume the Senator from Arizona would want his constituents to

get some help from contamination from asbestos.

Mr. MCCAIN. May I respond?

Mr. BAUCUS. Absolutely.

Mr. MCCAIN. All the Senator had to do was have it authorized, bring it up on the floor as an appropriation, and I am sure the Senator's arguments would have been far more cogent than jamming it into a bill which has to do with health care reform, the policy of health care reform.

This legislation and this cause of the Senator from Montana has been turned back several times on other grounds.

Mr. BAUCUS. This is health care. Reclaiming my right to the floor.

Mr. MCCAIN. I am responding.

Mr. BAUCUS. I reclaim my right to the floor because he doesn't want to deal in good faith with this issue.

My second point. It is disrespectful, it is unseemly for Senators in this body to invoke the names of Ted Kennedy and Jack Kennedy in opposition to this bill. It is disrespectful and unseemly. I, frankly, am very much surprised that Senators would go to that level and invoke the names of Ted Kennedy and Jack Kennedy in opposition to this legislation. Talk about profiles in courage. I hear Senators on the other side say: Where is the courage of one Senator to stand up and vote against health care reform? That is what I keep hearing. Where is the courage? Where is the courage of one Senator on the Democratic side to stand up and vote against health care reform?

Mr. President, I want to turn that around. ''Profiles in Courage''—Jack Kennedy and Ted Kennedy were Senators who worked to try to find resolutions to agreements. They wanted to compromise. They wanted to work together to get just results.

I ask, where is the Senator on that side of the aisle who has the courage to break from their leadership, break from the partisanship they are exercising on their side of the aisle to work together to pass health care reform? I ask, where is the courage? Where are the Senators who have the courage on that side of the aisle to stand up and work together on a bipartisan basis to get health care reform passed? Where?

We on this side reached out our hands for bipartisan agreement on health care reform, probably to a fault. I say ''to a fault'' because for months and months this Senator, anyway, extended the hand to work with other Senators on a bipartisan basis. I know the current occupant of the chair knows that. He watched this. He saw it happen in the Finance Committee.

Senator GRASSLEY and I worked very hard to get Senators on both sides of the aisle to work to pass health care reform, very hard. Then after a while we had to work toward another approach. The Group of 6—3 Republicans, 3 Democrats—worked for months on a bipartisan basis to get health care reform passed. Do you know what happened? I watched it happen. Those Senators in the room were acting in good faith. They were in good faith. They wanted to mutually work together to pass health care reform. They asked good questions. Senator ENZI from Wyoming, for example, asked very good questions. Senator SNOWE asked very good questions. Senator GRASSLEY asked very good questions. We worked to get health care reform.

But do you know what happened? I could feel it happening. One by one by one, they started to drift away. They wanted to pass health care reform. They wanted to act in a bipartisan basis. But they were pressured—pressured from their political party not to do it, not to do it, not to do it. Why were they pressured not to do it? Unfortunately, they gave in to the pressure because their leadership wanted to make a political statement. One of the Senators on the floor here said: Let's make health care Obama's Waterloo. They did not want to work with us, that side of the aisle. They did not want to work with us because they thought it was better to make a political statement: Attack the bill, attack the bill, attack the bill, attack the bill in order to make political points for the 2010 election. That is what they were trying to do.

I ask, where is the courage? Where is the courage? Where is the Republican Senator who will stand up and say: Boy, let's work together to pass health care reform. Where is the Senator who will stand up and say: We want to work together to pass health care reform.

This Senator tried mightily to get bipartisan support. Ask Senator GRASSLEY from Iowa, with whom I have been working for a long, long time. They were pulled away. Senator GRASSLEY—I don't want to speak for him, but I know he wanted to get health care reform passed on a bipartisan basis. I know that is the case. Frankly, he got pressured, pressured, and he just couldn't do it. I have the highest respect and regard for him, but he just couldn't do it.

Mr. WICKER. Will the Senator yield briefly?

Mr. BAUCUS. Absolutely.

Mr. WICKER. I think the Senator has really answered his own question. As a matter of fact, Senator GRASSLEY and Senator ENZI met for hours and hours, weeks upon weeks with my friend from Montana in good faith, hoping to come up with a program that could get that 80-vote support we usually get on matters of——

Mr. BAUCUS. That is how they started out, that is true.

Mr. WICKER. And then eventually, it dawned on them that my friends on the other side of the aisle wanted to Europeanize the health care system of the United States of America.

Mr. BAUCUS. Reclaiming my time.

The PRESIDING OFFICER. The Senator from Montana has the floor.

Mr. WICKER. I thank the Senator for yielding.

Mr. BAUCUS. That is not what happened. I was in the room constantly. I talked to those Senators many times. That is not what happened. I will tell you what did happen. Your leadership pressured them, pressured them, pressured them not to work together. There was no European-style effort in that room. That is a totally untruthful statement—a totally untruthful statement. None whatsoever. We are passing a bill here that is a uniquely American solution. It provides competition. It helps the doctor-patient relationship. That assertion of working toward a European solution is entirely untrue. It is entirely false.

The fact is, those Senators did not want to work with us. It is regrettable. It is highly regrettable. One of the biggest travesties here is there was not a good-faith effort on that side of the aisle to come up with a constructive, comprehensive alternative to the Democratic version of health care reform. If there had been a constructive, honest, alternative health care reform, we could have had a really good debate. What is the better approach to solving the health care problem? That did not ever happen. It did not ever happen at all. Rather, they didn't have anything. They didn't have a health care bill. None whatsoever.

The only one that came up a little bit was over in the House. Because of all the criticism about Republicans not having an alternative, finally the Republicans in the House came up with an alternative. It was very small. There wasn't much to it. To be honest, the CBO said it would hardly increase any coverage whatsoever. It was not really a comprehensive health care reform bill. And there has been none in the U.S. Senate on the Republican side, no alternative for a comprehensive health care reform bill.

I want the public to know we worked very hard to get a bipartisan bill. That side of the aisle started without working with us, but gradually they began to believe that politically they would have a better chance in the 2010 elections by just not working with us but just attack, attack, attack, attack, trying to score political points to defeat any honest effort to get health care reform.

I now yield such time as he would like to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Thank you, Mr. President.

Well, this has been quite an enlightening experience on the floor this past 30 or 40 minutes. It shows how emotionally charged this body has become over this issue and perhaps other issues as well. But the challenge is, we are all entitled to our own opinions. We are just not entitled to our own set of facts.

I would like to take a moment to explain the so-called Medicaid fix for the State of Nebraska. Now, it has been described as the ''Omaha Stakes fix.'' I take issue—and I only wish my colleague from Nebraska had stayed on

the floor to hear this. I take issue with one of the premier businesses in the State of Nebraska used in a manner of derision to outline something that is factually incorrect on the basis of how they are presenting it.

You can twist and you can turn and you can try to distort what happens, but it does not change the underlying facts. The underlying facts are, this was pursued initially as an opt-in or opt-out for all States. It was impossible to do that at the present time, and so as a matter of fix, there was, in fact, the extension of the Federal dollars from the year 2017 on, well into the future, as a marker to lay down so that every State could object to this manner of unfunded mandates.

As a Governor—and my colleague is a former Governor—we fought against Federal unfunded mandates. As a Senator back here, I have also fought against unfunded and underfunded Federal mandates. This was, in fact, exactly that. While we were not able to get in this legislation an actual opt-out or opt-in for a State-based decision, what we did get is at least a line, if you will, so that in the future other States are going to be able to come forward and say: Hey, either the Federal Government pays for that into the future or the State will have the opportunity to decide not to continue that so that we do not have an unfunded Federal mandate.

So I am surprised. I am shocked. Well, actually, I am not shocked. I am disappointed this would be used and misused in this fashion, not only derisively against a great company in Nebraska—the Nebraska Steaks—I am also surprised my colleague would participate in a colloquy that would use the name of that company in such a manner.

I am surprised this colloquy went on without understanding the facts of what this so-called carve-out—which is not a carve-out—truly consisted of. There is no carve-out. Each State between now and 2017—two-thirds-plus of a decade—will have an opportunity to come back in and get this bill changed.

Governors asked for relief. As Governors, we asked for relief against these continuing unfunded mandates. Time and time again, we fought against them. This was one more opportunity to fight. As a matter of fact, the Governor of Nebraska spotted this and wrote me a letter on December 16 and said, among other things:

> The State of Nebraska cannot afford an unfunded mandate and uncontrolled spending of this magnitude.

He goes on to say a number of other things about the bill. But he makes the point that this is an unfunded Federal mandate and wanted me to do something about it.

So I sent him back a letter on the same date, saying:

> Thank you. . . .
>
> Please be advised that I have proposed that the Senate bill be modified to include an ''opt-in'' mechanism to allow states to avoid the issues you have raised. Under my proposal, if Nebraska prefers not to opt in to a reformed health care system, it would have that right.

My colleague and others know this is the case. They know this is the case, but they choose to ignore it. They choose to ignore the facts.

On December 20, I again wrote to the Governor and shared with him my concern about this unfunded mandate, and I pointed out that:

> Within hours after the amendment was filed, [my colleague from Nebraska] objected to the inclusion of these funds. As a result, I am prepared to ask that this provision be removed from the amendment in conference if it is [the Governor's] desire.

I got a letter back on the day after, on December 21, talking about this as a special deal. It is not a special deal for Nebraska. It is, in fact, an opportunity to get rid of an unfunded Federal mandate for all the States. Let me repeat that: for all the States. There is nothing special about it, and it is fair.

What we have done is we have drawn a line in the sand and said: This is unacceptable, and it is unacceptable for all States as well. I cannot believe that this sort of a situation would continue. There is no misunderstanding here. I think it is just an opportunity to mislead, distort, and, unfortunately, confuse the American public all the more, and to use the State of Nebraska and the name of a good company for partisan political purposes on the other side of the aisle.

My colleagues know I am not a deeply partisan person and that I rarely come to the floor to speak, and that when I come to the floor, it is for something like this, to take exception with the misuse of information for partisan purposes. That is exactly what has been done with this situation.

I am prepared to fight for the State of Nebraska, and I hope my colleague is as well. Obviously, the Governor was prepared to fight for the State of Nebraska by bringing it to my attention. But I am not prepared to fight to get a special deal for the State of Nebraska. I did not, and I refuse to accept that kind of responsibility or that kind of a suggestion from anyone on that side of the aisle or anyone else.

Then, as it relates to abortion, I think my colleagues know that we introduced legislation that is comparable to the Stupak legislation in the House dealing with barring the use of Federal funds for elective abortions. We introduced it over here, and it was bipartisan. It was Nelson-Hatch-Casey, and it did not pass. So I began the process of trying to find other solutions that I thought equally walled off the use of Federal funds and made it clear that no Federal funds would be used.

Now, apparently I did not say ''mother may I'' in the process of writing that language because others took issue with it, even though they cannot constructively point out how it does not prohibit the use of Federal funds or wall off those funds or keep them totally segregated. They just did not like the language.

Well, if in the conference the Stupak-Nelson-Hatch-Casey language passes, I will be happy, and so will Congressman STUPAK, and so would, I would imagine, those who signed on to that legislation. It is unfortunate, though, to continue to distort and misrepresent what happens in the body of the Senate. It is difficult enough to have comity. It is difficult enough to have cooperation. It is difficult enough to have collegiality. When politics are put above policy and productivity, this is what we get.

Mr. President, I am very disappointed, somewhat disillusioned, by the use of this method and this approach that would undermine the good name of a company in Nebraska, as well as the name of the State of Nebraska, by associating it with something that has not been done, was not intended, and did not result.

Mr. President, with that, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. BAUCUS. Mr. President, I yield 15 minutes to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, let me just express my thanks for those 17 minutes.

I would ask the Chair to please advise me when I have used 15 of those minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. CARPER. Mr. President, listening to the debate today reminds me of, among others, a famous quotation from Winston Churchill, who, I believe, said: ''The worst system devised by wit of man''—he was talking about democracy. He said it was the worst form of government devised by wit of man, and then he added ''except for all the rest.''

We like to sort of lecture the Iraqis and Afghanis on how to run a democracy, and we still struggle with it after more than 200 years. In the 8 or 9 years I have been here, I have never seen us struggle as much as we have on the issue of health care. Part of the reason is because it is just enormously complex, and it is just confusing.

As to the people who are following the debate, if you listen to folks on the political left, mostly in our party, what you hear is: No public option, no Medicare buy-in, we are not doing enough to make health care affordable. What you hear from the right, mostly on the other side of the aisle, is, this is government run, this is government funded, this is a government takeover.

So you have the two extremes out here trying to take shots at one another. Those of us in the middle are sort of collateral damage or road kill. But at the end of the day, a lot of times when you find neither the left nor the right are entirely pleased with the outcome, sometimes that suggests that the outcome is not all that bad.

I am not saying this is a perfect balance, but it is not a bad balance. For those, especially in our party, who feel as though we should have done more, I am sure in 1965, when Lyndon Johnson signed into law the Medicare legislation, there were probably some who did not vote for it—and I am told it was mostly Democrats who voted for it, not so much our Republican friends—but I am not sure how many Democrats who voted for Medicare at the time said: It does not do enough for our senior citizens. It does not provide for hospice care. It does not provide for home health care. It does not provide for disability benefits for those who are under the age of 65. There is no prescription drug program. There is nothing for outpatient surgery. None of those things were in the original Medicare legislation. Over time, they have been added, and I think the Medicare legislation, the Medicare law, has been improved to make it a better program.

Now we face a day when the Medicare Program is literally running out of money. One of the less-told secrets in the legislation that is before us is that the life of the Medicare trust fund—life that has been down to about 7 or 8 years—I understand, thanks to the reforms that are in this legislation, should be pretty much doubled. That is not good enough, but we are going to stretch by about 100 percent the useful remaining life of the Medicare Program.

Another fact that is sort of lost in all the debate, all the tumult, is what this does with respect to our budget deficits. I am told by—not us, not Democrats or Republicans—the neutral Congressional Budget Office, which is neither Democratic nor Republican—nonpartisan—that the legislation, if we adopt it in its current form, will reduce the deficit over the next 10 years by about $130 billion, and by as much as maybe $1 trillion, $1.3 trillion in the second 10 years beyond that.

In terms of what is going to happen as to the cost of premiums, we are told, again, by the nonpartisan Congressional Budget Office that rather than spiking premiums, we are actually going to see people get somewhat better coverage for, frankly, not more money in terms of their premiums.

In terms of those of us who just love the health insurance we have—we are delighted with the coverage and the amount we pay for it—I would just remind all of us of a couple things: One, we have spent more money by far than any nation on Earth for health care—about 1½ times more than the next closest country. We do not get better results. In many cases, we get worse results.

We have about 14,000 people who woke up with health care coverage who will wake up tomorrow morning and they will not have it; they will have lost it. Over 40 million people in our country have no health care coverage at all.

Finally, we have big companies such as GM and Chrysler that have gone bankrupt because they cannot compete with foreign competitors because of the price of our health care; and that is true with a lot of smaller companies as well.

The idea of doing nothing is, to my mind, not a very smart thing to do. We have to do a number of things to accomplish three goals: No. 1, rein in the growth of health care costs. This idea of two, three times the rate of inflation in the growth of health care costs is not sustainable. Frankly, if we do not rein in the growth of health care costs, neither will be sustainable the coverage we extend to people who do not have it today.

The third thing we try to work on in this legislation, to the extent we can—a lot of interesting things are going on in the private sector, very interesting things going on in the private sector, regarding how to instill personal responsibility in employees, and how to get better transparency and better costs through the health care delivery system. That is going to be a part of this as well. But we have to figure out a way to get better outcomes, and there are a lot of good examples for doing that.

I want to take the remaining time I have today to just mention some things that are in the legislation that I think make sense because they are based and founded on what works. And as an old Governor—and Senator NELSON has already spoken from Nebraska—we are used to focusing on what works and trying to replicate what works, steal ideas from other States and try to work them in our own State. I want to mention a couple things we have taken that work. We are trying to grow them and, in some cases, on a national level.

One of things Senator BAUCUS and his staff in the Finance Committee focused on, I think, is maybe the best idea in the health care legislation, something called an exchange.

When I was a naval flight officer, we used to go to the exchange on the base which was a place to buy stuff. It was like a little department store. The exchange in health care delivery, which will open in January 2014—I hope we can actually stand up the exchanges and open the exchanges sooner—but that is going to be a place for people to go and buy health care coverage. When people do that, they will become part of a purchasing pool in their State or maybe in a couple of States to sort of band together and form a regional purchasing pool.

Why is a purchasing pool important? Well, because we are part of one, and we know that with 8 million people in our purchasing pool—Federal employees, Federal retirees, all of our dependents—we get a lot of competition. A lot of private sector companies want to offer us products to choose from. We don't get cheap insurance, but we get pretty good prices. With 8 million people in a purchasing pool, we really drive down administrative costs to about 3 percent for every premium dollar. That is a lot lower than folks who try to go out and buy it on their own in the open market. They may pay 33 percent of their premium dollar for their administrative costs. They are not paying 3 percent. We are going to try to replicate that. We do it in the exchange.

There may be 50 exchanges throughout the country, some regional exchanges as well. So we do exchanges as well. When States create interstate compacts across State lines, such as Delaware with New Jersey or maybe Delaware and Maryland or Delaware and Pennsylvania, maybe all four of us, insurance sold in any of those four States can be sold across State lines and introduce new competition, additional competition for business and for the folks looking for coverage for those two or three or four States.

Another thing that works is the delivery system, delivery of health care in outfits such as the Cleveland Clinic and the Mayo Clinic, Geisinger in Pennsylvania, not far from where we are in Delaware, Intermountain Health out in Utah, and Kaiser Permanente in California.

I actually went with Rachuel Russell, a member of my staff, to the Cleveland Clinic about 3 months ago. What we found was the Cleveland Clinic and the Mayo Clinic and Geisinger and all these others pretty much all have the same template. They focus on primary care. They focus on prevention and wellness. They coordinate the care of folks who are receiving treatment. All of their patients have electronic health records.

Medical malpractice coverage is provided by the entity itself, the Mayo Clinic, Cleveland Clinic, and all the docs are on salary. They have gone after what we call not just defensive medicine but fee-for-service, and they have done a very good job reducing the problems that flow out of fee-for-service which lead to more utilization and unnecessary utilization of time, tests, technology. They get better outcomes and they spend less money.

What we are trying to do with this legislation is to take those health care delivery ideas from those nonprofits and instill them into the delivery of health care, particularly through Medicare but also in other ways too.

I like to shop for groceries. We have a bunch of good grocery stores in Delaware. One of the places I shop for groceries occasionally when I am in my State is a place called Safeway, in Dover. A guy named Steve Burd is the CEO of the company, and they have really helped inform our decision-making in this debate in ways that are pretty remarkable by virtue of the way they provide coverage to their employees. It is not just Safeway. It is not just Pitney Bowes. There are a number of companies that are figuring out how to get better results for less money, and we are borrowing some of their ideas.

One of the ways we are borrowing is to say, how does Safeway provide—literally flattening out for the last 4 or 5 years—health care coverage for their employees? They haven't reduced their benefits. One of the things they have done is to incentivize their employees, use financial incentives to get employees to—if they are overweight, to control their weight, get their weight down, and if they do that, their payments are reduced. If they are smokers, they get rewarded for stopping smoking. If they have high cholesterol or high blood pressure, they get rewarded by reduced premiums for reducing their cholesterol and blood pressure.

What we have done with our legislation—and I thank the chairman and my colleagues for their support, Democratic and Republican, for supporting an amendment by Senator ENSIGN and myself where employers would be able to provide a 30-percent discount to employees who do the right thing for their own health. By doing that, they will reduce health care costs for not just their employer but for others in the group in which they are covered.

There is another piece in the legislation that really borrows from an idea that is popping up in a couple of cities and maybe a State or two around the country, and that is, Why don't we better inform people? We are interested in personal responsibility, people taking charge of their own health and reducing their health care liability. Why don't we do a better job of ensuring that—when I go into a restaurant or anybody goes into a restaurant, we look at the menu board of a chain restaurant and we know right then and there what the calories are in what we are drinking or eating, for an entree, for a salad or dessert. I know it right there by looking at the menu board if it is a chain restaurant. If it is a menu, not a board, they have to have that information on the menu. They have to have on site additional information on 10 other items, including fats, trans fats, cholesterol, sodium, and on and on.

The idea is to make us better informed consumers. As we try to fight obesity in this country—about a third of our country is obese or overweight, and adults are worse than kids. Kids are catching up with their parents, unfortunately. That is one of the things that is in the legislation. We call it the Lean Act. The idea is to try to provide personal information so people can assume personal responsibility.

Speaking of what we should eat or not eat, I wish to mention doughnuts, and I will do it in the context of something called the doughnut hole. Folks who are Medicare eligible have probably heard this term before because under the Medicare prescription drug program, when people's out-of-pocket costs reach about—when their cost for medicines, their prescription medicines, reach about $2,500, the first $2,500, Medicare pays 75 percent of the cost and the individual pays 25 percent of the cost. But once a person's prescription costs reach $2,500 up to about $5,500, for most people Medicare doesn't pay anything and the individual pays it all. That $2,500 to $5,500 gap is called the doughnut hole. It has nothing to do with doughnuts, but that is the name we have given to it.

In the legislation that is before us—again, I give a lot of credit to our chairman and others who have negotiated this—we are going to fill the doughnut hole. We are going to basically cover people who are in that gap of the $2,500 to $5,500 so that people will be able to continue to take the medicine they need to take. They won't stop. They will have the availability to medicine.

They will also have access to something called primary care. I am at the tender age of 62, and I think my Presiding Officer, also from Delaware, is just about the same age as I. When people in this country end up being old enough for Medicare, they get a one-time-only Medicare physical. That is it—one time. If they live to be 105, they never get another one, at least not paid for by Medicare.

In terms of borrowing good ideas from the nonprofits, the Cleveland Clinics and the Mayo Clinics, we are going to say you get more than just one physical. You get it when you are 65 and 66 and 67 and 68, and if you live to be 105, God bless you, you will get it every year up until then; finding out what is right with people, what is wrong with people, and what they need to do more of or less of. That is a smart idea, and it is part of the reforms in the legislation.

In terms of going back to medicine, we want to make sure people have good access to primary care, annual physicals if they are on Medicare, so their doctor can find out what is wrong with them, if they need to exercise, stop smoking, control their weight, whatever that might be, but also to learn if there are some medicines they ought to be taking, and second, to make sure they can afford them. Third, our legislation actually improves their lives in terms of if medicines are prescribed, they will actually be taken and used the way they are prescribed.

There is a little piece in this legislation that Senator RON WYDEN deserves a lot of credit for called personalized medicine. The idea is that if there are certain people who, because of their genetic makeup, the way God made them, they have a particular condition and the medicine is not going to help them—if the same group of people have the same problem—or if a different group of people have a different genetic makeup and the medicine will help one group and not the other, we want to make sure we spend the money on the folks who will be helped and not waste money on the folks who will never be helped because of their genetic makeup—literally, the way the Good Lord made them. That is called personalized medicine, and it is in this legislation. I think in the future it will be a very important addition.

Lastly, I want to build on a proposal offered again by Senator BAUCUS with Senator ENZI, and the issue is defensive medicine.

The ACTING PRESIDENT pro tempore. The Senator has used 15 minutes.

Mr. CARPER. Thank you.

The issue is defensive medicine. The issue is medical malpractice. There have been a couple of amendments offered by friends across the aisle for us to try to deal with the incidence of medical malpractice lawsuits, the defensive medicine that sort of flows from there where doctors prescribe really too many tests and too many procedures and maybe too many of the wrong kinds of medicine just in an effort to reduce the likelihood they are going to be sued. What we have done here is to take an idea from the States.

The States have done some very interesting stuff with respect to trying to make sure we reduce the incidence of medical malpractice lawsuits, that we reduce the incidence of defensive medicine, and we actually improve health care outcomes. We are going to take those ideas, one called Sorry Works that they were using up in Michigan where people have an opportunity—doctors have an opportunity to apologize and offer a financial settlement to people and patients who have been harmed by that doctor; an idea called panels of certification like we have in Delaware where before I can sue my doctor I have to go before a panel to find out if my suit has any basis in fact. We are going to take ideas like safe harbor. If a doctor does all the things by the book, everything by the book, should that doctor receive some kind of expectation that maybe they are safe from lawsuits or reduced exposures to lawsuits? We think there should be some of that. There is the idea of health courts, where there are folks on the court, like the bankruptcy courts, folks who are the experts, and before a suit can actually go into a court, that health court would actually sit in determination of whether a doctor or a hospital or a nurse has really messed up. Those are all ideas that are being talked about, experimented with.

We are going to make sure they are robustly tested. States are going to apply for grants to test those ideas and maybe others to accomplish three things: one, reducing medical malpractice lawsuits; two, reducing the incidence of defensive medicine; and three, and most importantly, improving health care outcomes.

Those ideas build on what works. They are not Democratic ideas. They are not Republican ideas. I think they are just smart ideas for the most part. They are ideas that, as time goes by, people will find out if they really do the trick in helping to rein in health care costs so the coverage we extend can be sustained.

I will just close with this, if I could. For the folks in this country who are

totally confused by all this, for the people who are scared that we are doing something really foolish and it is going to be a disaster for our country, let me just say that when all the negative ads sort of stop being funded, when folks have actually had a chance to understand some of the things I have talked about here today and a lot of the aspects of the bill that really will improve outcomes, that really will rein in the growth of cost, that really will extend coverage, I think they really will be pleasantly surprised.

In closing, I am the guy who came here always believing that Democrats and Republicans should work together. I know our chairman tried mightily in the Finance Committee to do that, and I commend him and others for their effort. When we come back, we can't have another 12 months of this or 12 years of this. Our country is in trouble if this is the way we are going to be doing business in the future. Our country is in trouble.

My hope is that we will get this done, we will get it behind us, we will improve the bill in conference, and the President will provide a signature for us, and we will go back to work on implementing this. Just like Medicare. Just like Medicare. The key isn't just to stop; the key is to make it better and to build on this as a foundation. I am committed to doing that. I know my colleagues on this side of the aisle are committed to doing that. My hope and prayer is that our friends on the other side will want to join us in that effort.

Again, I commend our chairman of the Finance Committee, our leadership, Senator REID, and others. I commend my friend OLYMPIA SNOWE, who showed a lot of courage during the course of this debate in committee and here on the floor. She was under enormous pressure, as were some of our Republican colleagues on the Finance Committee whom I am convinced would like to have been with us, and I believe we would have had an even better bill if the pressure from within their own party had allowed them to be more fully participative. But that wasn't the case this time. It has to be the next.

On that happy note, I say to my colleagues, we will gather again after the holidays and get this job done and look forward to working on a host of other issues. None will be more important than this one. None will be more important than this one.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I want to begin by saying I agree with my colleague from Delaware. This partisanship has to stop. It is just too much. It is ironic, it is bittersweet that we are reaching a high point because we are going to pass health care reform legislation, but we are reaching a low point, too, in terms of partisanship. It is very unfortunate. Many of us over the last several days have been scratching our heads just trying to figure out what we can do to avoid this next year. Hope springs eternal.

I know this Senator and I know the occupant of the chair want to try to find ways for this body to be much more civil. We are not just blowing smoke here. We really mean it. I thank very much the Senator from Delaware for raising that point. It is needed, and I do think this country is in trouble if we don't find some solution to handle this excessive partisanship which is certainly hurting our country.

On another matter, some of my colleagues on the other side of the aisle have asserted that the penalty that is proposed under the bill before us for failing to maintain health coverage is unconstitutional. One Senator has raised a point of order—Senator ENSIGN—on that subject, and that is now pending.

Those of us who voted to proceed to the health reform bill and who voted for cloture on the substitute amendment take seriously our oath to defend the Constitution. Every Senator here takes that oath of office very seriously.

We have seriously looked at this question as well and have concluded that the penalty in the bill is constitutional.

Those who study constitutional law as a line of work have drawn that same conclusion. Most legal scholars who have considered the question of a requirement for individuals to purchase health care coverage argue forcefully that the requirement is within Congress's power to regulate interstate commerce.

Take Professor Erin Chemerinsky, a renowned constitutional law scholar, author of four popular treatises and casebooks on constitutional law and the dean of the University of California Irvine School of Law. Professor Chemerinsky has gone so far as to say that those arguing on the other side of the issue do not have ''the slightest merit from a constitutional perspective.''

In arguing that a requirement to have health care coverage falls within Congress's power to regulate interstate commerce, Professor Chemerinsky compares health care reform to the case of Gonzales v. Raich—often cited by the other side. In that case, the Supreme Court held that the Federal Government's commerce clause powers extend to the cultivation and possession of small amounts of marijuana for personal use. Professor Chemerinsky notes that the relationship between health care coverage and the national economy is even clearer than the cultivation and possession involved in Gonzalez v. Raich.

Mr. President, I ask unanimous consent that Professor Chemerinsky's Los Angeles Times article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[FROM THE LOS ANGELES TIMES, OCT. 6, 2009]

THE CONSTITUTIONALITY OF HEALTHCARE

(By Erwin Chemerinsky)

Are the healthcare bills pending in the House and Senate unconstitutional?

That's what some of the bills' critics have alleged. Their argument focuses on the fact that most of the major proposals would require all Americans to obtain healthcare coverage or pay a tax if they don't. Those too poor to afford insurance would have their health coverage provided by the state.

Although the desirability of this approach can be debated, it unquestionably would be constitutional.

Those who claim otherwise make two arguments. First, they say the requirement is beyond the scope of Congress' powers. And second, they say that people have a right to be uninsured and that requiring them to buy health insurance violates individual liberty. Neither argument has the slightest merit from a constitutional perspective.

Congress has broad power to tax and spend for the general welfare. In the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress' power. The ability in particular of Congress to tax people to spend money for health coverage has been long established with programs such as Medicare and Medicaid.

Congress has every right to create either a broad new tax to pay for a national healthcare program or to impose a tax only on those who have no health insurance.

The reality is that virtually everyone will, at some point, need medical care. And, if a person has certain kinds of communicable diseases, the government will insist that he or she be treated whether they are insured or not. A tax on the uninsured is a way of paying for the costs of their likely future medical care.

Another basis for the power of Congress to impose a health insurance mandate is that the legislature is charged with regulating commerce among the states. The Supreme Court has held that this means Congress has the ability to regulate activities that have a substantial effect on interstate commerce. A few years ago, for example, the court held that Congress could prohibit individuals from cultivating and possessing small amounts of marijuana for personal medicinal use because marijuana is bought and sold in interstate commerce.

The relationship between healthcare coverage and the national economy is even clearer. In 2007, healthcare expenditures amounted to $2.2 trillion, or $7,421 a person, and accounted for 16.2% of the gross domestic product.

The claim that individuals have a constitutional ''right'' to not have health insurance is no stronger than the objection that this would exceed Congress' powers. It is hard to even articulate the constitutional right that would be violated by requiring individuals to have health insurance or pay a tax.

Since the 19th century, the Supreme Court has consistently held that a tax cannot be challenged as an impermissible taking of private property for public use without just compensation. All taxes, of course, are a taking of private property for public use, and a tax to pay for health coverage—whether imposed on all Americans or just the uninsured—is certainly something Congress could impose.

The claim that an insurance mandate would violate the due process clause is also specious. Most states have a requirement for mandatory car insurance, and every challenge to such mandates has been rejected. More important, since 1937, the Supreme Court has constantly held that government

regulations of property and the economy will be upheld as long as they are reasonable. Virtually every economic regulation and tax has been found to meet this requirement. A mandate for health coverage would meet this standard, which is so deferential to the government.

Finally, those who object to having health coverage on freedom-of-religion grounds also have no case. The Supreme Court has expressly rejected objections to paying Social Security and other taxes on religious grounds. More generally, the Supreme Court has ruled that individuals do not have a right to an exemption from a general law on the ground that it burdens their religion.

There is much to debate over healthcare reform and how to achieve it. But those who object on constitutional grounds are making a faulty argument that should have no place in the debate over this important public issue.

Mr. BAUCUS. Mr. President, as a second example, I refer my colleagues to an article by Mark Hall, a law professor at Wake Forest University. His article is a comprehensive peer-reviewed analysis of the constitutionality of a Federal individual responsibility requirement.

In this article, Professor Hall concludes that there are no plausible 10th amendment or States' rights issues arising from the imposition by Congress of an individual responsibility to maintain health coverage.

Professor Hall notes further that health care and health insurance both affect and are distributed through interstate commerce, and that gives Congress the power to legislate a coverage requirement using its commerce clause powers.

Professor Hall notes that the Supreme Court indicated in its decision in U.S. v. Morrison and U.S. v. Lopez—two other cases relied on by the other side—that the noneconomic, criminal nature of the conduct in those cases were central to the Court's decisions in those cases that the government had not appropriately exercised power under the commerce clause.

Health insurance, on the other hand, does not deal with criminal conduct. Health insurance is commercial and economic in nature and, to reiterate, substantially affects interstate commerce.

Health insurance and health care services are a significant part of the national economy. National health spending is 17.6 percent of the economy, and it is projected to increase from $2.5 trillion in 2009 to $4.7 trillion in 2019.

Private health insurance spending is projected to be $854 billion in 2009. It covers things such as medical supplies, drugs, and equipment that are shipped in interstate commerce.

Health insurance is sold by national or regional health insurance carriers. Thus, health insurance is sold in interstate commerce. As well, claims payments flow through interstate commerce.

The individual responsibility requirements, together with other provisions in the act, will add millions of new consumers to the health insurance market, increasing the supply and demand for health care services.

Under existing health and labor laws, the Federal Government has a significant role in regulating health insurance.

Other prominent legal scholars have also said that Congress has the constitutional authority to impose a requirement on individuals to maintain health coverage.

Jonathan Adler, a professor of law at Case Western Reserve University School of Law, stated:

In this case, the overall scheme would involve the regulation of ''commerce'' as the Supreme Court has defined it for several decades, as it would involve the regulation of health care markets. And the success of such a regulatory scheme would depend upon requiring all to participate.

Doug Kendall of the Constitutional Accountability Center similarly concluded:

The fundamental point behind pushing people into the private insurance market is to make sure that uninsured individuals who can pay for health insurance don't impose costs on other taxpayers.

Professor Michael Dorf of the Cornell University Law School also noted:

[T]he individual mandate is ''plainly adapted'' to the undoubtedly legitimate end of regulating the enormous and enormously important health care sector of the national economy. It is therefore constitutional.

Robert Shapiro, a professor of law at Emory University School of Law, stated:

When everyone thinks of the wisdom of an individual mandate, or of health care reform generally, it would be surprising if the Constitution prohibited a democratic resolution of the issue. Happily, it does not.

Thus, Mr. President, the weight of authority is that health care and insurance represent interstate commerce. The individual responsibility requirement to maintain coverage would be within Congress's power to regulate interstate commerce.

Mr. President, in the last hour, several Senators on the other side listed many organizations they claim oppose the bill before us. I will indicate many organizations that favor the health care reform bill.

I will begin with the American Medical Association. That is the major doctors association that supports this legislation. In fact, the incoming president, the president-elect of AMA, at a press conference yesterday, made that statement very clear.

In addition, the American Heart Association supports the legislation. They believe the many patient-centered provisions are a significant step toward meaningful health care.

The American Hospital Association supports passage of the legislation.

The American Cancer Society Action Network supports it.

The Federation of American Hospitals also supports it.

The National Puerto Rican Coalition supports this legislation.

Mr. President, it would be unfair to say that these are all totally 100 percent endorsements. Rather, these are statements of support from these organizations. Some totally support it, and some say there are very good features in it. As far as I know, none of these groups totally oppose this legislation. Some would like to see some changes, but they favor the legislation.

The American Association of Retired People supports this legislation. That is the largest seniors group. They think this is good—I am sure for a lot of reasons, but it extends the solvency to the Medicare trust fund for another 5 years.

The Business Roundtable supports this legislation. They say:

On behalf of the members of Business Roundtable, I want to commend you for your efforts to improve the health care reform legislation currently being considered by the United States Senate. The proposed legislation is a step toward our shared goal of providing high quality, affordable health care for all Americans. . . . As we understand it, the proposed legislation now will include provisions to accelerate and enhance the process for delivery reform for the Medicare system. . . . It strengthens the match between the insurance reforms and the individual obligation. . . . We will continue to work with you, the Congress and the Administration to ensure we achieve the goals we all set when this process began.

The American Diabetes Association also supports this bill. They say it is ''long overdue improvements to our broken health care system.''

The Small Business Majority also believes the managers' amendment ''includes new provisions essential for small business protection and survival.''

Doctors for America supports passage of this bill.

The National Hospice and Palliative Care Organization strongly supports this legislation. There has been confusion as to whether they did. But they strongly support it, saying:

On behalf of hospice and palliative care providers and the more than 1.5 million patients, and their families . . . would like to express our strong support for the national effort to enact health care reform. We acknowledge the enormity and complexity . . . and we applaud your recognition of the importance of various provisions. . . .

Families USA supports this legislation. I already mentioned AARP, which also supports it. Community Catalyst is another organization that supports it. U.S. PIRG supports it. The Center for American Progress supports it. Medco Health, Microsoft, a big company in the United States, makes a strong statement approving the measure we are considering here.

Many organizations support this legislation. I am sure there are more, but this is an example of a few.

How much time remains on our side?

The ACTING PRESIDENT pro tempore. There is 10 minutes remaining.

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

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

Mr. CASEY. Mr. President, I commend the work of our Finance Committee chairman, MAX BAUCUS, for so many things in this debate. First, for helping us get health care legislation moving in 2009 and now at the point of getting close to passing the bill. I am grateful for his leadership. There are some highlights of the bill I want to note in the remaining moments of our time.

First, there has been a lot of debate over the last couple of days and weeks—but even over months—about cost and care. Fortunately, we are able to report that with this bill coming out of the Senate, we will have more care and less costs. The deficit will be cut by $132 billion over 10 years as a result of this bill; $1.3 trillion will be cut in the deficit in the second decade.

It will provide coverage for 94 percent of the American people. This has not been talked about much, but the bill is a net tax cut for the American people. We are going to crack down on insurers' practices that have gone on too long, were allowed to go on for too many years: ending preexisting condition discrimination, and discrimination based upon gender, providing protection from exorbitant out-of-pocket costs, something we hear about all the time.

Just with regard to older citizens across our country, one, the bill will extend the solvency of Medicare; two, it makes prescription drugs more affordable by filling the so-called doughnut hole and helping people with those costs; cutting waste, fraud, and abuse in Medicare; ensuring Medicare funding to improving care for seniors not to insurance companies.

Small businesses—if there was one sector of our economy we have heard from over and over about the crushing burden of health care costs, it is small businesses. I know that tens of thousands of small businesses in Pennsylvania, for example, will benefit from this legislation.

There are two points with regard to the bill and small business. First, the bill provides tax credits to small businesses to make employee coverage more affordable.

Second, tax credits of up to 50 percent of premiums will be available to eligible firms that choose to offer coverage—a tremendous breakthrough for people out there who are creating most of the jobs in Pennsylvania and most of the jobs nationally.

One of the more unreported or underreported aspects of the bill is what happens immediately. A lot of folks say: We like your bill. We like what is going to happen. But a lot of it won't take effect for at least several years, until 2014.

A good part of the bill takes effect in 2010. A quick summary of those provisions: First, it provides affordable coverage to the uninsured with preexisting conditions. If there is an insurance company that excludes you because of a preexisting condition, you can go into a high-risk pool to get help right away.

It improves care to older citizens, as I mentioned, and lowers prescription drug costs.

It reduces costs for small businesses through tax credits.

Fourth, it extends coverage for young adults—young adults 25, 26 years old, who may be living under difficult circumstances and don't have insurance coverage. Preventive care—we preached and talked about that for years, and we point to studies and good practices, but we have never made it part of our overall health care bill. This bill does it.

We eliminate lifetime limits on the amount of coverage a person may receive—a terrible problem for families. The message from our system has been that we can cure you, but we have to limit the kind of care we are going to provide for you.

Three more points in this area: What are the immediate benefits in 2010? It prohibits discrimination based upon salary, gender, or illness. We make insurance plans more transparent and competitive.

Finally—and this is a rather new change—it prohibits insurance companies from denying children coverage due to a preexisting condition.

That has moved up in the bill, so to speak, to an immediate benefit for children. So at least in the short term for children, there will be no more denying them coverage due to a preexisting condition—a tremendous breakthrough for a child, for his or her family, and for our economy and for our health care system, to protect children in a very substantial way. Whether it is cutting the deficit, providing better quality of care, providing opportunities for great prevention which will lead to a healthier outcome, protecting people so they do not have to go bankrupt to get the care they need, and especially for protecting older citizens and children, this bill moves forward in a way we have never had an opportunity to move our system forward in a very positive way.

I again commend Chairman BAUCUS on his work and our majority leader, HARRY REID, and all those who made it possible to move this bill forward and to have it passed through the Senate and move it to enactment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I see no Senator seeking recognition. I ask unanimous consent that the next block of time begin immediately.

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

The Senator from Florida.

Mr. LEMIEUX. Mr. President, I thank the chairman of the Senate Finance Committee for his courtesy. I appreciate the opportunity to be here.

I understand, Mr. President, I have a certain allotment of time. If I can be notified when I have 2 minutes remaining, I would appreciate that.

The ACTING PRESIDENT pro tempore. The Chair is unaware of any restrictions. There is 1 hour for the Senator's side.

Mr. LEMIEUX. OK. If I can be notified when I have spoken for 20 minutes.

The ACTING PRESIDENT pro tempore. The Chair will so notify the Senator.

Mr. LEMIEUX. Mr. President, I rise today to talk about this health care bill. I have spoken about it before. I feel obligated on behalf of my State of Florida to explain why I, unfortunately, will not be able to support this bill on final passage. I think, in doing so, it is important to talk about why we are here and how we got here.

I am sure the American people think that in this process of debating health care over the past weeks and months, this has been a process where both sides, Republicans and Democrats, have worked together, sat in an open room and gave ideas back and forth; that there has been give-and-take and compromise so that we could come to the plan that is before us today. I am sure the American people believe that amendments were offered, that each Senator could come to the floor and offer amendments and that his and her colleagues were allowed to hear about those amendments and vote them up or down. I also believe the American people think we do not just come to this Chamber and give monologs. They probably think this room is not empty and that there are just two of my distinguished colleagues here but that we all sit here and listen to each others' arguments and decide what is best for the American people.

Unfortunately, that is not the case with this bill. This bill was designed and crafted by the Democratic leadership, without the input of the colleagues from this side of the aisle. There was no give-and-take. There was no back-and-forth in a conference room with C–SPAN in the room, as the President told us he would ensure when he ran for the Office of the Presidency. And we did not have the opportunity to offer amendments to make this bill better.

I know that seems hard to believe, that we would not have the ability to offer amendments to make this bill better, but I can prove it to you.

I have an amendment at the desk. It is amendment No. 3225. What this amendment does is it takes a piece of legislation I filed shortly after coming to the Senate in September of this year—the legislation is called the Prevent Health Care Fraud Act of 2009. This legislation has 11 cosponsors. It has bipartisan support.

What the bill does is basically three things:

First, it creates the chief health care fraud prevention officer of the United States. It would be the No. 2 person at Health and Human Services. Their only job would be to ferret out health care fraud.

Second, it would use and take a page from the private sector to go after fraud. There is an industry out there right now that does an excellent job of stopping fraud. That industry is about the same size as the health care industry. It is the credit card business. It is about a $2 trillion business. Health care is about a $2 trillion business. In health care and in Medicare alone, estimates are that $1 out of every $7 in Medicare is fraud. In the credit card business, it is pennies on the hundreds of dollars.

How does the credit card business do it? We have all had this experience. You go to purchase something in a store, and when you leave, you get an e-mail or a phone call and your credit card company says to you: Did you really mean to purchase that good or service? Guess what. If you say no, they don't pay. The way we do things in Medicare and Medicaid is we do pay-and-chase. We pay, and then when we think there is fraud, we try to go after it.

This model stops the fraud before it starts. A group here in Washington, DC, has evaluated this legislation and says that it might save as much as $20 billion a year in Medicare alone. We think there is $60 billion in fraud in Medicare—$1 out of every $7.

This proposal that we put forward also would require background checks for every health care provider in America to make sure they are not a criminal. Florida, my State, unfortunately is ground zero for health care fraud. We have the worst health care fraud in America. Just this past weekend, and I sent this letter around to my colleagues—a $61 million Medicare fraud scheme out of Florida and some other States.

My bill, this proposal which has bipartisan support, could save $20 billion a year. We have fashioned this bill into an amendment to this health care bill.

Mr. President, I ask unanimous consent that the pending amendment be set aside to call up my amendment. It is amendment No. 3225.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BAUCUS. Reserving the right to object, and I hope my colleague will let me say a word or two in my reservation, the underlying bill, while certainly objective, was crafted with the guidance of CMS, the Office of the Inspector General, HHS, and the Justice Department for stronger antifraud. It would give CMS new screening authority to provide resources to CMS for new screening authority. It also limits providers in other ways but more oversight when fraud is suspected, such as limiting durable medical equipment providers because we know it is fraught with fraud. We also require providers to have compliance programs, make sure providers know the rules. There are increased penalties for fraudulent activity in the bill as well. Most importantly, we will give CMS, HHS, OIJ, and DOJ more tools at their disposal to preserve and protect the program's integrity. The bill does a lot to protect fraud.

I might say, I know this is on his time, but this procedure has been unusual. I appreciate the indulgence of the Chair, as well as the indulgence of the Senator from Florida.

You will not believe the number of amendments that were offered on a bipartisan basis in the Finance Committee, as well as in the HELP Committee. They were adopted in both committees. It was very transparent, open, bipartisan. Unfortunately, by the time the bill got to the floor, it became apparent we were facing less than the nature of legitimate amendments, more message amendments. So the majority leader resorted to a procedure to move this bill expeditiously.

I am taking advantage of the Senator's time to explain all this. That is not the proper procedure. There are strong antifraud provisions in this legislation, and very respectfully I must object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. LEMIEUX. Mr. President, I thank the distinguished chairman of the Finance Committee. Sure, there are things in this bill that he pointed out to go after fraud. But I would like to inform the Senate of a report that came out evaluating this new bill, the managers' amendment.

I have a table which evaluates how much will be saved from the waste, fraud, and abuse provisions which are in this bill. It is $.9 billion. The proposal that I have, one group—and, again, it is not the CBO—one group has said it might save $20 billion a year.

Putting aside our differences, I sure wish we could talk about my amendment today, I say to my colleague. I hope we can revisit it after this is over because we should be able to agree, and it does have bipartisan support. I wish we could amend the bill today. I hear the objection, and I will move on. I hope we can talk about this.

Mr. BAUCUS. I ask the Senator if he might yield using time on our side. I fully agree with the Senator. It is unfortunate we cannot proceed at this moment. But I pledge my support next year to work aggressively with very strong oversight to boost our antifraud measures even more than they are in this bill.

There will be an awful lot of oversight necessary when the bill is passed to make sure all the provisions that are intended come true. In fact, we think we are working hard to get it passed; frankly, I think we have to work harder next year to make sure the provisions work. I pledge my support to work aggressively in that area.

Mr. LEMIEUX. I thank the chairman. I wish we could do it before we had to rush to judgment on this bill. I wish we had more time. I wish we did not have to be backed up against a wall before Christmas. I understand colleagues on the other side have a desire to get this bill done. But it is my concern with this measure and with the other measures in the bill that we could have worked together.

Mr. President, I say to the chairman, I am new to the Chamber. But this is not the way businesses work. It is not the way American families work. It is not the way even State legislators work, which I have experience with in Florida.

I wish we could have talked about that amendment and offered it. I wish my colleagues were here to debate it up or down. Let's talk about where we are instead. Let's talk about what this bill does and why I cannot, unfortunately, support it as a Senator from Florida.

We know this bill cuts Medicare by nearly $½ trillion. We know this bill raises taxes by nearly $½ trillion. And we know it does not accomplish the fundamental goal the President put forward when we embarked on this debate about health care reform.

The American people are beginning to realize and if they have not realized yet will be shocked to hear that this bill is not going to cut the cost of health care for people who have insurance already. That is the very reason this debate was embarked upon, not just access for people who do not have health care insurance but to bring the costs down. Health care has gone up 130 percent in the past 10 years. This bill will not address that. In fact, estimates show that for some folks, the cost of health care will go up.

There are basically five reasons why I cannot support this measure as a Senator from Florida.

I am concerned, first of all, about access and quality of care for our seniors. When you take $½ trillion out of Medicare, my fear is that it is going to diminish the quality of care for seniors in Florida.

It is said on the other side that we are not going to take away benefits, that we are just going to take money away from providers. It was said on the other side that the new insurance will take care of uncompensated care, so that the cuts to hospitals and to other providers will not really hurt seniors in the end. I think that is a tremendously risky experiment.

I cannot believe, at the end of the day, when we pay providers less, it is not going to affect benefits. Right now, studies show that 24 percent of seniors on Medicare trying to find primary care physicians cannot find one. I get letters from seniors in Florida who say they cannot find a doctor who will take their Medicare. We know in Medicaid it is worse. We know in Medicaid that if you are just going into the program and trying to find a physician, almost 40 percent of the physicians will not take you. In metropolitan areas for specialists, it is up to 50 percent who will not take Medicaid.

I fear that if we take nearly $½ trillion out of a program that is already in financial trouble, a program that in the next 7 years is going to be in serious financial trouble and not be able to

meet its obligations, that it is going to hurt seniors.

I have heard this discussion about how we are prolonging the life of Medicare. The distinguished chairman just spoke about it. But when you look at what the Actuary at HHS has said about that assumption, the assumption is that we are not going to restore the 21-percent decrease in physician payments which, of course, as soon as we get back in the new year, we are going to have before us.

You cannot take money out of Medicare and pay for a new program and shore up Medicare. You do not need an actuary or an evaluation or an analyst to tell you that. It is common sense. You cannot get blood from a stone. If the doctor is not in, it is not health care reform.

I have received a letter, as many of my colleagues have, from an organization called 60 Plus which represents 5.5 million seniors. James Martin, the president of 60 Plus, writes:

> Cutting half a trillion dollars from Medicare while adding 31 million more to the health care rolls is an outrage.
>
> 60 Plus strongly supports health care reform but first we should do no harm to a system serving so many so well. . . . Make incremental changes that do not bankrupt a system already teetering on insolvency.

I want to talk a minute about Medicare Advantage. There are more Floridians in Medicare Advantage than any other State. A lot has been said about this program. We have had amendments to try to stop the cuts. Mr. President, 950,000 Floridians—Medicare Advantage is a great program, and people in Florida enjoy it. Seniors enjoy it because they get more than regular care; they get eye care, hearing care, wellness, diabetic supplies, and other things that add to the quality of life of seniors and help their entire health care. These Medicare Advantage providers are actually working hard to make sure their senior customers are happy, not a concept you hear a lot about when the government is in charge.

There is a fix for Florida, as has been talked about, but I wish to talk about what that fix is, as I understand it. It is an off-ramp. For the rest of the country, it is going to be somewhat of an exit. For Florida, it is an off-ramp.

First of all, we don't know what will happen in conference. The Senate cuts $120 billion; the House cuts $170 billion. I don't know if the Florida fix will still be there. But in talking to experts and reading the bill myself—specifically around page 895 through about 901 of the original Reid bill—there is this grandfathering in for folks in Florida, and other areas, but part of Florida is covered. Of the 950,000 people, the experts think 150,000 to maybe as many as 250,000 will not get this grandfathering in. They are going to get the cuts to Medicare Advantage. So this is not good for them. Then, for the others, say, 700,000 people or so, every year, starting in 2013, their benefits—or the payments to the providers for benefits—are going to decline 5 percent a year. That is on pages 895 through 897. So it is an off-ramp. Every year, less payments. Every year, less benefits.

I talked to one provider down in Miami that many Senators in this Chamber have visited. He runs a very successful Medicare Advantage Program. He said these cuts would be devastating. So while it might not be an exit for Florida right away, it is certainly going to be an off-ramp that one day ends up being an exit.

Let's remember that many of the folks on the other side of the aisle who are proposing these cuts to Medicare Advantage didn't vote for Medicare Advantage to start with. They don't like it. They don't like the private sector being involved. They don't like these extra benefits being provided. It goes against what they philosophically believe. But I know Floridians like it. Because this bill cuts it, I can't be for it. No one can guarantee to me that in the next 10 years Medicare Advantage in Florida will be as robust as it is today.

I am concerned also about the home health care payments. I am concerned about what it is going to do to the small business home health care providers in Florida. I talked to the largest provider of home health care services in Florida, and he said: We will be fine, but the small businesses—the mom and pops who do this—will go out of business. That is disconcerting in a State with 11½ percent unemployment.

The second reason I can't support this bill is this is going to have a devastating effect on our State budget in Florida. We talked today to the head of the Florida health care system, the Agency for Health Care Administration, and these increases in Medicaid, raising Medicaid from 100 percent of poverty to 133 percent, are going to cost Florida an estimated $3½ billion over the next 10 years. That is $3½ billion Florida can't afford to pay.

Our budget has gone from $73 billion to $66 billion in a short period of time with the economic decline. Unlike this Chamber, which spends money it doesn't have, Florida has to balance its budget. So what happens when you have less money? You have to cut programs. But when you have a Federal mandate, you can't cut that. So what do you cut? You cut education and teachers. You cut law enforcement—not good for Florida. This is a burden Florida can't afford to pay. That is why all the Governors in the country—virtually Republican and Democratic alike—including our Governor, Charlie Crist, are against this unfunded mandate.

The third reason I can't support this bill is because it raises taxes—$518 billion. What happens when the drug company that makes your medicine or the medical device company that makes the lifesaving implement for you gets taxed? They are going to pass it along to you. They are going to put it right in the bill. That is the way it is going to work. That is why health care costs aren't going down for the 170 million Americans who have health insurance. In fact, for some, they are going to go up. That is not health care reform.

Fourth, this is a budget-busting bill. It is not deficit neutral. Let me explain why. You will hear reports this is going to cut more than $100 billion from the deficit over the next 10 years. Only in Washington, DC, could you come to this calculation. It is funny math. We have this Congressional Budget Office, which is sort of the arbiter of all things financial here in Washington. You send them a proposal and they give you an answer. But it is not a thinking answer; it is an analytical answer, and it gets gamed. What you send them determines what you get back. They only look at a 10-year period—what it is going to cost in the next 10 years. If you bring in more money than you spend in the next 10 years, then it will cut the budget. It will cut the deficit. That is what they say back to you.

So what was done in this bill in order to get something that would fulfill the President's promise to be a budget cut or at least deficit neutral? We have 10 years of taxes and 6 years of benefits. Most of the benefits don't start until 2014, yet the taxes start in 2 weeks—in January. That is akin to you going to buy a home and saying: I am going to live here for 10 years, and they say: That is great, start paying today and you can move in in 2014.

It is funny math. This is a $2.5 trillion new entitlement program we can't afford. We can't afford the programs we have, let alone the programs the majority in this Chamber want. We have a $12 trillion deficit. We have $30-some trillion in unfunded entitlement deficit. We have hundreds of thousands of dollars of debt for every family in America, and no plan to pay for it. We spend more than we take in. We spent $1.4 trillion—we have a $1.4 trillion deficit this year—just the debt this year. That is more than the past 4 years combined.

The American people are on to this and they are angry about it and they should be.

The ACTING PRESIDENT pro tempore. The Senator has used 20 minutes.

Mr. LEMIEUX. Fifth and finally, the reason I can't support this bill is it doesn't lower the cost of health insurance for Americans.

The Congressional Budget Office has said the majority of Americans would see the same increases as they currently get under the current system. For some people, individual policies, for example, they will receive a 10- to 13-percent increase.

I am going to conclude by saying this, and this will probably be the final time I will speak before we have final passage on this bill. I long for what could have been. We could have worked together. We could have had an 80-vote bill. We could have had a bill that would say insurance companies can't drop you if you are sick, insurance

companies can't deny you if you have a preexisting condition, insurance companies can compete across State lines, set up an exchange, give a tax credit to the American people, put money in their pocket, let them be consumers who go out and buy health insurance and drive the cost down because the market economy would, once again, work in health care.

This bill doesn't solve the problem. It perpetuates it and makes it worse. At the same time, it cuts health care for seniors and doesn't lower the cost of health insurance for most Americans. For more and more seniors, the doctor will not be in. That is not reform. For those reasons, respectfully, for that lost opportunity, I will not be able to support this bill.

I yield the remainder of my time to my friend and colleague from Alaska.

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

Ms. MURKOWSKI. Mr. President, I wish to acknowledge the very eloquent and articulate comments of my friend from Florida. We recognize that his time in the Senate has been relatively short, but in terms of an individual jumping in with both feet and embracing the challenges we clearly have in front of us and representing the constituents of the State of Florida in the manner he has, I think that deserves public recognition, and I thank the Senator for his leadership.

We have had occasion to talk about the similarities between Alaska and Florida. You might not think there would be much in relationship there—my being from the North and the cold versus the sunny South in Florida. But when it comes to our senior populations, this is where we truly have a shared interest. Florida has probably the largest number of seniors per capita, and in my State of Alaska, we are the State that has the fastest growing population of seniors per capita.

One might not think of Alaska as being a retirement haven, but more and more we are becoming so, and we share the same problems when it comes to access. When you can't get in to see a provider, when that insurance card is all we have given you, then we haven't done anything to provide for a level of care to improve the situation for the residents of Florida or the residents of Alaska. So what we are doing today—as we move toward final passage on legislation that I would concur with the Senator from Florida does not fix the problem—we are not dealing with how we appropriately and adequately provide for access to quality health care. We have much work remaining before us.

We have had some time these past couple days—actually these past couple weeks—as we have spent a considerable amount of time in our offices waiting for votes at 1 in the morning or votes at 7 o'clock in the morning, and I have had a chance to go through some things on my desk, but I have also had an opportunity to spend a lot of time checking to see what people are saying when they are contacting our office. The volume of correspondence, whether in e-mails or faxes or phone calls, coming in from Alaskans during this time has been absolutely unprecedented.

I think, typically, in the legislative calendar about this time—several days before Christmas—you don't see constituents contacting their Senators and pounding the drum. Well, let me tell you, the people in Alaska are pounding the drum. In just the past 24 hours, we have gotten probably close to about 500 health care e-mails that have come in. Overwhelmingly these are e-mails from constituents saying: No, this is not good. You must do what you can to prevent this reform package, as you call it, from moving forward.

It seems the longer the people from Alaska, the longer the people from around this country have to look at what is contained in this 2,000-plus page bill, the more they realize the negative impacts, the consequences to them and their families and their businesses and they are no longer silent. I have had so many calls and letters coming from people saying: I have never weighed in with you before, never weighed in with my delegation, but this is something I can't keep silent on.

When you look at some of the ones that have come in, these are just today's. This is one from a woman in Anchorage who says: Yesterday on the TV news I heard about the sweetheart deal Senator NELSON made regarding the rest of us paying Nebraska's Medicare bill forever. To say I am angry is putting it mildly.

There is a gentleman in Fairbanks who writes in: I am very skeptical about this mandatory health insurance that apparently everyone will have to buy in.

Here is one from a fellow in Anchorage also. He says: You are moving a health care bill that can't be understood unless a person has a law degree.

Another individual, and this is an interesting one. He and his family apparently own four indoor tanning businesses in Alaska. We need to get a little sunshine, even if it is not what God has provided us. But these are good businesses, and he says: When did this go from a 5-percent tax increase for cosmetic surgery to 10 percent for indoor tanning anyway? And he adds: Adding another 10-percent tax hike on small businesses, like indoor tanning, will likely drive many families, just like mine, into bankruptcy.

I could go on and on in terms of the stacks of correspondence and phone calls we have gotten, but suffice it to say, the more people understand what is in this legislation, the greater their concerns are and the greater their outrage as they learn what is contained in it.

One of the things I learned just yesterday, which I don't think we have gotten the focus or the attention on—and this is a concern that was raised by the Anchorage homebuilders and the Alaska State Home Building Association. They have pointed out that as an industry, the homebuilders industry, they are being unfairly singled out in this bill.

We have talked about the employer mandate that is contained in this legislation, and that mandate applies to those businesses with 50 or more employees. But there is a zing in this legislation to homebuilders who are now responsible for providing federally approved health benefits if they have five or more employees.

Look at what is going on throughout this country in terms of industries that have taken a real hit with this economic downturn and this recession. The homebuilding industry has suffered incredibly during this downturn. On top of depressed house prices and increases in home foreclosures, now we are now going to punish them with an employer mandate that treats them worse than any other employer. In other words, if you have five or more employees as a homebuilder, you need to know that your industry is the one, the only one that will be subject to the employer mandate of $750 per employee.

In Alaska, we checked to see how many individuals are homebuilders within the State. We have about 250 homebuilders in Alaska. But when you look to see how many individuals they employ, that is about 3,078 employees, it is about 12 employees to every builder. So the total homebuilding industry that would be impacted is about 800 employers in my State.

Yesterday, there was a letter sent to Members of the Senate. This is from the homebuilding industry as well as many other associated industries—the air-conditioning contractors, the builders and contractors, the electrical contractors. I wish to mention some of the statements that are contained in this letter. Again, it is written yesterday. They say:

> We are writing to express our strong opposition to language contained in the managers' amendment which excludes the construction industry from the small business exemption contained in the bill. The fact that the managers' amendment was made public less than 2 days before the first vote on the matter has increased the difficulty of playing a constructive role in the legislative process.

I will take a little detour from the letter. This is part of the problem. You have these organizations and groups, and there is a list of about a dozen of them here, that have signed on to this letter. They had literally hours before we were forced to vote on the managers' amendment. They did not know what was in the bill and how it impacted them. They go on to say:

> The managers' amendment singles out the construction industry by altering the exemption so it applies only to firms with fewer than 5 employees. This is an unprecedented assault on our industry. It is unreasonable to presume that small business owners can bear

the increased costs of these new benefits simply because Congress mandates that they do so.

They go on to conclude in the letter:

We are unaware of any data or evidence that suggests that the needs and struggles of a construction contractor with fewer than 50 employees are so different from those of small business owners in other industries, and absent such convincing evidence, we are left to assume that this specific provision is merely a political payoff to satisfy the desires of a small constituency.

Those are some pretty strong words there toward the end. But it does cause you to wonder why, in this legislation, we are going to require that businesses—only businesses in excess of 50 employees are going to be subject to this mandate. Why this unprecedented assault on the homebuilders? I don't get it. But what it does cause me to get is that there is a heck of a lot more out there that, the more we read it, the more we sit down and we connect the dots, the more we realize this fish we have set out on the front porch is going to continue to stink.

It stuns me. We have the homebuilders up in Alaska who are beside themselves, saying: Can you take a look at this and let me know how the Senators feel. What are you going to do about this, LISA, is the question I have received.

This is something we all have to reckon with.

Madam President, at the conclusion of my remarks, I ask unanimous consent that a copy of the letter be printed in the RECORD.

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

(See Exhibit 1.)

Ms. MURKOWSKI. I am going to speak a little bit about how aspects of this legislation have impact specifically on my State. As a rural State, sometimes the impacts we see are different than you have in more urban States. Our geography is different, our lack of providers, our high senior population, our extremely expensive costs, there are a lot of dynamics at play that cause real issues and real concerns.

There have been many words that have been exchanged on this floor about what this bill doesn't do or what it does do. I find it helpful to go to the experts, the think tank in my State, and ask them flat out. We have an institution at the University of Alaska called the Institute of Social Economic Research. I take what they have to say very seriously.

I also take very seriously what our Congressional Budget Office has to say, what the CMS Actuary has to say, because, as my colleague from Florida pointed out, these are the independent arbiters. These are the guys whose job it is to work the numbers. I would like to discuss some of the findings from the University of Alaska and also try to inject a little bit of common sense into the debate as to what it means for Alaska, how it increases their premiums, how it raises that cost curve on the Federal health care expenses, the taxes on small businesses for the individuals, the families, the health benefits of the police, the firefighters, other public protective service people who put their lives on the line for so many. These are the things about which, unfortunately, we might not be getting the full picture.

Our colleagues on the other side have claimed that health care coverage will be expanded. Again, let's go to our nonpartisan entities—the CBO and the Joint Committee on Taxation. The average premium per person, if you purchase in the individual market, is going to be 10 to 13 percent higher in 2016 than the average premium under current law. That tells you if these Federal scorekeepers are correct, your premiums are going to go up under this health bill if you buy insurance yourself.

In Alaska, according to ISER—again, the Institute for Social and Economic Research—you have about 28,000 Alaskans who would pay 12 percent more for their premiums. It is going to cost an individual in my State an extra $1,100 per year and a family in my State nearly $3,000 more per year for the coverage by 2016.

Again, you have to ask the question: Is health care expanding? This bill forces you to purchase federally approved health care; otherwise, you have to pay the penalty of $750 or 2 percent of your income if you earn more than $37,500.

If you look at Alaska's population, this is going to bring in more than 50 percent of Alaska's population who are going to be penalized if they fail to have health insurance. Again, you ask the question: Is health care coverage going to be expanded?

Since the law we are advancing is going to require that you buy federally approved health insurance, and then we are going to penalize you if you do not buy it, then what you have is the heavy hand of the Federal Government that forces you to buy health insurance, which is going to cost about 12 percent more once this bill is enacted—12 percent more than it would today.

The Democrats will also talk about the hidden tax on families and how that will go away because once this bill passes, under this bill, everyone is going to have coverage. Alaskans and all Americans who do not get federally approved health insurance that the Federal Government is going to require that you have, they are going to be fined $750, 2 percent of your taxable income, and what the Democrats will not tell you when they say health care coverage is going to be expanded or the hidden tax is going to go away is, those with income greater than $37,500—again, affecting over 50 percent of the people in my State—are going to be taxed a full 2 percent of their household income, once the bill is fully phased in, if they do not get health insurance. It is this penalty that is going to raise $15 billion to help pay for this bill. This is how we are paying for the bill.

CBO and CMS told us the taxes on medical devices—whether they are tongue depressors or x-rays or blood sugar meters—these are going to be passed on to the individuals so you are going to be taxed for vital medications and other health products. The question you then have to ask yourself: OK, so do these hidden costs actually go away?

I suppose they do because they are no longer hidden. What we will have done is we will have raised your premiums, we will have increased the penalties on those earning more than $37,500 who did not buy into health insurance, and we will have taxed your tongue depressors and x-rays to pay for the bill.

In addition, the smallest of the small businesses are going to be taxed if they do not provide insurance for their employees, and individuals and couples earning over $200,000, they are going to be penalized because they are the higher income earners.

The Democrats are also telling you that as Medicare patients, they are going to get some good, positive things. They will get free preventive services. This is good. This is absolutely great. We should be encouraging preventive services.

But as my colleague from Florida was explaining, as I mentioned, after this bill passes, are any of the 13—I think we are down to only 12 now—primary care doctors in Alaska, in the Anchorage area anyway, accepting new Medicare patients? We are saying we are going to provide this service to you at no cost. But, again, if you can't get anybody who will take you as a patient, how are we helping you? We have heard from a doctor in Anchorage. In fact, I have an opinion piece that was published just this week in the Anchorage Daily News. She indicates she is dropping out of Medicare and she is doing it because of this legislation.

I ask unanimous consent that be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Anchorage Daily News, Dec. 18, 2009]

OPINION: DOCTORS AND PATIENTS, NOT FEDS, KNOW BEST

(By Ilona Farr, M.D.)

I have made the heart-wrenching decision as a physician to opt out of Medicare. I do so after working with Sen. Stevens, Sen. Murkowski and Rep. Young for a decade in hopes we could ensure seniors would be able to continue to receive medical services in Alaska.

On a visit costing $115, Medicare pays $40, secondary insurance pays $7, and the rest—$68—is a loss, not a tax write-off. It takes six insurance paying patient visits to offset losses from one Medicare or Medicaid patient.

The House health care bills, HR3590/HR3962, increase the number of people not paying their share of the costs and will lead doctors to opt out of Medicare or retire early.

Anchorage has 75 family physicians, down from 180. Physician shortages like these are

caused by government interference in the free market. Government artificially keeps reimbursement rates low, forcing other patients, and insurance companies, to pick up the additional costs. Family practice residencies are filled with foreign medical graduates because of high costs (more than $200,000) associated with medical school. Low physician reimbursement rates make it difficult to repay loans.

Medicare and Medicaid auditors are paid on commission, can fine us $2,000 to $50,000 for one charting mistake or billing error, and then extrapolate this over the practice and drive us out of business . . . all for one minor mistake. There is fraud, but this system that penalizes us severely for simple errors is untenable.

In these bills malpractice reform is restricted, health savings accounts (which help reduce costs and fraud) are essentially eliminated, and taxes and fees on insurance and medical services are increased. There are no Medicare/Medicaid rate, rule, or audit reforms, or tax write-offs for business losses.

One section in Sen. Harry Reid's bill says Medicare will no longer pay for home health services, durable medical goods, and possibly labs, X-rays, prescriptions or other services written by providers who have opted out of Medicare. Many talented physicians have had to opt out of Medicare (and by this law must opt out of Medicaid and the military's Tricare also) to stay in business. People will no longer be able to see these physicians because of government financial restrictions or will be forced to pay all medical bills associated with these visits themselves.

Bills under consideration cut Medicare spending by $460 billion, raise fees on medical services, increase physicians' administrative burdens, promote electronic medical records with mandated reporting of outcomes data, and increase business costs so it will be impossible for small practices to survive.

My decision to withdraw from Medicare was also precipitated by U.S. Preventive Services Task Force's recommendation that breast cancer screening mammograms should only be done on women between age 50 and 74. Approximately 48 percent of my patients with breast cancer developed it before age 50. Up to 1.2 percent of my practice, mostly young mothers, could have died if this were a national guideline.

The Senate bill has this task force and other committees determining what tests will be covered for patients. I am concerned that penalties may be imposed on insurance companies, and maybe providers, for going against these guidelines. The Hippocratic Oath compels us to protect the health of all humans throughout life, and many provisions in these health care bills would cause us to violate that oath.

Physicians and patients (not government) should decide the best, most cost-effective medical treatment for patients. Government should not dictate to insurance companies or providers which tests can or cannot be covered. Medicine is changing too rapidly for guidelines to be made at a national level.

I have worked in government medical facilities and in private practice for the last 26 years. Physicians provide timelier, less costly and more patient-oriented care if not overseen by hordes of non-producing government administrators.

I am in favor of reform, but current bills before Congress will collapse our health care system and work against the freedoms we are guaranteed under the Constitution. Government should not be allowed to force people to purchase health insurance, mandate what health care services you are allowed, or increase our taxes astronomically to support a huge government health care bureaucracy that will bankrupt us as individuals and as a nation.

Ms. MURKOWSKI. It is no secret, in my State of Alaska and in far too many States around this country, we do not have enough providers that will take these individuals. ISER has said seniors in low payment Medicare States will be forced to wait in line. Alaska is one of two States—we are, I think, second to last in terms of Medicare payments and where we stack up in relation to the reimbursement. ISER goes on to state:

> Independent of the doc fix, in Alaska the remainder of seniors are at risk of long lines to see a primary care doctor and overflowing to community health center and hospital emergency rooms where existing capacity is highly likely to be quickly overwhelmed and long wait times become increasingly common.

ISER has also said that additional new insured patients are going to hurt Medicare beneficiaries, and they state:

> Federal healthcare reform applied to Alaska likely will exacerbate an already very challenging situation for Alaska's seniors as baby boomers age into Medicare and finding themselves waiting in line behind a rapidly expanding line of better paying private plans.

We are told 5 years from now our Medicare population is going to increase by 50 percent. We cannot accommodate those who are Medicare-eligible now. Our boom is not sustainable.

The CMS Actuary has said:

> The Reid bill reduces payments to health care providers, which is unlikely to be sustainable on a permanent basis. As a result, providers could find it difficult to remain profitable and absent legislative intervention, might end their participation in the Medicare program.

It is happening. Doctors, providers, physicians are making those decisions as we speak. They are opting out. So this is not some theoretical approach to the problem. This is happening.

Madam President, how much time do we have on our side?

The PRESIDING OFFICER. The Senator has 17 minutes.

Ms. MURKOWSKI. If I may ask my colleague from Kansas, do I understand the Senator is seeking about 10 minutes?

Mr. BROWNBACK. Yes.

Ms. MURKOWSKI. Madam President, I want to speak about small businesses because we have all been talking about the impact to small businesses. Under this bill, as we know, small businesses are going to be penalized $750 per employee if even one of their employees seeks governmental health care through Medicaid or through Federal subsidies. So if you have 50 or more employees, you can be expected to pay fines in an amount of $750 per employee, which amounts to over $37,000 or $3,000 for that individual employee.

I think we need to put it into perspective in terms of who these businesses are. These are the solo-practitioners, like the one-lawyer office or the small doctor's office. If these individuals purchase health care in the individual market, they are going to see their premiums go up an extra $1,160 per year for a family—nearly $3,000 more in 2016.

Alaska is defined as a high-cost State. If you are a small business that can afford to pay good health and dental benefits for your employees and those benefits amount to $8,500 per individual or $23,000 per family, in a high-cost State such as Alaska, you look to be hit with a 40-percent excise tax because you basically want to provide your employees with good benefits.

Again, according to ISER:

> Alaska is a high cost state and thus, roughly 50 percent of health plans in Alaska will be subject to the tax by 2016, compared to only 19 percent average in the Lower 48.

Again, by 2016, 50 percent of the plans in my State will be subject to this 40-percent excise tax.

I ask unanimous consent to have printed in the RECORD a letter we received from the municipality of Anchorage, Police and Fire Retiree Medical Trust.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MUNICIPALITY OF ANCHORAGE, POLICE & FIRE RETIREE MEDICAL TRUST,

December 15, 2009.

PLAN ADMINISTRATOR REPORT

At the November 24, 2009 PFRMT board meeting I brought to your attention a health care bill, HR 3590as—Patient Protection and Affordable Care Act, being considered in the US Senate that contains provisions that if implement into law would require that the Municipality of Anchorage (MOA) and the Trust to make changes to their current business practices. S 1796—America's Healthy Future Act of 2009 also contains these changes and could become effective January 1, 2010.

Three provisions in the bill that are of particular concern are:

1. Inclusion of health care benefits as taxable income to employees. Not only will this increase the employee's taxable income but the MOA's payroll taxes will also increase.

SEC. 9002. INCLUSION OF COST OF EMPLOYER-SPONSORED HEALTH COVERAGE ON W–2. (p. 1996)

(b) EFFECTIVE DATE—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

2. Taxation of MOA health care plans. This tax will be imposed on the employer. The current MOA health plan design is apt to be considered to have an ''excess benefit''. This would make it subject to a 40% excise tax. There is also an aggregation rule for the value of employee coverage with multiple employers or retiree medical (example, veterans and rehired police officers and fire fighters). If a retiree would purchase MOA Health Insurance that is considered excessive, the 40% excise tax would be incurred by the general fund of the Medical Trust. One may argue that the tax is a tax to the employer. The argument can also be made that the Trust is an integral part of the Municipality. This was a conclusion determined in IRS PLR–06164–96. Thus the tax would be payable from the Trust general fund assets.

SEC. 9001. EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE. (P. 1979)

''any excess benefit with respect to coverage, there is hereby imposed a tax equal to 40% of the excess benefit.''

(d) (1) (E) GOVERNMENTAL PLANS INCLUDED

IRS PLR–06164–96 Because the Trust is an integral part of the Municipality, it is not required to file an annual federal income tax return. (p.5)

3. Current Municipal employees are able to be reimbursed tax free from money that they have placed in their flexible spending account for over the counter (OTC) medicine. Retired police officers and fire fighters also currently are allowed this reimbursement as part of their medical benefit. Under the rules of this bill, these reimbursements would no longer be allowed. This is a reduction in employee benefits. It is also likely to encourage an increase the utilization of more expensive non-OTC prescriptions, as they are a covered expense.

SEC. 9003. DISTRIBUTIONS FOR MEDICINE QUALIFIED ONLY IF FOR PRESCRIBED DRUG OR INSULIN. (p. 1997)

This bill contains expenses that should be considered and planned for accordingly. A December 2009 press release from Mercer, an HR consultancy stated,

Nearly two-thirds (63 percent) of employers in a recent survey by Mercer say they would cut health benefits to avoid paying an excise tax included in the Senate's Patient Protection and Affordable Care Act, unveiled November 18. Mercer estimates that one in five employers offer health coverage that would be deemed ''too generous'' and thus be subject to the Act's 40 percent non-deductible tax on the excess value.

Two letters have been sent to the MOA informing them of these matters. The dates of these letters were November 25 and December 5, 2009. Since then, Larry Baker, Senior Policy Advisor, in the Mayor's Office informed me that the MOA's benefit consultant, The Wilson Agency, affirmed that the current MOA health plans are going to be subject to the 40% excise tax. They are contacting Senator Begich but beyond that he did not specify what the course of action was going to be.

I recommend two points of action. Bring the PFRMT membership up to date of this situation. And contact Senator Begich to inform him of the negative impact that these bills will have on our retired police officers' and fire fighters' medical benefit.

Sincerely,

LORNE BRETZ,
Plan Administrator.

Ms. MURKOWSKI. The city of Anchorage is the largest city in Alaska. We received this letter last week. In the letter, they cite specifically three provisions in the bill that are of particular concern—No. 1, inclusion of health care benefits as taxable income to employees.

It states:

Not only will this increase the employee's taxable income but the [Municipality of Anchorage's] payroll tax will also increase.

The second point is the taxation of the municipality's health care plans.

This tax will be imposed on the employer. The current [municipality] health plan design is apt to be considered to have ''an excess benefit.'' This would make it subject to a 40% excise tax.

They go on to say:

There is also an aggregation rule for the value of employee coverage with multiple employers or retiree medical. If a retiree would purchase [the municipality's] Health Insurance that is considered excessive, the 40% excise tax would be incurred.

One may argue that the tax is a tax to the employer. The argument can also be made that the Trust is an integral part of the Municipality. Thus the tax would be payable from the Trust general fund assets.

Their third point is:

Current municipal employees are able to be reimbursed tax free from money they have placed in their flexible spending account for over the counter medicine. Retired police officers and firefighters also currently are allowed this reimbursement as part of their medical benefit. Under the rules of this bill, these reimbursements would no longer be allowed. This is a reduction in employee benefits. It is also likely to encourage an increase [in] the utilization of more expensive non-OTC prescriptions, as they are a covered expense.

There are about 400 members that are part of the Police and Fire Retiree Medical Trust. When they find out, as I am sure they will, that essentially they are going to be taxed on their plan—I think most of these firefighters and police officers don't view themselves as having access to a Cadillac plan. They are just firefighters and police officers. But this is coming from their trust fund, expressing great concern over what we have in front of us.

I have mentioned that we have received a copy of an opinion piece from a primary care provider in Anchorage who has outlined why she is opting out of the Medicare system in Alaska.

I ask unanimous consent to have her letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Anchorage Daily News, Dec. 18, 2009]

OPINION: DOCTORS AND PATIENTS, NOT FEDS, KNOW BEST

(By Ilona Farr, M.D.)

I have made the heart-wrenching decision as a physician to opt out of Medicare. I do so after working with Sen. Stevens, Sen. Murkowski and Rep. Young for a decade in hopes we could ensure seniors would be able to continue to receive medical services in Alaska.

On a visit costing $115, Medicare pays $40, secondary insurance pays $7, and the rest—$68—is a loss, not a tax write-off. It takes six insurance paying patient visits to offset losses from one Medicare or Medicaid patient.

The House health care bills, HR3590/HR3962, increase the number of people not paying their share of the costs and will lead doctors to opt out of Medicare or retire early.

Anchorage has 75 family physicians, down from 180. Physician shortages like these are caused by government interference in the free market. Government artificially keeps reimbursement rates low, forcing other patients, and insurance companies, to pick up the additional costs. Family practice residencies are filled with foreign medical graduates because of high costs (more than $200,000) associated with medical school. Low physician reimbursement rates make it difficult to repay loans.

Medicare and Medicaid auditors are paid on commission, can fine us $2,000 to $50,000 for one charting mistake or billing error, and then extrapolate this over the practice and drive us out of business . . . all for one minor mistake. There is fraud, but this system that penalizes us severely for simple errors is untenable.

In these bills malpractice reform is restricted, health savings accounts (which help reduce costs and fraud) are essentially eliminated, and taxes and fees on insurance and medical services are increased. There are no Medicare/Medicaid rate, rule, or audit reforms, or tax write-offs for business losses.

One section in Sen. Harry Reid's bill says Medicare will no longer pay for home health services, durable medical goods, and possibly labs, X-rays, prescriptions or other services written by providers who have opted out of Medicare. Many talented physicians have had to opt out of Medicare (and by this law must opt out of Medicaid and the military's Tricare also) to stay in business. People will no longer be able to see these physicians because of government financial restrictions or will be forced to pay all medical bills associated with these visits themselves.

Bills under consideration cut Medicare spending by $460 billion, raise fees on medical services, increase physicians' administrative burdens, promote electronic medical records with mandated reporting of outcomes data, and increase business costs so it will be impossible for small practices to survive.

My decision to withdraw from Medicare was also precipitated by U.S. Preventive Services Task Force's recommendation that breast cancer screening mammograms should only be done on women between age 50 and 74. Approximately 48 percent of my patients with breast cancer developed it before age 50. Up to 1.2 percent of my practice, mostly young mothers, could have died if this were a national guideline.

The Senate bill has this task force and other committees determining what tests will be covered for patients. I am concerned that penalties may be imposed on insurance companies, and maybe providers, for going against these guidelines. The Hippocratic Oath compels us to protect the health of all humans throughout life, and many provisions in these health care bills would cause us to violate that oath.

Physicians and patients (not government) should decide the best, most cost-effective medical treatment for patients. Government should not dictate to insurance companies or providers which tests can or cannot be covered. Medicine is changing too rapidly for guidelines to be made at a national level.

I have worked in government medical facilities and in private practice for the last 26 years. Physicians provide timelier, less costly and more patient-oriented care if not overseen by hordes of non-producing government administrators.

I am in favor of reform, but current bills before Congress will collapse our health care system and work against the freedoms we are guaranteed under the Constitution. Government should not be allowed to force people to purchase health insurance, mandate what health care services you are allowed, or increase our taxes astronomically to support a huge government health care bureaucracy that will bankrupt us as individuals and as a nation.

Ms. MURKOWSKI. One of the things we don't have in this legislation is a provision that relates to medical malpractice. It has been stated that, in Alaska, you tried medical malpractice reform and we haven't seen the positive impacts.

I ask unanimous consent to have printed in the RECORD a statement from the Alaska State Medical Association, along with an article that was published in Alaska Medicine in September of 2009 entitled ''Malpractice Relief, Lower Premiums, Tort Reform Add to Alaska's Appeal.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ALASKA PHYSICIANS' GROUP: SENATOR ERRED ON TORT REFORM

ANCHORAGE, ALASKA (Dec. 21, 2009)—The Alaska State Medical Association (ASMA), which represents physicians throughout Alaska and is primarily concerned with the health of all Alaskans, is taking issue with Sen. Mark Begich's stance on medical liability reform.

In an interview with Fox News on Dec. 7, 2009, Alaska's junior senator opined that tort reform in his home state has not worked. ASMA asserts that Begich did not accurately portray the facts in that nationally broadcast interview and that medical liability reform in Alaska serves as a shining example for the other 49 states.

''Alaska's physicians have worked hard for at least the last 35 years to achieve meaningful and equitable liability reform measures,'' ASMA President Brion J. Beerle, MD, wrote today in a letter to Sen. Begich. ''Those efforts have resulted in a stable marketplace for insurers that provide medical professional liability coverage to Alaska's physicians at rates that are competitive.''

More than 90% of medical liability coverage in Alaska is provided by two, not-for-profit insurers—MIEC and NORCAL—that are owned by their policyholders (mutual insurers) and overseen by boards of governors, all of whom are physicians, with representation on those boards by Alaska physicians.

''The cumulative result of the Alaska physicians'' advocacy has been a success for physicians and their patients,'' Beerle wrote. ''For example, according to the Medical Liability Monitor Survey, 2008 premiums paid by Alaska's internists average just 24% of those paid by the interests in the five most expensive states; general surgeons pay about 25%; and obstetricians/gynecologists pay about 31%. According to that same 2008 survey, the premiums for those same specialties are in the lowest quartile of all states plus the District of Columbia.

''MIEC also has returned excess earnings to its policyholders in 16 of the last 19 years; and NORCAL policyholders received dividends in 12 of the last 18 years. MIEC has, in addition, reduced its rates by 5% in 2009 and also for 2010,'' the ASMA president added.

Writing on behalf of the association he leads, Beerle noted that because of tort reform, premiums Alaska's physicians pay for liability coverage is generally not significant in the cost of operating a medical practice.

''The factor that does have a material effect is the cost of practicing defensive medicine,'' he wrote.

The American Medical Association has estimated that the annual cost of the practice of defensive medicine in the United States ranges from $99 billion to $179 billion.

''Until medical liability reforms similar to those enacted in Alaska are adopted nationwide, the additional costs of the practice of defensive medicine will continue to be a driver in the cost of health care in Alaska and throughout the country,'' Beerle concluded.

[From Alaska Medicine, Sept. 2009]

MALPRACTICE RELIEF

(By Andrew Firth and Roger Holmes)

It is seemingly a universal truth that wherever one practices in the United States, malpractice insurance costs too much. But in Alaska, the average medical malpractice premiums are lower than at least 35 other states, a national survey shows.

Physicians in Alaska pay much less than their colleagues in the nation's five most costly states, according to the Medical Liability Monitor Survey, 2008. Premiums paid by Alaska's internists average 24 percent of those paid by internists in the five highest states; surgeons here pay roughly 25 percent, and obstetrician/gynecologists pay about 31 percent. (The top five states vary by specialty.) Some of the difference in cost may be societal, but part of it has to do with the tort reforms that have passed, or not passed, in each state.

In Alaska, our history is similar to many states where the costs are lower. It's a state with an active medical society (the Alaska State Medical Association), an engaged membership, a broad coalition of providers and an enlightened legislative body that recognizes the connection between malpractice costs and access to care.

In 1975, Alaskan physicians suddenly were confronted with a disappearing market for medical malpractice insurance. The Legislature stepped in and created the Medical Indemnity Corporation of Alaska (MICA), a quasi-state agency funded with state money but run by a private board of directors appointed by the governor. At the same time, the Legislature modified the law governing medical malpractice claims. Among the key changes:

The burden of proof was codified, making it clear that a practitioner could only be judged against those in the same field or specialty.

Res ipso loquitur, a legal doctrine that switched the burden of proof to the health-care provider in certain instances, was abolished.

The law required that juries be told that injury alone does not raise a presumption of negligence or misconduct.

Plaintiffs were prohibited from filing inflammatory pleadings asking for millions of dollars.

The law of informed consent was codified.

The law prohibited claims that a health-care provider had orally agreed to achieve a specific medical result.

Plaintiffs were prohibited from obtaining a recovery for sums that had been paid by collateral sources, except for a select few federal programs that must, by law, seek reimbursement.

During the 1970s and '80s physicians encountered rising and falling malpractice costs as the insurance cycle reacted to changing claim experience in Alaska and elsewhere, culminating in the departure of several medical professional liability (MPL) insurers in the late 1990s.

In the mid-1990s, the Alaska State Medical Association and several MPL insurers joined with the Alaska State Hospital and Nursing Home Association, Providence Hospital and the business community to press for additional tort reforms. The result was the 1997 Tort Reform Act.

Among its achievements was a cap on non-economic damages of $400,000 except in cases of severe disfigurement or severe permanent impairment, in which the cap rises to $1 million.

Punitive damages were limited, and the standards for awarding them were tightened. Prejudgment interest was tied to the federal discount rate—Alaska's current rate is 3.25 percent. Joint and several liability was abolished in favor of comparative fault, in which each party is responsible only for its percentage share of the total fault. And parties were prohibited from using experts in medical malpractice cases unless the expert is licensed, trained and experienced in the same discipline or school of practice as the physician and certified by a recognized board.

A coalition called Alaskans for Access to Health Care—comprising ASMA, Alaska Physicians & Surgeons, the hospital association and Providence—went back to the Legislature in 2005 and argued for an even lower non-economic damage cap for health-care providers. The result was a limit of $250,000 in all cases except when damages are awarded for wrongful death or a severe permanent physical impairment that is more that 70 percent disabling. For those, the limit is $400,000.

Since then, Alaska has enjoyed a stable malpractice climate, with both of its major insurance carriers reducing rates and/or returning profits through dividend distributions.

The caps make a big difference. For example, NORCAL Mutual, which writes policies in Alaska and California, also does business in Rhode Island, which does not limit non-economic damages in malpractice cases.

''Most rates for physicians with at least three years' practice experience (mature rates) in Rhode Island are at least double the mature rates for physicians in Alaska,'' NORCAL Marketing and Communications Manager Brent Samodurov wrote in an e-mail to Alaska Medicine. ''For several medical specialties NORCAL Mutual's rates for Rhode Island are nearly triple those for Alaska.''

MPL CARRIERS

There are two major MPL insurers in Alaska: MIEC and NORCAL. Both companies are owned by their policyholders (mutual insurers) and are overseen by a board of governors consisting of physicians.

MIEC came to Alaska in 1978 and is sponsored by ASMA. NORCAL became active in 1991 after it purchased MICA.

According to data published by the National Association of Insurance Commissioners, MIEC wrote 69.7 percent of all medical malpractice premiums for physicians in the state during 2008 and NORCAL wrote 23.4 percent. Ten other carriers shared the remaining 6.9 percent of the market.

Typical of these types of policyholder-owned companies, both MIEC and NORCAL have a long history of returning profits to policyholders through dividend distributions:

NORCAL's Alaska clients have received dividends in 12 of the past 18 years, the most recent amounting to 12 percent of each eligible policyholder's premium as of Sept. 30, 2008, according to Samodurov. He noted: ''Dividends declared are directly related to the company's loss experience in each state.''

MIEC has a similar record of returning profits to its Alaska members. MIEC policyholders have received dividends in 16 of the past 19 years in amounts that average 28.8 percent of basic premiums (for $1 million/$3 million limits) in each one of the past 19 years.

Ms. MURKOWSKI. The bottom line is from the Alaska State Medical Association:

The cumulative result of Alaska physicians' advocacy has been a success for physicians and their patients.

Again, we have seen the positive impact in Alaska because of the laws we have passed. It is unfortunate that we didn't take that opportunity as we dealt with health care reform these past many months.

I yield the floor.

EXHIBIT 1

DECEMBER 21, 2009.

U.S. Senate,
Washington, DC.

DEAR SENATOR: We are writing to express our strong opposition to language contained in the Manager's Amendment to H.R. 3590, which excludes the construction industry from the small business exemption contained in the bill. We regret that this is our first opportunity to address this issue, though the

fact that the Manager's Amendment was made public less than two days before the first vote on the matter has increased the difficulty of playing a constructive role in the legislative process.

In recognition of the negative impact that a mandate to provide health insurance will have on employers, H.R. 3590 exempts employers with fewer than 50 employees from the fines levied on those who cannot afford to provide their employees with the federal minimum standard of health insurance. However, the Manager's Amendment singles out the construction industry by altering the exemption so that it applies to only those firms with fewer than 5 employees.

This narrowly focused provision is an unprecedented assault on our industry, and the men and women who every day make the bold decision to strike out on their own by starting a business. Our members' benefit packages reflect the reality of their business models, and they proudly offer the best health insurance coverage that they can afford. It is unreasonable to presume that small business owners can bear the increased cost of these new benefits simply because Congress mandates that they do so.

In the real world, where the rhetoric surrounding this legislation will meet the stark reality of the employer struggling to make payroll, this special interest carve out is simply another bill to pay in an industry that, with an unemployment rate exceeding 18% and more than $200 billion in economic activity lost in the past year, already is struggling to survive.

And, we would be remiss if we failed to question the justification for singling out the construction industry to bear such a burden. We are unaware of any data or evidence that suggests that the needs and struggles of a construction contractor with fewer than 50 employees are so different from those of small business owners in other industries, and absent such convincing evidence, we are left to assume that this specific provision is merely a political payoff to satisfy the desires of a small constituency.

As Congress moves forward in the legislative process for H.R. 3590, we strongly encourage you to address this onerous provision that needlessly singles out small construction industry employers.

Sincerely,

Air Conditioning Contractors of America, American Institute of Architects, Associated Builders and Contractors, Associated Equipment Distributors, Associated General Contractors, Association of Equipment Manufacturers, Independent Electrical Contractors, National Association of Home Builders. National Federation of Independent Business, National Lumber and Building Material Dealers Association, National Ready-Mixed Concrete Association, National Roofing Contractors Association, National Utility Contractors Association, Plumbing-Heating-Cooling Contractors-National Association, Small Business & Entrepreneurship Council, U.S. Chamber of Commerce.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I am glad to join my colleagues in talking about the health care bill. If you looked in the New York Times today, there was a full-page ad describing the bill. I am putting it up here, the same thing that was in the New York Times today. It starts with the question, I want to receive care from my doctor. This, on one page, puts the 2,600 pages in kind of what you are going to see with this bill. It is convoluted. It is difficult. It is expensive. This is what you are going to get. This was in the New York Times today. This is where I sit or this is what is going to happen to me in this overall system. It is no wonder the American public doesn't want this. They are not excited about this. They are not excited about what it is going to do to the budget—$2.5 trillion. That is about $700 million a day, if you are counting in millions a day as one way to look at it.

There are some interesting things hidden within the bill. One of the things I want to point out is the transfer of wealth from young people to old. One of the things that has really bugged me about what we have done in so many of the government systems here—it has been a wealth transfer from younger people to older.

Several of my children are students and working part-time jobs, and they are paying payroll taxes. They say: What is this payroll tax going to? I say: Well, talk to your grandparents and tell them to say thank you to you. These are funds collected that are going to pay for their retirement funds. They do, and the grandparents say thank you. But it doesn't seem to be satisfying to them because they are saying: Why aren't I putting this in something I am saving money for me so that I can have something later on instead of this sort of, OK, I am paying and they are getting. What is going to be there when I get there?

That sort of wealth transfer from young people to old people continues in this bill. Look at this wealth transfer. Younger workers will pay more for health insurance premiums so that older workers can pay less. Their cost at age 25 will go up 25 percent for health insurance premiums. If you are 64, it will go down 20 percent for health care. This is another one of the wealth transfers that take place. It isn't right. It is taking from the kids. It is taking from the grandkids. It should not be continued. It is continued in this bill.

You can look at it another way: Subsidies in this bill go disproportionately to older Americans. Average subsidies for the 55-year-olds are nearly 10 times that of a 25-year-old. A 25-year-old gets a subsidy of $458, a 55-year-old gets a subsidy of $4,427—another wealth transfer from younger to older.

Then you can look at the claims in this bill that there are going to be tax cuts for the middle class. That is if you are in the lucky group. For every low-to-middle-income family with a tax cut, three low-to-middle-income families have a tax increase in this bill by the structure of this bill, by this structure, this convoluted, difficult-to-navigate, hard-to-understand, expensive, $2.5 trillion structure.

That is where we stand. Likely to pass this body and then go to the House of Representatives where there is a major issue that is still brewing, difficult, and must be dealt with, and that is the issue of public funding of abortion that is in this bill.

If you want to cut some of the cost out of this thing, why don't you take some of those expenses out of this. That would be one way to cut back some of the expenses. But in the House bill, they included Stupak language which continued the Hyde tradition and law of the land that the government will not pay for abortions other than cases of rape, incest, and life of the mother. Except now buried in the Senate bill, in the Reid amendment, is the public funding of abortion, which we haven't done for years.

Yesterday I talked to both Congressman STUPAK and Senator NELSON. They both agree that the Stupak language is far superior. It doesn't publicly fund abortions, whereas what is in this bill now does. You don't need to take my word. Here is what others have said. The U.S. Conference of Catholic Bishops, who want a health care bill but are opposed to the public funding of abortion and opposed to abortion, say:

> The bill is morally unacceptable unless and until it complies with longstanding current laws on abortion funding such as the Hyde amendment.

We voted on this floor for the Nelson-Hatch amendment which is now not in the bill.

You don't have to take that. You can take BART STUPAK, Democrat from Michigan, who voted for the bill in the House. He says:

> It is now not acceptable. A dramatic shift in Federal policy that would allow the Federal Government to subsidize insurance policies with abortion coverage.

The American public doesn't want that either. The latest poll of December 22 shows that 72 percent of Americans oppose using any public money in the health care overhaul to pay for abortion, including 54 percent of Democrats and 74 percent of Independents. That is where they are. That is where the public is.

National Right to Life, which is the gold standard on standing up for life, says:

> The Reid managers amendment requires that all enrollees in an abortion covering plan make a separate payment into an account that will pay for abortions. The bill also contains language that is intended to prevent or discourage any insurer from explaining what this surcharge is to be used for. Moreover, there is nothing in the language to suggest that payment of the abortion charge is optional for any enrollee.

This base bill has another thing in it: It takes the individual opt-out and moves to it a State opt-out. So while let's say Kansas may opt out of the abortion funding in the bill, they still have to pay their taxes that go to another State to pay for abortions there which are equally offensive to my people or other States that don't want to see this funding take place.

It doesn't address the issue of having preventive services include abortion. There was discussion that we are not going to include preventive services in it, but that is not in the language. There was discussion. We tried an amendment. That is not there. It can still be defined. Now it may ultimately

unwind the entire bill based upon the funding of abortion that is in the Senate bill. It will be up to House Members, a number of whom are very concerned and quite fired up about this particular piece, to take this out. I know Congressman STUPAK is working to do that, wants to see that done, agrees with Senator NELSON that his language is far superior, actually does that. It is supported by the Catholic Bishops, the National Right to Life, and other pro-life groups that say the way to go is the Stupak language.

It is not what is in the Senate bill. The Senate bill will actually fund abortions. Then we go through the specifics, as I have in here, of the various places that it has. I met with Senator NELSON about those specifics. I have addressed a number of those concerns. I know he continues to work on it, but at the end of the day this is one of those babies you cannot split. You need to have the Stupak language in this bill. I am afraid at the end of the day that is not going to be in there. I know Congressman STUPAK is pushing very hard for its inclusion, and I wish him all the best.

If this legislation passes this body, it is going to be up to the House of Representatives to put in that Stupak language. And they can do it. It is my hope they will do it. I do not think the overall bill should be passed, but certainly you should not have this piece of funding in this bill, in breaking the longstanding work we have had in the Hyde agreement, in the Hyde language.

Thank you very much, Madam President. How much time do we have remaining on our side?

The PRESIDING OFFICER. One minute.

Mr. BROWNBACK. Madam President, in that concluding minute, what I would like to briefly speak about is the overall process.

I think there are people in this body who did not want to include things such as abortion funding in the bill. But when you operate in a closed process like this, these sorts of things end up happening because the people who work on these issues are excluded. I certainly was not consulted. I am not saying anyone said: Well, look, we are not going to get your vote anyway, so we do not need to have it. But if you do not want to have abortion funding in it, one should look past that and say: Let's get the people who understand and work on this issue—and we agree, we should not have it in there; that is what President Obama said; it should not be in there—and let's see what language passes by their muster.

That was not done. Unfortunately, that is part of what has happened in this process. I think it is tragic that it has happened that way in this process. I think it is wrong. I think it builds a bill that then people are not satisfied with, and certainly a process they do not agree with that takes place in this overall bill.

It is still not too late. There is still time to address these issues, now that we have the bill to be able to look at. If people of good faith on the other side want to get these addressed, there are ways, and we have the language on how to address it. It is called the Stupak language. It has already passed the House of Representatives. It is called the Nelson-Hatch amendment that was debated here, although it was not passed. We can do that. It is important that it get done.

This bill is not supported by the American public, and particularly this funding piece that is so offensive to so many Americans. We can debate about abortion, but the government should not be funding it, and that is agreed to by over 70 percent of the American public.

I just ask my colleagues on the other side, as you move on forward with this—if this bill passes here—take this piece out. We know what language is agreed to and works. This piece can be taken out. It can be taken out yet. And I think the whole bill may unwind if it is not taken out—unwind because of a number of Democrats who voted for the bill on the House side who want the Stupak language, and they do not want the inferior language that was put in on the Senate side that will actually allow and start the funding of abortion, that we have not done for 30 years.

Madam President, I thank my colleagues and yield the floor.

Mr. GRASSLEY. Madam President, My Friend, Senator CASEY, just a few moments ago repeated the frequent claim made by members on the other side of the aisle that the health care bill provides a $40 billion net tax cut.

As I demonstrated in a speech earlier today, this claim is inaccurate and does nothing to address the fact that millions of middle-class Americans will see a tax increase.

I have consistently given my Democratic friends credit for providing a significant benefit to help people buy insurance.

This beneficiary class, however, is small.

At the same time there are 78 million individuals, families, and single parents who will see a tax increase.

Seventy-three million of them are below $200,000.

It is only because the subsidy for this small group is so large—and refundable—that there is a net tax benefit.

For example, the average subsidy is close to $8,000. Around 13.2 million individuals and families receive this subsidy.

But the data also shows that there is a group of 73 million middle-class Americans who will pay on average $710 more in taxes.

My Democratic colleagues want to say that since the cost of providing an average tax benefit of $8,000 to 13.2 million individuals and families is greater than the revenue raised by raising the taxes on 73 million individuals and families by $710 there is a net tax decrease.

The truth is individuals who are seeing a tax increase are not actually benefiting from the very large subsidy. This is because, in general, this group isn't even eligible for the subsidy.

It comes back to this: a small group of Americans benefit under this bill. Another group of Americans pay higher taxes. These Americans include middle-income individuals and families.

Mr. HATCH. Madam President, I rise to speak on my amendment to the Reid health care bill that would add an expedited judicial review provision to the legislation. It would provide a mechanism for the courts expeditiously to handle any future constitutional challenges to this legislation.

Make no mistake. I strongly oppose this Federal takeover of our health care system. I do so for a host of important and serious policy reasons. I believe it is bad for our country, but I also oppose it because I believe some of its core provisions are unconstitutional, undermining the Constitution and the liberty that it makes possible.

I have argued for months that the constitutional problems with this legislation include the requirement that individuals obtain a certain level of health insurance and the differential State-by-State taxation of high cost insurance plans. Other scholars and commentators have argued that restrictions on the ability of insurance providers to make risk-adjusted decisions about coverage and premiums amount to a taking of private property in violation of the fifth amendment. Others have said that requiring States to pass legislation creating health benefit exchanges exceeds Congress's power in our Federal-State system.

I do not necessarily believe that each of these constitutional arguments is as substantive or as persuasive as the next. Some may agree with this one or that one, all of them, or none at all. These and other arguments, however, are real, substantive, and many of them are as yet untested by the courts because this legislation goes so far beyond anything the Federal Government has ever attempted. These and other issues very well may be the basis for litigation against this legislation. Therefore, I think it is in everyone's interest to provide a mechanism for future constitutional challenges to be handled expeditiously by the courts.

The supporters of this legislation, those who are so confident that no conceivable constitutional argument has any merit whatsoever, should be the strongest supporters of this amendment. More than anyone, they would want to eliminate as quickly as possible anything that could delay or prevent full implementation of this legislation. Frankly, I am surprised that they are not the ones offering this amendment and I hope they will support it.

Madam President, I now wish to speak about my amendment No. 3294. My amendment would ensure that all Americans would be able to keep the health care coverage they already have.

My amendment is simple. If adopted, it would ensure that the implementation of the Democrat's health care bill shall be conditioned on the Secretary of Health and Human Services certifying to Congress that this legislation would not cause more than 1,000,000 Americans to see higher premiums as compared to projections under current law.

This amendment would ensure that this $2.5 trillion tax-and-spend bill would not go into effect if the Secretary of Health and Human Services finds that it would actually raise health insurance premiums for more than 1 million Americans compared to projections under current law contrary to the promise made by President Obama that health care reform would result in average savings of $2,500 per family.

One of the major reasons for enacting health care reform is to ensure that we control rising health care costs that continue to put increasing pressure on American families and small businesses. However, according to the nonpartisan Congressional Budget Office, the premiums under this bill would actually rise for Americans purchasing insurance on their own by as much as 13 percent and will continue to rise at double the rate of inflation for both the small group and large group markets.

Spending $2.5 trillion of hard-earned taxpayer dollars on a system that already spends almost $2.2 trillion a year without any impact on controlling health care premiums should be unacceptable to every American.

Madam President, I also wish to speak to my amendment No. 3296 to H.R. 3590, the health care reform legislation. This amendment isn't complicated. It would prevent the provisions of the bill from taking effect in the event that it imposes unfunded mandates on the States. As we all know, this legislation imposes significant new burdens on the States and the proposed funding for this program is, in some cases, likely to fall short. Simply put, the Congress should not impose upon the States new Federal policy requirements without ensuring they are adequately reimbursed. In the event that Congress does not provide full funding for these programs, my amendment would ensure that none of the new mandates will be binding on the States.

MEDICAID PHARMACY REIMBURSEMENT

Mrs. LINCOLN. I would like to engage my colleague, the distinguished Senate Finance Committee chairman, in a short colloquy regarding the Medicaid pharmacy reimbursement provisions in the Senate health care reform bill.

Mr. BAUCUS. I would be happy to engage Senator LINCOLN in a colloquy. I commend her for all her leadership over the years on this issue, because she recognizes that it is important to reimburse pharmacies adequately for the generic medications they dispense to Medicaid patients. In rural States like ours, Medicaid patients need access to their community pharmacies to obtain their medications. Sometimes community pharmacies are the only health care providers for many miles. So, it is important that we permanently fix in this health care reform bill the problems for pharmacies caused by the severe reimbursement cuts from the Deficit Reduction Act of 2005.

Mrs. LINCOLN. I thank my colleague and agree with him. That is why I ask him the purpose behind the language in the bill that would establish the Federal upper limit for generics at no less than 175 percent of the weighted-average average manufacturer price. I know this amount is less than the chairman originally proposed in the Medicaid Fair Drug Payment Act from last Congress, which I cosponsored. However, in what cases would it be the intent of the intent of the chairman that the Federal upper limit would be set at more than 175 percent? I am particularly concerned about my small independent pharmacies in Arkansas that fill a significant number of Medicaid prescriptions. Would it be the intent to set a higher rate for these pharmacies? Would it be the intent to set a higher rate for generics that might be in short supply or for which there are availability problems to encourage more manufacturers to make them?

Mr. BAUCUS. I would say to my colleague that the language indicating that the Secretary could set the Federal upper limit at no less than 175 percent the weighted average average manufacturer price could be used in those types of circumstances. It would give the Secretary flexibility to set the Federal upper limits in cases where there is a need to provide states with a higher match in order to assure that appropriate payment is made to pharmacies to encourage the use of generic drugs.

Mrs. LINCOLN. I thank the chairman for his insights into this provision and his work on behalf of our Nation's community pharmacies.

WISCONSIN'S MEDICAID PROGRAM

Mr. KOHL. Madam President, I rise to discuss language in the Reid substitute amendment to H.R. 3590 that would have a dramatic effect on Wisconsin's Medicaid Program. I would like to converse about this with two of my distinguished colleagues—the other Senator from my home State of Wisconsin, Senator FEINGOLD, and Senator BAUCUS, chairman of the Senate Finance Committee.

I commend Senator BAUCUS's long and hard work in crafting this historical piece of legislation, and today, I seek clarification of one piece of this bill.

Mr. FEINGOLD. I also seek clarification of this piece of the Patient Protection and Affordable Care Act, specifically in section 2001, regarding the definition of individuals that would be considered newly eligible under Medicaid.

Mr. BAUCUS. I thank the Senator. I would be pleased to enter into a colloquy with the Senators from Wisconsin on this subject.

Mr. KOHL. I thank the Senator. Section 2001 of the legislation describes which individuals in each State will be deemed ''newly eligible'' for Medicaid. It is my understanding that the Federal Government will provide 100 percent of the funds to cover this group of newly eligibles from 2014 to 2016 and that States will be provided with their current law FMAP rates, which are below 100 percent, for individuals already covered. Is this correct?

Mr. BAUCUS. I thank the Senator for the question. Yes, that is correct, and it is my understanding of the legislation as well.

Mr. FEINGOLD. I thank the Senator. As the Senator knows, to be considered ''newly eligible'' under this bill, individuals must not be eligible under the State plan or under a waiver of the plan for full benefits or for benchmark coverage as described in section 1937 of the Social Security Act. Two of the benefits that must be incorporated into benchmark coverage under section 1937 of the Social Security Act are mental health and substance use disorder services, and prescription drug coverage. If these two benefits are not offered at all, then the coverage will not count as benchmark coverage.

Mr. KOHL. As my two colleagues are aware, Wisconsin currently provides coverage for a number of individuals under a Medicaid waiver, but this coverage does not meet the requirements for benchmark or benchmark-equivalent coverage under the Social Security Act. The Centers for Medicare & Medicaid Services, the Federal agency that oversees Medicaid, has confirmed this for us. Senator FEINGOLD and I understand that, because of this, the individuals in Wisconsin who do not receive benchmark or benchmark-equivalent coverage will be considered newly eligible, and therefore Wisconsin will receive 100 percent Federal funds for those individuals in 2014, 2015, and 2016. Is this the Senator's understanding of the legislation as well?

Mr. BAUCUS. Yes. I thank the Senator.

RELIGIOUS CONSCIENCE EXEMPTION

Mr. CASEY. May I ask the Senator from Iowa to yield for a question about the managers' amendment, amendment 3276, to amendment 2786 to H.R. 3590?

Mr. HARKIN: Of course.

Mr. CASEY. Chairman HARKIN, the managers' amendment includes a religious conscience exemption from the individual requirement to maintain minimum essential coverage in section 1501. Is it the intent of the managers that this exemption apply to an individual who is a member of recognized religious sect described in Internal Revenue Code section 1402(g) regardless of employment status?

Mr. HARKIN. Yes, the intent of the religious exemption is to focus on an individual who is a member of a religious