



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155

WASHINGTON, MONDAY, DECEMBER 14, 2009

No. 189

Senate

The Senate met at 2 p.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Loving God, You are just and compassionate. As we labor today, we need Your strength. Forgive us for becoming impatient, for being too busy, too distracted, and too quick to speak or act. Forgive us for not taking time to think or to pray. Bless our Senators in their work. May they labor with integrity and faithfulness, cheerfulness and kindness, optimism and civility. Lord,

keep them ever mindful of life's brevity and of the importance of being faithful in life's little things. Help them to seek to serve rather than to be served, following Your example of humility and sacrifice.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 14, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

NOTICE

If the 111th Congress, 1st Session, adjourns sine die on or before December 23, 2009, a final issue of the *Congressional Record* for the 111th Congress, 1st Session, will be published on Thursday, December 31, 2009, to permit Members to insert statements.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-59 or S-123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 30. The final issue will be dated Thursday, December 31, 2009, and will be delivered on Monday, January 4, 2010.

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event, that occurred after the sine die date.

Senators' statements should also be formatted according to the instructions at http://webster/secretary/cong_record.pdf, and submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at <http://clerk.house.gov/forms>. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT-59.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the *Congressional Record* may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512-0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman*.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S13143

Mr. WARNER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each. The Republicans will control the first 30 minutes, the majority will control the next 30 minutes. We are still working on an agreement to line up votes that have been the subject of competing agreements with respect to the health care reform legislation. Pending is a Crapo motion, with a Baucus side-by-side on taxes; and a Dorgan amendment, with a Lautenberg alternative. So we have four amendments on which we need to try to work something out. That is not done yet, but as soon as it is worked out we will notify Senators of any scheduled votes.

HEALTH CARE REFORM

Mr. REID. Mr. President, every day we do not act, it gets more expensive to stay healthy in America.

If you are fortunate enough to have health insurance, this is not news to you. You have no doubt noticed your premiums have more than doubled in the last decade, even though the quality of your health care has not doubled—and that is an understatement.

If you are fortunate enough to have coverage, you might have noticed that you are paying at least an extra \$1,000 a year to cover all of the other families who do not have health insurance.

Those with insurance know when premiums eat up a larger slice of their paychecks, they have less money to take home to their families. Those without insurance know the pain of skipping medicine or treatments or doctors visits because it simply costs too much to go to the doctor. Economists tell us if we do nothing, those costs will continue to climb and to climb. The economists tell us that without question, if we do not do something, the costs will continue to increase.

Very recently, the President's Council of Economic Advisers has crunched the numbers, and this respected group tells us the bill before the Senate will indeed keep health care costs down.

Lower costs are good for every American. It means more people who do not have insurance today will be able to afford it, and those who do have insurance will have more stability and security against losing it.

The White House's economists highlighted a number of other impressive

effects of our bill. The amount our government spends on Medicare for our seniors and Medicaid for the underprivileged will be much less than if we do not act. Our Nation's deficit will be much lower than if we did not act. Health care costs in the private sector will be much lower than they would be if we did not act. And with this bill, American families' incomes will increase more than they would if we did not act. The same is true for job creation, small business growth, and our overall economy.

After all, health reform is economic reform. When you are not spending so much of your paycheck on premiums, you have more left to feed your family and to fuel our economy.

We also know a healthier workforce is a more productive workforce, and a more productive workforce means a healthier economy. Those are pretty good reasons to act and a pretty strong rebuttal against the strategy of doing nothing. This data proves once again what we have said from the start: this bill will save lives, save money, and save Medicare.

That is the reality, and that is why we are working to make it possible for every American to afford a shot at a healthy life. It is a goal that will make our economy stronger and make our citizens healthier. It is a goal with an eye to the future, to our children, one that appreciates the long-term effects of what we do.

The other side has a goal of its own—one that not only ignores the reality of the present but dismisses both the long-term benefits of acting and the long-term costs of doing nothing. Whereas we are working to slow the growth of health care costs, they are working to slow down the Senate. In fact, they would like to bring this body to a screeching halt.

But we will not let talking points meant to scare seniors and frighten families obscure the hard data that show just how unhealthy our health care system is. We will not be derailed by those who spend more time hoping for America's leaders to fail than they do helping the American people succeed. We will not be sidetracked by those who try to stop history in its tracks.

Mr. President, would the Chair now announce morning business.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business, with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

The Senator from Tennessee.

ORDER OF PROCEDURE

Mr. CORKER. Mr. President, I ask unanimous consent that the Republicans be allowed to speak as a group over the next 30 minutes.

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

Mr. CORKER. Mr. President, I thank you.

HEALTH CARE REFORM

Mr. CORKER. Mr. President, I rise today to speak about the health care bill that is before us. One of the major points of contention over the last 2 weeks has been the fact that Medicare savings are being utilized to leverage an entirely different entitlement and not even taking care of the SGR issue that is so important to physicians around our country.

The other important stat is the fact that half of the expansion in health care benefits that is occurring under this bill is under Medicaid, probably the worst health care program in America. After a year of discussions among many folks on a bipartisan basis, and ending up with a very partisan bill, the fact that half of the expansion is occurring in one of the worst programs that exist in our country, locking people at 133 percent of poverty into Medicaid, with no other choice, does not seem to me to be true health care reform.

I know the Senator from New Hampshire, who has spoken eloquently on this issue, has something to say about that.

Mr. GREGG. I thank the Senator from Tennessee for opening this discussion on the issue of Medicaid. But I did want to ask a couple questions relative to what the Senate leader just said about the bill that is before us.

We have to remember the bill that is before us—all 2,074 pages, as I understand it—is not the bill we are going to actually consider. There is somewhere in this building a hidden bill, known as a managers' amendment, which is being drafted by one or two or three people on the other side of the aisle, and which is going to appear *deus ex machina* on our desks fairly soon. We do not know what is in it. A lot of the people on the other side do not know what is in it. The press does not know what is in it. The American people do not know what is in it.

Mr. CORKER. The President does not know what is in it.

Mr. GREGG. The President does not know what is in it. Nobody knows what is in it. But they are designing this bill, which is going to be represented to expand Medicaid even further and to also offer the ability to people age 55 and over to buy into Medicare, which is going to have a huge impact.

But what the Senator from Nevada said, which I want to ask the Senator

from Tennessee about, is, he said this bill before us—this 2,074-page bill, which we know is what we are working off of—is going to reduce health care costs.

Is it not true that the President's Actuary—the Actuary for CMS, who is the President's Actuary—sent us a letter last week which said that health care costs in the first 10 years would go up by \$235 billion?

The majority leader also said people will be able to keep their insurance. Is it not true that the President's Actuary said millions of people will lose their own insurance under this bill?

Further, is it not true, in the area of Medicare, that the President's Actuary actually said that the expansion in Medicare and the Medicare cuts in this bill that are before us in the Democratic bill would actually lead to a massive reduction in the number of providers for Medicare; that up to 20 percent of the providers in Medicare would become unprofitable and therefore they would have to leave Medicare, making Medicare unavailable to people because there would be no recipient?

Didn't the Actuary also say, in the area of Medicaid—and I am quoting—“it is reasonable to expect that a significant portion of the increased demand for Medicaid would” be difficult to meet, particularly in the first few years, and that is because providers would no longer be profitable and would have to leave the business of providing—doctors groups, hospitals, small clinics?

Are not all those three points true relative to what the President's Actuary has told us—not us, not the Republican side but what the President's Actuary said? And don't all three points contradict the representations of the majority leader?

Mr. CORKER. Not just his representations, but the representations of the President of the United States. As a matter of fact, it is hard to understand any goal that is being achieved other than making sure our country has a huge indebtedness.

But the senior Senator from Tennessee has talked about this very subject the Senator is talking about—about Medicaid, in essence, giving people a bus ticket, where there is no bus because of the fact that if we add these people to a system where 40 percent of physicians do not take it, 50 percent of specialists do not take it, in essence, you have people accessing a system where there are not providers to care for them.

I do not know if the senior Senator from Tennessee wants to expand on that.

Mr. ALEXANDER. I thank Senator CORKER from Tennessee.

We have our usual situation on the Republican side—a lot of Senators who wish to speak on the subject of Medicaid—so I am going to keep my remarks brief. But looking around I see one, two, three, four of us who have

been Governors of a State. The Acting President pro tempore was the Governor of the State of Virginia. Senator CORKER, himself, was mayor of Chattanooga and the chief operating officer of the Tennessee State government.

Why do I bring that up? Because the Medicaid Program we are discussing—I know to many people listening to this debate, it gets confusing. Medicare is the program for seniors on which 40 million to 45 million people depend. We have talked about that a lot, and how the cuts to Medicare are going to be used to pay for this bill. But we have not talked as much about Medicaid, which is an even larger government program. Sixty million people depend on Medicaid, and they must be low-income people in order to qualify for the program. This bill would add 15 million more Americans to the Medicaid Program which, as Senator CORKER said, is like giving someone a bus ticket to a bus line that only operates half the time, because about 50 percent of the time, doctors will not see new Medicaid patients.

But there is another problem with the Medicaid proposal, which all of the Governors here—I know if they are like me, nothing made me any angrier than to see a bunch of Washington politicians come up with a big idea, announce it, take credit for it, and then send me the bill when I was Governor. Usually we would find them back at the Lincoln Day Dinner or the Jackson Day Dinner the next spring making a big speech about local control. Well, what happens here is a huge bill for this Medicaid expansion that is going to be sent to the States.

I would say to Senator CORKER, hasn't our Governor, a Democratic Governor, Governor Bredesen—who like all of us has struggled with paying for Medicaid—has he not said this will cause about \$750 million in added expense? I would ask the Senator from Tennessee, wouldn't that require either big cuts to higher education or big tax increases to pay for it?

Mr. CORKER. As you pointed out, in California there was almost an insurrection among students there because of the high cost of tuition, because of the fact that other programs in the State were eating up money. It is the same kind of thing that is going to happen in States across this country. Our Governor, who is a Democrat and who probably knows as much about health care as anybody in the country, is very concerned about what this is going to do—hoping, by the way, that revenues in our State reach 2008 levels by the year 2013. So he is very concerned.

I know Senator JOHANNIS from Nebraska has been a Governor. I am sure he has some things to add to this debate.

Mr. JOHANNIS. I do have some things I wish to add to this debate. I have gone across the State. I have talked to hospital administrators and I always ask them the same question: If you had

to keep your hospital open on Medicaid reimbursement, could you do that? With no exceptions whatsoever, from the largest to the smallest hospitals, they say, MIKE, we would go broke because the Medicaid reimbursement is so bad. No question about it, that is bad news for the hospitals.

But ask any Governor. It doesn't matter if they are a Democrat or a Republican—and the senior Senator from Tennessee is so right, nothing would irritate Governors more, nothing would get us in a more bipartisan furor than the politicians in Washington passing something, taking all the credit for it, and then sending the bill to the State taxpayers. I will give a speech on this to nail this down in the next couple of days.

The States have very limited options. They can raise taxes or they can cut very valuable programs such as education, K-12 education, higher education, and already States are struggling. In Nebraska we had a special session where our Governor and our legislature stood up and said, We have to cut spending, and they cut over \$300 million. Can you imagine if I were to call up later on in a couple of weeks from now and say, I know you did your very best at that special session, but we sent you another bill for millions and millions of dollars over the next 10 years that you have to deal with?

The final point I wish to make is, do my colleagues realize what we are doing to the people we will be putting on Medicaid? Already 35 to 40 percent of the physicians won't take Medicaid. Why? Because the reimbursement rates are so incredibly pitiful. So if you are at 133 percent of poverty, we basically lock you into Medicaid. It is like giving somebody a driver's license but then saying, there is no way you can ever get a car to drive, because, look, here is the problem: They can't get medical care no matter if they have that Medicaid card. What it will do to our health care system is literally bring it to its knees, because we are going to have this massive rush of people who have the Medicaid card in hand and we don't have the capacity to deal with that. The doctors, the hospitals are all going to be in trouble because of this. It is the wrong policy for a whole host of reasons.

Mr. CORKER. Mr. President, I read a story this weekend in the New York Times where Medicaid recipients, especially young Medicaid recipients, have huge prescriptions taken out on them for antipsychotic drugs because basically the physicians don't want to take the time to deal with them, and so they are huge users of them.

When we speak about physicians, I think it is always important to talk to one. Fortunately, we have one on our side, Senator BARRASSO, who I know has treated many Medicaid recipients. I know he has a lot to say on this topic.

Mr. BARRASSO. I have a couple of points I wish to add because I think you made a point, as does Senator

JOHANNIS. The concern is are there going to be enough doctors to take care of these patients. We are talking about 18 million more people placed on the Medicaid rolls, which is a huge unfunded mandate to the States. Having practiced in Wyoming for 25 years, in Casper, taking care of families, taking care of lots of patients on Medicaid, it becomes harder and harder for doctors to take new patients.

There is an article in this week's Wyoming Tribune Eagle; Doctor Shortage Will Worsen. As many as a third of today's practicing physicians will retire by the time all of these additional 18 million get on to Medicaid.

There is an article in the Wall Street Journal and it talks about a report from a research group, nonprofit, based in Washington, the Center for Studying Health System Change, and it says, as the Senator has previously stated:

Nearly half of all the doctors polled said that they had stopped accepting or limited the number of new Medicaid patients. That is because many Medicaid programs, straining under surging costs, are balancing their budgets by freezing or reducing payments to doctors. That, in turn, is driving many doctors, particularly specialists, out of the program.

For people in Wyoming, whether in Cokeville or Kemmerer or Casper, in all of these communities we are looking to try to recruit physicians. It is making it much more difficult when we look at this health care proposal the Democrats have, which is going to raise taxes, cut Medicare, cause premiums to go up for people who have insurance, and one of the reasons is because it underpays so much for things such as Medicaid. Yet they are talking about putting another 18 million people on Medicaid.

This morning I called one of the offices of a physician group in Wyoming and said, What are the differences in terms of Medicaid versus regular insurance? For something like carpal tunnel, we know about overuse of the wrist and carpal tunnel surgery where the normal fee is about \$2,000 for the surgery. Medicaid itself reimburses less than \$500. Medicare—they are talking about putting a lot more people on Medicare—reimburses less than \$400.

It is very difficult if you are trying to run an office and you pay all of the overhead expenses and see everybody who wants to see you to do it on the fees alone that you get from Medicare or Medicaid. That is why I have great concerns. If we have all these people on Medicaid, will it actually help them get care?

I think this Democratic proposal we are looking at fails. It fails in terms of getting costs under control. It fails in terms of increasing quality or increasing access, but those are the things we need in health care reform.

I see my colleague from Florida is here, who has experience, having run a Governor's office as Chief of Staff. He may want to add to this discussion as well. I can't see any way this would be sustainable. As a matter of fact, a re-

port that came out recently from the CMS, the group that oversees all of this, said it is not sustainable, that one out of five hospitals by the year 2020 and one out of five doctor groups will basically have to go out of business and close their doors.

Mr. CORKER. Mr. President, it is pretty amazing when you think about it. We have a 2,074-page bill that includes the largest expansion of Medicaid in the history of the program. It would take about 1 page of that 2,074 pages to expand Medicaid and do no reform, and yet that is where 50 percent of the expansion is taking place. Yet, the 2,073 pages remaining don't meet many goals that many—any goals, really, other than access—any goals that Americans would stand behind.

I know the Senator from Florida, who has spent a lot of time on this issue, wants to speak on this topic.

Mr. LEMIEUX. I thank my colleague from Tennessee. I didn't have the honor to be a Governor but I got to sit in the office next door to be the Governor's Chief of Staff. We had these issues of trying to balance budgets because, unlike the Federal Government which is out of control, States actually have to balance their budgets. Receipts have to meet expenditures. When your Medicaid budget grows and grows and grows—and in Florida, \$18 billion is what we pay in Medicaid. It is the largest expenditure in the Florida State budget. When it grows and grows and grows, what happens? You have to cut education. You have to cut public service programs that do things such as law enforcement, correctional facilities that hold prisoners. You hurt the other main functions of government if you keep adding in Medicaid.

I wish to highlight a point my colleague from Tennessee made. It occurred to me when I was going through the Chief Actuary's report we received last Friday from the Center for Medicaid and Medicare Services that this plan the Democrats have put forward is the expansion of Medicaid. Let's be honest. This is Medicaid for the masses. Thirty-three million people supposedly are going to be covered by this plan if it is implemented. How do those numbers add up? Eighteen million are Medicaid, 20 million go into this new exchange, and then we lose 5 million because their employer drops them because they can go into the exchange. So what are the majority of the people who are going to go under this new health care reform going to get? They are going to get the worst health care system in America, called Medicaid, a system where doctors won't participate. If the doctor is not in, it is not health care reform.

This is not all it is cracked up to be. I did a little back-of-the-envelope math: \$2½ trillion to put 18 million people into Medicaid. We could give all of those people \$166,000 each, put it into an account and say: Here, fund your health care for the next 10 years or we could create this huge government pro-

gram that expands a program that most doctors won't accept.

My colleague Dr. BARRASSO has it right. Forty percent of the doctors won't take Medicaid, and 50 percent of the specialists. How is this health care reform?

I know my colleagues here have a lot of experience on this issue. I see my colleague from Mississippi and it looks as though he has a great chart and is going to talk about increased Medicaid spending, so I am sure he has something great to say to us.

Mr. WICKER. Yes, and I appreciate so many of our colleagues being here today because I am glad we are getting into the Medicaid aspect of this bill. There has sort of been a feeling around this building the last couple of days that if we could only take care of the Medicare buy-in and the government-run option this bill would be OK. So I think today we are bursting that myth and pointing out the huge unfunded mandate the Medicaid portion would put on almost all the States.

Every State in red as shown on this chart would be required under this bill to increase their Medicaid spending. Only Vermont and Massachusetts would not have to be mandated by us in Washington to do this additional spending. Of course, with the unfunded mandate, what the Federal Government is saying is, We think this is a great idea. We think people should be covered with additional Medicaid Programs and, by the way, you folks at the State level should come up with the funds to pay for it. That is the very nature of an unfunded mandate.

I am not a Governor nor have I been a Chief of Staff of a Governor, but I have a letter from my Governor, Gov. Haley Barbour, who says:

If the current bill, which would expand Medicaid up to 133 percent, were enacted into law, the number of Mississippians on Medicaid would increase to 1,037,000, or one in three of our citizens. Over 10 years this bill would cost Mississippi's taxpayers \$1.3 billion—

The generosity of this Congress would be to tell the legislators and taxpayers of my State of Mississippi: Congratulations. We get more coverage and, by the way, you have to pay an additional \$1.3 billion—necessarily requiring Mississippi to raise taxes in order to continue vital programs such as education and public safety.

As has been pointed out, our State governments don't have a printing press. They have to balance the budget and make the numbers come out at the end of every year. We are putting a new burden, if we pass this legislation unamended, a tremendous burden on our Governors.

One other comment. There has been mention of the Governor of Tennessee who is a two-term, respected Democrat who knows a little something about health care. I think the actual quote last summer from Gov. Phil Bredesen was that he feared "Congress was about to bestow the mother of all unfunded mandates on the State of Tennessee."

I have here in my hand—and we don't have time because we have so many

people who want to speak—I have 13 quotes, not from Republican Governors such as Gov. Haley Barbour of Mississippi, but Democratic Governors all across this Nation, including the newly elected Democratic Governor's Association chairman, Gov. Jack Markell, and 12 others saying, we cannot afford, we cannot accept, we cannot bear at the State level this unfunded mandate upon this number of States.

Mr. CORKER. I thank the Senator. That was very good. I am hearing some comments about there being a wink and a nod process taking place which is sort of what we have happening right now with the bill. We don't know what is in it, but I understand there may have been a tilt by leaders of the Democratic Party to say to Governors: If you won't raise much Cain here, we are going to take care of you down the road on this issue. I don't know if I would trust something like that to happen in this body but—

Mr. WICKER. Here is the problem there. If they take care of the Governors down the road by saying we are going to send the money from Washington to cover this, then all of this talk about the program cutting costs at the Federal level goes out the window. Something is going to have to pay for it. Either we are going to have to gin up the printing press here, borrow some more money from China and send it to the States, which I guess is what the Senator was referring to, or we are going to pass the unfunded mandate on to the taxpayers of 48 of our States.

Mr. CORKER. So many Senators, so much participation, so little time. I think there is about 6 minutes left. The distinguished Senator from Utah has not yet spoken. The distinguished Senator from Idaho—a former Governor—has not yet spoken. I wondered if the senior Senator from Utah might close us out in the remaining time, just to bring this all to a climactic conclusion.

Mr. HATCH. Mr. President, I appreciate the comments of my colleagues. They are right-on. They know what they are talking about regarding the Medicaid program.

If this bill becomes law, the CBO estimates that by the year 2019, 54 million nonelderly, nondisabled Americans will be locked into Medicaid. Think about that.

Americans with incomes below 133 percent of the Federal poverty level are not eligible for tax credits to purchase private coverage through the exchange.

I will take a few minutes to read part of a letter I received from our Governor in Utah, Gary Herbert—who worked at almost every job from local government right up to Governor of the State—about the Medicaid expansion included in the Reid bill. My Governor is deeply concerned about the impact the proposed Medicaid expansion would have on individual States. Here is what he said:

In Utah, we have a good system of public medical programs that provide for our neediest population.

The extension of Medicaid to additional populations, as discussed in proposed Federal healthcare legislation, will amount to an unfunded mandate that would create financial havoc for our state.

While I understand the idea that everyone must "share in the pain," and appreciate the Administration's commitment to reforming healthcare without increasing the size of the federal deficit, to force Medicaid cost increases onto states will simply shift massive cost increases to the states.

As we prepare the state's fiscal year 2011 budget, we face continued cuts to agency budgets and reduced government service on top of painful reductions made last year. The unfunded mandate of a forced Medicaid expansion will only exacerbate an already dire situation.

If required to increase our Medicaid program as envisioned in Washington, Utah and most every other state will be forced to fund the money to do so through other means. This will require states to either raise taxes or continue to cut budgets in areas currently suffering from a lack of funding, such as public and higher education. We must work together to ensure that no new requirements for states to fund healthcare for additional populations pass.

In summary, I ask my colleagues, if the Reid bill is signed into law and the Medicaid expansions go into effect, what will the States do to make their budgets work? According to Utah Governor Herbert, States will be looking at a variety of options, such as cutting education programs and raising taxes. It would devastate the State, as Governor Barbour has said and as almost every Governor would say. I thought that was an important point to make.

Mr. CORKER. Mr. President, I know the Senator has been a leader in making sure people throughout this country have appropriate health care. I thank the Senator for those comments.

There is no one better to respond than a former Governor, the Senator from Idaho, JIM RISCH.

Mr. RISCH. Mr. President, first of all, let me say this raid on the States is just that. This is going to be a tax increase, and it is not included anywhere, it is not talked about anywhere. There is no way the States can deal with this except with massive tax increases or massive cuts in education.

In most States, I am sure, like Idaho, about two-thirds of the budget is spent on education, about 10 percent of it is on public safety, and you have about 20 percent that is on social services. Unless you have been a Governor, you can't understand how difficult it is to control what has become an expanding black hole in Medicaid.

The first social program this Congress came along with was Social Security. They decided they would do it, and they funded it. The second was Medicare. They decided they would do it, and they funded it. Along came Medicaid, and some genius here decided the Feds will only pay 70 percent or so and we will make the States pay 30 percent. Well, everywhere across this country, Governors are saying: Don't do this to us.

The dozen of us here who are former Governors were asked to participate in

a conference call a couple weeks ago. I listened, but I didn't talk. I didn't need to because there was great bipartisan support for killing this bill. The most vocal people were Democrats. The most vocal Governors were Democrats, who were saying we cannot tolerate this kind of an increase. That is what is going to happen under this bill.

I am sorry none of my friends from the other side of the aisle are here, with the exception of the Presiding Officer.

Could the Senator from Mississippi take the top chart off. If my friends were here, I would tell them to pay attention to the polls because that is what America is going to look like on CNN next November 2, in the evening, if you continue down this road.

I thank the Chair.

Mr. CORKER. I thank the Senator. I know of nobody who has spoken more eloquently on this topic than the Senator from New Hampshire. Before I hand it off to him, when I was in my 40-something-plus townhall meeting since this debate began, our citizens said to me they wanted the same choices I had as a U.S. Senator. This expansion for the American people is mostly being done in the area of Medicaid.

I don't know if the Senator has any comment to that effect or a comment as to whether we Senators ought to be in Medicaid, if this is our idea of health care reform. I certainly hope he will close us out, and I thank him for his tremendous contribution.

Mr. GREGG. Mr. President, I thank all of the Senators here for their comments. I say this—and I think the Senator from Tennessee was alluding to this at town meetings—this expansion of Medicaid isn't good for people. It is not good for people on private insurance. Their insurance will go up, and a lot of employers will have to drop insurance because it is too expensive. It is not good for people getting Medicaid because the number of providers willing to see them will go down. That is what the Actuary tells us, and that is what common sense also tells you. When you are only paying 60 percent of the cost of seeing somebody, people will stop seeing them. It is not good for everybody in all those red States up there on the chart because their taxes will go up because the States are going to get the bill for this. States can do nothing but raise their taxes. So it is not good for people and not good for health care in this country, in my opinion.

Mr. CORKER. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. Thirty minutes has been consumed.

Mr. CORKER. I am sure the Senator from Tennessee—if there is time remaining and if nobody is here to claim it—would like to speak. He is always good at explaining the deficiencies of this bill.

Mr. ALEXANDER. Mr. President, I thank the Senator. I am impressed

with the number of Senators here this afternoon. One thought comes to mind, and I wonder if some of my colleagues may want to talk about it. I woke up one day and saw on television a sign that said “32 percent tuition increase for the students of California.” The University of California could be the best public institution of higher education in the world.

One of the great things the United States has—which keeps us competitive and gives us a chance to continue to grow and create new jobs—is a superior system of higher education. About half of the best universities—Harvard, Yale, and the private universities—half or more than half are public universities, where tuition is a few thousand dollars a year. Well, what is going to happen with this? All of us who have been Governors have gone through this. You have a pot of money left, and it either goes into higher education or Medicaid. For the last 30 years, we have been having to fight to fund Medicaid, and as a result States have not been funding public higher education properly and the quality has gone down and the tuition has gone up.

What is this bill saying? It says that, after 3 years, we are going to dump a huge new cost on the States. I don't believe I am overstating it when I say that in our State of Tennessee, given the terrible fiscal condition our States are in today—and our State is more conservatively run than most—I believe our State could only fund this through a new State income tax and/or serious damage to higher education or both. I wonder if that is not the case in all of the other States represented here.

Mr. CORKER. Listening to what the Senator just said, I looked on the other side of the aisle and realized there is no one there. This is one of those issues. I know that on Medicare, the other side has been able to argue they are extending the life of Medicare. Yet Senator GREGG so clearly pointed out yesterday on national television that is impossible because they are taking those savings to pay for a new entitlement program. At the end of the day, it really will not be extending the life in any way. We all wonder why those savings are not being utilized now to make Medicare more solvent.

I wonder what my friends on the other side of the aisle would argue in favor of the largest expansion of Medicaid. I think that would be a pretty hollow argument. I think everyone knows that it was all about money, that this was the cheapest way to try to meet some goals—by passing it off to States. I would love to hear somebody on the other side argue how health care reform, where 50 percent of the people being added are being thrown into the worst program that exists in America—I would love to hear somebody over there argue how that is good for our country.

I know Senator GREGG, myself, and others have signed on to legislation

that would give low-income citizens choices among private companies and, with that, vouchers, nonrefundable tax credits, and then to be able to pay for that. That is health care reform. That is something that creates robust competition, and certainly we would not have these low-income individuals locked into the dungeon of the worst health care program that exists simply because it is cheap, making, in essence, the value of their health care less than the value of ours here in the Senate.

I would love to hear anybody on the other side of the aisle argue for expanding Medicaid—how that is a good thing for the citizens it covers.

I see we have someone from the other side of the aisle here. Mr. President, I don't know if we still have time to talk. I know Senator JOHANNIS has comments to make.

The ACTING PRESIDENT pro tempore. The time for the minority has expired.

The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, I rise to speak about the ways in which small businesses will be helped in this bill.

Before my colleagues leave the floor, had some of them stayed at the negotiating table, perhaps some of the provisions they talked about could have been considered. Since they pretty much packed up their bags months ago and left the debate and they just come to the floor to talk, it is very difficult to put any of their provisions in the legislation. There were some amendments that were accepted in the Finance Committee and in the HELP Committee.

The fact is, there is a lot of choice in this bill. There are a lot of choices for individuals and for small businesses. There is help for Americans and for businesses not only in the State of Louisiana, which I represent, but all the States in the Union.

As you can see on this chart, without reform, the cost for small businesses will rise from—or the jobs lost because of the lack of reform will rise from 39,000, to 70,000, to 103,000, to 137,000, and then to 178,000. These are jobs lost because small businesses are having a very difficult time affording premiums and because of a lack of reform in the private insurance market, which this bill also provides. This trendline will continue unless we do something. That is why many of us are here working early in the morning, through the middle of the day, and until late at night trying to figure out the way to reform this system.

I respect my colleagues. I know them all very well. They made their statements for the record this morning. But the fact is, we have been at this since Harry Truman was the President. We can't throw this bill away and start over again. There is choice and there is expansion of Medicaid and reform in the Medicaid system. There will be strengthening and reform of the Medicare system. In the middle, there is

great strength and reform of the private insurance market.

I am a very strong supporter of choice and competition. I came to the floor to speak about a segment of our population—27 million, to be exact. That is the number of small businesses that are depending on us to do our very best work on the Patient Protection and Affordable Care Act pending before the Senate as we speak.

Our economic prosperity as a nation, as you know, Mr. President, as a former Governor of Virginia who helped bring millions of jobs to your State and now as a leader on small business yourself, the economic prosperity of our Nation relies, in large measure, on how we can help our small businesses become the economic engines we know they can be to help lift us out of this recession.

Entrepreneurs roll up their sleeves and go to work each and every day. They go early to work; they stay late. They create jobs. They push the envelope on technical advances, and they assume the risk necessary to succeed in the private marketplace. Small businesses created 64 percent of American jobs in the last 15 years, according to the Small Business Administration and others.

Yet as chair of the Senate Committee on Small Business and Entrepreneurship, I have heard time and time again from these same business owners that they cannot afford to operate in the current broken health care system, and they desperately need us to fix it. That is what this effort underway is.

Small businesses have been hard hit by premiums that are regularly increasing at 15 percent, 25 percent and, in many cases, 45 percent. This is the cumulative cost of health benefits: You will see, in 2009, \$156 billion. Without reform, it is going to go to \$717 billion. Then, in 2015, it will exceed the \$1 trillion mark. This is what happens if we do what my colleagues are urging us to do and do nothing or to start again.

We have been, as I said, since Harry Truman was President, trying to figure out a way to provide each and every American with affordable health insurance, either through the public or the private sector or some combination of the above. That is why this bill is so important because, without reform, this is the price our small businesses will have to pay, and it is too steep, it is too high of a mountain for them to climb.

Without these reforms, as I said, costs are expected to more than double over the next 10 years. But this debate is not about numbers, it is about people—people such as Mike Brey, who owns Hobby Works in Laurel, MD, and who was here just last week in the Capitol to speak at a press conference. I have had hundreds of business owners from all over the country to come. Mike was one of the last ones to come and speak at a press conference last week. He said to us that his plan not too long ago cost only \$100 a person,

most of which he was happy to cover as a company. Over the years, however, his premiums have tripled and his employees have seen their costs go five times higher as they pay more of their premiums, up to almost a \$1,200 deductible.

Mike said—and his words are echoed by business owners in my State and business owners around the country:

Those of us who do provide coverage are slowly being dragged down by these costs. Something that we once considered a benefit, a benefit I was proud to provide, has now come to be seen as a burden—a burden to be feared because you don't know what is coming next.

He went on to say:

After years of astonishing rate hikes and declining competition among providers, many small businesses, like mine, may be only one or two years away from having to cut their health care programs entirely. I'm not going to let [these premiums] put me out of business. I'm just going to say we can't do it anymore.

This is what is happening all across America. Only 15 years ago, 65 percent of small businesses in our country offered affordable health insurance, something they were proud to provide—full and comprehensive coverage, many of them picking up a majority of the costs. Today that has dropped to 39 percent and dropping every week that we fail to act.

Small business owners, such as Mike from Maryland, hundreds in my State, need meaningful health care reform. The Senate health care bill contains measures that responsibly put in place both intermediate and long-term insurance reforms that are very important.

Let me start with the immediate benefits. I understand there are some, including myself, who would like to see more immediate benefits, but these are some that are important, substantial, and real.

Temporary reinsurance for early retirees will be available under this bill. This will help many in a very tough stage in their life.

States may establish exchanges to get a jump on, of course, the mandatory date that is in the bill.

No annual limits and restricted lifetime limits. This will be a very important benefit to small business.

Reporting medical loss ratios. For the first time, insurance companies will have to report information that will help keep the costs lower over time and bring more transparency and accountability to the system.

The bridge credit for small businesses will go into effect almost immediately. It will help businesses that have 10 employees or 25 employees provide health coverage for their workers.

Then, in the intermediate timeframe, there are some additional ones. The exchanges will be set up by 2014. When people on the other side talk about choice, there is going to be plenty of choice in this bill for uninsured individuals, for those who are in small businesses up to 100 employees. They will be able to access these exchanges

and look for affordable options. That is going to be a major improvement over the current system.

There is a bridge credit—a credit I call a bridge credit—a bridge to the exchanges for small businesses. Once the exchanges are up and running, businesses with 10 and 25 employees or less will be able to get almost 35 percent credit for the insurance they provide. That is in addition to the deductibility they have in current law.

I ask unanimous consent to speak for another 5 minutes.

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

Ms. LANDRIEU. Mr. President, one of the major criticisms of this bill has been the costs. The bill does show fiscal responsibility, cutting budget deficits by \$127 billion in the first decade and \$650 billion in the second decade. Anything we do is going to cost money upfront to fix the system, but the way this bill is being designed is that for every dollar that is spent, there is a dollar raised to pay for that change. That is a refreshing change of method, considering the last 8 years, where bill after bill was put on this floor, whether for domestic or international priorities, and not paid for at all.

We can be criticized for trying to push major reform forward, but at least we are finding ways within the system to pay for these important changes that will hopefully drive down costs for everyone.

As Mike reminded me, the gentleman who spoke at our press conference:

It is even more important not to let one problem prevent you from solving another problem.

While we do have budget deficit problems and we are very sensitive to it, we cannot allow that to stop us from doing anything else. What we can do, as we work on the other problems, is to do it in the most fiscally responsible way possible. That is why I and many Members of the Senate have said we are not prepared to vote on anything until we get a final CBO score, to make sure not only can we afford it and not only have we paid for it but that, over time, premium costs will go down, costs to the government will go down, both at the Federal and State level, as well as to small businesses.

The Business Roundtable reports that these exchanges, both in the near term and the intermediate term, could reduce administrative costs for business owners by as much as 22 percent. If business owners are making shoes, they can get back to making shoes, not running around looking for insurance they cannot find and, if they can, it is too expensive for them anyway. If they are building high-tech equipment or electronic equipment, they can get back to the business of doing that, instead of being in the business of figuring out insurance actuarial tables.

Reducing administrative costs for small businesses is important. Twenty-two million self-employed Americans

have even more unpredictable costs. Their premiums have risen 74 percent since 2001. These exchanges will help them also reduce administrative costs.

I am proud that one of the amendments I have pending on the Senate floor would give the self-employed a 50-percent tax deduction so they can be on a similar playing field, if you will, for the small businesses and large businesses that enjoy favorable tax treatment under the current Tax Code.

It has been mentioned before, but insurance companies will no longer be allowed to arbitrarily raise rates or drop coverage. Instead, companies will be forced to compete on the price and quality of their plans, not by underwriting the least risk.

The bill also has no employer mandate. Instead, we have a shared responsibility for businesses with more than 50 employees. Ninety-six percent of small businesses in America are exempt from the provision of required coverage, but we have come to terms with a system that requires individuals to purchase insurance, as well as small businesses to provide insurance with proper tax credits and subsidies that help them make it possible.

To help small businesses more immediately bridge the affordability gap, these exchanges will not be up and running until 2014. Again, there is an amendment to push that up. I hope we will be able to do that.

In the bill, tax credits will help about 51,000 businesses in my State of Louisiana alone. There are hundreds of thousands of businesses that will benefit—51,000 in my home State of Louisiana alone—because of the credits that are in the bill, and through the amendment process, we are hoping to enrich and expand them.

While these provisions in the underlying bill are strong for small business, there is always room for improvement. That is why I, along with many of my colleagues, have submitted a series of amendments. Some have costs to them, such as the 50-percent deduction. It is a \$12 billion cost. But if we can find it in the bill, if the mark allows us to find \$12 billion, that would be a good place to spend it because these individuals, whether they are realtors, attorneys, accountants, sole contractors, or carpenters who are working out there creating a job for themselves and creating economic opportunity in their communities, could use a tax cut and a tax credit to help them.

There are a series of amendments that I have submitted that do not have any costs associated. They are just common sense and create more efficiency in the system. I trust the leadership will consider including those amendments.

In addition, Senator LINCOLN has an amendment to expand both the bridge credit and the tax credit. It is a \$9 billion provision. We are hoping the mark will allow for that addition as well.

I wish to mention a few other points in my closing. I thank the small business owners, organizations, and advocates who remained at the negotiating table. They did not pack up their bags and run away. They stayed here in Washington, in State capitals, on telephones, on conference calls, in public meetings, in the debates taking place in the many committee rooms to argue for this kind of reform—for choice, for transparency, for insurance market reform, the tax credits, more favorable tax treatment to help them afford the insurance they know is the right thing for them to do and it is the smart thing for them to do. Most small business owners want to provide good health insurance for their employees so they can compete for the best employees out there, which helps them keep their businesses strong.

I thank the small business owners, particularly the small business majority, many of the women business owners, organizations that have stayed at the table to help negotiate this important bill.

In conclusion, as we move forward, I am prepared to work with my colleagues in the Senate to pass meaningful and responsible health care reform for small businesses. We have a historic opportunity in Washington to fix a system that is broken, that is in desperate need of repair. Let us not let this chance slip away.

In these final days of negotiation, let us come together to find a way forward, again, one that reforms the private insurance market, strengthens Medicare, and sustains its viability over a longer period of time, helps to improve the system of Medicaid, by hopefully providing poor, middle-class, and wealthy people with more choices of health care and by coming to terms that we are not going to have an all-public system and we are not going to have an all-private system. We are going to have to find a middle ground, where we take the best of both sides of the public and private system and put them together so every American can have insurance they can count on and, most important, that our small businesses can have insurance that help them create the jobs necessary to lead us out of this recession to start turning this deficit situation around and creating wealth and prosperity for all Americans.

Mr. President, I see my colleague here, the Senator from Vermont, and so I thank the Chair and I yield my time.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. SANDERS. Mr. President, as an independent, let me try to give an independent assessment of where we are—which ain't easy, because this is a 2,000-page bill and different people have expressed different thoughts about it. I know my Republican friends are down here on the floor every day telling us that the world as we know it will rapidly come to an end if this legislation

is passed, and yet I want to say to them: Where were they for 8 years? Where were they during the 10 years of President Bush? Some 7 million Americans lost their health insurance, health premiums soared, and tens of thousands of people died every single year because they couldn't get to a doctor. Where were they? It is very easy to be critical, but it might have been a good idea if 5 or 6 or 8 years ago they were down here before the crisis erupted to the level it is right now.

This bill, in my view, is far from perfect, and I am going to talk about some of the problems I have with it, but I also want to very briefly outline some of the real assets, positive provisions that are in this legislation. It is not insignificant that this bill provides insurance for 31 million Americans who have no insurance. That is a huge step forward for our country. It is not insignificant that this legislation provides for major health insurance reform, finally outlawing some of the most outrageous behavior patterns of the private insurance companies—practices such as denying people coverage for preexisting conditions, behaviors such as not renewing health insurance because somebody committed the crime the preceding year of getting sick and running up a huge bill. It eliminates caps on the amount of money that people need. Well, you know what, if people need cancer surgery, it is expensive, and you can't tell them there is going to be a cap on what they receive. This bill, importantly, says to families with young people that young people will get coverage until they are 26 years of age. That is a very important provision. All of those are very important steps forward.

Having said that, let me also mention that this bill is strong on disease prevention. The Senator from Iowa, TOM HARKIN, has talked for years about the need to understand why we are seeing more and more people coming down with cancer or heart disease or diabetes or other chronic illnesses, which not only cause death and pain and suffering but huge expenditures for our health care system. It seems to me to make a lot more sense to get to the root of the causation of those problems, try to prevent them, and in the process keep people healthy, and save our system substantial sums of money. We have a lot of resources in there for disease prevention.

Those are a few of the positive elements that are in this bill, and I congratulate the people who have fought to make those provisions possible. But let me talk about some of the weaknesses in this bill and some of the areas where I have real concern.

Right now, today, we are spending almost twice as much per person on health care as any other major country on Earth, despite the fact our health care outcomes in many cases are not as good. Can I stand here with a straight face and say we have got strong cost-containment provisions in this legisla-

tion; that if you are an ordinary person who has employer-based health care your premiums are not going to go up in the next 8 years based on what is in this bill? I can't say that. It is not accurate. So we need to have in this bill, as we proceed on it, to make sure there are far stronger cost-containment provisions than currently exist.

To my mind, at the very least, we must have a strong public option to provide competition to the private insurance companies that are raising their rates outrageously every single year. What is to prevent them from continuing to do that under this legislation? Not a whole lot, frankly. So the fight must continue for strong public options, not just to give individuals a choice about whether they have a public plan or a private plan but to also provide competition to the private insurance companies.

Second, let me tell you another concern I have. Right now, our primary health care system in this country is on the verge of collapse. There are people all over this country who cannot get in to see a doctor. In fact, we have some 60 million people in medically underserved areas. Most of them can't get to a doctor. What they end up doing is going to an emergency room. They get sicker than they should be and end up going to a hospital, at great expense to our system, and adding a lot of human suffering. What I worry about, if we add 15 more million into Medicaid, if we add another 16 million people into private health insurance, where are those people going to get the primary health care they desperately need? The system is inadequate now. It certainly does not have the infrastructure to address 31 million more people who are getting health insurance.

The good news is that in the House there is language put in there—and fought for by Congressman JIM CLYBURN—that would add \$14 billion over a 5-year period in order to see a significant expansion of community health centers and the National Health Service Corps. Community health centers today are providing primary health care, dental care, low-cost prescription drugs, mental health counseling to some 20 million people. What is in the House bill is language that greatly expands that program and also expands the National Health Service Corps, which provides debt forgiveness for medical students who are going to practice primary health care, dental care, or nursing in underserved areas.

We desperately need more primary health care physicians. Certainly we have to change reimbursement rates, but one way we can help is that when medical school students are graduating with \$150,000 in debt, debt forgiveness will help them be involved in primary health care. So this is an absolutely essential provision we have got to adopt. We have to do what the House did and provide at least \$14 billion more for primary health care, an expansion of community health centers and the National Health Service Corps.

There is another issue. I know there are not many people in this institution who agree with me—although there are millions of Americans who do—that at the end of the day we have to understand that one of the reasons our current health care system is so expensive, so wasteful, so bureaucratic, so inefficient is that it is heavily dominated by private health insurance companies whose only goal in life is to make as much money as they can. We have 1,300 private insurance companies administering thousands and thousands and thousands of separate plans, each one designed to make a profit. The result is we are wasting about \$400 billion a year on administrative costs, profiteering, high CEO compensation packages, advertising, and all the other stuff that goes with the goal of private insurance companies to make as much money as they can. So I will be offering on the floor of the Senate, I believe for the first time in history, a national single-payer program, and I look forward to getting a vote on that.

I am not naive; I know we will lose that vote. But I will tell you, at the end of the day—not this year, not next year, but sometime in the future—this country will come to understand that if we are going to provide comprehensive quality care to all of our people, the only way we will do that is through a Medicare-for-all, single-payer system, and I am glad to be able to start that debate by offering that amendment.

But more importantly for the immediate moment, we have language in this legislation which must be improved which gives States—individual States—the right, if they so choose, to go forward with a great deal of flexibility in order to provide quality care to all of their people. Many States may look at a single payer, other States may look at other approaches. But I believe it is absolutely imperative—and I am working with Senator RON WYDEN on this issue—to give maximum flexibility to States to be able to take the money that otherwise would be coming in to their State to use for their own innovative health care programs designed to provide quality, universal, comprehensive health care in a cost-effective way. Some may choose to go single payer, some may choose to go in another direction. We have language in there which must be improved so that States can begin that process when the exchange comes into effect in 2014.

I want to touch on two other issues briefly. The House has very good language in determining how we are going to pay the \$800 billion to \$900 billion we are spending. What the House says is there should be a 5.4 percent surtax on adjusted gross income above \$2.4 million for individuals and \$4.8 million for couples. That means nobody in this country who is making less than \$2.4 million or less than \$4.8 million as a couple will pay one nickel.

What we have here in the Senate, unfortunately, is a tax on health insur-

ance programs which, in fact, will result in the middle class paying, over a period of time, a not so insignificant amount of money as part of this process.

The ACTING PRESIDENT pro tempore. The Senator has used his time.

Mr. SANDERS. I ask unanimous consent for 5 more minutes.

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

Mr. SANDERS. Mr. President, in joining me, Senators BROWN and FRANKEN are supporting this amendment, as well as the AFL-CIO, the National Education Association, the International Brotherhood of Teamsters, the Communication Workers of America, the United Steelworkers of America, the American Postal Workers Union, and many other organizations representing millions of Americans.

The bottom line here is that at a time when we are in the worst economic crisis since the Great Depression, do we want to ask the middle class to pay more in taxes as part of health care reform or should we ask the wealthiest people in this country to start paying their fair share of taxes? I think the evidence is overwhelming that we should do that.

I would point out that, according to the consultant group Mercer, the Senate tax on health insurance plans—despite what we are hearing about a so-called Cadillac plan—would hit one in five health insurance plans in 2013. The CBO has estimated that this tax would affect 19 percent of workers with employer-provided health coverage in 2016. So what we have got to do is junk the tax on health insurance plans, move to the House provision, which says let us ask the wealthiest people in this country to pay a modest amount in order to make sure many more Americans have health insurance.

The last point I want to make is that in the current bill being debated now there is a provision which deals with the reimportation of prescription drugs. This is an issue I have been involved in almost since I have been in the Congress. I was the first Member of the Congress to take Americans into Canada, across the dividing line, in order to purchase low-cost prescription drugs. I will never forget the reality that women who were with me from Franklin County, VT, ended up paying one-tenth the price for Tamoxifen—a widely used breast cancer drug—than they had been paying in the United States. They pay one-tenth the price in Montreal, Canada, for the same exact medicine.

We have to be bold. I know and you know that the drug companies are very powerful. They are delighted that the American people are paying by far the highest prices in the world for prescription drugs. That is good for them. They are making a lot of money. But it is not good for the average American who cannot afford to buy the prescription that his or her doctor is writing. So we

have to pass prescription drug reimportation. We have to lower the cost of prescription drugs in this country significantly.

The bottom line here is that this bill has a number of very important features which I think will make life easier for a lot of our fellow Americans. There are problems remaining, and I hope that in the coming weeks we will successfully address those problems.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent that Senator NELSON from Florida be allowed to speak for 10 minutes; after that, that I be allowed to speak for 10 minutes; after that, that Senator MURKOWSKI speak for 10 minutes; and after that, Senator DODD. Following that—Senator MURKOWSKI for 20 minutes, I am sorry; and after that, Senator DODD.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, it is a wonder this health care bill has survived this far with so many people shooting at it. But survive it must and survive it will, because it is the right thing to do. With a country that has 46 million people who do not have health insurance, when they do get health care, it costs the rest of us a lot of money because they get it free in the most expensive place. That is not a system that is operating as it should and that is what this whole effort is about. This whole effort is about trying to help people who cannot get insurance get it—those who desperately want it, who cannot get it, to be able to get it—and those who have it to not have it canceled on them in the middle of their treatments.

It is all about people who desperately want insurance suddenly having an excuse from an insurance company: No, you can't get insurance because you have a preexisting condition. Some of those preexisting conditions are the flimsiest excuses. But what about those who have had a heart attack who definitely desperately need health insurance after that? This legislation is all about folks who desperately want insurance and they finally find an insurance company that will insure them and then they cannot afford it.

Why, in America, in the year 2009 and almost 2010, aren't we at the point of being able to give our people the confidence, the satisfaction, the loss of fright that they cannot take care of their families if they get sick? That is what this legislation is all about.

But everybody and his brother and sister are taking these potshots and every special interest that has their finger in the pie wants their share of the pie and to heck with anybody else. This is what we are trying to overcome. We are trying to overcome a system that has built up since World War II, over the last 60 years, that is inefficient and is not giving the health care

to the people who desperately need it, unless they can afford it.

So despite all these potshots, survive this bill, it must and survive it will. We are going to pass this bill, and somehow we are going to get 60 votes cobbled together to break this filibuster so we can get on to the final passage of this legislation.

I wish to give one example. You remember that story, that famous novel, "A Tale of Two Cities," about London and Paris? I am going to give you a story, a tale of two industries and what they are doing in this bill. One industry is the insurance industry, the other industry is the pharmaceutical industry—two industries that have an enormous interest in the outcome and high stakes in how this legislation comes out. On the one hand is the insurance industry. They are running TV ads all over this country, trying to torpedo this. If you watch those 30-second and 60-second ads, you would think this is the worst thing that is going to bankrupt America, and we are not going to have anybody given any insurance. Why are they doing this? Because they know they are going to have to suddenly act responsibly. They are not going to be able to have the excuse of a preexisting condition, they are not going to be able to cancel your policy in the middle of your treatment. You thought they would come to the table, when suddenly we were going to insure an additional 46 million people, that they were going to get all those premiums. But because the subsidies were not enough for the poor people or, if they did not buy that insurance in the health insurance exchange that the penalty wasn't enough, the insurance industry said: Forget it.

Contrast that with the pharmaceutical industry. The pharmaceutical industry, to their credit, is still supporting this bill. That is very good. They are one of the few deep-pocketed industries that can go out and buy TV time and support this bill. But remember when I said everybody has their finger in the pie? The pharmaceutical industry—I want them to know how much I appreciate what they have done, but they can do more. Let me give a case in point. They say in their so-called \$80 billion contribution that \$20 billion of that is to have a 50-percent discount on their brand-named drugs in the doughnut hole. The doughnut hole is that vast amount—of about \$3,000 that senior citizens, once Medicare helps them get up to it—it is about \$2,300—above that all the way up to about \$5,300 the Medicare recipient doesn't get any reimbursement. It is not until that higher level that catastrophic Medicare coverage kicks in.

What the pharmaceutical industry has said is they will come in and give a 50-percent discount. Of their \$80 billion contribution, that is worth \$20 billion. But here is what they didn't tell you. Again, I am speaking very favorably for them because they are supporting the legislation. But this is

what they did not tell you. They did not tell you, with that 50-percent discount, that, No. 1, they are going to have increased sales of their brand-name drugs to the tune of \$5 billion over this 10-year period in the doughnut hole because they are selling more drugs in the doughnut hole; and because that means more people get above that \$5,300 level and get it into catastrophic coverage, that they are going to be able to sell, incremental sales, another \$25 billion or a total of increased sales of \$30 billion.

They are going to contribute \$20 billion, but they are going to get \$30 billion additional. So they come out a net \$10 billion over 10 years to the good.

What I would ask the pharmaceutical industry—that we appreciate—to do is come in and give a 100-percent discount and, by their open numbers, they have come up with, in a study by Morgan Stanley—by their own numbers, a 100-percent discount would cost them \$40 billion over 10 years, but they would reap back, by Morgan Stanley's numbers, \$60 billion. They would be, the pharmaceutical industry would be \$20 billion to the good.

It is a tale of two industries. One is the insurance industry, which grabbed its bag of marbles and said you are not making the penalties severe enough, we are taking our bag of marbles and we are going home and we are going to try to defeat your bill.

No. 2, the pharmaceutical industry, which has still hung in there but which can do a lot more. I hope, as we get into these negotiations, they will be willing to step up and set the example of health care reform in America.

I yield the floor.

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

Mr. KYL. Mr. President, let me talk for a moment about one aspect of the health care legislation that has been of great concern to our Nation's Governors. The Presiding Officer can certainly appreciate the problem since, among other Governors and former Governors, the Presiding Officer had the responsibility of balancing a State budget with one of the largest obligations, being the payment for the Medicaid patients.

My Governor, Jan Brewer, of Arizona, was in town last week. She talked to me about the problem. She sent me a letter which, in a moment, I will ask to be printed in the RECORD. But as a result of that conversation, I wish to point out some things to my colleagues and hope we can revisit the legislation that is on the floor.

Incidentally, before we do that, let me note the fact that my colleague from Florida referred a moment ago to a filibuster. I wish to be clear. I presume he was not referring to Republicans filibustering the bill, since we have been asking to have votes on the pending amendment, which is the Crapo amendment, since 6 days ago when that amendment was posited. As

a matter of fact, the Republican leader on Sunday finally had to file cloture on the Crapo amendment, which will ripen tomorrow morning, to end the filibuster the majority has been conducting.

I understand members of the majority have not been able to decide how to proceed. But in the meantime, we have not been able to vote on any pending amendments. Republicans would like to do that, would like to get some more amendments up and continue on with our debate on the bill. For a bill this important, we should have been able to dispose of a lot more amendments than we have. So lest anybody believe there is a Republican filibuster going on, I hasten to add that, of course, is not true.

Let me talk about the Medicaid features of this bill. It is against the backdrop of unemployment because, as you get more people on unemployment, you are going to have more people on the Medicaid rolls. Arizona's unemployment rate has risen 6 points just since June of 2007 and more and more of our people are, therefore, eligible for our Medicaid Program, which is known in Arizona as the AHCCCS Program.

Currently, one in five Arizonans is covered through AHCCCS; over 200,000 Arizonans have enrolled in AHCCCS since December 31. That is nearly 20,000 new enrollees every month. So we are talking about a substantial burden as a result of the recession we are in on our State government.

As my State and many others have had to deal with the challenges of the recession, declining State revenues, increasing need for certain State services, the last thing Washington should do is make things even harder for the States. Yet that is exactly what the Reid bill would do. The Reid bill would require States to expand Medicaid eligibility to all children, parents, and childless adults up to 133 percent of Federal poverty, beginning January 1, 2014, and there is even talk now of raising that to 150 percent of poverty. Moreover, the Federal government would only foot the bill for 3 years. In 2017, and in subsequent years, the States would have to help finance this expansion. The Congressional Budget Office estimates that \$25 billion in new State spending would result in the Reid bill.

The Arizona Governor's office estimates this bill would require the State of Arizona to increase its costs by almost \$4 billion, between now and 2020. The State of Arizona does not have that kind of money.

Just the so-called woodwork effect alone, meaning the number of currently eligible individuals who might enroll, would itself entail significant costs. There are about 200,000 Arizonans currently eligible but not all are enrolled in Medicaid. If only half those individuals would enroll, it would cost the State \$2 billion, from 2014 to 2019.

As I said, our State simply doesn't have the money to do that. Our Arizona Governor wrote to Chairman BAUCUS stating her strong opposition to the Medicaid expansion. I ask unanimous consent that her letter, dated October 6, to Chairman BAUCUS be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. KYL. Let me read a few key excerpts.

First:

Arizona cannot afford our current Medicaid program, despite the fact that we have one of the lowest per member per year costs in the country. Arizona's General Fund spending on our Medicaid agency has increased by 230 percent over the past ten years, rising from 8 percent of total General Fund spending in fiscal year 1998-1999 to 16 percent ten years later. As part of the solutions for our current year's budget shortfall, we have had to reduce Medicaid provider reimbursement by over \$300 million and freeze institutional reimbursement rates, resulting in an additional loss of more than \$60 million.

Despite these reductions, we are sacrificing other state programs that impact the education, health and safety of our children and our seniors in order to cover the growing costs of Medicaid. Considering this, it is incomprehensible that Congress is contemplating an enormous unfunded entitlement mandate on the states. The disconnect between policymakers in Washington and the reality of State and local governments is disheartening.

Let me quote from some other colleagues of Governor Brewer's, Democratic and Republican Governors around the country who have made exactly the same point.

The newly elected chairman of the Democratic Governors Association chairman is Jack Markell of Delaware. He said:

We've got concerns . . . And we're doing our best to communicate them. We understand the need to get something done, and we're supportive of getting something done. But we want to make sure it is done in a way that state budgets are not negatively impacted. . . . But I believe all governors are certainly concerned about what the potential impact is of some of these bills.

Governor Rendell of Pennsylvania, who has been on television a lot and makes a lot of sense when he talks about this:

I don't think it's an accounting trick. I think it's an unfunded mandate. We just don't have the wherewithal to absorb that without some new revenue source.

Bill Richardson of New Mexico:

We can't afford that, and that's not acceptable.

Gov. Phil Bredesen of Tennessee said he feared Congress was about to bestow "the mother of all underfunded mandates."

He was referring to this Medicaid mandate.

Gov. Christine Gregoire of Washington State:

As a governor, my concern is that if we try to cost-shift to the states, we're not going to be in a position to pick up the tab.

Bill Ritter, Democrat of Colorado:

Our only point was that a significant Medicaid expansion should not operate as an unfunded mandate for the states.

Gov. Brian Schweitzer, Democrat of Montana:

The governors are concerned about unfunded mandates, another situation where the federal government says you must do X and you must pay for it.

Let me quote two more.

Gov. Ted Strickland of Ohio:

The states, with our financial challenges right now, are not in a position to accept additional Medicaid responsibilities.

Governor Perdue of North Carolina:

The absolute deal breaker for me a governor is a federal plan that shifts costs to the States.

There are more and more I could quote. The point is, virtually all of the Nation's Governors have expressed a concern about this and have alluded in one way or another to the disconnect between Washington and the States. The point is, Washington seems to bark the orders but it is with no regard to the difficult financial challenge many of these States are in.

One final point. These new unfunded mandates generally mean higher taxes and significant payment cuts to safety net providers, just as Governor Brewer said, and ultimately the loss of jobs. This is the example I want to close with. Phoenix Children's Hospital was built to handle 20,000 emergency cases a year. It is a great hospital. It receives about 60,000 per year. Its capacity does not begin to match the need. To meet the demand—and by the way, more than half of these are Medicaid patients—the hospital built a new tower expected to open at the end of next year. Good news, right? Not exactly. The hospital has added up the State budget cuts Governor Brewer referred to, the payment cuts in the Reid bill I have referred to, and additional State cuts that will be needed to finance new Federal mandates, and concluded that the math doesn't add up. As a result, the Phoenix Children's Hospital informs me they will not be able to move into their new building. It would have generated 2,000 new jobs. What we do in Washington has real consequences. I submit the Reid bill spells disaster for States.

As we debate more and more features of this bill, each day we focus on something different in this legislation that creates a huge problem. Today's focus is on the problem that is focused on States because of the visit from our Governor. She is at her wit's end because they don't have the fiscal means of paying for this new unfunded mandate. She doesn't know what they will do if Congress ends up passing this. I urge colleagues, we have to find a way to not expand the Medicaid eligibility in a way that adds this new mandate on our States. Incidentally, if the Federal Government were to pick it all up, it simply transfers it to the citizens in the form of higher taxes they would have to pay in order to pay for the

mandate that is laid off on to the States themselves. One way or another, this element of the bill has to be rethought.

I encourage my colleagues on the other side, figure out what you need to do to reach a vote so that we can actually vote on these amendments. Republicans are ready. We have been ready for a long time now. Whatever it is that is causing a problem within your conference, figure it out so you can reach agreement with the Republican leader and we can begin to take votes starting on the Crapo motion and then move on through other amendments we have, one of which is the amendment by Senators HUTCHISON and THUNE, then an amendment by Senator SNOWE, and then an amendment I hope we will be able to offer at some time to remove this unfunded mandate which the States cannot afford to pay for about which I have been talking.

I yield the floor.

EXHIBIT 1

EXECUTIVE OFFICE,

STATE OF ARIZONA,

Phoenix, AZ, Oct. 6, 2009.

Hon. MAX BAUCUS,

U.S. Senate, Chairman, Senate Finance Committee, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN BAUCUS: I have been following the debate on federal healthcare reform with interest, and I have been working closely with members of Arizona's Congressional delegation to make sure they are well informed about the impact of the various proposals on our state. I am concerned that the proposals under consideration thus far do not consider the fiscal difficulties states are facing and are likely to continue to face over the next few years. Like many, I was particularly focused on the proposal that would emerge from the Senate Finance Committee, and I hoped that your plan would appropriately address state concerns. Given the continued lack of attention to state issues in the Chairman's Mark, I believe it is critical to provide you with my perspective on the state of my state, and how your proposal will impact Arizona.

By way of background, Arizona is wrestling with one of the most challenging economic downturns in state history. Arizona's economy is heavily focused on construction, real estate and the service sector, all of which have experienced declines that have combined to create a severe and lasting recession. While experts are expressing reserved optimism that the national economy may be turning the corner, it is likely that states—including Arizona—will not feel that turnaround for some time to come.

For example, the revenue collections during the most recent fiscal year for Arizona declined by 18 percent. Through the first quarter of the latest fiscal period, revenues from our three major tax sources have decreased an additional 10 percent. Our budget declines are contrasted with our rising Medicaid enrollment, which has grown by 18 percent over the past 12 months. At this time, one in five Arizonans is covered through the Medicaid program and we expect Medicaid enrollment to remain at elevated and unsustainable levels through the near future.

Arizona cannot afford our current Medicaid program, despite the fact that we have one of the lowest per member per year costs in the country. Arizona's General Fund spending on our Medicaid agency has increased by 230 percent over the past ten years, rising from 8 percent of total General

Fund spending in fiscal year 1998–1999 to 16 percent ten years later. As part of the solutions for our current year's budget shortfall, we have had to reduce Medicaid provider reimbursement by over \$300 million and freeze institutional reimbursement rates, resulting in an additional loss of more than \$60 million. However, budgetary savings cannot be achieved solely through provider reductions. Arizona also recently made the difficult decision to eliminate coverage for 9,500 parents of children enrolled in our Children's Health Insurance Program. Looking forward to fiscal year 2010–2011, we know that further reductions will be necessary.

Despite these reductions, we are sacrificing other state programs that impact the education, health and safety of our children and our seniors in order to cover the growing costs of Medicaid. Considering this, it is incomprehensible that Congress is contemplating an enormous unfunded entitlement mandate on the states. The disconnect between policymakers in Washington and the reality of state and local governments is disheartening.

These are realities that many states across the country are facing. Arizona's situation, however, is compounded by the fact that we have already expanded our Medicaid program to all residents with incomes under 100 percent of the federal poverty level (FPL). This decision means that, under your proposal, our state will be unable to take advantage of the higher level of federal funding that will be provided to states that have not enacted similar expansions. In essence, the Chairman's Mark penalizes Arizona for its early coverage of non-traditional Medicaid populations, like childless adults.

I must also point out my concern that estimates developed at the federal level do not accurately reflect the costs that states will ultimately bear. While I have great respect for the Congressional Budget Office (CBO), in this instance, its estimates are substantially below Arizona's fiscal estimates and I believe they understate the cost of expansion. For instance, the CBO analysis estimates the State cost of the Medicaid expansion and "woodwork" to be \$454 million. Arizona has an estimated 200,000 citizens below 100 percent of the FPL that are currently eligible for Medicaid, but not enrolled. If only half of those individuals enrolled, the cost of this "woodwork" effect alone would be over \$2.0 billion for FY 2014 through FY 2019, using the traditional Medicaid match. That is a significant difference for just one small state.

I want to reiterate my opposition to these unfunded mandates on states. I implore you to bear in mind the fiscal realities states are facing as we attempt to maintain responsible balanced budgets while preserving services for our most vulnerable residents. I hope you find this information useful as you consider the various proposals before you, and please do not hesitate to contact my office should you require additional information.

Sincerely,

JANICE K. BREWER,
Governor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

CLIMATE CHANGE

Ms. MURKOWSKI. Mr. President, I know the Senate is focused on health care, but I have come to the floor to speak on another very important topic and that is climate change. I wish to discuss a recent action by the Environmental Protection Agency and the consequences that could entail for our economy and why Congress must pre-

vent it from taking effect. I remind my colleagues that I have committed to a careful evaluation of all the options to address climate change in order to develop an approach that will benefit both our environment and our economy. Over time it has become increasingly apparent that some approaches are better than others. While we have not yet found that right approach, we have certainly identified the wrong approach: EPA regulation of greenhouse gases under the Clean Air Act. I believe this option should be taken off the table so we can focus our attention on more viable policies.

My concerns about this led me to file an amendment in September that would have limited EPA's ability to regulate certain greenhouse gas emissions for a period of 1 fiscal year. I offered my amendment for two reasons: first, to ensure that Congress had sufficient time to work on climate legislation and to ensure that the worst of our options, EPA regulation, did not take effect before that point. Even though Congress was and today remains nowhere close to completing legislation, the majority chose to block debate on my amendment. Since then the EPA has continued its steady march toward regulation. Last week the Administrator signed an endangerment finding for carbon dioxide and five other greenhouse gases. This finding is supposedly rooted in concerns about the public health and the public welfare. What it really endangers is jobs, economic recovery, and American competitiveness. Some have praised the endangerment finding as a step forward in our Nation's efforts to reduce emissions. They view it merely as an affirmation of the scientific assertion that human activities contribute to global climate change. Such a conclusion is within EPA's authority and appears to be appropriate given the years of research indicating that this is the case. Those same scientific findings underscore my desire to address this challenge in a proactive way.

Unfortunately, the endangerment finding is not just a finding. Despite what some in the administration have claimed, its effect is not limited to the science of global climate change. In reality, the finding opens the doors to a sweeping and convoluted process that will require the EPA to issue economywide command and control regulations. Once that finding is finalized, the EPA no longer has discretion over whether they can impose regulations.

As the Administrator noted last week, the agency is now obligated and compelled to take action. This is where it becomes evident that EPA regulation is an awful choice for climate policy. If a pollutant is regulated under one section of the Clean Air Act, it triggers identical treatment in other sections of that statute. So while the EPA initially intends to address only mobile source emissions, meaning vehicles, the agency will also be required to

regulate stationary source emissions as well.

Think of it this way: If the EPA attempts to control any greenhouse gas emissions, the agency will be required to control all greenhouse gas emissions. Because EPA regulations will consist of command and control directives rather than market-based decisions, this approach will increase the price of energy, add greatly to administrative costs, and create many new layers of bureaucracy that must be cut through.

This is why you often see EPA regulations described as intrusive or Byzantine or maze like. They are all of the above. While the permitting process that will be created is unclear, the consequences of imposing these regulations are not. The bottom line is, our economy will suffer. Businesses will be forced to cut jobs, if not close their doors for good. Domestic energy production will be severely restricted, increasing our dependence on foreign suppliers as well as threatening our national security. Housing will become less affordable and consumer goods more expensive, as we see the impacts of the EPA's regulations ripple and break their way across our economy.

In the wake of the majority's decision to block my effort to establish a 1-year timeout for this process, we now find ourselves in a bit of a bind. Even though Congress is working on climate legislation, the EPA is proceeding with a tremendously expensive regulatory scheme. It appears increasingly likely that the EPA will finalize its regulations before Congress has an opportunity to complete debate on climate legislation. That outcome is simply unacceptable as our Nation struggles to regain its economic footing.

Today I have come to announce that I intend to file a disapproval resolution under the provisions of the Congressional Review Act related to the EPA's endangerment finding. I have this resolution drafted. I will introduce it as soon as the EPA formally submits its rule to Congress or publishes it in the Federal Register, as is required by law. My resolution would stop the endangerment finding. In general terms, I am proposing that Congress veto it. Like my previous amendment, this one is also rooted in a desire to see Congress pass climate legislation because the policy is sound on its own merits and not merely as a defense against the threat of harmful regulations.

While I know that passage of this resolution will be an uphill battle, I believe it is in our best interest. It is the best course of action available to us. This is a chance to ensure that Congress, not unelected bureaucrats, decides how our Nation will reduce its emissions.

To understand why my resolution is so critically important, we have to dig deeper into the economic consequences that will result from regulations based upon the endangerment finding. Because there are no regulations within

the finding itself, the agency has omitted any projection of what they might cost our Nation.

Even though the EPA has not prepared projections of what these regulations will cost, I expect the totals would be staggering. The price tags attached to the climate bills pending in the Senate, which a majority of Members have concluded are too high, would almost certainly pale in comparison.

There are a few figures that can help us put the potential costs in perspective. In one of its recent proposals, the EPA noted that some 6 million "sources" could be required to obtain new operating permits if greenhouse gases are regulated. The word "sources" refers to the businesses, schools, hospitals, and other fixtures found in every town in America that would suddenly face scrutiny due to their carbon footprints. Farms, landfills, and any other "source" that emits more than 250 tons of greenhouse gases per year would be caught in the same net.

Facing the heaviest regulation will be the facilities that are subject to the Clean Air Act's "Prevention of Significant Deterioration" permitting process. This is referred to as "PSD." Today, 300 facilities are covered by that requirement. Under EPA regulation, that number would soar to 40,000. The PSD process prevents existing facilities from making certain modifications until the EPA has granted its approval. The same holds true for new construction as well. Any facility expected to emit more than 250 tons per year would not be allowed to break ground until their owners have secured the EPA's permission to proceed.

The PSD process is already hugely expensive and time-consuming for affected facilities. It can take years, and cost tens if not hundreds of thousands of dollars, to navigate the PSD process. And that is true today, well before the number of facilities it covers is increased by an order of magnitude.

Earlier this year, in sharing their reference for congressional action, the editors of the Washington Post provided a pretty good description of what EPA regulation would be like on a daily basis. They stated in their editorial:

The EPA in theory . . . could go shopping mall by shopping mall, apartment building by apartment building . . . But even plant by plant, how can you "limit" greenhouse gas? The short answer is, you can't. Or, no one knows. Or, you can't, yet. Take, for example, a coal-fired power plant. EPA regulation would be triggered only when someone wanted to build one or update an old one. At that point, the agency could demand that the plant use the "best available control technology" (BACT) to limit emissions.

The editorial goes on to state:

Right now, no such BACT exists for coal-fired plants beyond better efficiency measures. A lot of attention has been focused on carbon capture and sequestration, but it wouldn't be considered BACT until it was up and running successfully in a coal-fired

power plant somewhere in the United States. Even then, its use would have to be weighed against a number of other factors, such as the amount of energy used, the environmental impact and the effect on the output of other regulated pollutants. If past practice applies, the issuance of the final permit would be followed by a series of lawsuits. The whole process could take a decade or more—and that would be multiplied hundreds or thousands of times across the country.

No one is more aware of how damaging these regulations could be than the EPA itself, so it is no surprise the agency has sought to dramatically increase the Clean Air Act's regulatory threshold—from 250 tons per year right now, to 25,000 tons per year for greenhouse gases. As the EPA admitted earlier this year, if the Clean Air Act's current threshold is not lifted, "the administrative burdens would be immense, and they would immediately and completely overwhelm the permitting authorities"—meaning, of course, the EPA and its State and local counterparts.

Now, I do give some credit to the EPA for recognizing that the 250-ton per year threshold is "not feasible" for greenhouse gases. While most pollutants are measured in much smaller amounts, greenhouse gases are far more abundant.

After all, nearly every form of economic activity results in at least some level of emissions. But I am also deeply disturbed that instead of recognizing and accepting that the Clean Air Act is simply not suited for this task, the agency attempted to make it so by ignoring its explicit, statutory requirements.

As we all know, whenever an executive agency fails to adhere to the laws passed by Congress, it opens itself up to litigation. The EPA's so-called tailoring rule is no exception, and I fully expect that lawsuits will be filed if the agency issues it. Once the rule is challenged, I expect the courts will reject it, as it has no legal basis, and restore the regulatory threshold to 250 tons per year. At that point, the agency will be mired in the regulatory nightmare it hopes to avoid.

In the meantime, it is also worth noting that the EPA is proceeding with the regulation of greenhouse gases even though the tailoring proposal is not part of the existing statute. So for all of the agency's promises of regulatory relief, and a safety net to help minimize the pain associated with these regulations, there is nothing behind that yet. And given the larger conversation that needs to take place about amending the Clean Air Act, that relief may never materialize.

Given the tremendous economic, administrative, and bureaucratic drawbacks associated with EPA regulation, it should come as no surprise that Members of the majority, the administration, and environmental groups have expressed their preference for congressional legislation.

The Democratic chairman of the House Agriculture Committee declared

that EPA regulation would result "in one of the largest and most bureaucratic nightmares that the U.S. economy and Americans have ever seen." He went on to add, "Let me be clear, this is not a responsibility we want to leave in the hands of EPA."

The most senior Member of the House of Representatives, a Democrat, who has served our country for more than half a century, has concluded that EPA regulation would create a "glorious mess." He has also said that, "As a matter of national policy, it seems to me to be insane that we would be talking about leaving this kind of judgment, which everybody tells us has to be addressed with great immediacy, to a long and complex process of regulatory action."

Shortly before I filed my amendment in September, the EPA Administrator herself insisted that "new legislation is the best way to deal with climate change pollution." You wouldn't guess that by looking at the efforts of some in her agency as they helped to defeat my amendment, but just last week, she reiterated the claim by stating, "I firmly believe . . . and the president has said all along that new legislation is the best way to deal with climate change."

With such widespread, high-level, and bipartisan agreement that EPA regulation is such a bad idea, you would think it would be easy to suspend the EPA's regulatory efforts. Unfortunately, you would be mistaken. Many seem convinced that the threat of EPA regulation will force Congress to work more quickly than it otherwise would.

This is not a conspiracy theory. It is an open and well-established strategy on the part of the administration, confirmed just this week when a senior White House economic official was quoted as saying "If you don't pass this legislation, then . . . the EPA is going to have to regulate in this area . . . And it is not going to be able to regulate on a market-based way, so it is going to have to regulate in a command-and-control way, which will probably generate even more uncertainty."

An author of the House cap-and-trade bill has posed the question: "Do you want the EPA to make the decision or would you like your Congressman or Senator to be in the room and drafting legislation?" going on to say that, "Industries across the country will just have to gauge for themselves how lucky they feel if regarding EPA regulation." The Wall Street Journal has referred to this as the "'Dirty Harry' theory of governance."

This approach is often likened, rather starkly, to "putting a gun to Congress's head." Personally, I believe that is a terrible way to pursue climate policy, and beyond that, a terrible way to govern this country. It is difficult to grasp how or why Congress would feel compelled to enact economically damaging legislation in order to stave off economically damaging regulations.

We are being presented with a false choice that should be rejected outright. The majority and the administration are saying: Don't make us do this. My answer to this is, simply: You don't have to.

Before concluding, I want to spend a few minutes putting to rest some of the criticism that will surely follow my decision to offer a disapproval resolution. During the debate over my last amendment, several baseless arguments were made. So I would like to challenge anyone who finds reason to oppose my resolution to keep their remarks, and thereby this debate, as substantive as possible.

First, I want to reiterate my desire to take meaningful action to reduce our Nation's greenhouse gas emissions. Such a policy can and should be drafted by Congress, and designed to both protect the environment and strengthen our economy. I was a cosponsor of a climate bill last Congress, and I am continuing to work on legislation that will lead to lower emissions. Senator BINGAMAN and I spent more than 6 months developing a comprehensive energy bill in committee, and have now held six hearings on our climate policy options.

Next, my resolution is not meant to run contrary to the Supreme Court's decision in *Massachusetts v. EPA*. Remember, I previously sought a 1-year delay of this process that would have allowed mobile source emissions to be regulated. That amendment was blocked by the majority from even being considered and, at this point, I am left with little choice but to raise the question of whether the Clean Air Act is capable of effectively regulating greenhouse gas emissions.

Finally, I am not interested in trying to embarrass the President, either here at home or on the international stage. I have stated publicly that I wish the President well in making progress on international issues. And I think it is safe to acknowledge that I didn't choose to release the endangerment finding on the opening day of the Copenhagen climate conference; that was the EPA's decision. As Administrator Jackson reportedly said, the EPA "tried to make sure we had something to talk about" in Copenhagen.

Mr. President, I understand I may have come to the end of my 20 minutes. I ask unanimous consent for a minute and a half to conclude my remarks.

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

Ms. MURKOWSKI. I thank the Chair.

If the administration truly wanted something to highlight in Copenhagen, it should have prioritized climate legislation over health care. The Senate majority could have devoted weeks spent on a tourism bill and other matters to working through a climate bill here on the floor. And even if climate legislation could not be agreed to, Congress has now had nearly 6 months to take up the comprehensive bill we re-

ported from the Energy Committee. That bill would have allowed the President to highlight significant accomplishments on energy efficiency, clean energy financing, and renewable energy generation. Instead, he is left to tout regulations that his administration doesn't really want, that a wide range of stakeholders dread, and that many Members in both Chambers of Congress actively oppose.

We need to only look back to the development of the Clean Air Act itself for an example of how this process can, and should, work. The product of both Presidential leadership and congressional unity, the 1970 Clean Air Act was unanimously passed by the Senate. I hope the current administration will take note of that example. And should we ever reach a point where the President is able to sign climate legislation into law, I truly hope it will be the result of his administration having brought Congress together to complete this important task.

Right now, though, the administration and the majority in Congress continue to choose a different path. Threatening to disrupt the Nation's economy until Congress passes a bad bill by the slimmest of margins won't be much of an accomplishment, nor is that approach worthy of the institutions and people we serve. It isn't appropriate for a challenge of this magnitude. No policy that results from it will achieve our common goals or stand the test of time.

As I said earlier, I am submitting this resolution because it will help prevent our worst option for reducing emissions from moving forward. The threat of EPA regulations are not encouraging Congress to work faster, they are now driving us further off course and increasing the division over how to proceed.

I understand that some are comfortable with the threat of EPA regulations hanging over our heads. But, in closing, I would simply remind my colleagues of an observation once made by President Eisenhower:

Leadership is the art of getting someone else to do something you want done because he wants to do it.

What we are dealing with right now isn't leadership—is an attempt at leverage. The EPA's endangerment finding may be intended to help protect our environment, but the regulations that inevitably follow will only endanger our economy. That lack of balance is unacceptable. We can cut emissions, but we can't cut jobs. We can move to cleaner energy, but we can't force our businesses to move overseas. It is past time to remove the EPA's thinly veiled and ill-advised threat, and we can do that by passing my resolution and giving ourselves time to develop a real solution.

With that, I yield the floor, and I thank my colleague from Connecticut for his courtesy.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Connecticut is recognized.

HEALTH CARE REFORM

Mr. DODD. Madam President, I wish to resume the conversation about the pending health care proposal.

We have had a lot of talk, going back for 60 years, I guess, about health care. But in the last year, if we tried to calculate the number of times there have been meetings and conversations, not including the ones that occur here on the floor of the Senate but throughout the Capitol, both in the other body as well as here, between Members and staffs, it has been voluminous, to put it mildly. We are coming down to what appears to be the remaining few hours before we will decide as a nation whether to move forward or to leave things as they are with the hope that one way or the other things may correct themselves in terms of the cost, affordability, and quality of health care. So the next few days of debates could largely determine whether, once again, the Congress of the United States, Democrats and Republicans, as well as the administration and all of the others who have grappled with this issue now for many months, will succumb to what has afflicted every other Congress and every other administration and every other group of people since the 1940s. That is our inability to answer the question of whether we can do what almost every other competitor nation of ours around the world did decades ago—provide decent, affordable health care for our fellow citizens.

If nothing else, this debate has proven how complex this issue is and it has demonstrated the wide variety of viewpoints that exist among those not only in this very Chamber but among people across the country. Certainly, that was evident during this summer's townhall meetings. I held four of them in my State earlier this year. I know most of my colleagues either did telemeetings or conducted them in their respective States. Because this issue affects one-sixth of our economy and 100 percent of our constituents, not only those here today but obviously the millions yet to come, our debates have been spirited and our disagreements at times emotionally charged, not only here in this Chamber but across the country.

So to my Democratic colleagues who still have concerns over aspects of the legislation, as all of us do; to any of my Republican colleagues who still desire to put people, as I know they do, ahead of partisanship; and to my fellow Americans who worry that politics will once again triumph over progress, which it has for six decades, let me offer some context for the debate that begins again this afternoon and will arrive at a closure in a matter of hours and days. The answer ultimately will be whether we move forward and do what I think the majority of our fellow citizens want us to do or fall back, once again, into the same paralysis that affected Congresses, administrations, and generations before us.

The consensus we have already reached as a Senate is that health care

reform would represent a significant victory for the American people—I think we all agree on that point—and it would be a significant moment in our Nation's history.

I think all of us can agree that insurance companies should not be allowed to deny coverage because of a pre-existing condition, that these same companies shouldn't be able to ration the benefits a family receives, and that citizens of the United States should be guaranteed that the coverage they pay for will be there for them when they need it. I think all of us in this Chamber, regardless of party or ideology, agree that reform should make insurance more affordable; that it should protect Medicare and keep it solvent so that it will be there for future generations; and that it should improve the quality of health care for all Americans, focusing on preventing diseases, reducing medical errors, and eliminating waste from our system so that our health care dollars are used more effectively. I think all of us can agree as well, regardless of which side of this debate one is on, that reform should empower families to make good decisions about purchasing insurance; empower small businesses to create jobs; empower doctors to care for their patients instead of filling out paperwork; and empower the sick to focus on fighting their illnesses instead of fighting their insurance companies. These are the commonsense reforms that will make insurance a buyer's market, keep Americans healthier, and save families and the government an awful lot of money in the years ahead. I think all of us share these views—at least that is what I have heard in the last year I have been so intensely involved in this debate and formulating the policy that is now before us.

If we listen to the distinguished minority leader, our good friend from Kentucky, we might be surprised to learn that his conference has decided to not just oppose our legislation but, unfortunately, to obstruct even further progress. After all, he called for a reform bill that incentivizes workplace wellness, allows people to purchase insurance across State lines, and reduces costs. Our bill does all three things. Let me be specific. On page 80, our bill includes a bipartisan proposal allowing employers to offer larger incentives for workplace wellness programs. On page 219 of our bill, it includes a Republican proposal allowing health plans to be sold across State lines. On page 1 of the Congressional Budget Office analysis of this bill, the Congressional Budget Office concludes that our bill would cut the deficit of our Nation by \$130 billion over the next 10 years—the single largest budget deficit reduction since 1997.

In a body of 100, as we are, in which both parties claim to agree on these principles, we should be able to achieve, one would think, a bipartisan consensus on a matter of this magnitude. But, sadly, it would seem our colleagues—many of them, again, on

the other side of this divide—don't seem to care what is in this bill specifically.

I am reminded again, as others have been, of what is actually included in this bill—not that I would expect them or anyone on this side of the divide to agree with everything that is here. We don't. There is not a single Member of this body who would not write this bill differently if he or she could. There is no doubt in my mind whatsoever about that. But we serve in a collegial body of 100 where we have to come to consensus with each other even when we don't agree with every single aspect of this bill.

Yet, when I read the words of the chairman of the Republican National Committee—and again speaking on behalf of a party, this is why I find this so disheartening. At a time such as this, I expect there to be full debate and disagreement over various ideas. But read, if you will, the words of the national chairman of a major political party in this country. Here is what he is suggesting his party ought to be doing at this critical hour:

I urge everyone to spend every bit of capital and energy you have to stop this health care reform. The Democrats have accused us of trying to delay, stall, slow down, and stop this bill. They are right.

Let's hear that again:

The Democrats have accused us of trying to delay, stall, slow down, and stop this bill. They are right.

It is awfully difficult to hear my colleagues talk about wanting to get a bill done, wanting to come together, when the chairman of their national party is recommending they do everything in their power to stop a bill that, in fact, includes many of the very reforms they themselves embrace.

Make no mistake, if the status quo prevails, one thing I can say with absolute certainty—if we do what too many of our friends on the other side and clearly what the chairman of the Republican National Committee are recommending—I can predict with absolute certainty the outcome, and that is that premiums will go up dramatically, health costs will continue to wreak havoc on small businesses, our deficit will grow exponentially, and Americans will see premiums nearly double in the next 4 years. In my state of Connecticut, a family of four is paying \$12,000 a year right now. It is predicted that those premiums will jump to \$24,000 within 7 years if we do nothing. That much I can guarantee.

For those who argue for the so-called status quo or keeping things where they are, know that more and more people will lose their health insurance. More families will be forced into bankruptcy. Hundreds of thousands of Americans are going to die unnecessarily, in my view, in the name of that obstruction. I don't think we can let that happen. So it has fallen to the majority to do alone the job we are all sent here to do collectively—the hard and honest work of legislating, as difficult as it is.

The factors that make this work so hard are not new or unique to this debate, and, as history shows, they will not be what is remembered a generation from now. The words that have been spoken here in this Chamber, the charts, the graphs—all of these things are slowly forgotten by history.

Today, we hold Medicare up as an example of a program worth defending. How many speeches have been given in the last 2 or 3 weeks about the glories of Medicare? I only wish those Members who are here today had been present in 1965. We might have been able to pass that bill without the partisan debate that took place in those days.

Today, no one talks about the 50 years it took to bring Medicare to the floor of the Senate. No one talks about what the polls said in 1965 when it took a lengthy debate involving more than 500 amendments, by the way, to achieve consensus on Medicare. I might add, nobody attacks it as socialized medicine as they did in 1965.

It is always easier to envision the legislation we want than it is to pass legislation we need. Such is the case here this afternoon. We won't end up with a bill that I would have written if it were up to me, and it won't be the bill that any one of our colleagues would have written either.

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

Mr. DODD. Madam President, I ask unanimous consent for 2 more minutes.

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

Mr. DODD. But it will be a bill that improves the health care of all Americans. It will be a bill that makes insurance more affordable, improves the quality of care, and helps create jobs in our Nation. It will be a bill that saves money and saves lives. And it will be a bill that decades from now we will remember not for the differences we had in this Chamber but for the differences it made in our Nation and for the differences it made for our fellow citizens.

To get there, we must build on the consensus we have already reached, not tear it down with the petty weapons of political gamesmanship. We must answer not the call of today's poll or tomorrow's election but the call of history that we have been asked to meet, that other generations, other Congresses have failed to meet but we are on the brink of achieving.

My hope is that all of us will come together in these closing hours and do that which many predicted we could not do: pass legislation that we need.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

CLIMATE CHANGE

Mr. THUNE. Madam President, I wish to start by referring briefly to the remarks made earlier by the Senator from Alaska. She indicated earlier on the floor that she is going to be offering a motion of disapproval for a set of

regulations that are not final yet but have been announced by the EPA that they are coming forward with, the so-called endangerment finding. I wish to indicate that I intend to support her on that resolution.

I cosponsored the amendment she tried offering earlier this year to one of the appropriations bills that would have prevented the EPA from moving forward with the endangerment finding for a year, which would have allowed Congress an opportunity to examine this issue and perhaps approach it with a legislative solution as opposed to having the EPA move forward in a way even they acknowledge they don't have statutory authority to do.

I might say that the end result of what is being proposed at EPA—if they are successful—is they will implement a cap-and-trade program, only it will be a cap without the trade.

The reason they are moving forward, in my view, is because there isn't the political will in the Congress to pass a punishing cap-and-trade proposal this year. The House of Representatives passed it narrowly this year. There are a number of Members of the House who I think would like to have that vote over again. I know there aren't the votes in the Senate because many Senators on both sides realize the impact it would have on the economy—the number of jobs that would be lost in our economy and how it would punish certain parts of our country with crushing energy costs, at a time when we don't need to pile costs on small businesses and consumers who are trying to come out of a recession.

This is a wrongheaded move by the EPA. It is something they should not be acting on independently. This should be resolved by the Congress of the United States. Honestly, if the EPA moves forward, there are a number of industries in South Dakota that will be impacted and a number of businesses in my State. If the litigation is successful—and, inevitably, there will be lots of lawsuits filed—and if the 25,000-ton number is reduced to the 250-ton number that is used as a threshold in the Clean Air Act, there will be literally millions of entities that will be covered—hospitals, churches, farmers, ranchers, and small businesses.

In South Dakota, we have a lot of farmers and ranchers who make their living in small businesses that would be adversely impacted were these regulations to be enacted and then move forward with regulating and putting the caps in place. If the litigation is successful, we know what will be subsequent to that.

I say that as a lead-in to talk about impacts on small businesses. There are so many things happening right now in Washington that have an adverse and detrimental impact on the ability of small businesses to create jobs. I have heard the President talk about creating jobs—that is his No. 1 priority—and we need to give incentives to small

businesses to create jobs. I have heard my colleagues on the other side talk about how important job creation is. Yet everything coming out of Washington, whether it is in the form of heavyhanded regulation, such as this endangerment finding coming out of EPA, or in the form of a cap-and-trade proposal or whether it is this massive expansion of the Federal Government—the \$2.5 trillion expansion to create a new health care entitlement—all these things are raising clouds over the small business sector of our economy, which creates about 70 percent of the jobs.

We are essentially telling small businesses that you may end up with these massive new energy taxes or with this employer mandate that will cost you up to \$750 per employee if you don't offer the right kind of insurance; you are going to be faced with all these taxes imposed on health insurers and prescription drugs and medical device manufacturers that will be passed on to you.

Then we are saying go out and create jobs, in light of all this policy and uncertainty in Washington, all these proposals to tax and spend and borrow more money by the Federal Government. You cannot blame small businesses for acting with a little bit of hesitancy when it comes to making major capital investments and when it comes to hiring new people.

Those are the very things we want small businesses to do. We want to encourage that type of behavior. We want to encourage that kind of investment. We want to encourage job creation. Unemployment is at 10 percent. We have lost 3.3 million jobs since the beginning of the year. Who will put people back to work? It will be the small businesses in our economy. In South Dakota, they are about 96 percent of the game, when it comes to employment in South Dakota. Here we are debating a health care reform bill which, in addition to spending \$2.5 trillion to create this new health care entitlement, raises taxes on small businesses, cuts Medicare, and at the end day, according to the experts—the CBO and the Chief Actuary at the CMS, which is the so-called referee in all this, who tells us what these things will cost and their impact—they have all said premiums will either stay the same or go up. So the best small business can hope for under this is the status quo.

I hear my colleagues on the other side coming down here, day after day, making statements, saying this is going to be good for small businesses, and this will help small businesses deal with the high cost of health care.

The problem with all their arguments is one thing: They are completely and utterly divorced from reality. You cannot look at this health care reform proposal and come away from it and say this is a good thing for small businesses, when small businesses are saying this will drive up their cost of doing business, it will raise health care costs, and these taxes

you are going to hit us with will make it harder to create jobs.

Why do we proceed in the face of this and then deny what all these small businesses are saying, what the experts are saying, and what increasingly the American people are saying, which is that this is a bad idea. So why don't you reconsider this and start over again and do some things that will actually lower health care costs. That is what small businesses are saying.

We have people down here saying this is good for small business. What are small businesses saying—and large businesses, for that matter. The NFIB represents small businesses all over the country. They said:

This bill will not deliver the widely promised help to the small business community.

They say:

It will destroy job creation opportunities for employees, create a reality that is worse than the status quo for small businesses. It is the wrong reform at the wrong time, and it will increase health care costs and the cost of doing business.

That is the National Federation of Independent Businesses, as I said.

How about large businesses? The Chamber of Commerce expressed their disappointment with the Senate health care bill and has weighed in with strong opposition against it. That includes the National Association of Wholesaler Distributors, the Small Business Entrepreneurship Council, the Association of Builders and Contractors, the National Association of Manufacturers, the Independent Electrical Contractors, and the International Franchise Association. The list goes on and on. The Small Business Coalition for Affordable Health Care—50 organizations around the country that are members of the group—including many that have members in South Dakota, not the least of which is the American Farm Bureau Federation. That represents farmers and ranchers who are still businesspeople out there trying to make ends meet. They said this:

Our small businesses and self-employed entrepreneurs have been clear about what they need and want: lower costs, more choices, and greater competition for private interests.

They say:

These reforms fall short of long-term, meaningful relief for small business. Any potential savings from these reforms are more than outweighed by the new tax, new mandates, and expensive, new government programs included in this bill.

That is what small businesses across the country are saying. The reason they are saying that is because, as I mentioned, not only are they hit with these taxes every year, there is a tax on health plans that will amount to \$60 billion over 10 years, which will be passed on to small businesses. There is a new payroll tax, Medicare tax, which incidentally, for the first time ever, instead of going to Medicare, will be used to create a new entitlement program. That will hit about one-third of small businesses in this country, we are told.

As I said earlier, they have the employer mandate, which is going to hit a whole lot of small businesses—another \$28 billion that will hit small businesses across this country. So you have all these new taxes heaped upon our small business sector. The small businesses are saying: What do we get out of this? What is this going to do to affect our health care costs?

I will show you. This chart represents what the CBO has said health care costs would do if this bill is enacted. The blue line represents the cost of essentially, if you will, doing nothing. In other words, the blue line represents what will happen if Congress does nothing, the year over year increases we are already seeing. It represents the status quo. We have heard people from the other side say we have to do better than the status quo. The President and the Vice President say that and our Democratic colleagues say that. You cannot accept the status quo and then attack Republicans for being in favor of status quo. The blue line represents the status quo. The blue line is what will happen year over year, in terms of increases in health insurance premiums that small businesses and individuals will deal with.

It doesn't matter where you get your insurance—the small business group market or the large business employer group market or the individual market. If you get it in the individual market, your rates will be 10 to 13 percent higher. I ask unanimous consent to extend my remarks for another 5 minutes.

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

Mr. THUNE. It doesn't matter which market you get your insurance in, except if you are in the individual market, you will pay much higher insurance premiums than the status quo, which is locking in double the rate of inflation premiums for the foreseeable future.

The red line on the chart represents the spending under this bill. This is what the CBO says will happen. You will see the cost curve bent up, not down. You are going to have more money coming out of our economy to pay for health care than you do today. That is what small businesses are reacting to. That is why they are coming out strongly and adamantly opposed to this legislation. It bends the cost curve up, increases the cost of health care, rather than bending it down. We heard the same thing come out of the Actuary of the CMS just last week.

Again, the experts are saying—the referees, the people who don't have a political agenda—repeatedly, that this will increase the cost of health care. This will drive health insurance premiums higher.

The other point I wish to make, because after I have shown you how health care costs will go up under this legislation, the other amazing thing about it—this is, again, one of those phony accounting techniques or gim-

micks that Washington uses, the same old business in Washington, the Washington smoke and mirrors, the ways of disguising what this really costs: In order to bring this thing in at about \$1 trillion, which is what the majority wanted to do, they had to use budget gimmicks.

The Senator from New Hampshire knows all about this because he has followed this closely as chairman of the Budget Committee for many years. He can attest to the fact that one of the things they will do is start the tax increases immediately. So on January 1 of next year—which is now 18 short days away—all these businesses across the country are going to see their taxes go up—in 18 days. But the amazing thing about it is, many benefits don't get paid out for another 1,479 days. So they front-load all the tax increases; the tax increases will be passed on immediately. By 2013, every American family will be paying—starting next year—\$600 a year. So every American family will feel the brunt of the additional costs for taxes and the premium increases that will follow from those.

The remarkable thing about it is, they structured a bill that would punish small businesses and people who will pay these taxes on January 1 of 2010—18 days away. They don't pay out benefits for another 1,479 days. What does that do? In the 10-year window they use to measure what this will cost, it dramatically understates the cost of the legislation. So we are faced with not a \$1 trillion bill but a \$2.5 trillion bill, when it is fully implemented and when all the budgetary gimmicks and phony accounting is actually taken into consideration. This is a bad deal for small businesses. That is why all the small business organizations have come out opposed to it.

You cannot get up, day after day, and defy reality, logic, reason, and facts. That is what those who are trying to push this huge government expansion and huge takeover of health care in this country are trying to have the people believe. They are dead wrong.

I believe the American people are tuning in to that, which is why, increasingly, in public opinion polls, they are turning a thumbs down on this by majorities of over 60 percent.

I see the Senator from New Hampshire. I appreciate him indulging me for an extra few minutes.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Madam President, I ask unanimous consent to speak for 15 minutes.

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

Mr. GREGG. Madam President, I appreciate the explanation of the Senator from South Dakota of the effects of the bill on small business—especially the description of the gimmicks played in the bill in order to make it look fiscally responsible, which it is not—the

fact they use 10 years of revenues in Medicare cuts to offset 5 to 6 years of spending and then they claim somehow it is in balance.

I wish to turn to another part of the bill. I think it is important to recognize it is not our side so much that is representing the failures of the bill. It is actually the administration itself. The administration's Actuary came forward with a letter analyzing the Reid bill. You have to remember the Reid bill isn't necessarily the bill. This is sort of like a "where is Waldo" exercise here. We have a bill called the Reid bill—it is 2,074 pages—which we got 10 days ago. It took 8 weeks to develop it, in camera, by Senator REID and a few of his people.

Now we are told there is going to be a new bill. Nobody has seen it. Nobody on our side has it. I understand most Members on the other side have not seen it, but it is supposed to be a massive rewrite of the Reid bill. We can only project what that is through news reports. News reports are not very good. They represent they are going to expand Medicaid which will be a massively unfunded mandate to States and lead to letting people into a system that is fundamentally broken, and you are going to let people buy into Medicare age 55 and over.

Medicare is insolvent today. It has \$35 trillion of unfunded liabilities on the books, and they are going to let people buy into Medicare. What sort of sense does that make? It means that seniors who are on Medicare—and, by the way, Medicare gets cut significantly under this bill—will find Medicare under even more pressure when you put people into it.

Turning from those two obvious problems to the potential bill that we have not seen but will be asked to vote on before the week is out, it appears, I want to turn to this actuary report done by the CMS Actuary who works for the Department of HHS and whose job it is to evaluate this bill. He works for the President. He is a Federal employee. He is in the administration.

The CMS made a number of points. Remember, when we started down this road, the President said he wanted to do three things, all of which I agreed to: One, he wanted to expand coverage so uninsured would get covered. Two, he wanted to bend the outyears cost curve of Medicare and of health care generally in this country so we could afford it. And three, he wanted to make sure if you had insurance, you get to keep it. If you like your insurance, if you like the employer plan you have, you get to keep it.

What did the Medicare Actuary—this is not the Republican side, this is an independent, fair analysis of the Reid bill—what did they say on these three points the President held up as his test for what health care should be?

On the issue of whether this bill bends the outyears cost curve—which we have to do, by the way. If we do not get health care costs under control,

there is no way we are going to get our Federal budgets under control. What did the Actuary say:

Total national health care expenditures under this bill would increase by an estimated \$233 billion during the calendar period 2010 to 2019.

Instead of going down, they go up. The chart that Senator THUNE showed is totally accurate. There is no bending down of the outyear health costs. There are a lot of reasons for that, and I will go into it in a second. Primarily they did not put provisions in the bill I would support and should have been in this bill, such as malpractice abusive lawsuit reform, such as expanding HIPAA so companies can pay people to live healthier lifestyles—if you stop smoking, your company could pay you; if you lose weight, your company could pay you—which is not in this bill, which would have bent the cost curve down. Those were taken out of the bill because the trial lawyers opposed the first one and the unions opposed the second one.

On the second point the President set out as his test, which was there would be coverage for everybody who is uninsured, what did the Actuary say after he looked at this bill? There are 47 million people uninsured. Some people say there are 50 million. The Actuary said after this bill is completely phased in, there will still be 24 million people uninsured. So for \$2.5 trillion—that is what the cost of this bill is when it is totally phased in—for the creation of a brandnew entitlement, for cuts in Medicare which will be \$1 trillion over the 10-year period when the bill is fully phased in, \$½ trillion in the first 10 years, \$1 trillion when phased in, \$3 trillion of Medicare cuts in the first 20 years—for that price, \$2.5 trillion, what do you get? You still get 24 million people uninsured. Why? Because they set the bar so high on the insurance level people still cannot afford to get into it and people will be pushed out of their private insurance. That is the third point.

The President said if you like your private plan, you get to keep it. That was his third test. I agree with that. I agree with all these tests. We should bend the outyear cost curve and get everybody covered. The third test is if you like your private insurance, you get to keep it.

What does the Actuary say? Once again, the Actuary works for the President through HHS. The Actuary says 17 million people will lose their existing employer-sponsored insurance; 17 million people will be pushed out of their private plans into this quasi-public plan. Why is that? Because the way this bill is structured, there is so much cost shifting that is going on as you put people in Medicaid, which only pays about 60 percent of the cost of health care of a person getting Medicaid, and you put more people into Medicare, which only pays about 80 percent of what it costs to take care of a Medicare recipient, that difference—

that 40 percent in Medicaid, that 20 percent in Medicare—has to be picked up by somebody else. The hospitals have to charge the real rate of what it costs them. The doctors have to charge the real rate of what it costs them to see that patient. So they put that cost on to the private sector. They put it on to private insurance. So the private sector is subsidizing, the person who gets their insurance through their company is subsidizing the cost of the person who goes into Medicaid or the cost of the person who goes into Medicare.

In fact, today, the private sector is subsidizing the Medicare recipient and the Medicaid recipient through the cost of their insurance by almost \$1,700 a year. Madam President, \$1,700 a year of your private insurance, if you are insured by an employer plan, is to pay that gap in reimbursements, that underreimbursement for people who are under Medicaid and under Medicare.

When you put more people into Medicaid—and this bill assumes 15 million people are going to go into Medicaid—and you put more people into Medicare and this bill puts people age 55 and over into Medicare, you end up with even more people being subsidized. Who pays for it? Private insurance. So private employers, especially small businesses, see their insurance price going up. They cannot afford it. They figure it is cheaper to pay a penalty, a tax, essentially, under this bill than to keep their insurance for their employees. They have to say to their employees: Sorry, folks, you have to go over to the quasi-public plan. Seventeen million people, the President's Actuary has estimated.

There is another point that the President's Actuary makes here. It is critical because this Reid proposal is devastating to a program which is also under severe stress, and that is Medicare. We know today that because of the retirement of the baby boom generation, which doubles the number of retired people in this country from 35 million to 70 million, which generation will be fully retired by 2016, 2017, 2019, we know today that because of the demands of that generation for health care there is a \$38 trillion—that is trillion with a "t"—unfunded liability in Medicare. In other words, there are \$38 trillion of costs we know we have to pay but have no idea how we are going to pay it. No idea. The insurance system does not support it.

That program is under a lot of stress right now as it stands. As it stands, it is under a lot of stress. But when you start cutting that plan even further, which is what is proposed in this bill—under this bill there is approximately a \$500 billion cut in the first 10 years for Medicare, \$1 trillion in the second 10-year period when it is fully phased in, and \$3 trillion over the 20 years. When you cut Medicare beneficiaries by those amounts and you eliminate essentially Medicare Advantage for prob-

ably a quarter of the people who get it today, providers can no longer afford to provide the benefits to their recipients, to the Medicare patient. They cannot make a profit.

Again, you are going to say, oh, that is just a Republican throwing out some language here. No, it is not. That is the Chief Actuary of the President of the United States saying that. Let me read to you: Because of the bill's severe cuts to Medicare, "providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and might end their participation in the program (possibly jeopardizing access to care for beneficiaries)."

That is a quote from the President's Actuary. The Actuary suggests that approximately 20 percent of all Part A providers—that is doctors, hospitals, and nursing homes—would become unprofitable as a result of the Reid bill. What happens when you become unprofitable? You close. People will not be available to deliver the care to the senior citizens under this proposal.

The representation from the other side of the aisle is, oh, we don't cut any Medicare benefits. They cut Medicare benefits from Medicare Advantage, but what they do is cut provider groups. If you don't have somebody who is going to see you, you can have all the benefits in the world and it is not going to do you any good. That is clearly a very significant cut in benefits. It is not me saying this. It is the Actuary saying this.

Madam President, how much time do I have remaining?

THE PRESIDING OFFICER. Four minutes.

Mr. GREGG. So this is a critical point, that under this bill, the Medicare Actuary has said four major things: first, that it doesn't bend the cost curve down, it bends it up. Second, it leaves 24 million people uninsured when fully implemented. Third, 17 million people will lose their private insurance and be forced into quasi-public plans. And fourth, there are a lot of providers of Medicare who are going to go under and, therefore, will not be available to provide Medicare. That is not constructive to the health care debate.

How should we do this? I will tell you some things we should do that are not in this bill, things which are sort of a step-by-step approach, rather than this massive attempt written in the middle of the night, dropped on our desks for 8 days, 10 days, or for however long. Why don't we try to take a constructive, orderly approach? We know there are sections of insurance reform that can occur across State lines. We know we can do things if we set up the proper coverage scenario for preexisting conditions so people do not lose their insurance because of a preexisting condition. We know there is a lot of market insurance reform that can be done. We also know if we curtail or at least limit abusive lawsuits, we can save massive

amounts of money. We know there is \$250 billion of defensive medicine practiced every year in this country. CBO scores it as a \$54 billion immediate savings just like the plans they have in Texas and California, which work. Why isn't it in this bill? The trial lawyers didn't want it.

We know if we say to employers you can pay more to employees in the way of cash benefits if they stop smoking, get mammograms when they should, get colonoscopies when they should, reduce weight so they are not subject to obesity issues—if you do that, you get huge cost savings. Some employers, such as Safeway, have already proven that. Why don't we do that under this law? Because labor unions don't want that law, which was actually in the bill passed out of the HELP Committee, but it was out of this bill.

We know there are certain diseases that drive costs in this country—obesity, Alzheimer's. Why not target those diseases rather than this massive bill, \$2.5 trillion bill which our kids cannot afford? Change the reimbursement system so we reimburse doctors for quality and value rather than quantity and repetition. Things such as that can be done.

If you want to insure everyone, which I do, you can follow the suggestion I and other people have made around here. Let people buy into a catastrophic plan, especially the young and healthy, people between the ages of 20 and 45. They don't need these gold-plated plans or bronze-plated plans which have excessive amounts of mandated coverage in them. They don't need them. What they need is a plan that says if they are severely injured or they contract a very difficult disease, they are going to have coverage so their responsibility of care does not fall on the rest of the country. That can be done.

There are a lot of specific things that can be done to improve our health care system without this quasi-nationalization effort which is going to expand the size of the government so dramatically by \$2.5 trillion that there is no possible way our kids are going to be able to afford the debt that is going to come on to their backs as a result of this because this will not be fully paid for, in my opinion.

Certainly, we can at least look at the points made by the Actuary of the President who has disagreed with four of the core proposals in this bill, saying they do not meet the tests which were set out for good health care reform and say in those areas: Let's go back and take another look; let's start over again; let's do it right. That is our proposal. Let's do it right rather than rush this bill through.

Remember, most of the programs in this bill do not start until 2014. So why do we have to pass it before Christmas, especially when we have not even seen the final bill? It makes no sense at all.

Listen to the Actuary of the President and let's get this right.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Madam President, I ask unanimous consent to engage in a colloquy with my colleagues from Vermont and Ohio.

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

Mr. FRANKEN. Madam President, I rise today to urge my colleagues in the Senate to support Senate amendment No. 3135 to replace the proposed excise tax with a surtax that would affect only those making literally millions of dollars a year. Senator BROWN and Senator SANDERS, with whom I will engage in this colloquy, have shown tremendous leadership on the issue, and I thank them and join them in their efforts.

Before I get into this, though, I want to answer a couple of things I have seen and heard on the Senate floor. I walked in and my colleague from South Dakota, Senator THUNE, had a chart up. He had a chart up that said when your taxes will kick in and when your benefits will kick in. So I didn't hear the whole speech, and I felt bad about that—not having heard his whole speech—and I went up to him and said: I didn't hear your whole speech.

And he said: Oh, man, that's too bad.

But I said: Did you actually happen to mention any of the benefits that do kick in right away?

And he said: No.

So I think we are entitled to our own opinions, but we are not entitled to our own facts. Benefits kick in right away. If you are going to hold up a chart that says when taxes kick in and when benefits kick in, and you say 1,800 days, you better include the benefits that do kick in right away.

Mr. THUNE. Madam President, will the Senator from Minnesota yield for a question?

Mr. FRANKEN. Absolutely.

Mr. THUNE. Did the Senator understand that what I was pointing out on the chart—the point I was making—was that the tax increases start 18 days from now, and the benefits—the spending benefits under the bill, which are the premium tax credits and the exchanges that are designed to provide the benefits delivered under this bill—don't start until 2014. Did the Senator miss that?

Mr. FRANKEN. Does the Senator understand that spending benefits start right away?

Mr. THUNE. If the Senator missed that point, I can get the chart out.

Mr. FRANKEN. I asked a question. I yielded to you for a question. I am asking you a question. Does the Senator—

The PRESIDING OFFICER. The Senator from Minnesota may only yield for a question, and the Senator from Minnesota has the floor.

Mr. FRANKEN. Has to what?

The PRESIDING OFFICER. Has the floor.

Mr. FRANKEN. I have the floor. The Senator from South Dakota said: Did I

realize he was talking about the spending doesn't start for 1,800 days on health care—that the benefits don't start. Well, here is one: \$5 billion in immediate Federal support starts immediately for a new program to provide affordable coverage to uninsured Americans with a preexisting condition.

I don't know about anyone else in this body—

Mr. THUNE. Will the Senator yield for an additional question?

Mr. BROWN. Will the Senator yield?

Mr. FRANKEN. I yield.

Mr. BROWN. That is exactly right, what Senator FRANKEN says. The \$5 billion is for the high-risk pool—people who have the most trouble because of preexisting conditions, because of the behavior of insurance companies. And this debate is really all about the insurance companies. My friends on the other side of the aisle always come down with the insurance companies. The insurance companies really are the ones that are driving so much waste and so much bad behavior in the system.

Another thing in this bill that is very important now is the Medicare buy-in. The Medicare buy-in we have been discussing is for somebody who is 58 to 62 years old and who can't get insurance. Maybe they have been laid off or maybe they have a preexisting condition or maybe they are a part of small business that doesn't insure them. At 58 to 62 years old, they simply can't get insurance. This legislation will allow them, so far, to buy into Medicare.

I know my Republican friends can't make up their minds what they think about Medicare. They have opposed it, mostly, for 40 years. They opposed its creation; they tried to privatize it in the mid-1990s. They succeeded in partially privatizing it. They have cut it. Now, when we are—at AARP's request, in part—pushing legislation which will cut some of the waste out of Medicare, all of a sudden they are big fans of Medicare. But then they don't like Medicare again because we are trying to do the Medicare buy-ins. I guess I am confused.

Mr. THUNE. Would the Senator from Ohio yield for a question?

Mr. BROWN. We gave the other side 30 minutes.

Mr. FRANKEN. We have our time now.

Mr. BROWN. Senator THUNE wants to sort of monopolize our 30 minutes.

Mr. FRANKEN. We have our time, and the Senator from South Dakota just said, when he gave his presentation, nothing that we are paying for starts until 1,800 days from now. There is a whole list of things that start. The Patient Protection Affordable Care Act—

Mr. THUNE. Will the Senator yield for a question?

The PRESIDING OFFICER. The Senator from Minnesota has the floor. He may engage in a colloquy. He does not have to yield for any further questions.

Mr. FRANKEN. The Patient Protection and Affordable Care Act will prohibit insurance from imposing lifetime

limits on benefits starting on day one—starting on day one, Senator. He doesn't want to hear it.

We are entitled to our own opinions, but we are not entitled to our own facts. The fact is, benefits kick in on day one and the large majority of benefits kick in on day one, and we shouldn't be standing up here with charts that say the exact opposite.

Senator MCCAIN, a week ago, said: Facts are stubborn things. These are stubborn things. Small business tax credits will kick in immediately. The Senator from South Dakota just said that no payments, nothing that costs any money will kick in right away. That is not true. We are not entitled to our own facts.

I stand here day after day and hear my colleagues, my good friends from the other side, say things that are not based on fact.

We hear about this \$78 trillion unfunded liability. You know, I remember during the Social Security debate that we used to hear about this \$11 trillion unfunded mandate for Social Security. They asked the Actuary what that was about—Treasury Secretary Snow—because the American Actuarial Society got mad about this. You know what it was? It was into the infinite horizon, was the liability. It was into infinity. That was a figure used by the President of the United States—George Bush at the time—that we have an \$11 trillion unfunded mandate. What was the actuarial thinking behind it? Into infinity, and that people would live to be 150 years old.

Mr. SANDERS. Will the Senator from Minnesota yield?

Mr. FRANKEN. One second. I want to explain the end of this.

So this was the unfunded liability—assuming people lived to 150 and still retired at 67. That meant an 83-year retirement and that we would live to 150. I assume the first 50 years would be great, the next 50 years not so great, and the last 50 years horrible. Ridiculous stuff.

Let's have an honest debate, for goodness' sake. Let's not put up charts that contend one thing and that are just not true.

I yield to Senator SANDERS.

Mr. SANDERS. What I wanted to do is to get back to an issue that is of great importance to the American people, in addition to everything Senator FRANKEN appropriately pointed out; that is, as we proceed forward on this legislation, there is a provision in the Senate bill that I think needs to be changed. I have offered an amendment to do that. I am delighted Senator BROWN and Senator FRANKEN and Senator BEGICH, who is not here, and Senator BURRIS, who is also not on the Senate floor, are in support of that amendment, as I think the vast majority of the American people are.

Madam President, this bill is going to cost some \$800 billion to \$900 billion, and the American people want to know where that money is going to come

from. Is it going to come from the middle class whose incomes in many ways are shrinking, who have lost their jobs, are having very serious financial problems, or is it going to come in a more progressive way?

The amendment that we are supporting would simply say we will get rid of the 40-percent excise tax on health care benefits above a certain limit and move toward a more progressive way of funding, which is close to what exists in the language in the House.

Essentially, what we would be doing is addressing the fact that the so-called Cadillac plan is not a Cadillac plan because in a relatively few years, millions of workers with ordinary health care benefits are going to be impacted by that. According to a major health care consultant, the Mercer Company, this tax would hit one in five health insurance plans by the year 2016—one in five. The Communications Workers of America have estimated that this would cost families with a Federal employees health benefit—Federal employees with a standard plan with dental and vision benefits—an average of \$2,000 per year over the 10-year course of this bill.

So what this issue is about is do we sock it to the middle class again, with the heavy tax that over a period of years is going to impact more and more ordinary families, or do we say that at a time when we have the most unequal distribution of wealth and income, when President Bush gave huge tax breaks to the wealthiest people, that maybe we ask people who have a minimum income of \$2 million a year to start picking up their fair share?

I yield to my friend from Ohio.

Mr. BROWN. Madam President, I thank my colleagues for kicking off this debate. My understanding is that this amendment would eliminate the tax on people's health insurance plans, even people who have pretty generous union-negotiated—obviously, not just union, but when a union negotiates a good plan, the white-collar workers in those same plants, those same companies often get decent plans too. It would take away the tax for them, and it would then tax 1 percent, ½ percent of wealthy people?

Mr. SANDERS. Interesting that the Senator asks that. What this amendment does is it imposes a 5.4-percent surtax on adjusted gross incomes above \$2.4 million for individuals and \$4.8 million for couples.

What that means, I would tell the Senator from Ohio, is that this impacts the top two one-hundredths of 1 percent, which means 99.98 percent of the American people would not pay one penny in additional taxes. It is the top two one-hundredths of 1 percent, and I think that is in fact the proper thing to do.

Mr. BROWN. So that would be 2 out of 10,000—1 out of every 5,000 families would pay that or 1 out of 5,000 of the wealthiest families would pay that; is that what the Senator is saying?

Mr. SANDERS. That is true. Of the approximately 134 million individual tax returns filed in 2005, which is the latest data we have available, only two one-hundredths of 1 percent or about 26,000 individuals reported adjusted gross incomes over \$2.4 million.

Mr. BROWN. So 26,000 out of 134 million people would pay this.

Mr. SANDERS. That is right.

Mr. BROWN. As opposed to millions of families who have good health insurance that they have negotiated or been provided by their employer.

This brings me back to the discussion we had earlier this year; that when people talk about legacy costs, about pension and health care, which many people have, fortunately, almost always these health benefits and pensions people earn by giving up pay today. They say: I will take a little less pay today if I get a good pension and good health insurance. So that is why the Senator from Vermont is arguing that we shouldn't be taxing this insurance, I assume.

Senator FRANKEN.

Mr. FRANKEN. Let me go into this term "Cadillac." You know, I never had a Cadillac, but that was the thing, right?—a Cadillac? That was an incredible extravagance—a gold-plated extravagance. But, in fact, this would be taxing plans that provide basic comprehensive coverage for thousands of middle-class workers and their families. One of the problems with the excise tax is that it categorizes plans based on their actuarial cost, not solely on the generosity of their benefits. Plan characteristics explain only a small percentage of the differential in cost. Some reports suggest only 6 percent of the difference in cost is explained by generosity of benefits.

Let me give an example: A small business that employs many older workers is going to face—actuarially, it is going to be considered higher than a business with a young workforce. So even if both of these employers provide the exact same benefits, their costs will be different. The employer with the older workforce faces a higher risk of falling under this tax—not due to the richness of the benefits but due to the age of its employees.

The same goes for small workforces. If a small business offers one set of health benefits and a large company offers the exact same set of benefits, the cost for the smaller employer is higher because its risk pool is smaller.

Do we really want to penalize small businesses or workplaces that retain older workers?

Senator SANDERS.

Mr. SANDERS. Let me pick up on the point the Senator from Minnesota made. When you use the term "Cadillac," the implications are that maybe we will get some of those guys at Goldman Sachs who have this off-the-wall outlandish benefit package.

The reality is, the CWA—Communications Workers of America—has done a bit of work on this. What their

estimate is, as health care costs continue to rise—and we are seeing 6 percent, 7 percent, 8 percent increases every year—obviously, the way the language of this legislation is written, it will impact more and more health care plans. By the year 2019, it will burden one out of three health care plans in this country. Does that sound like a Cadillac plan, one out of three plans? And eventually, as health care costs continue to rise, it will impact virtually every plan in this country.

The bottom line we are talking about is, yes, we need to raise money. How do you do it? Do you do it by socking it to the middle-class and working families? And as the Senator from Ohio has indicated, many of these workers have given up wage increases in order to maintain a strong health care benefit. Are those the people we are going to tax or do you tax the top two one-hundredths of 1 percent, many of whom have received generous tax breaks in recent years?

Mr. BROWN. If the Senator will yield, I want to talk for a moment about the people who will be paying more taxes. The Senator said their income is over a couple of million a year, those who will pay these taxes.

During the last 10 years—during the 8 years President Bush was in the White House, the tax system changed pretty dramatically during that time. It is my understanding—maybe the Senator can shed some light on this, either colleague—my understanding for sure is that the tax system, as it changed, had much more of a tilt toward the wealthy; that is, President Bush's tax cuts always included a few middle-class people, so a family making \$50,000 might get \$100 in tax savings over a year but, on the other hand, if you made millions of dollars, you got huge tax cuts.

I remember Warren Buffett, one of the most successful businesspeople in America, who generally likes what we are doing here and wants a fairer tax system, Warren Buffett said he pays a lower tax rate than his secretary and he said he pays a lower tax rate than a soldier coming back from Iraq.

Talk, if you would, either Senator, Senator FRANKEN or Senator SANDERS, about what happened over the last decade to taxes for the group of people, the wealthiest, who we think should pay a little more under this plan.

Mr. SANDERS. I think the evidence is overwhelming that one of the reasons we have seen record-breaking deficits and we have a \$12 trillion national debt—it is not just the war in Iraq but also the huge tax breaks that have been given to the very wealthiest people in this country. As the Senator from Ohio indicated, the facts are very clear. Yes, the middle class may have gotten some benefit, but the lion's share of tax breaks went to the people on top.

What we are seeing in this country is a growing gap between the very wealthy and virtually everybody else.

In many ways, the middle class is shrinking. Poverty is increasing. It makes zero sense to me that in the midst of all of that, we ask the middle class to pay more in taxes to provide health care to more Americans and we leave the top one-hundredth of 1 percent alone.

Let me also say this: There is a lot of support out there for the amendment Senator BROWN, Senator FRANKEN, Senator BEGICH, Senator BURRIS, and I are offering. Let me just read one. This is from the president of the Fraternal Order of Police. These are cops out on the street. Most people do not think the police are getting extravagant health care benefits.

This is what he said:

I am writing to you on behalf of the membership of the Fraternal Order of Police to express our support for your amendment which would eliminate the excise tax on high cost insurance plans.

Et cetera, et cetera.

This provision is intended to tax the health plans of the wealthiest Americans, but it will also tax the plans of many law enforcement officers who need high cost and high quality insurance due to the dangerous nature of their profession. The Fraternal Order of Police strongly supports your amendment, because health care reform legislation should not increase the tax burden for those who fearlessly risk their health, and even their lives, to keep our communities safe.

Mr. FRANKEN. Again, let's think about what these folks, these union folks who negotiated these health care policies and sacrificed in salary—what are they getting? They are getting affordable deductibles. They are getting affordable co-pays. Sometimes, they are getting vision and dental care. This is comprehensive health care we want Americans to get. That is who is going to get hit.

Over the last 20, 30 years, we have seen a squeeze on these people. We have seen a squeeze on the middle class, a shift in the risk to people. That is what this whole bill is about. We are trying to eliminate the risk of losing your health care if you have a preexisting condition; we are trying to lose the risk of going bankrupt. That is the whole point of this bill. Let's not shift more risk onto these folks who are doing these kinds of jobs and supporting their families with their salaries and their benefits.

Mr. BROWN. Exactly right. Think about that. We want to give incentives for people to do the right thing. We are glad when people have good health insurance because then they do not rely on Medicaid or they don't show up in the hospital or the emergency room and get the care for free, while other people have to pay for that care—others who use the emergency room and have insurance, others who use the hospital. So the hospitals don't get stuck with the costs. If they have dental care, they are getting the right kind of preventive care so they do not have more expensive care later.

Ideally, we want everybody to have one of these "Cadillac" plans. We want

people to have insurance that includes vision, that includes eye care, that includes catastrophic coverage, that includes preventive care. If more people had this, there would be a lot less burden on taxpayers to take care of everybody else.

It is clear the arguments here are not just it is the right thing for police officers, as Senator SANDERS said. It is the right thing for the person Senator FRANKEN talked about who is getting dental and vision care, but it is good for society as a whole, that people are willing to give up some of their wages to get a good medical plan.

Mr. SANDERS. If I could jump in, a moment ago Senator BROWN asked me a question about the extent of the tax breaks given to the wealthiest people, and I do have that information. Since 2001, I say to Senator BROWN, the richest 1 percent of Americans received \$565 billion in tax breaks. In 2010 alone, the most wealthy 1 percent of Americans are scheduled to receive an additional \$108 billion in tax breaks. That is point No. 1.

Point No. 2—let me be a little political here. In the Presidential election of 2008, one of the candidates said that it was a good idea to tax health care benefits. That candidate—Senator MCCAIN—lost the election. The other candidate said it was a bad idea to tax health care benefits. That was Barack Obama; he won the election.

Let me quote from what then-Senator Obama said when he was running for President. On September 12, 2008, he said:

I can make a firm pledge, under my plan no family making less than \$250,000 will see their taxes increase, not your income taxes, not your payroll taxes, not your capital gains taxes, not any taxes. My opponent, Senator McCain, cannot make that pledge and here is why. For the first time in American history—

This is Senator Obama speaking about Senator MCCAIN's plan.

For the first time in American history, he, Senator McCain, wants to tax your health benefits. Apparently, Senator McCain doesn't think it's enough that your health premiums have doubled. He thinks you should have to pay taxes on them, too. That's his idea of change.

I agree with what Senator Obama said in 2008. I disagree with what Senator MCCAIN said then. Right now, we are in a position to follow through on what Senator Obama said at that point and make sure the middle class of this country does not pay taxes on their health benefits.

Mr. BROWN. If the Senator will yield, I say thank you. I think that made it very clear.

Earlier, the Senator talked about what the tax cuts for the wealthiest citizens during the Bush years did to our national debt. He mentioned the war in Iraq, the trillion-dollar war in Iraq and Afghanistan, not to mention the huge cost it is going to be to continue to take care of the men and women who served us courageously with their physical and mental injuries from Iraq.

Senator FRANKEN is so familiar with this because of tours he made as a private citizen to battle zones, year after year, to talk to our troops and entertain our troops. He didn't get a lot of credit for that, but he didn't care about the credit for that. He was there, always doing that.

One of the things that is pretty interesting, listening to my Republican friends on the other side of the aisle talk about this bill now, which the Congressional Budget Office says is paid for and more, while they continue on their side to talk about the budget deficit, it was that group who passed—Senator SANDERS and I were both House Members at that time and voted against it—passed the Medicare Privatization Act, and the people who were on the floor talking to us voted for cloture for the Medical Modernization Act. That bill was not paid for. That bill was a giveaway to the drug industry and the insurance industry. It has added tens and tens of billions of dollars to our national debt.

On the one hand, they support these tax cuts that are not paid for, they support the Iraq war which was not paid for, and they now want us to go into Afghanistan and not pay for it, yet increase the number of troops. They continue down this road when we are on this bill doing the right thing. Even with our amendment here to eliminate the Cadillac—the taxing Cadillac plans, we are saying we are going to find another way to pay for it. We are not just going to eliminate that cut in taxes. We want to, but we are going to pay for it some other way.

I yield for Senator FRANKEN.

Mr. FRANKEN. We are actually addressing that doughnut hole that was in the Medicare Part D bill. We are closing it by half. Do you know when it starts? Next year.

Mr. BROWN. I thought Senator THUNE said none of the benefits started then.

Mr. FRANKEN. Senator THUNE did say none of the benefits started next year, but I guess he just hasn't read the bill. I have so many constituents come to me and say: Read the bill, read the bill. I ask—

Mr. BROWN. If the Senator will yield, perhaps if you are going to vote against it, you do not need to read it? Is that the way to think about it?

Mr. FRANKEN. I do find that many of my colleagues with whom I am very friendly have not read the bill and are not very familiar with it. I think if you are going to get on your feet and debate and make assertions, you should really be familiar with the content of the bill. That is what I thought. I have only been here a while, so maybe I am naive, but I think when you say none of the benefits are going to start next year, you should be right.

Mr. SANDERS. If I could just add to the point Senator BROWN and Senator FRANKEN have made regarding concern about the national debt, every day there is a Republican coming up here

to say we have a \$12 trillion national debt and we have to cut this and cut that—all that. Yet I think virtually every one of them is in support of the repeal of the asset tax, which would benefit solely the top three-tenths of 1 percent and would cost the Treasury \$1 trillion over a 20-year period—\$1 trillion over a 10-year period. I am sorry, \$1 trillion over a 10-year period.

I am really concerned about the deficit, I am concerned about the national debt, but I am prepared to vote for repealing the entire estate tax which only impacts—gives \$1 trillion in tax breaks over a 10-year period to the top three-tenths of 1 percent.

Some may question the sincerity about their concern about the national debt.

Mr. FRANKEN. In fairness, I am not sure they are all for that. I think I have heard some soundings from the other side to extend what we have this year because this runs out on January 1 and we do not want to see a lot of plugs pulled.

Mr. SANDERS. I am talking about what happens now. Overall, the vast majority of our Republican friends—

Mr. FRANKEN. Yes, in theory.

Mr. SANDERS. Want to abolish the estate tax, which is \$1 trillion in tax breaks.

Mr. FRANKEN. I just want to bend over backward to be fair to my colleagues on the other side.

Mr. SANDERS. The Senator is so nice.

Mr. FRANKEN. Maybe I do that to a fault, and I apologize to our side.

Mr. SANDERS. Madam President, polls show there is overwhelming support among the American people for what we are discussing today. Organizationally, it has the support of the AFL-CIO, the National Education Association, the Fraternal Order of Police, the United Steelworkers of America, AFSCME, the American Postal Workers Union, and a number of other organizations representing millions of working people. This is not a complicated issue. Somebody will have to pay for this bill. Should it be the middle class and working families or should it be the people at the top two one-hundredths of 1 percent who, over the period of the last 8 or 9 years, have enjoyed huge tax breaks? This is kind of a no-brainer.

The good news here is that our friends in the House have moved correctly in this area. The bill before us in the Senate does not. What we are trying to do is to get an amendment to take out the tax on health care benefits and replace it with similar language, not exactly the same as exists in the House.

Mr. FRANKEN. Let's get back to the excise tax and what it is purportedly supposed to do. It is supposed to bring down costs and generate revenues. Those are both necessary objectives. I have been submitting stuff over and over again to bring down costs, including a 90-percent medical loss ratio, in-

cluding uniform standardized insurance forms which will save billions of dollars. I don't think this excise tax is the best way to bring down costs and generate revenue. We should be focusing on actually bringing down the cost of services instead of trying to limit the availability of care.

One way to actually bring down the cost of services is the value index in the bill, which Senator CANTWELL introduced in the Finance Committee and which is still in this bill, and which Senator KLOBUCHAR fought for, and many of us from high-value States. That will change the Medicare reimbursement rates to incentivize value. Another unintended consequence of the excise tax is its effective penalty on comprehensive benefit packages secured for workers by their unions. Again, I come back to these unions who gave up salary benefits, who gave up earning benefits. As soon as this gets going, this is going to be returning year after year as we see medical inflation go up and up. This is the cost of living index plus 1; right?

Mr. SANDERS. Right.

Mr. FRANKEN. Plus 1 percent. That is not what we have seen from medical costs.

Mr. SANDERS. That is the point. The point is that medical costs are going up substantially more than inflation. In fact, general inflation is actually going down. There is no question but that as medical inflation continues to remain high, millions and millions more workers are going to be forced to pay this tax. One of the other side effects of this tax is that many employers, in order to avoid it, are going to start cutting the health care benefits that workers receive. Today it may be dental; tomorrow it will be vision. The next day it will be more copayments, more deductibles. This is grossly unfair to working families.

Mr. BROWN. Again, it is making the choices. Unlike the Medicare Modernization Act, which Republicans pushed through in 2003—I know Senator ENSIGN voted against that although he voted for cloture, but he actually opposed that, to his credit—that was legislation that wasn't paid for. It was a giveaway to the drug insurance industry. It wasn't paid for. Our legislation is, and our amendment is. We made a choice. Do you charge the middle class? Do you say to the middle class, you are going to pay a tax on your health care benefits, or do we have someone else pay who has gotten a lot of advantages in the last few years? Since 2001, the richest 1 percent of Americans, because of the Bush tax cuts, got \$565 billion in tax breaks. This year that same wealthiest 1 percent of Americans are scheduled to receive an additional \$108 billion in tax credits. It is clear we want to go to the right place in this. We want to keep it fiscally sound. We want to keep it balanced. We want to pay for it, something my friends on the other side of the aisle rarely do when it comes to

war, when it comes to tax breaks for the rich, when it comes to giveaways to the drug and insurance companies.

We are doing it that way. That is why the Sanders-Franken-Begich-Brown amendment makes so much sense.

Mr. FRANKEN. One last word on the deficit and the debt. May I remind everyone that when the Republicans were in the majority and President Bush came to Washington, we had a surplus, a record surplus. At the time the Chairman of the Fed, Alan Greenspan, testified to Congress that we had a new problem. The new problem was that because of the projected surpluses, we were, in a number of years, going to have too much money, that we were going to pay off the debt and the Federal Government would be forced to buy private equities and that this would not have a maximizing effect on our economy. That is what he said, after Bush became President. That was what he said. He said we were going to have too much money. That is what the Chairman of the Fed said. So we handed the ball off to President Bush, and we handed the ball off to these Republicans. The problem was, we were going to have too much money. That is not a problem anymore, is it? Now you hear them screaming about the deficit. Think about the deficit they left us. Think about the economic circumstances they left us in. We are talking about getting rid of this excise tax, but we are talking about paying for it. The CBO has scored this bill as cutting the debt in the next 10 years by \$179 billion and then \$500 billion in the next 10. That is responsible.

What we saw in the years that we had a Republican President and a Republican House and a Republican Senate was an explosion in the deficit. I don't want to hear lectures about the deficit. When I hear presentations from my colleagues, I want them to remember what Senator MCCAIN said when he said facts are stubborn things.

When we debate in this Hall on this floor, let's stick to the facts. So many of the benefits in this bill start immediately. It is simply not fact to say they don't.

Mr. SANDERS. Madam President, how much time do we have remaining?

The PRESIDING OFFICER. There was no time limit on the colloquy.

Mr. SANDERS. I think we are coming to the end of it. I hope, focusing on the issue of the excise tax, the Senate is prepared to support our amendment. If that is not the case, certainly support what the House has done in the conference committee. Taxing middle-class workers is not the way we should fund health care reform.

Mr. FRANKEN. I thank the Senator. I thank both of my colleagues from Vermont and Ohio, and urge my colleagues to support amendment No. 3135.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I ask unanimous consent that I be allowed to engage in a colloquy with the senior Senators from Connecticut and Montana.

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

Mr. REID. Madam President, when the American people demanded last November and throughout this year that we make it possible for every American to afford to live a healthy life, they did so because they know from personal experience how broken our country's health care system is. As the Senate has worked to answer that call this year, we have drafted a bill that will save lives, save money, and save Medicare. Many aspects of the current bill achieve that goal. But there is one more thing we could do, closing the notorious gap that arbitrarily charges seniors in Nevada and throughout the Nation thousands and thousands of dollars for prescription drugs.

As seniors know all too well, the prescription drug plan is called Medicare Part D, and the coverage gap is commonly known as the doughnut hole. Right now Medicare will help seniors afford their prescription drugs only up to a certain annual dollar limit, \$2,700 a year, then stop, then help it again only once their bills reach another much higher level, \$6,100. So from \$2,700 to \$6,100, that is the notorious, bad doughnut hole. Between these two points, seniors are stuck with the full bill. Imagine if you had car insurance that covered you until you drove 2,700 miles in a given year, then stopped, then started covering you again once you hit 6,100 miles. From 2,700 to 6,100 miles would be pretty scary. That wouldn't work for drivers, and the doughnut hole doesn't work for seniors. The effects of this broken system are painfully simple. More and more seniors have to skip or split the pills they need to stay healthy. It means that in January someone will pay \$35 to fill a prescription, but by October he or she could be asked to pay thousands of dollars for the very same pills.

I was at CVS a day or two ago to pick up some stuff for my wife at the prescription counter. They had on the counter there where you were waiting a list of the cost of all drugs. I didn't fully understand it, but I looked at it. Some had values of thousands of dollars to fill a prescription. The only one I saw—I didn't want to flip through the pages—but the one page, \$9,800 for one prescription. I don't know if that was 30 pills or what, but it was striking.

If someone will pay \$35 to fill a prescription, that is fairly inexpensive. But by October, he or she would be asked to pay thousands of dollars. That is what it is. It is not an uncommon problem. Millions of seniors, a quarter of all in the Part D Program, reach that no man's land during the year, the doughnut hole. But only a small fraction get to the other side. Both numbers will only get worse if we don't act.

Not surprisingly, those caught in the middle don't take the medicine they need at far greater rates than those who do have coverage. Like we see with uninsured Americans of all ages, those who can't afford the treatments they need to get healthy will get even sicker. Down the road that means more expensive doctor visits, more expensive hospital stays, and more expensive medicines. It means more sickness and more death.

We have already taken the first steps to fix this in the current bill, closing the gap by half and by an additional \$500 for 2010. Because I am committed to saving lives, saving money and saving Medicare, I personally am committed to fully closing the doughnut hole once and for all. Once we pass this bill out of the Senate, we will do so in the conference committee with the House, whose bill already closes the gap. The House legislation closes the doughnut hole. The legislation we will send to President Obama for signature will make good on his promise and ours to forever end this indefensible injustice for America's seniors.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I agree with my friend the majority leader that we must close the doughnut hole. I think it is something all of us appreciate. I second his commitment to doing so with this bill that we will send to the President. As most seniors live on modest incomes, we all know it is imperative that they can afford the prescriptions they need. As the majority leader has noted, seniors who have trouble paying for prescription drugs are more likely to skip doses or stop taking their medications altogether which would lead to more serious health problems and higher long-term costs, both for them and our health care system as a whole. In my State of Connecticut, 25 percent, a quarter of all Part D enrollees fall into the doughnut hole. I understand the significance of delivering on the commitment to fixing this problem.

We have a responsibility, as all of us can appreciate, to protect and strengthen Medicare and to improve the lives of our seniors. If we fail to act, the doughnut hole, we are told, will continue to grow in size, doubling in less than 10 years. The size of the doughnut hole is directly tied to drug prices, prices that are rising at an alarming rate.

Seniors who have spent thousands and thousands of dollars—not including the cost of their premiums—before they get out of the doughnut hole and get the treatments they need cannot afford to wait any longer to close this costly gap.

Our historic reform effort must improve the quality and affordability of Medicare. Closing the doughnut hole is a very clear and concrete way to do that.

I understand we may not have the opportunity to fix this issue in the Senate bill before it leaves this Chamber,

but I want it to be known that I support the idea of closing the doughnut hole in the conference committee that will meet with the other body.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, closing the doughnut hole is clearly the right thing to do. Medicare beneficiaries face extremely high out-of-pocket costs for outpatient prescription drugs. In fact, they face costs that are six times higher than out-of-pocket costs for those of us fortunate enough to have employer-sponsored coverage.

The doughnut hole contributes to these high out-of-pocket costs. As a result, the doughnut hole often results in seniors skipping vital medications.

Eliminating the coverage gap in the Medicare prescription drug program will save people with Medicare thousands of dollars every year. Lowering the costs for seniors will also keep them healthier by ensuring they can afford their medications.

In my home State of Montana, 33 percent of seniors enrolled in the Medicare prescription drug program fall into the doughnut hole every year—one-third. We all know what the consequences are when people cannot afford the medicines they need to stay healthy, both for the affected individuals and for society at large.

Recognizing the scope of this problem, in his address to a joint session of Congress in September, President Obama promised to close the doughnut hole once and for all. It is our responsibility to make good on this promise and provide this needed relief to seniors. I join my colleagues in committing that we will send a bill to the President that closes the doughnut hole and fulfills his promise.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I wish to, if I could, ask my two colleagues, through the Chair, if it is their understanding that the President fully supports this action.

Mr. BAUCUS. Madam President, responding to the leader, that is my full understanding.

Mr. DODD. Madam President, I would add, that is my full understanding as well.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Nevada.

Mr. ENSIGN. Madam President, I want to address a few of the things that were mentioned on the floor just now. However, I want to start by talking about how this health care bill will affect small businesses.

Small businesses are the engine that drives our economy. We know they are struggling right now. The President met with some bankers today at the White House because many of the large banks are not loaning money to small businesses. We all know that. Many small businesses are struggling to keep their doors open.

One of the reasons small businesses are a little nervous right now is be-

cause they do not know if this bill goes into effect, what that massive effect is going to be on them. They are uncertain about the future.

Let me tell you a few things.

First of all, we all know that there is a \$500 billion tax increase contained in this 2,074-page bill that is before us today. In that bill, there is also an employer mandate of \$28 billion. This is what the nonpartisan Congressional Budget Office has said about that \$28 billion: Not only does it fall heavily on small businesses, but the CBO goes further to say that “workers in those firms would ultimately bear the burden of those fees” in the form of reduced compensation. That is a direct quote.

This bill also discourages small businesses from hiring folks. CBO went on to say: “. . . the employment loss would be concentrated among low-income workers.” Do we want to do that to folks out there who are struggling right now? We have heard across this country that record numbers of people are signing up for food stamps, welfare, unemployment insurance, and all of the various government subsidies that are out there to try to help people through a tough time. Do we want to keep them from getting a job?

The Medicare payroll tax, that is \$54 billion in this bill, will hit one-third of all small business owners. Those small business owners that it will hit about 30 million people in the United States. If you put a tax on somebody, especially during a recession, you are going to inhibit them from investing in their business and creating jobs.

I have heard many people from the other side of the aisle say that it is not a good time to raise taxes, and yet they are raising taxes in this bill. Sometimes they call them fees, penalties, assessments, or different things, but they are taxes.

This bill will also require small businesses to buy a government-approved insurance plan. So even for those small businesses that currently have a plan that they like, one that works for them and their employees, and one that is affordable and even though these small businesses have tried to do the right thing, the plan that they have selected may not quite meet the government criteria. This may be because the plan they chose was a little more of a bare-bones type of plan—in any event, this bill will require them to spend more money for a higher level of coverage than maybe they can afford.

What will that do? Well, if the small business is barely getting by now, barely keeping its doors open, and the government requires it to spend more money on health insurance, some employees may be laid off or in some cases, small businesses may close and all its employees may lose their jobs.

Most people in this body have never operated a small business. I built, owned, and operated two different small businesses—veterinary clinics. I understand how difficult it is for a small business owner, especially when

you are just starting out and you are investing, you are putting everything you have into it, with all your hard work, and the few profits you make you plow right back into the business. You are trying to expand. You are trying to hire the next person, and you are trying to grow your business. When the government comes along and puts extra taxes and extra burdens on you, it makes it tough. That is not what we should be doing, especially during a time of recession.

This bill before us also caps what are called flexible spending accounts at \$2,500. Flexible spending accounts are used by a lot of small businesses, but they are also used by a lot of Federal employees. They are used by a lot of people. They are especially used by a lot of people who have serious chronic diseases.

If you are a Federal employee, for instance, you can put \$5,000 in a flexible spending account, and then you can pay, for instance, for approved out-of-pocket health care expenses. This bill caps that at \$2,500 a year. So for somebody who has multiple sclerosis or somebody who has diabetes or somebody who has a chronic disease that requires a lot of medical attention, you are hurting those people who need that money the most. That is not something we should be doing, but that is exactly what this bill does.

Let me talk about some of the general provisions in this bill and not just how it affects small businesses. We have talked about the Medicare provisions in the bill a lot on the floor. We know there is a \$500 billion cut in Medicare. Folks on the floor were just talking about the doughnut hole for senior citizens in the Part D prescription drug plan under Medicare. Under this bill, Medicare Advantage will be cut by \$120 billion. Most Medicare Advantage plans have no doughnut hole, yet this bill would take \$120 billion out of Medicare Advantage, cutting extra services. According to CBO, there will be a 64-percent reduction in extra benefits by the year 2016 for those seniors who have Medicare Advantage.

Ten million seniors in the United States today have Medicare Advantage. They have chosen it. They were not forced into it. As a matter of fact, Medicare Advantage is a relatively new program. Seniors do not like change that much, yet they saw an advantage in this program. They did not have pay to pay their Medigap insurance. They did not have a doughnut hole. Many of them get vision and dental services, yet their extra benefits are going to be cut by 64 percent because of this bill.

Overall, because of the smoke and mirrors that are used, it is said this bill only costs \$849 billion. But, the costs are hidden. First of all, \$849 billion is a huge number. But it is actually a \$2.5 trillion spending bill. The reason is because when you look at it fully implemented—right now, a lot of the benefits do not start right away but the taxes start right away—when

you look at the full 10 years when taxes, benefits, and everything is implemented, it is a \$2.5 trillion bill. This is a massive increase in the Federal Government.

As an example, within the 2,074 pages of this bill there are almost 1,700 new places where authority is provided to the Secretary of Health and Human Services to make health care decisions for the American people. Madam President, this bill gives the Secretary of Health and Human Services the authority to make health care decisions for the American people 1,700 times. If that is not a massive government expansion into our health care field, I do not know what is.

There is also about \$500 billion in new taxes. I have this chart in the Chamber. This is a quote by President Obama on his health care promises. He said:

Let me be perfectly clear. . . if your family earns less than \$250,000 a year, you will not see your taxes increased a single dime. I repeat: not one single dime.

He said:

Nothing in this plan will require you or your employer to change the coverage or the doctor that you have. Let me repeat this: nothing in our plan requires you to change what you have.

And thirdly, he said:

Under the plan, if you like your current health [care] insurance, nothing changes, except your costs will go down by as much as \$2,500 per year.

Let me focus on the first quote about the new taxes that are in this bill. The bill includes a 40-percent insurance plan tax. There is a separate insurance tax on top of the 40-percent insurance plan tax. This is the one, by the way, that several of my colleagues were talking about that the unions are all up in arms about. It is the Cadillac plans they were talking about that are going to be taxed. Most union members have a Cadillac plan, and their plans are going to be taxed at 40 percent above a certain dollar figure. Because this tax is not indexed to inflation, by the end of a decade, most Americans' plans will be subject to this 40-percent tax.

There is also an employer mandate tax. But as the Congressional Budget Office said, this tax actually gets shifted down to the workers. There is a drug tax. Every time you purchase drugs, taxes are passed onto you by the drug companies, so all of us are going to be paying more for drugs. There is a laboratory tax. Every time you go in, there is a tax on lab work. All of these taxes end up raising health care premiums. There is a medical device tax. There is a failure to buy insurance tax. There is a cosmetic surgery tax. And, there is an increased employee Medicare tax.

At this point, let's remember that first quote I showed where President Obama said he would not raise taxes on families making \$250,000 or less, and on individuals making \$200,000 a year or less. Well, 84 percent of the taxes in

this bill will be paid by people making less than \$200,000 a year—84 percent of the taxes.

I would like to point out another problem with this bill. It contains a sense of the Senate on medical liability reform. In his September address on health care reform, the President talked about the need to do something about medical liability reform. The problem is that this bill before us today only includes a sense of the Senate on medical liability reform. Let me show you. As shown on this chart, this is how much money this health care bill saves with their sense of the Senate. Zero.

However, the Congressional Budget Office said that real medical liability reform would save \$100 billion in this country—between what the government spends and what the private sector spends, that is \$100 billion in total.

The problems with this bill are so numerous that we could go on and on discussing them, but we truly do need to start over. We need to start over and take more of a step by step approach. We need to develop an incremental approach, where both sides can agree on some of the reforms we need to do—without destroying our current health care system. We need to enact meaningful medical liability reform.

We need to agree on provisions about eliminating preexisting conditions. We need to agree on an incremental approach to reward people for engaging in healthy behaviors. It is cheaper to insure people who are nonsmokers and people who are not obese. It is about \$1,400 less to insure a non-smoker versus a smoker; and it is about \$1,400 less to cover someone who has the proper body weight versus somebody who is obese. Encouraging individuals to engage in healthy behaviors is a good thing. We can agree on that.

We also need to allow small businesses to join together to take advantage of purchasing power in the same manner that big businesses do. This is an incremental reform proposal that would not destroy the quality of our health care system and would not take the costs and put them on the backs of small businesses. This is something we should do. This is something we can do.

The only way to enact these incremental reforms is to stop the bill that is before us today. The only way for us to do that is to sit down together, not as Republicans or Democrats, but to sit down together and come up with ideas that we can all agree on that will actually help the health care system in America. That is what this body should do if we want to do what is right for the American people.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. McCONNELL. Madam President, I ask unanimous consent that Senator McCain and I be permitted to engage in a discussion regarding the health care matter.

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

Mr. McCONNELL. Madam President, last Friday, we heard from two entities. We heard from the Center for Medicare & Medicaid Services, indicating health care costs in this country would actually go up under the Reid bill. We also heard from CNN. We heard from CMS and from CNN. We heard from CNN about how the American people feel about this measure. At a time when all the polls indicate the American people do not favor this bill, do not want us to pass it, and when the government's Actuary indicates the bill will actually not cut health care costs, which we thought was what this debate was all about in the first place, we are being confronted with a procedure that is quite unusual: an effort to restructure one-sixth of the economy through a massive bill that it appears almost no one has seen.

At what point, I would ask my friend and colleague from Arizona, could we expect that the American people would have an opportunity to see this measure that has been off in the conference room here and being turned into sausage in an effort to get 60 votes?

Mr. McCAIN. I would say to my friend, the Republican leader, that I have seen a lot of processes around here and a lot of negotiations and a lot of discussions, but I must admit I have not seen one quite like this one, nor do I believe my leader has.

I was on the floor in a colloquy with the assistant Democratic leader a couple days ago, and I said: What is in the bill? He said: None of us know. Talk about being kept in the dark.

I would say to my friend from Kentucky, we have to put this into the context of what the President of the United States said in his campaign because the whole campaign, as I well know better than anyone, was all based on change. On the issue specifically surrounding health care reform, I quote then-Candidate Obama on October 18, 2009:

I am going to have all the negotiations around a big table 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 or the insurance companies.

He went on to say that a couple more times.

I would ask my friend: Hasn't it been several days that we basically have been gridlocked over one amendment, which is the amendment that the Senator from North Dakota that would allow drug reimportation from Canada and other countries?

So then, guess what the reports are today:

PhRMA renegotiating its deal? Inside Health Policy's Baker, Pecquet, Lotven and Coughlin report: 'The pharmaceutical industry is negotiating with the White House and lawmakers on a revised health care deal under which the industry would ante up cuts beyond the \$80 billion it agreed to this summer, possibly by agreeing to policies that would further shrink the . . . doughnut hole. . . .'

I will not go into all the details of that.

Just a few minutes ago on the floor, guess what. They announced there would be some change made, an amendment that would be included in the managers' package.

I would ask my friend, is it maybe the case that the majority leader, who is having a meeting, as we speak, of all the Democratic Senators behind closed doors, without C-SPAN, has cut another deal along with the White House with—guess who—the pharmaceutical companies that have raised prices some 9 percent on prescription drugs this year?

This is a process the American people don't deserve, so I would ask my friend from Kentucky.

Mr. McCONNELL. I would say to my friend from Arizona, that is a process that gives making sausage a bad name.

Mr. McCAIN. So we were hung up—or should I say gridlocked—for 2 or 3 days, over the entire weekend. The Republican leader even agreed to a unanimous consent agreement that would allow a Democratic side-by-side amendment, and that was not agreed to—until over at the White House, according to this report, PhRMA renegotiated its deal and apparently they now have sufficient votes to defeat the Dorgan amendment which, as of last summer, according to the New York Times, said the last deal shortly after striking that agreement, the trade group—the Pharmaceutical Research Manufacturers of America, or PhRMA—also set aside \$150 million for advertising to support the health care legislation.

I ask my friend, is this changing the climate in Washington or is it not only business as usual but, in my opinion, I haven't seen anything quite like this one.

Mr. McCONNELL. I would say to my friend, it certainly is not changing business as usual in Washington. Even more important than that, it is not changing American health care for the better, which is what we all thought this whole thing was about when we started down this path of seeing what we could do to improve America's health care, which almost everyone correctly understands is already the best in the world.

Mr. McCAIN. Hadn't there been charge after charge that Republicans are "filibustering" and Republicans have been blocking passage of this legislation? I would ask my friend, hasn't the Republican leader offered a series of amendments we could get locked into and have votes on?

Mr. McCONNELL. We have been trying to get votes on the Crapo motion, for example, since last Tuesday. It will be a week tomorrow. Maybe at some point we will be able to have amendments again.

We started off on this bill with each side offering amendments, and we went along pretty well until, I think, the majority decided it was not only better to write the bill in secret, it was better to not have any amendments to the bill. So they began to filibuster our ef-

forts for Senators to have an opportunity to vote on aspects of this bill, such as the \$½ trillion worth of cuts in Medicare which we, fortunately, were able to get votes on; the \$400 billion in new taxes, which we would like to be able to get votes on.

This is the core of the bill. The American people have every right, I would say to my friend from Arizona, to expect us to debate the core of the bill—the core of the bill, the essence of the bill—which is not, of course, going to be changed behind closed doors or during this meeting that is going on with Democrats only.

Mr. McCAIN. As I understand it, there is a meeting going on behind closed doors, again, where there are no C-SPAN cameras.

According to the Washington Post this morning, it says:

The Senate will resume debate Monday afternoon on a popular proposal to allow U.S. citizens to buy cheaper drugs from foreign countries which led to a last-minute lobbying push by drug makers last week and bogged down negotiations over a health care reform bill.

It goes on to say:

The fight over the imported drugs proposal poses a particularly difficult political challenge for President Obama who cosponsored a similar bill when he was in Congress and who included funding for the idea in his first budget. But the pharmaceutical industry, which has been a key supporter of health care reform after reaching agreement with the White House earlier this year, has responded with a fierce lobbying campaign aimed at killing the proposal, focusing on Democratic Senators from States with large drug and research sectors.

So it will be interesting to watch the vote.

I would also point out to my friend, it is clear that if we allow drug reimportation, we will save \$100 billion, according to CBO, and the deal that was cut—the first deal that was cut with the White House was they would reduce it by \$80 billion, so they had a \$20 billion cushion. Now it will be very interesting to see what the latest deal is and how the vote goes.

But, again, I wish to ask my Republican leader, we get a little cynical around here from time to time and we see sometimes deals cut and things done behind closed doors. I am past the point of frustration; I am getting a little bit sad about this. Because I think we know we are now bumping up against Christmas. Sometime we are going to break for Christmas. So the pressures now are going to be even more intense because I think it is well known and reported that if they don't get a deal before we go out for Christmas, then it will be very much like a fish sitting out in the sun. After awhile, it doesn't smell very good, when people see a 2,000-page bill which has all kinds of provisions in it.

So I understand, without C-SPAN cameras, that all the 60 Democratic Members of this body are going to go down to the White House for another meeting tomorrow, and we will see what happens then.

Mr. McCONNELL. I would say to my friend from Arizona, talk about an example of manufactured urgency. Is it not the case, I ask my friend from Arizona, that the benefits under this bill don't kick in until 2014?

Mr. McCAIN. Well, my understanding is, if you go out and buy a car today from any car dealer, you don't have to make payments for a year. You can get that kind of a deal if you want it. This deal is exactly upside down. You get to make the payments early, and then you get to drive the car after 4 years.

Mr. McCONNELL. So the urgency, it strikes me, I would say to my friend from Arizona, is to get this thing out of the Congress before the American people storm the Capitol.

We know from the survey data, do we not, that the American people are overwhelmingly opposed to this bill? So what is the argument I keep hearing on the other side? I was going to ask my friend from Arizona: I hear the President and others say: Let's make history. Well, there has been much history made but much of it has actually been bad, right?

Mr. McCAIN. I would also like to say, there is a history we should not ignore; that is, that every major reform ever enacted in the modern history of this country has been bipartisan, whether it be Medicare, whether it be Social Security, whether it be welfare reform, as we remember under President Clinton. Every major reform has been accomplished by Democrats and Republicans sitting down together and saying: OK, what is it we have to do? What kind of an agreement do we have to make?

Some of us have been around here long enough to remember that in 1983, Ronald Reagan and Tip O'Neill, a liberal Democrat from Massachusetts and the conservative Republican from California, sat down with their aides across the table and key Members of Congress when Social Security was about to go broke.

Why can't we, since there must be areas we agree on, now say to our Democratic friends and the President, rather than trying to ram 60 votes through the Senate, why can't we now sit down and proceed in a fashion—we will give things up. We are willing to make concessions to save a system of Medicare that is about to go broke in 6 years. We will make some concessions but get us in on the takeoff and don't expect us to be in on the landing when already the bill is written and the fix is in, as the fix apparently is in on the Dorgan amendment.

Mr. McCONNELL. Could I say to my friend from Arizona, no one has done more in the Senate, in the time I have been here, to express opposition to and warn us about the perils of excessive spending.

As I recall, one of the things the Senator from Arizona told us after he came back following his campaign was, what the American people are concerned about is the cost of health care—the cost. Of course, we are also

concerned about government spending—the cost to consumers of health care and the cost to government spending. Dr. Christina Romer, a part of the White House's economic team, said on one of the shows yesterday:

We are going to be expanding coverage to some 30 million Americans and, of course, that's going to up the level of health care spending. You can't do that and not spend more.

Maybe she didn't get the talking points for yesterday's appearances. But we have conflicting messages out of the White House on this very measure.

In short, it is safe to say this is a confused mess, a 2,100-page monstrosity of confusion and unintended consequences. Yet they are in this rush to enact a bill—the benefits of which don't kick in until 2014—before Christmas Day this year. I am astonished at the irresponsibility of it.

Mr. McCAIN. Madam President, it is a remarkable process we are going through. I see that my friend from Tennessee is here. I know he, being the head of our policy committee and a major contributor to keeping us all informed and up to date, would also like to say something.

First, I will say something I had not planned on saying; that is, this has been a vigorous debate. I think we have been able to act in an effective way, which has been reflected in the polls of the American people who are largely opposed to this measure and greatly supportive of a process where we can all sit down together—with the American people in the room, to be honest—when we are talking about one-sixth of the GDP. The Republican leader's job has been compared by one of his predecessors to herding cats—I agree with that—or keeping frogs in a wheelbarrow. I have not seen the Republican Members on this side of the aisle as much together and as cohesive and working in the most cooperative and supportive fashion of each other since I have been in the Senate. For that, I congratulate the Republican leader.

Mr. McCONNELL. I thank my friend.

Mr. ALEXANDER. I congratulate the Senator from Arizona for his comments and his own leadership on this issue. I want to add my commendations to the Republican leader.

My thought is that the reason we are working so well together is because we are afraid our country is about to make a historic mistake. There is a lot of talk about making history. There are a lot of ways to make history. Put aside all of the laws about race—don't talk about them. When we talk about race, that is often misunderstood. We didn't fail to make a historic mistake on laws about race until the 1960s, when we began to correct those laws. Let's put aside all the historic mistakes we might have made in failing to stop aggression before World War II. We know about those mistakes. We can remember historic mistakes.

I ask the Republican leader if the Smoot-Hawley tariff sounded like a

good idea when President Hoover pushed it in the late 1920s. We were going to raise tariffs on 20,000 imported goods, create more American jobs, and it created the Great Depression. The Alien and Sedition Act sounded like a great idea. That made a little history. Shortly after our country was founded, we made it a crime to publish false and scandalous comments about the government. It has never been repealed. Our Supreme Court said it was a historic mistake. Then there was the Medicare Catastrophic Coverage Act of 1988. I wonder if the Senators might have been here then.

So we are capable of making historic mistakes. As the Senator from Arizona has said very well, most Americans, if presented with a problem, would not try to turn the whole world upside down to solve it. They would say: What is the issue? The issue is reducing costs. We can all talk to family members and others—we know what they are paying monthly for premiums, and we would like that to be less, and we would like for the government's costs to be less.

Why don't we, as we have proposed day after day, and as the Senator from Arizona has said—why don't we go step by step in the direction of reducing costs.

I will not go into a long litany of proposals we have made. We can take five or six steps on small business health plans, reducing junk lawsuits against doctors, or buying health insurance across State lines. We should be able to agree on that instead of a 2,000-page bill that raises premiums, raises taxes, and seems to have a new problem every day.

I think the cohesion on the Republican side is not so partisan. I like to work across party lines to get results. That is why I am here. I am just afraid that our country is about to make a historic mistake, and we are trying to help and let the American people know what this bill does—what it does to them and their health care.

Mr. McCONNELL. The fear is palpable. In addition to the public opinion polls we have all seen, we are each having experiences with individuals. I will cite three.

I ran into a police officer—a long-term police officer, an African American. He came up to me and said: Senator, you have to stop this health care bill.

Then there are the health care providers. I see Dr. BARRASSO from Wyoming. Within the last week, I spoke to one of the Nation's fine cardiovascular surgeons. He said: Please stop the health care bill. This is going to destroy the quality of our profession. He told me of a friend of his, a neurosurgeon, who called him with the same concern.

I get the sense that there are an enormous number of health care providers—physicians, hospitals, everybody involved in the health care provider business—apparently, with the

exception of the pharmaceutical industry, which seems to have cut a special deal—who are just apoplectic about the possibility that the finest health care in the world is going to be destroyed by this—as the Senator from Tennessee points out—“historic mistake.”

Mr. McCAIN. I will mention, also, on the issue of PhRMA, again, here we are in the direst of economic times, with a Consumer Price Index that has declined by 1.3 percent this year, and they have orchestrated a 9-percent increase in the cost of prescription drugs—that is remarkable—laying on an additional burden, which naturally falls more on seniors than anybody else since they are the greatest users of pharmaceutical drugs. I don't blame them for fighting for their industry. But the point is, what they are doing is harming millions and millions of Americans.

Again, about contributing to the cynicism of the American people, whether you are for or against the issue of drug reimportation, to cut a deal behind closed doors and then, apparently, because of support of an amendment by Senator DORGAN, go down and negotiate another deal—how do you describe a process like that?

Mr. ALEXANDER. Well, “unsavory” would be a minimum word that comes to my mind. The problem I have is that Americans have a perfect right to their view, and the pharmaceutical industry has a perfect right to advocate its point of view.

As I hear the Senator describe what has been going on, am I hearing correctly? I mean, the pharmaceutical industry is saying we don't like drug reimportation. The White House says: OK, we will cut a deal with you behind closed doors—as far as we can tell—and we will change the law this way, and then—

Mr. McCAIN. The original deal was published in every newspaper, and it was that they would close the so-called doughnut hole by some \$80 billion. CBO said their profits would be reduced by some \$100 billion if we allow reimportation. They had a \$20 billion cushion.

Mr. ALEXANDER. So it is a negotiation between the White House, the President, and big industry about profits: I will do this, you do that, and then you go out—and my understanding is that you write in as part of the deal that the industry spends \$150 million on television advertisements in support of the deal. Is that the deal?

Mr. McCAIN. But then, incredibly, they counted the votes. The votes were there to pass the Dorgan amendment. According to published reports, the pharmaceutical industry is negotiating with the White House and lawmakers on a revised health care deal under which the industry would ante up cuts beyond the \$80 billion it agreed to this summer.

In other words, because that wasn't sufficient to get votes to kill the Dorgan amendment that would allow reimportation of drugs, they went down and renegotiated. What is that called?

Mr. ALEXANDER. Well, if I am remembering right, earlier this year the Republican leader made a talk on the Senate floor. The attitude of the White House toward a large company in Kentucky, as I remember, was: If you don't agree with us on health care, we will tax you. That was the attitude, it seems, to come out. If you don't agree with us, we will tax you, or we will make it difficult for you to do business. If you do agree with us, we will make a deal with you that affects your profits.

Mr. McCONNELL. I say to my friends, beyond that, the administration basically told this company to shut up. They issued a gag order that was so offensive, even an editorial in the New York Times said it should not have been done. They could not communicate with their customers the impact of various parts of this bill on a product they buy, Medicare Advantage. The tactics have been highly questionable, it strikes me, from the beginning of the year up to the present. What Senator MCCAIN is talking about is just the most recent example.

Mr. MCCAIN. Can I also give you this to illustrate it graphically? In this news report, several lobbyists told Inside Health Policy—that is the organization that is reporting this—they have heard that the Pharmaceutical Research and Manufacturers of America may have already reached a deal with the White House and AARP to close the Senate bill's coverage gap by 75 percent versus the 50 percent under the current bill. PhRMA declined to confirm the reports that it may be agreeable to reforms that would further close the doughnut hole but signaled discussions were underway, and AARP said no agreement has been reached. We haven't seen a deal.

Here are our old friends at AARP at it again. They are at it again.

Mr. McCONNELL. Will the Senator yield for this point?

Mr. MCCAIN. Yes.

Mr. McCONNELL. Is that the same AARP that would, I am told, actually benefit from the decline of Medicare Advantage because they sell policies themselves that would be more likely to be purchased by seniors? Is that the same AARP?

Mr. MCCAIN. When you lose Medicare Advantage, as Dr. BARRASSO will fully attest, then you are almost forced into the so-called Medigap policies, which then cover the things that are no longer covered under Medicare Advantage, such as dental, vision, fitness, and other aspects of Medicare Advantage.

So if you destroy Medicare Advantage, then people will be forced into the Medigap policies. Who makes their money off Medigap policies? AARP.

Mr. SESSIONS. If the Senator will yield for a question about this deal with big PhRMA, a few days ago I made reference to and quoted from a scathing editorial by Robert Reich, who served as Secretary of Labor in

the Clinton administration, who is a leading intellectual liberal Democrat who criticized these deals in the most scathing terms. He used words I was reluctant to use on the floor—as my colleague said, “unseemly,” whatever. I would say it goes beyond that. He used the word “extortion.” I don't think he used that word lightly.

I think it is the kind of process—the Senator has been here and many who are on the floor now have been here for a long time—but it seems to me this is pushing the envelope on dealmaking to the point that really is a dangerous step. It goes beyond anything we should countenance, in my view.

Mr. MCCAIN. I agree with the Senator. Again, I would like to ask Dr. BARRASSO because he has treated patients who are under Medicare Advantage. Before I do, I want to say again that the whole process has been wrong. The process of going behind closed doors; the process where, after nearly a year of addressing this issue, the distinguished—and he is a fine person, a fine Senator from Illinois—the No. 2 leader in the majority, in a colloquy I had with him just 2 days ago, said no one knows what is in the bill. He said no one knows what is in the bill. This is after a year. It is wrong. What it does is—this issue is vital, but it destroys the confidence of the American people to be truly represented here to have their interests overridden by the special interests, of which PhRMA and this deal that is going on right now is a classic example. I ask Senator BARRASSO.

Mr. ALEXANDER. Before Dr. BARRASSO speaks, just listening to the Senator from Arizona, it seems to me it puts the Democratic leadership in the extremely awkward position of even its leadership—proposing a bill that affects 17 percent of our economy and the leadership of the Democratic Senate doesn't yet know what is in the bill, we certainly don't know what is in the bill, and they are in the awkward position—at least they have been the last few days—of filibustering their own bill at a time when they are insisting that we pass the bill before Christmas, which we can hear the sleigh bells ringing. It is just a few days before that happens.

Mr. BARRASSO. It seems, as we are on the Senate floor talking—

Mr. MCCAIN. May I interrupt? I ask unanimous consent that the Senator from Tennessee take over this colloquy.

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

Mr. MCCAIN. Go ahead. I am sorry.

Mr. BARRASSO. It seems to me, as we are on the Senate floor discussing the issue wide open—any American can come in here and listen to us—hidden behind closed doors is the other party, maybe sharing what is in the secret negotiations, maybe not, because it sounds as if a number of their members don't know.

What I do know from practicing medicine for 25 years and taking care of families around the State of Wyoming is that people depend on Medicare for their coverage. There are seniors who depend on Medicare and Medicare Advantage. The reason they call it Medicare Advantage is because there are advantages to being in it. It coordinates care. It helps with preventative care, which is not part of the regular Medicare Program.

Yesterday, I heard my colleague from Arizona say there are those who want to shut down Medicare Advantage—AARP, he said—because they are the ones to benefit and profit if, in fact, Medicare Advantage is lost to the seniors in this country. Madam President, 11 million Americans depend on Medicare Advantage. Yet they are losing because of a vote this body took. This body voted to strip \$120 billion away from our folks who depend on Medicare Advantage.

I know the Senator from Arizona has another important point he wants to make.

Mr. MCCAIN. The point I want to make is this process has turned into something, again, like I have never seen before. I was just handed this FOX News, just-reported breaking news that HARKIN said—I guess referring to the Senator from Iowa—HARKIN said that Medicare buy-in and public option are now dead. I don't know what to say except it seems to me they are just throwing everything against the wall and seeing what sticks and what doesn't stick. This is really, again, one of the most astounding kinds of situations I have observed in the years I have been in the Senate. Medicare buy-in is dead, public option is now dead.

What I would like to see is that HARKIN would report that now Republicans and Democrats will sit down together and try to work out something of which the American people would heartily approve.

Mr. BARRASSO. I have great concerns about the health care availability for the people of our great country. This is a front-page story in the Wyoming Tribune Eagle on the 13th: “Doctor shortage will worsen.” That is what I am worried about. I am worried about the patients at home. I am worried about the folks in Arizona, Alabama, and Tennessee. “Doctor shortage will worsen.” “It is estimated that as many as one-third of today's practicing physicians will retire by 2020” and provider shortages will continue to increase. It says that based on health care so-called reforms they are proposing, the strain on certainly Wyoming's physician shortage will even possibly lead to longer wait time for appointments as patients travel even farther for care.

As I look at this bill that raises taxes \$500 billion, cuts Medicare \$500 billion, and causes people who already have insurance—insurance they like but they are concerned about the cost—they will see the cost of their premiums going

up. There is very little in this bill that I think the American people would be interested in having for themselves.

The President has made a number of promises. He said: I won't add a dime to the deficit. Eighty percent of Americans do not believe him. Recent poll, CNN: 80 percent of Americans don't believe the President on that point. How about taxes? With taxes, he said he won't add a dime to your taxes. Eighty-five percent of Americans don't believe him there. They believe their taxes are going to go up. Yet they don't believe the quality of their care will be better.

So when we talk about a bipartisan solution, we want to improve access to care, we want to get costs under control. This bill raises costs.

Mr. ALEXANDER. I see the Senator from Idaho is here. We both had the experience of being Governors, as did the Presiding Officer in her State of New Hampshire. We were talking the other day—and I hope he doesn't mind me repeating that—I worked with a Democratic legislature the whole time I was Governor. But what we always did on anything important was we sat down together. We had our different positions, we fought during elections, but we worked things out. We didn't go forward unless we found a way to agree. That meant I usually didn't get my way. I got some of my way, but I had to take into account that someone else—in this case, the Democratic legislature in Tennessee—might have a different idea. Sometimes it was a better idea.

I ask the Senator from Idaho, we talk a lot about bipartisanship around here. The reason for bipartisanship is that these big bills are tough bills. We are expected to make difficult decisions: Are we going to reduce the growth of Medicare? Are we going to expand Medicaid? Are people going to be required to buy insurance? What are we going to do about health care premiums? Many of these decisions are controversial.

When the American people look at Washington and they see that just one side of the political spectrum is pushing a bill through and the other side says: Absolutely not, what kind of confidence is that going to give the American people? On the other hand, if they look at Washington as they did with the civil rights legislation we talked about in the 1960s when Lyndon Johnson, a Democrat, was President and Everett Dirksen was the Republican leader, they saw the Republican leader and the Democratic President saying: OK, this is a tough problem, but we have a solution with which we both agree. Then the American people had some confidence in that.

Bipartisanship is not just a nice thing; it is a signal to the American people that people of different points of view think a controversial decision is in the country's interest. Isn't that totally lacking here? Isn't that bipartisanship signal lacking across the country?

Mr. RISCH. I thank the Senator. I am astonished at the process that is involved here. If one steps back and has a look at this from 30,000 feet and you look at what we are doing here, what we are doing here is—and I say “we” but it is actually the other side of the aisle—what the other side of the aisle is doing here is attempting to entirely revamp the health care system of this country and they are doing it all in one bill, which we think is a mistake. It should be broken into its component parts. The bill contains and attempts to address quality, cost, accessibility, and the insurance industry all put into one bucket and stirred and expected to resolve all of these problems at one time.

If you look at what has happened here, the House produced three bills, a multithousand-page bill. Those bills were stirred around over there, and eventually in the dead of night they finally got one of them passed with one or two votes to spare. Then it came over here. There were already two bills over here.

The two bills were produced through the committee process. The committee process is a very good process by which we produce bills. Admittedly, both of those bills were heavily skewed to the Democratic side, and all of the Republican amendments—or virtually all of the Republican amendments, certainly all the significant amendments—were voted down on a party-line basis.

Those two bills came out of those committees. One would expect that then they came to the floor and would go through the process. But, no, the two bills were taken over to the majority leader's office, doors shut, curtains closed, and various people were brought in. We don't know who, we don't know how, we don't know what the negotiations were, but at the end of the day, a third bill over here was produced, and it is 2,074 pages long. It is usually kicking around here on the desks. I see they removed most of them. I suspect they removed most of them because most people were afraid they were going to fall over and hurt somebody. These were 2,074 pages that were put together. Nobody really knows exactly what is in them. There are some generalities that we know, but we don't know all the specifics.

Then what happened is a week ago, they decide they will put 10 people in a room, leave the rest of the 90 of us out, and they will try to come up with some type of compromise. And they did. The next day, I got calls from home: I guess it is over; they put out an announcement; they have a compromise. I said: That is news to me. I don't know what is in it. I started to make some calls. Nobody would release the details of what this supposed compromise is.

Remember, in the last election we were promised things would be changed. Change we could believe in. These things would be done out in the open, without lobbyists coming and getting their input in the bill behind

closed doors. That is exactly what has been produced. You have a secret document that has been produced that we have not even seen.

In spite of all this, the other side is saying: By golly, we are going to produce a bill before Christmastime. Christmas is coming, and Christmas is very close.

I can tell you, after looking at these 2,074 pages—not looking at the compromise because we are told we cannot see it—it would be reckless, absolutely reckless to shove down the throat of the American people something that has been put together in secret, something that has been put together in the dead of night, something they will not let us look at and examine, and to say: We are going to take this now and shove it down the American people's throats before Christmastime.

This is not a Christmas present the American people want. If you don't believe me, all you have to do is look at the polling. The polling shows every single day support for this bill deteriorates. It deteriorates amongst Republicans, amongst Democrats, and amongst Independents. The last poll, I think, was up to 61 percent of the American people said: Don't do this to us.

We need health care reform in this country. We want health care reform in this country. But this monstrosity that has been produced, and whatever it is they are going to drag out of the alley tomorrow and say: This is what we are going to vote on now, is not what the American people want.

I have a message for those on the other side from the American people: Don't do this to us. Stop. Bring some sanity into this. Do it right.

I yield the floor back to my good friend from Tennessee.

Mr. ALEXANDER. Madam President, may I ask the Senator from South Dakota, unless the Senator from Arizona wants to, to lead the colloquy.

Mr. MCCAIN. If I can speak for just about 10 seconds.

Mr. ALEXANDER. Let me ask the Senator from South Dakota to lead the colloquy on the Republican side.

Mr. MCCAIN. Very briefly, I say to my friends, apparently, if the news reports are right, the public option and Medicare is out. That is an interesting twist, and again, I think affirmation that they are just throwing things against the wall to see if anything sticks. But it doesn't change the core of the bill, which the Senator from South Dakota has been so eloquent about, and that is the \$½ trillion in cuts from Medicare and increases in taxes.

So you can take the public option out or leave it in, and it still doesn't change the fundamental fact that it is going to restructure health care in America and do nothing to reduce the cost and nothing to improve the quality. I just wanted to make that comment and ask for comment from the Senator from South Dakota.

By the way, could I just mention, I haven't quite seen anything on the floor of the Senate as I saw when the Senator from South Dakota was challenged earlier today. I was watching the proceedings on the floor, and I wonder if the Senator from South Dakota would like to maybe respond to accusations of misleading information, I guess is the kindest way I could describe it.

Mr. THUNE. I appreciate the Senator from Arizona yielding and the discussion of all our colleagues on the Senate floor this evening, pointing out how flawed this process is and that it is being conducted behind closed doors in contradiction of all the promises and commitments that were made that this would become a transparent and open process. I think the Senator from Arizona has been great at holding the other side accountable when it comes to all these pronouncements about how this was going to be an open, transparent process, and that is just not the case. There is something going on right now that we are not privy to, and I think at some point they are going to throw something, as the Senator from Arizona said, at the wall, hoping that the latest thing will stick.

But I do want to make an observation with regard to the discussion held earlier today because a Member from the other side—the Senator from Minnesota—had indicated that he thought this chart was somehow inaccurate or misleading, and I want to point out again, Madam President, that the chart is very accurate. In fact, the taxes in the bill begin 18 days from now, on January 1 of next year. January 1, 2010, is when the taxes in this bill begin.

In fact, almost \$72 billion of taxes will have been collected before the benefits that start to kick in will be paid out—the premium subsidies that are going to support the exchanges, that are supposedly going to help those who don't have insurance get access to it. That is 1,479 days from now.

The Senator from Minnesota got up and said, and I quote: We are entitled to our own opinions; we are not entitled to our own facts. The fact is, benefits kick in on day one. The large majority of benefits kick in on day one, and we shouldn't be standing up here with charts that say the exact opposite.

Well, Madam President, it is not me saying this; it is the Congressional Budget Office. The Congressional Budget Office has said that 99 percent of the coverage spending in this bill doesn't kick in until January 1, 2014—1,479 days from now.

Now, I ask my colleagues, and most Americans around this country: Do you think it is fair to construct a bill that in order to understate its total cost starts raising taxes in 18 days, but doesn't start delivering 99 percent of the coverage benefits until 1,479 days from now?

If the other side wants to have an argument about whether 99 percent of

the coverage benefits kick in in the year 2014 or 100 percent, I am happy to have that argument. The point is simply this: Taxes start 18 days from now—tax increases—so that \$72 billion in taxes will have been imposed upon the American people, and the benefits 1,479 days from now.

So, Madam President, I want to make that point and refute the argument that was made by the Senator from Minnesota that a large majority of benefits kick in on day one. Ninety-nine percent of the benefits don't kick in until later.

Incidentally, I have an amendment on which I hope we will get a chance to vote that delays the taxes until such time as the benefits begin. We think it is only fair to the American people that we synchronize the tax increases with the benefits. Many of us don't support the tax increases in the first place, which is why we will be supporting the Crapo amendment to recommit the tax increases back to the committee to get rid of them. But if you are going to have tax increases and start raising revenue immediately, you ought to start paying out the benefits today, or at least delay the tax increases so the benefits and the tax increases are synchronized. That, to me, is a fair way to conduct and do public policy for the American people.

The reason it was done this way, let's be honest about it—and the newspapers have made it pretty clear in some of their statements—for instance, the Washington Post states:

The measure's effective date was also pushed back to the year 2014. That projection represents the biggest cost savings of any legislation to come before the House or Senate this year.

The measure's effective date was also pushed back. They keep pushing the date back to understate the cost. The reason they want to start collecting revenue right away and not start spending until later is because they know if they start the spending early on, they are going to start inflating significantly the cost, and the goal was to try to keep it under \$1 trillion. We all know now, and they have acknowledged, the 10-year, fully implemented cost of this isn't \$1 trillion, it is \$2.5 trillion.

The American people deserve to know the facts. That is the fully implemented cost. The only reason they can say in the 10 years it comes in at \$1 trillion or thereabouts is because the tax increases started January 1, 2010, and the benefits—99 percent of the benefits—don't start kicking in until January 1, 2014.

So I thank the Senator from Arizona for giving me the opportunity to clarify that. It is important we make this debate about the facts. I have tried to do that when I speak, and I am happy to have the opportunity to restate the facts as they exist and as they have been presented to us by the experts—by the Congressional Budget Office and by the CMS Actuary, both of whom have

concluded the same thing when it comes to the benefits and the impact this will have on premiums in the country. I think that is probably the most devastating blow to the argument the other side has made in support of this bill—when the CMS Actuary came out last week and said this is actually going to increase the cost of health care in this country by \$234 billion over the next 10 years.

So, Madam President, I am happy to yield. I see a number of our colleagues on the Senate floor, and the leader is here as well, and I would certainly yield time to the leader.

Mr. MCCONNELL. If I could, Madam President, Senator MCCAIN and I had an opportunity to talk off the floor about things that may be in or out of the current Reid bill. It is over there behind closed doors.

Whether things are popping up or being left out, and whether any of that is significant, I would say to my friend from Arizona, it doesn't make a whole lot of difference, does it? Because the core of the bill, that which will not change, has not changed in any of these various iterations of Reid that we have seen, with $\frac{1}{2}$ trillion in cuts in Medicare, \$400 billion in new taxes, and higher insurance premiums for everyone else.

I would ask my friend from Arizona, if he thinks any of that is going to change?

Mr. MCCAIN. I would respond by saying whether the public option is in or out or whether expansion of Medicare is in or out, the core of this legislation will do nothing to reduce or eliminate the problem of health care in America, which is the cost of health care not the quality of health care. In fact, it will, in many ways, impact directly the quality of health care, increase the cost, as we all know, by some \$2.5 trillion, according to the chairman of the Finance Committee.

But I also want to point out the back and forth of this—is it in there, is it out? Well, let's try this. Who, up until a week ago, ever heard we were going to expand Medicare? Now it is out, now it is in. We used to have hearings around here, proposals, witnesses, and then we would shape legislation, which would be amended in the committee, and then brought to the floor and amended on the Senate floor. Here we have to get news flashes to know whether the public option is in or out, whether Medicare expansion is in or out. Again, this is kind of a bizarre process.

But my friend is right; it doesn't affect the core problem with this legislation, which is that it does not reduce cost, and it increases the size and scope of government and the tax burden that Americans will bear for a long period of time, including, by the way—and, again, I don't mean to sound parochial, but there are 337,000 of my citizens in the Medicare Advantage Program. The other side has admitted that the Medicare Advantage Program will go by the

wayside. That is affecting a whole lot of people's lives, I would say, and that is in the core of the bill. That will not be changed by expansion of Medicare or with a public option or with no public option.

Mr. THUNE. Would the Senator from Arizona yield? I see a number of our colleagues and the leader.

I would simply add that this idea of expanding Medicare, which just emerged last week, was a bad one, and one even I think a lot of the Democratic Senators have come out in opposition to, which is why we are now back to the drawing board. But this relentless effort to try to tweak this bill around the edges, to somehow get that 60th vote, doesn't do anything to change the fundamental features of the bill, which the leader and the Senator from Arizona have been talking about, and that is the tax increases and spending.

Mr. MCCAIN. If I could just mention this. Over the weekend, obviously people watched football games. I was obviously pleased to see my alma mater prevail over those great cadets at West Point. We have a tendency to divert our attention—even seeing, for a change, the Redskins winning a football game—but what we talked about late last week is vitally important. The Centers for Medicare and Medicaid Services had some devastating comments to make.

This is the organization that is tasked to provide us with the best estimates of the consequences of legislation—specifically Medicare and Medicaid.

The CMS, referring to this bill, said:

... we estimate that total national health expenditures under this bill would increase by an estimated total of \$234 billion during calendar years 2010 to 2019.

It goes on and on and talks about the devastating effects of this legislation, whether the public option is in or out, whether we expand Medicare or not. It is remarkable information that is in this study, a study being ignored by the other side. Clearly, what is happening on the other side is only one Senator is throwing proposals back and forth to the CBO until they get something that perhaps looks like it might be sellable. But the CMS has already made their judgment on this legislation.

Mr. CORKER. If I could respond to that, I have only been around here by about 3 years, but I passed an incredible scene—I think many of you coming to the floor may have seen it—a huge gaggle of journalists and reporters and folks waiting outside a room where our colleagues are meeting. There is reason this bill does not lower cost. I came from a world where if you had a problem, you identified what the problem was and then you had sort of a central strategy that you built out to try to lower cost, which I think is what all of us thought that health care reform should do—let's lower cost and create greater access for the American people.

Well, instead of that, we have had a process where it has been literally like 50 yellow stick-ums were put up on the wall to figure out how they could get 60 votes. There hasn't been an attempt to actually lower cost. There hasn't been an attempt to try to create a mechanism where Americans can actually choose, with transparency, the type of plans that work for them. Instead, it has been a game from the very beginning of trying to get 60 votes, and that is why none of the goals, except for one, has been achieved that they set out to achieve.

This is going to drive up premiums, it is going to add to the deficit, and it is going to make Medicare more insolvent, which is pretty incredible because when I got here there was a bipartisan effort to make Medicare more solvent. Instead we are using money from that to leverage a whole new program with unfunded mandates to States, new taxes, as the Senator from South Dakota was talking about.

So, again, what is happening in this room, and the reason I bring up the 50 yellow stick-ums on the wall, some of which were circled to try to get votes, that is what this has been about from day one. What is happening in the room right now is they are sitting around not dealing with the core of this bill, which is very detrimental to our country. But they are in this room trying to figure out which yellow stick-ums will get them the 60 votes. In the process, doing something that is going to be very detrimental to this country.

Mr. McCONNELL. It could be the reason they are so anxious to do this before Christmas is they think Americans will be too occupied with the holiday season and somehow they can sneak this unpopular bill through and everybody will be busy opening presents or taking care of their families and somehow the American people will not notice.

I suggest to my colleague, I think this is going to be a vote that will be remembered forever. This is going to be one of those rare votes in the history of the Congress that will be remembered forever.

Mr. MCCAIN. If I could, before my friend from Alabama, I wonder also, when we are talking about dropping expansion of Medicare as is reported by news reports—I don't know; we have not been informed—could it possibly have anything to do with the fact that the AMA came out in opposition to it? Could it have anything to do with the fact that the American Hospital Association came out in opposition to it? Of course, that the PhRMA situation is a parliamentary procedure that is awaiting action on the floor speaks for itself.

Mr. SESSIONS. I agree with the Senator completely. As Senator MCCAIN already said, it is baffling. Here we are, all these weeks, and now we are being told the public option is being dropped? Today? And maybe this expansion of Medicare? Oh, we just changed our

mind on this? On a bill that is designed to reorganize one-seventh of the entire American economy? This is how we are being led here? I say to Senator MCCAIN, it is historic. I think the American people have rejected this plan.

The numbers do not add up. The money is not there to pay for these schemes. I think the American people know it. So I guess I would suggest—my colleague from Tennessee, Senator ALEXANDER, is not here—rather than jamming forward before Christmas, isn't it time to slow down and think this thing through and start over in a step-by-step process that might actually produce some positive change in health care in America?

Mr. McCONNELL. Absolutely. That is what Senate Republicans have said for quite a while. Let's start over and go step by step to deal with the cost issue. Instead, there is this consuming desire on the other side of the aisle to transform one-sixth of our economy, to have the Government take it over and to make history and, as has been pointed out in this colloquy by many Senators: There are many things that happened in our history that we wish had not occurred. This is certainly going to be one of them.

I am optimistic. We just need one Democrat, just one to stand up and say: Mr. President, I am sorry, this is not the kind of history I want to make. I would love to listen to you but I also want to listen to my constituents and it is very clear where my constituents are. If I have to choose between you and my constituents, with all due respect I am going to pick my constituents. Just one Democrat needs to stand up and say I am willing to listen to the American people rather than arrogantly assume that all the wisdom resides in Washington.

If we figure this out, we are going to do it for you whether you want us to or not.

Mr. RISCH. I want to add to what the Republican leader has said. I think there is this push to get this done before Christmas because they think people are not watching. People are watching. If you look at the poll, the poll is moving. It is moving in the wrong direction for them, but it is clearly moving.

More important, I have news for the people on the other side. If they think this is going to go away after Christmas, they have another "think" coming. This is one of the largest issues to be debated in this room for a long time. Every senior citizen in America is going to wake up after Christmas and say: Wait a minute, let me get this straight. Those people in Washington, DC cut \$500 billion out of Medicare? Don't they care about me? The system is already going broke and they took \$500 billion out of Medicare, benefits I have paid into all my working life, and transferred it over to start a new program, a new social program that also is not sustainable? What is wrong with those people?

This discussion is going to go on. Because of the complexity of this, because of the size of this bill, there are going to be news stories every single day from now until November 2 of 2010. My friends, November 2 of 2010 is coming a lot quicker than you think. By the time you get there you are not going to be able to run from this vote. The American people are wisely going to respond and they are going to tell Washington, DC, through their voting what they think of what happened in this debacle that is called health care reform. It is misnamed, health care reform. It is higher taxes, higher insurance premiums, it is stealing from the Medicare Program, and it is creating a new giant Washington, DC bureaucracy.

The American people do not want this.

I yield to my friend from Wyoming.

Mr. BARRASSO. It is interesting because what you are doing now is fundamentally talking about the core of the bill, the core that cannot be changed as they drop this or add that. It is the core that led the dean of Harvard Medical School to say this bill, the core, is going to make spending worse. It is going to drive up spending and it is going to not improve quality.

This physician at Harvard has said people who are supporting this are living in collective denial. It is no surprise that the American people are very skeptical, very suspicious. It is why the dean at Johns-Hopkins Medical Center this past week wrote an editorial that said "this bill will have catastrophic effects" and it will do more harm than good. We are talking about the health care of the people of our country.

Mr. SESSIONS. Will the Senator yield? Those two deans are saying that the entire promises of this bill—that it would reduce cost and improve quality—both are not true?

Mr. BARRASSO. That is what we are hearing from the deans of medical schools. It is what I hear at home all the time. People in Wyoming read this and say this is wrong. This is going to make it harder for doctors to practice, harder for us to recruit doctors, harder for hospitals to stay open. We are saying in Wyoming—the Washington Post said it on Saturday, "Medicare Cuts Could Hurt Hospitals, Expert Warns." We are seeing that affecting the quality of care. We are seeing it in terms of will we have a doctor shortage? Will that worsen? We are going to deal with that at home, but people are seeing it all across the country because fundamentally this bill is flawed. It does not address the sort of concerns we have, and we are trying to get costs under control. This will drive up costs. We are trying to help improve the quality of care. This will not improve the quality of care. We are hoping to improve access for patients. This will make it harder. This will make longer waiting lines, this will limit people's choices, it will limit care in the rural

community. I know about those in Wyoming. You know about them in Alabama.

When we read the report by the Actuaries from the committee that oversees Medicare—and they didn't rush to do this. They are talking about the bill that now has been out, the 2,000-page bill that has been out for people to read for 3 weeks. It took them 3 weeks to do the report because they wanted to do a very thorough evaluation and they looked at it, and they said we think one out of five hospitals in the United States will end up closing within 5 years and one out of five doctors offices will close if this goes through. This is what the Democrats are proposing, something that is going to lead to one in five hospitals closing, one in five doctors offices shutting their doors, saying we can't continue to keep the doors open under these circumstances.

This report has said the whole effort to drive down the costs of care is wrong. At its core it is wrong; that the cost of care is going up if we pass this bill that is ahead of us now, regardless of the little changes they may make at the periphery. At the core this is going to drive up the cost of care. At the core it is going to cut our seniors who depend on Medicare for their health care.

Medicare is going broke. This is not going in any way to help that. It is going to make it worse. Then if they try to put more people into that Medicare ship that is already sinking, that is going to make it worse as well.

Plus the way they try to solve this, to say we are going to cover all these new people, many of them, the majority of them are going to be put on Medicaid—Medicaid, a program that Governors across the political spectrum have all said is a failed program, a program that is driving the States into bankruptcy, a program that Governors call the mother of all unfunded mandates—that is the way they are trying to get the costs down, by putting the cost on the States.

It is still the same people of America who have to pay those bills, whether you are paying your taxes here or there. Plus they are going to raise taxes. This report from the Medicare Services Group looked at that and said all of those taxes are going to go up, \$500 billion in taxes. Of course those are going to get passed on, so people of all different income brackets in the United States, all people are going to get hit with those taxes. Some people may see a little benefit, but by 4 to 1, four times as many people are going to get taxed as people who are going to see any benefits.

We are looking at a program, a core fundamental of a bill that to me is fatally flawed—fatally flawed—that will raise prices, raise insurance premiums for people who have insurance, cut Medicare and raise taxes. And you say, how could people support that?

We need the solution to improve quality, get costs under control and improve access. This does not do any of

those things. Plus it starts collecting taxes, as my friend from South Dakota said—it starts collecting taxes in 3 weeks but yet doesn't give services for 4 years.

Mr. CORKER. If the Senator will yield, I was listening to him talk about this bill being fundamentally flawed, which it is. I think back about the comments Senator MCCONNELL said on the floor, and I think ORRIN HATCH, from Utah, the other day expanded on it. Anything that is this major, this major of a reform that we are going to live with for generations, should be done in a bipartisan way. I know Senator HATCH talked about the fact that something of this size should have 70 votes, to pass a bill that will stand the test of time.

Earlier today I heard a friend on the other side of the aisle talk about the fact that Republicans walked away. I don't look at it that way. But I remember very early on when we saw the basic, fundamental building blocks of this bill, almost every Republican Senator wrote a letter to Senator REID, our majority leader, and told him if there were going to be Medicare cuts that were used to leverage a whole new entitlement, we could not support the bill. So what did the majority leader and the finance chairman, MAX BAUCUS, do? They used that as one of the fundamental building blocks of this bill. That is paying for 50 percent of this bill—taking Medicare cuts, a program that is insolvent, and using it to leverage a new program.

What I would say—and I see the leader here on the floor—I agree a bill of this size has to have bipartisan support. I don't know how you get bipartisan support, though, when almost everyone in our caucus wrote a letter in the very preliminary stages of negotiation to let them know that we considered that to be a fundamental flaw; we considered that not to pass the commonsense test. Yet it has been the major building block in causing this bill to come to fruition or to come to where it is today.

Mr. MCCONNELL. The Senator from Tennessee is entirely correct. We made a major effort. Senator GRASSLEY and Senator ENZI, the two ranking members of the relevant committees, as well as Senator SNOWE, were in endless discussions with the majority. Then it became clear that they were not interested in doing anything short of this massive restructuring of one-sixth of our economy, which includes, as the Senator indicated—we expressed our concerns early about these $\frac{1}{2}$ trillion cuts in Medicare to start a program for someone else.

I would go so far as to suggest the reason the public's reaction to this has been so severe is because they have chosen such a partisan route. Had they chosen a different route, had we produced a bill in the middle, a bill much more modest in its intention rather than this audacious restructuring, the American people would see us behind it and they would be behind it.

By choosing this sort of narrow “my way or the highway” approach, “we are going to get the 60 votes and jam you,” they have made it impossible to make this a proposal that they could sell to the American people.

The American people are not foolish. The difference between this issue and most issues is everybody cares about health care regardless of age. The older you get the more you care about it, but everybody cares about health care. But they are paying attention and they see that this is not in any way a bipartisan proposal. So they have created for themselves not only a terrible bill, in my judgment, that should not pass and probably will not pass, but an enormous political problem for themselves along the way that would have been entirely avoidable had they chosen a different route from the beginning.

Mr. CORKER. I think the fact is the two parties certainly have differences. We are seeing that by the huge amount of spending that is taking place right now. But the fact is, when we come together around bills, we do things that can stand the test of time.

When we do that, it is not about political victory, it is about us airing our differences and seeing those places where we have common ground. I have watched each of you in your deliberations on the floor. I know very early on we talked about the fact that if we could just focus on the 80 percent we agree upon, we could pass a piece of legislation that would stand the test of time. Maybe it wouldn't solve every problem in the world, maybe it wouldn't go from end zone to end zone, but maybe if we went 50 yards down the field, it was 50 yards of solid gain for the American people, something that would stand the test of time, then we could come back and maybe get another piece of it as we moved along.

I know almost everyone in this room has been a part of discussions to increase access, increase competitiveness, to drive down cost, to increase choices. This may be historic, if it passes. I actually still believe there is a chance that some of our friends on the other side of the aisle will realize that this is historic. But what is historic about it is this: If we pass this bill or if the Senate passes this bill, we will have missed a historic opportunity to work together and do something that will stand the test of time. All the energy would have been expended on a bill that does not pass the common-sense test, where the basic fundamentals are flawed.

This issue will not come up again for a long time. I know how the calendar on the floor is. I certainly know about the patience of the American people. But the history part of this, we will have missed a historic opportunity to do something that will be good for the American people. That is the part, I guess, that bothers me the most.

Mr. THUNE. Madam President, the Senator has been the mayor of a good-sized city, a small businessperson, ac-

tually probably bigger than a small businessperson. But if you were running a business and you were in an environment such as we are in today, a tough economy, trying to figure out ways to cut back on your costs and figure out a way to sell a little bit more of whatever it is you are making or doing, and somebody comes to you and says: We are going to reform health care and we want to do something that will get health care costs down and yet what they are selling is going to raise your taxes and, according to the referees—the Actuary at the Center for Medicare Services is sort of a referee in all this; they don't have a political objective; they simply want to get the facts out. Of course, that is the role that is played traditionally in Congress by the CBO, both of which now say—the CBO says it is going to increase health care spending by \$160 billion over the first 10 years and the CMS Actuary is now saying it will increase health care costs by \$234 billion over the first 10 years. You also have now the CMS Actuary saying it could close 20 percent of the hospitals, that 17 million people who get their insurance through their employers are going to lose it, that the Medicare cuts are not sustainable on a permanent basis in this legislation, and that a lot of these tax increases are being passed on in the form of higher premiums which will mainly be borne by people trying to provide insurance. If you are sitting there as a businessperson—and you have been there—and you are looking at that balance sheet and that income statement and somebody is trying to sell you on an idea about health care reform that has the features I mentioned, how do you react to something such as that? I see what small business organizations are saying, but the Senator has been there. Tell me how you view it.

Mr. CORKER. I met with a businessman in Tennessee on one of my more recent trips. They have an annual payroll of \$4.2 million—their health care costs are \$4.2 million a year for their employees. They file their tax return as a sub S company. The income from the company actually ends up being attributed to the partners. So when they file an income tax return, they don't take the money out of the company. They leave the money in to invest and make sure it is productive and they have jobs for other people. But that income is attributed to them. So he was showing me what this bill did to them. First, their percentage of health care costs is 12 percent of their payroll. He is way above the minimums this bill has said you have to be. I think it is 7 percent or something such as that. By the time he looked at the taxes that were going to be assessed to them because they filed—in other words, it was, again, their individual income, even though the money stayed in the company itself. What he was saying is: This means not only will we not hire any additional employees, we are not

going to do that. But in addition, we are going to seriously look at dropping our health care plan and paying the penalties that come with this bill. I do fear, one of the things people do when they see that the government—a lot of companies in this country do things because they think it is the right thing to do. But a lot of companies, when they see government sort of mandating what they have to do or if they don't do that, there is an option for them to opt out and pay a penalty, when they feel like the government is being intrusive, sometimes they decide: Look, I am not going to do this anymore.

What I would say, to answer the Senator's question is: No. 1, you end up depressing people's wages when you have these huge increases. Because at the end of the day, you have to have a profit to operate. You encourage people who are trying to do the right thing. You tax people at a level that, because of the way our taxation system works, takes money out of the company which, again, is used for productive good and to hire employees. At the very time when we are trying to create jobs—and I know you have been out here a great deal talking about the fact that we need to create jobs—we have legislation. This legislation that is before us is a job killer. The uncertainty of American companies about health care and then the fiscal issues and then this whole notion of cap and trade is, in fact, what resoundingly people across the country are saying is keeping them from hiring people.

Mr. MCCONNELL. I hear—and I know my colleagues have—they are about to send us another stimulus bill. I think I hear the Senator from Tennessee saying the single most important thing we could do to jump-start this economy would be to stop this job-killing health care bill.

Mr. CORKER. There is no question—and return to certainty. The fact is, people, businesspeople—and I know sometimes it is hard for the other side of the aisle to see this, but it is all about the cost of delivering goods; secondly, understanding what the environment is going to be into the future. This body has been so active and this President so active producing legislation that is a job killer, No. 1, but also producing such uncertainty that they are afraid to hire. That is, again—I know I have said this before—resoundingly, that is the No. 1 reason people are not hiring people on Main Street.

I do hope we stop this. I do believe this directly will kill jobs. But I also hope we will stop it and the American people will see we are working on things that save money and not things that cost money and take money out of businesses' pockets, out of Americans' pockets, which, by the way, that works hand in hand from the consumption standpoint. But this body doesn't seem to have gotten that message yet. I am feeling that a few of my friends on the other side of the aisle are greatly concerned. I hope, as the leader has said,

we can stop this but then work together on something that lowers cost so businesses will actually have a desire to hire even more people.

Mr. BARRASSO. I would like to ask my colleague, we are talking about a job-killing bill, and we are not talking about a couple of jobs. The National Federation of Independent Business estimates that mandating that employers provide health care will cost 1.7 million jobs over the next 4 years, between now and 2013. We are not talking about a couple jobs, 1.6 million jobs when our unemployment rate is already 10 percent. When I look at this as a job-killing bill, bad for our economy at a time when the No. 1 issue I hear about at home are jobs and the economy, that is another fundamental reason to take a look at a bill that at its core is fatally flawed and say: Don't do that right now. Our economy can't afford it. The jobless rate, we cannot afford to see that number get worse.

Mr. CORKER. It is amazing the Senator brings that up. If he remembers, during the General Motors and Chrysler debate, which I know Americans equally paid attention to, there was this discussion about the fact—advocates for government funding talked about the fact that they had to compete against companies in other countries that may not provide health benefits. If you remember this whole discussion began around the fact that we wanted to lower costs, lower health care costs so our economy would be more productive. I think all of us said that is exactly what we need to do. So here we end up with a 2,074-page bill that does exactly the opposite. How we got here, it is kind of like you couldn't make this up—that a year ago here we were, as a matter of fact almost this exact time, having another historic vote around the whole issue of what might happen with these automotive companies and the big driving issue being, we can't be competitive because we have costs that they don't and all of us saying: Health care costs do make our country less competitive. So here we have a bill that is going to take us in exactly the opposite direction.

This is why so many people have lost, rightfully so, faith in our ability to solve problems.

Mr. THUNE. The Senator has made a payroll. He knows what this is like, how hard these decisions are when it comes to making decisions about whether you are going to hire somebody and to try and squeeze those costs down so you can buy a new piece of equipment. I think all small businesses are dealing with that. The Senator from Wyoming mentioned the National Federation of Independent Business which, of course, is a very business-oriented organization that represents a lot of small businesses across the country, indicating the employer mandate would cost about 1.6 million jobs so the job issue is so absolutely pertinent to this debate. That is why NFIB and the Chamber of Commerce and every busi-

ness organization I think I know of in this country, including organizations such as the American Farm Bureau organization, which represents a lot of farmers and ranchers in my State, those are the organizations that speak for these various small businesses. They have all weighed in, and they weighed in heavily, in no uncertain terms, that this sets us back. This does not move us forward. You talked about getting that cost curve down. Every analysis that has been done, including by the referees—the Congressional Budget Office, the Actuary at CMS—all come back with the same conclusion.

The Senator from Alabama also probably has a lot of small businesses in his State, members of the National Federation of Independent Business, the Chamber of Commerce, the Association of Wholesale Distributors, the National Association of Manufacturers, lots of these organizations that have weighed in. It seems to me they have looked at this carefully, and they have come to the same conclusion. I would be interested in what the Senator from Alabama might be hearing from the small businesses he represents, with regard to the impact this would have on jobs.

Mr. SESSIONS. I say to Senator THUNE, I think you have made the point about the cost curve. And I say to Senator CORKER, you hit it right on the head. There is a need for us to work together to help reduce the cost of health care and not hurt its quality at the same time. This bill does not do that. I say to Senator CORKER, what businesses tell me is that when you make it more expensive to hire a worker, that makes you less able to hire more workers. If this bill, in effect, is driving up the cost of health care—not to mention the new taxes that are out there—as an economic principle, it does mean we are jeopardizing jobs. Would you agree?

Mr. CORKER. Look, I do not think that could be debated in a real way. There is no question when you add these mandates, you add the taxes, you actually drive up one of the major costs around hiring an employee in a firm. Then you add all the government intrusion. There is just the whole hassle factor of having to meet all the obligations that are laid out in this type of legislation. All those things just cause people to not want to hire folks.

The thing is, it actually affects the most responsible companies most. The way this bill is written, if you are one of those companies that has not been providing health benefits, you can just pay a penalty, just pay a penalty and not cover them. But this bill actually does not just stymie job creation, it punishes the companies that are the most responsible smaller companies in our country.

So, again, you all said it over and over again: The core of this bill, regardless of all the accouterments—and maybe we get three votes if we do this and lose one vote. I am sure there is some scribe in there that is confused

with all the vote counting that has been taking place over the last few weeks. But the fact is, regardless of all these accouterments, the core of this bill is detrimental to our country.

I certainly appreciate serving with all Senators, and I know all of us would love to see appropriate health care reform. I hope we are going to have the opportunity, after this bill is hopefully defeated, to be able to do that.

I thank everyone for the time and patience.

Mr. THUNE. I think we have to wrap up. But I just want to make one point in closing and say to the Senator from Tennessee, the Senator from Wyoming—the leader is here from Kentucky—that the citizens in my State of South Dakota, and I think most citizens, would expect that if we are going to reform health care, we do something about their cost, which clearly that point has been made very clear, repeatedly, here—that all the studies say that does not happen.

The other thing I will mention is, I cannot imagine any of our constituents would say that if you are going to implement public policy, you should raise taxes in 3 weeks and not start the benefits until 4 or 5 years later. It just seems to me the average American out there has to be saying: OK, that is like me going to the bank and taking out a mortgage, but I can't move into the house for another 4 or 5 years, and in the meantime I will be making payments.

Mr. CORKER. I would say to the Senator, if I could, his point is so good. So many businesses in my State are saying: I wish I could go to my local banker and use 6 years' worth of cost and 10 years' worth of revenues to get a loan. They are saying: We can't do that back home. I think it is that very thing the Senator pointed out so eloquently, it is that very thing, again, that builds the huge amount of distrust. They know it does not work. They know it does not pass the commonsense test in South Dakota and Tennessee. I think they continue to again wonder: You can't make this kind of stuff up. Certainly, you can't do it back home.

I thank the Senator.

Mr. THUNE. I thank my colleagues from Tennessee, Wyoming, Alabama, Kentucky, and Arizona, all who have been here.

In closing, I will quote the Associated Press:

In part to reduce costs, the legislation would delay until Jan. 1, 2014, creation of so-called insurance exchanges in which individuals and small businesses could shop for affordable coverage.

All done to disguise the bill's real cost of this, which it is being acknowledged now widely by the Democrats as well. This is not a \$1 trillion bill; this is a \$2.5 trillion bill. It is a job killer. It cuts Medicare, raises taxes, and raises premiums for most of the American people.

I yield back our time.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Mississippi.

Mr. COCHRAN. Mr. President, we have heard this described as a historic moment. My friend from Iowa, Mr. HARKIN—we have served together on the Agriculture Committee and have worked closely on appropriations and other issues—he has described this as a “historic moment.” I think we can all agree on that, but that is about all we do agree on in regards to this issue.

I think we just have to come out and say it: This Patient Protection and Affordable Care Act is controversial. It sounds like it is just what the doctor ordered, until you look at it closely. If you look at it closely, doctors are not favorably impressed with it. Neither are the taxpayers, especially those who earn less than \$200,000 a year, they are not impressed with it.

Another issue that is troubling is Senator DORGAN’s amendment on the reimportation of drugs. The Food and Drug Administration has concerns about the safety of the reimportation of drugs.

If the Senate tries to ignore these and other serious concerns about the bill before the Senate, it will be an act of hope over reality. It will be an act which this Senator cannot support.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT—H.R. 3590

Mr. REID. Mr. President, I ask unanimous consent that immediately after the opening of the Senate tomorrow, Tuesday, December 15, and following the leader time, the Senate resume consideration of H.R. 3590, and there then be a period of 5 hours of debate, with the time divided as follows: 2 hours equally divided between Senators BAUCUS and CRAPO or their designees and 2 hours equally divided between Senators DORGAN and LAUTENBERG or their designees, and 1 hour under the control of the Republican leader or his designee or designees; that during this debate time, it be in order for Senator BAUCUS to offer a side-by-side amendment to the Crapo motion to commit; and Senator LAUTENBERG be recognized to offer amendment No. 3156 as a side-by-side to the Dorgan-McCain amendment No. 2793, as modified; that no further amendments or motions be in order during the pendency of this agreement, except as noted in this agreement; that upon the use or yielding back of all time, the Senate then proceed to vote in relation to the aforementioned amendments and motion in this order: Baucus, Crapo, Lautenberg, and Dorgan, with each subject to an affirmative 60-vote threshold, and that if they achieve that threshold, then they be agreed to and the motion to reconsider be laid upon the table; that if they do not achieve that threshold, they be withdrawn; further, that the cloture motion with respect to the Crapo motion be withdrawn; provided further that upon disposition of the above-referenced amendments and mo-

tion, the next two Senators to be recognized to offer a motion and amendment be Senator HUTCHISON to offer a motion to commit regarding taxes and implementation and Senator SANDERS to offer amendment No. 2837; that no amendments be in order to the Hutchison motion or the Sanders amendment; that upon their disposition, the majority leader be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. McCONNELL. Mr. President, reserving the right to object, and I am not going to object, I would just want to confirm with the majority leader our understanding that even though it is not locked in in this consent agreement, we anticipate voting on both the Hutchison amendment and the Sanders amendment.

Mr. REID. Yes. And I say to my friend, either vote on them or have some kind of procedural motion.

Mr. McCONNELL. Yes.

Mr. REID. Which I have no idea what it would be at this stage. But the answer is yes.

I would also say, I have spoken to the Senator’s floor staff, and, as I indicated to the Republican leader, we have to be at the White House for a while tomorrow afternoon—we will give the Republican leader that time—for which we will probably have to be in recess because the whole caucus is called to go down there. But it is my desire to make sure we finish this tomorrow. I think that is to everyone’s interest. That is what we are doing here, with 5 hours.

Mr. McCONNELL. Would that include both SANDERS and HUTCHISON?

Mr. REID. No. No. As I explained, again, to floor staff, I would like those to be offered tomorrow, but I think we would have a pretty good day’s work if we have 5 hours of debate and then those four votes we have playing out.

Mr. McCONNELL. During the time that Democratic Senators are at the White House, would we be in recess or would we be allowed to—

Mr. REID. Yes. I think we should be in recess.

Mr. McCONNELL. Do you have any idea how long that meeting is going to be?

Mr. REID. The meeting is scheduled for 1 hour and 10 minutes.

Mr. McCONNELL. And at what time is it?

Mr. REID. I think it is at 1:30.

So, Mr. President, I am glad we finally got the balancing back and forth, unanimous consent request finally settled on these matters.

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

The Senator from Illinois.

HEALTH CARE REFORM

Mr. BURRIS. Mr. President, I rise, of course, to speak on the health care legislation.

The Senate is the greatest deliberative body this world has ever known.

Since the inception of this body, its Members have practiced and perfected the art of compromise. It has been said that politics is the art of the possible—and this Chamber is teeming with experienced legislators who know how to work with Members of both parties to forge a more perfect bill. This means that individual Senators must inevitably give ground in the interest of achieving legislation that is built on consensus.

As a body of lawmakers—and particularly as a Democratic Party—we have compromised throughout our history to bring about the greatest legislative achievements this Nation has known. In the process, this Senate has made the country better.

Today, we find ourselves debating a measure that could overhaul the entire American health care system. We stand at this point after nearly 100 years of discussion and deliberation, stretching from Teddy Roosevelt to Barack Obama.

What has defined us across that century is our commitment as a party to the fundamental pillars of health care, all of which have been echoed in this recent debate. These values served us well in 1935, when the Senate took up a proposal called Social Security. History recalls that debate was fierce. It was not without struggle and was not without compromise. But in the end, we achieved one of the greatest, most enduring public policy successes in American history.

Thirty years later, these very same values led this party and this Senate to take up a bill known as the Medicare Act. Again, that fight was not easy, and compromise was necessary to realize our vision. But, once again, this body and this party brought historic change to America.

These hard-fought programs have been the valued cornerstone of our domestic policy for generations. They define the way we legislate and underlie the principle that this government’s chief responsibility is to its citizens.

Today, a new generation of Americans and a new Congress find ourselves in the midst of another historic debate.

Earlier this year, a new President was swept into office, full of energy and ideas, and armed with a clear mandate to bring real reform to a health care system that was badly broken. So, once again, we took up the task of fighting for a more perfect health care system.

Americans all over the country, struggling and suffering, many in personal health crises, have looked to us. There is urgency there, and this body needs to act.

Those who need help the most need that help now.

So let’s pass this health care reform legislation, but let’s also do it right. Let’s not pass something just to pass something.

Everyone in this room is a legislator. We approach our responsibilities with the knowledge that our most optimistic ideas must often be tempered

with a pragmatic reality. In the process of this debate, we have all made concessions and we have all compromised.

My own preference was for a single-payer system. Some of my friends on the other side would like to see no reform bill at all. But as a body and at least as a Democratic Party, I hope we will stay true to those fundamental pillars that have determined our course for the last 100 years.

As Mohandas Gandhi once famously said:

All compromise is based on give and take, but there be no give and take on fundamentals. Any compromise on mere fundamentals is a surrender.

It was in the spirit of constructive compromise that 10 of our colleagues met and worked to forge the new compromise deal we have all heard about. I thank them for their hard work. We are all deeply invested in this issue. I applaud their willingness to come together at the table.

At this point, the specifics of this proposal are few. As are many in this Chamber, I am actually awaiting the chance to examine the full details of the proposal. I do have deep reservations, deep concerns, about what you have heard up to this point. Until I see more, I can only say again what I have said from the very first day of this debate so many months ago: I am committed to voting for a bill that achieves the goals of a public option, competition, cost savings, and accountability. I will not be able to vote for lesser legislation that ignores these fundamentals.

I will continue to fight every day to strengthen this legislation until its final moments on this floor. I fully realize how hard my colleagues have worked. I know how difficult it has been to get this far. My colleagues may have forged a compromise bill that can achieve the 60 votes that will be needed for its passage, but until this bill addresses cost, competition, and accountability in a meaningful way, it will not win my vote.

The American people most in need of help know we can do better, and we must do better.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I wish to share a few other thoughts in the 5 minutes I believe I have to speak on a different matter than we have been talking about earlier, but it is a very important matter. It is the procurement contract, the request for proposals the Defense Department has put out in order to request proposals for the Defense Department to purchase a new tanker for the U.S. Air Force. It will be perhaps the largest contract purchase in the history of the Defense Department, certainly since World War II. I regret that I must come to the floor today to give this speech, but it is important that we do this right.

Earlier, one of our colleagues, Senator MURRAY, for whom I have great admiration, I understand told NPR:

All things considered, I have stood on the line in Everett, Washington, where we have thousands of workers who go to work every day to build these planes. I would challenge anybody to tell me that they stood on a line in Alabama and seen anybody build anything.

Well, we are prepared, as I will explain, to construct the finest aircraft for a tanker the world has ever known in Alabama, my area of Mobile, AL, at the old Brookley airfield, which was a fabulous, huge airfield. It was closed 40 years ago, but the runway and the capacity and the location and access by water and rail and interstate are all there. It is going to be a fabulous place, and already there is a significant engineering center constructed there, and there are plans to go forward if and when this contract is awarded.

I would note that the people of Alabama get a little bit offended when people suggest they are not able to produce anything of world-class quality. I would remind my colleagues that it was in Alabama that the Saturn V rocket was developed that took a man to the Moon and that virtually everything that goes into space goes through Alabama; that we have some of the finest automobile manufacturing plants in the history of the world, including Mercedes, Honda, Hyundai, Toyota, all producing large amounts of some of the best automobiles in the world. In Mobile, have built a new trimaran ship that can cruise at 40 knots and has fabulous capability for cargo. It is one of the finest new ships of its kind the world has ever known. We have a fabulous workforce second to none of which I am utterly proud.

I would just say one of the complaints I have about the Department of Defense's request for a proposal—I have four I plan to talk about, but one I am going to highlight now in light of the comment of my colleague is that I believe there is an inadequate government assessment of acquisition and performance risk. In other words, the government should assess how well we can believe the bidders are able to produce the product at the price and in the time frame in which they would like to see it produced.

I am so confident the plant in Alabama could be competitive with any other bidder, that I believe the government should give this aspect higher weight. In fact, they did so in the previous bid process, and the aircraft plant in Alabama came out with a better score on risk than the one in my colleague's State.

So there are other matters that are important, but I just wanted to emphasize that point. We are ready, able, willing, and anxious to produce the finest tanker the Air Force has ever seen. This tanker aircraft today is now 50 years old.

I regret we are having the kinds of difficulties we are in this bid process. I

respect so much the men and women of the Department of Defense, but I do have to say this newly configured bid process is dramatically different from before, and I believe it is in the wrong direction. I believe it has failed our warfighters. I have to express my concerns about it, particularly as reflected in the request for proposal that has been sent out to the two bidders.

My intent here is simple. I will point out a few things that I think are significant.

In essence, the Department of Defense abandoned, out of the blue and without serious discussion, so far as I can tell, its decision to provide a transformational and game-changing aerial refueling tanker to the warfighter. Those were their words. And how has that resulted in or was the result of major changes in the request for proposals that have been sent out? The bidders are considering those proposals. In doing so, the result, I have to say, evidences a clear bias toward one aircraft over another. I hate to say that.

Let me provide a snapshot of what this new RFP does. I asked the Secretary of Defense about it at the hearing a few weeks ago. He indicated that this process for altering the RFP is still ongoing, but I am not sure the Air Force has been listening, so I am concerned about it.

Let me provide a snapshot of what our concerns are. Of the six key discriminating features that favored the KC-45 Northrop/EADS aircraft over the Boeing aircraft in the previous competition, five of the six features were either eliminated or changed to a non-mandatory status in the current draft RFP—a bias, I suggest. In contrast, eight features of the Boeing aircraft were upgraded in the new draft RFP, which resulted in seven of those eight areas favoring their aircraft.

So what is the bottom line? The very sad conclusion I have had to reach is that this closely watched competition was altered with a purpose, and that purpose was to favor one bidder over another.

So we are in a comment period now, and I hope the Department of Defense will listen to the concerns I believe are legitimate and to ensure fairness in this. Replacing the tanker is the Air Force's No. 1 procurement priority and has been for quite a number of years. In fact, the Department of Defense has indicated they understand this, and I think they understand their integrity and the whole acquisition process is at stake in this so closely watched and so important bid.

So I will show this chart. I am going to point out something we call a spider chart. It looks a bit like a spider web.

The green lines, the inside circle lines, represent the capability of the existing 50-year-old KC-135 tanker in 11 different category areas, such as passengers, fuel offload at 1,000 nautical miles, fuel offload capacity, boom envelope, operational availability—all of these 11 factors.

The red represents the latest RFP requirements for this new—what used to be considered—transformational aircraft. It follows almost the same as the current capability. This is really unthinkable to me. It follows those capabilities on point after point after point. In some areas, it is less capable than the current aircraft that is 50 years old.

The black line represents the capabilities of the Boeing aircraft. For example, Boeing's offering would carry 190 passengers, whereas the other aircraft, the one that would be built in Alabama if it were to be the winner, would carry 226 passengers.

And so, let me say again that

I love and respect the men and women of our armed services. But, their leadership, at least so far, has failed them on this matter. All I have ever asked for is that the DOD choose fairly the aircraft that provides the best value.

Let me outline my concerns with the disturbing actions taken in the current tanker draft request for proposal, RFP.

My intent here is simple. I will outline, through a series of charts, how the Department of Defense abandoned, out of the blue without serious evaluation, its decision to provide a transformational and game changing aerial refueling tanker to the warfighter. This is clearly evidenced by the major changes in the request for proposal sent to the two potential bidders. Furthermore—and in doing so—the result has been a clear bias towards one aircraft over another.

Let me provide a snapshot of what the RFP does: Of the key discriminating features that favored the KC-45—Northrup/EADS aircraft—over the 767 Boeing aircraft in the previous competition, five of the six features, 83 percent were either eliminated or changed to nonmandatory in the current draft RFP. In other words, these features are less important to the outcome of the competition.

In contrast, eight features of the Boeing aircraft were upgraded in the new draft RFP which resulted in seven of those eight areas, 87.5 percent, favoring the 767—Boeing aircraft—over the KC-45.

What is the bottom line?

The very, very sad conclusion that one must reach is that this closely watched competition was altered with a purpose, and that purpose was to favor one bidder over the other.

The DOD is now in a comment period for this draft RFP for a reason—to listen to concerns and to ensure fairness in the process.

Replacing the tanker is the Air Force's No. 1 acquisition priority and the Department of Defense's most critical acquisition program. In fact, the Department of Defense's integrity in acquisition and contracting are at stake.

This effort has stretched for over a decade and has been consumed by controversy, fraud, illegal activity, and

political posturing. Let me remind my colleagues—both DOD and Boeing employees were prosecuted, punished, and some even went to jail over the failed attempt at a sole source lease arrangement that would have cost the taxpayers billions.

Our national security relies on this critical capability—the men and women in uniform who protect this country deserve the best value, and they deserve a transformational aircraft.

Let me now turn to some specific concerns.

DOD's latest acquisition strategy for the KC-X aerial refueling tanker replacement competition is, unfortunately, deeply flawed. Instead of the modern, multirole, game-changing, transformational aircraft that the Air Force has said it wants and needs for the past 10 years, the Department's draft RFP specifies an aircraft that is essentially the same as the existing 50-plus-year-old KC-135.

This acquisition strategy cannot be justified and the DOD must make changes to ensure fairness.

The draft RFP released by the Department of Defense on September 24 is significantly different than the previous RFP created by the Air Force and released in January of 2007. While the GAO sustained 8 of the 111 complaints Boeing raised regarding the previous source selection process, the Department's initial reaction, as stated to Congress, was to fix those 8 flaws, and release a modified RFP to keep the program on track.

So how exactly have we arrived at a completely new draft RFP that fundamentally not only changes the acquisition process for the tanker, but is unlike any major procurement in the history of Defense acquisition?

The first change is a paramount focus on cost.

While controlling costs is important, when it becomes the overwhelming discriminator it has a negative impact on the capability that is produced. Holding cost far above capability, as this draft RFP does, will result in an aircraft without the kind of game-changing capability the Air Force has consistently requested.

The new draft RFP has many flaws. While there isn't enough time for me to list every single problem, the RFP's flaws can be summarized in four major themes:

1. The evaluation methodology does not consider best value, but rather lowest cost.
2. This results in a significant bias toward a smaller aircraft.
3. There is an inadequate government assessment of acquisition and performance risk.
4. The wrong contract mechanism is proposed.

Evaluation methodology is not best value.

The fundamental tenet of the RFP is the winner will be the lowest-priced offer that meets a minimum threshold

of specified capabilities. This is a far cry from the "value-based acquisition," as the Department claims and as the warfighter deserves. Additionally, this strategy represents a departure from the normal DOD acquisition process and goes against the generally recognized public policy standards of DOD which seeks the best value and most capability at the best price for the warfighter.

Because the options for the tanker aircraft will be based on existing commercial platforms, the "low cost" approach provides an inherent advantage to the smallest and least-capable aircraft. Because no additional credit is offered for additional capability—beyond the minimum thresholds of the RFP—additional size and capabilities will almost certainly be a negative because they can only come with some higher price.

There is inherent bias in this procurement—beyond the low cost approach—that substantially favors a smaller less capable aircraft. It is extremely troubling that nearly every single key discriminator from the previous competition that would have given additional credit to an aircraft with greater than the minimum capability required has been neutralized or eliminated under this new RFP.

The primary measure of tanker effectiveness—the ability to offload fuel at range—will not even be considered in the evaluation beyond a minimum distance requirement that, incidentally, is equal to the current 50-plus-year-old KC-135 aircraft.

This defies logic.

The very reason for a tanker to exist, and a key discriminator in the previous competition, has now become a "non-mandatory" aspect of the aircraft. This change substantially benefits the less capable aircraft and will result in a fleet of tankers that is no better than what we are currently flying.

I cannot recall a time when the Department of Defense, instead of enhancing capability when purchasing a new weapons system, made a deliberate decision to procure a new system that is no more capable than the system it is meant to replace, in this case a 50-plus-year-old aircraft.

This is especially so where much more capability can be obtained for so little cost.

This RFP change defies previous statements of senior Air Force leaders. For example, on November 30, 2005, following his statement at the Defense Logistics Conference, current Air Force Chief of Staff General Schwartz, who at the time was Commander of the U.S. Transportation Command, told reporters that the next tanker "needs to be multi-mission, it cannot be a single-mission airplane."

On December 1, 2005, Mike Wynne, who was the Secretary of the Air Force, told reporters "Tankers are not only tankers any more. They are going to be multi-mission aircraft."

If 4 years ago the senior leadership of the Air Force recognized the need for

more capable, multi-role tankers, why have we not been able to structure an acquisition that reflects that need?

General Duncan McNabb, Commander, US Transportation Command stated in a press briefing on December 11, 2009:

New KC-X tanker aircraft in the Air Force's inventory today would make the enormous task of surging more US troops into Afghanistan by mid 2010 and then sustaining the entire force there easier. As the Air Force envisions it, it would be "a very efficient cargo and passenger carrier" in the war zone, in addition to its primary aerial refueling tasks, due to its "floors, doors, and defensive systems." Instead of having to fly commercial aircraft, which lack defensive systems, into outlying places like Manas AB, Kyrgyzstan, and then transloading their passengers and palletized cargo onto military transports for delivery into Afghanistan, KC-X aircraft could move them directly there, thereby preserving C-17 transports for moving "rolling stock" military equipment."

The draft RFP does not require any government evaluation of price or schedule risk. Standard acquisition practice allows the government to adjust the proposed pricing and schedules of the offers based on an independent assessment, in order to protect the government's interest against an unreasonable "low-ball" offer.

This lack of a price and schedule risk evaluation in the new RFP is especially troubling considering that one company—Boeing—has its competitors pricing data from the previous competition and can consider Northrop's data when developing a competitive position.

The government should do the prudent thing and evaluate the potential price and schedule risk of each offering. A failure to include this provision, as was done previously without objection, is an abdication of fiduciary duty to the taxpayers, and will undoubtedly result in unreasonable bids that will haunt this program for years.

The business and contracting construct of this competition is simply unacceptable. The contracting mechanism used by the Department—an 18-year firm fixed price contract—will require industry to assume many future risks, including inflation and the risk associated with developing a new tanker.

The new RFP incorrectly assumes that both tankers are fundamentally nondevelopmental items. While it is true that they are derived from commercial platforms, they are far from nondevelopmental.

In fact, this idea is inconsistent with the proposed structure of the program, which includes at least three years and several billion dollars for development. The new RFP will require both companies to make significant changes to the baseline commercial aircraft platforms, including redesigning the cockpits and fire-control equipment.

It sounds to me like the Department needs to make up its mind and either buy an off-the-shelf product at a fixed price or properly structure a develop-

ment contract. Trying to do both will inevitably result in doing neither very well.

The bottom line is I am baffled as to why the Department changed the RFP so substantially.

Why am I baffled? Let me highlight a few quotes from DOD that illustrate my point: On February 29, 2008, at a DOD news briefing following the previous award to the Northrop Grumman/EADS tanker, General Art Lichte, Light-EE, then commander of the Air Force Air Mobility Command, explained why the Northrop tanker was selected:

From a warfighter's perspective, I can sum it up in one word: more. More passengers, more cargo, more fuel to offload, more patients that we can carry, more availability, more flexibility and more dependability.

On September 18, 2008, John Young, the Under Secretary of Defense for Acquisition, was quoted in the Washington Post as saying that the Northrop tanker was selected because it "provided more tanker capability and offload rate and was substantially cheaper to develop."

Since then, little has changed to suggest that the capabilities valued during the last competition are no longer necessary. It is even clearer today that we need an aircraft that is more than a tanker; one with enhanced multirole capabilities to meet global challenges, such as the President's decision to send an additional 30,000 U.S. troops to Afghanistan.

In fact, before the new and radically different RFP was released, very few people associated with the program had any idea that the needs had changed.

During his opening statement in his testimony before the Senate Armed Services Committee on March 17, 2009, General Duncan McNabb, Commander of U.S. Transportation Command, testified before Congress:

The KC-X will be a game changer. Its value as a tanker will be tremendous. Its value as a multi-role platform to the mobility enterprise will be incomparable. . . . It will be an ultimate mobility force multiplier.

In fact, on September 24, 2009, the very same day DOD unveiled the new RFP, the Air Force Air Materiel Command released a white paper that stated the KC-X must be dual mission capable—able to perform airlift and air refueling missions.

Yet the new RFP values multirole capabilities far less than the previous RFP and will undoubtedly result in a less capable aircraft. In fact, Air Force Magazine recently quoted USAF General Duncan McNabb, Commander of the U.S. Transportation Command as he addressed defense reporters on December 9, 2009—just last week. General McNabb stated:

The KC-X, as the Air Force envisions it, would be a very efficient cargo and passenger carrier.

According to General McNabb, the Air Force still wants a game changing aerial refueling tanker. So not allowing additional credit for extra cargo

and passenger capacity in the draft request for proposal, RFP, makes no sense.

During a DOD press conference after the new draft RFP was released on September 24, 2009, the Deputy Secretary of Defense, Bill Lynn assured everyone that the competition would not be a "Low-Price Technically Acceptable approach," and would in fact be a "Best Value competition, with both price and non-price factors taken into account."

Now that sounds good, and while they can argue its technically true, it isn't the whole story. While the RFP does allow for consideration of non-price factors, it is a far second to consideration of price. Most non-price factors, including the ability to deliver additional fuel and cargo, won't even be considered if the price difference in the two bids is less than 1 percent.

Let's think about that for one moment. Under the current RFP structure, if one aircraft costs 1.1 percent more than the other—even if—it delivers 20 times more fuel and cargo at twice the distance, it would not be selected.

This approach turns a blind eye toward providing the most capability to warfighters at the best value for taxpayers. A rational person certainly wouldn't use this approach for buying a family a car, so why is it being used to buy one of our most critical national security assets?

Is that the kind of approach we want to use to buy tankers that will be the backbone of our global posture for the next 50 years? The answer should be a resounding "no." Indeed, in the decades to come, the ability of this tanker fleet to transport people and cargo may become even more important than today. And it should prompt us to ask how we got such a bizarre and illogical RFP.

While the reasons for the dramatic changes have no rational explanation, their impact on the RFP is clear. The changes favor one company. Following its loss in the previous competition, Boeing filed 111 complaints about the selection process.

Although the GAO only upheld eight of these complaints, the Department addressed many more of their complaints in the new RFP to the disadvantage of the Northrop Grumman offering. These include:

Boeing complained the methodology used to estimate the refueling capability of each aircraft was flawed. The new RFP has adjusted that methodology to favor its smaller aircraft.

Boeing complained fuel costs should be considered over a 40-year time period, not the 25-year time period used in the previous competition. The new RFP has adjusted the time-period used to evaluate fuel costs to 40 years, again to favor its smaller aircraft.

Boeing complained about the schedule risk assessment. The new RFP does not include a schedule risk assessment.

Boeing complained that the bidders' past performance was too heavily

weighted. The new RFP significantly diminishes past performance.

Boeing complained that additional credit was given for an aircraft that had much higher capability. The new RFP offers no real additional credit for exceeding minimum capability thresholds.

Finally, the price competition has been tainted by the Air Force releasing the Northrop Grumman team's pricing data to Boeing following the previous competition and now refusing to release Boeing's pricing data to Northrop Grumman.

For these reasons, I am deeply troubled by the Departments' approach for selecting the next tanker. If the Department continues down the path that it is currently on, warfighters and taxpayers will be done a great disservice.

Mr. President, in closing, I would like to return to my initial comment.

It is clear to me that the draft RFP abandons the Air Force's need to provide a transformational and game changing aerial refueling tanker to the warfighter.

And, furthermore, I must reluctantly conclude, it did so with a bias towards one aircraft over another. If we continue down the path of this draft RFP—without competition—we are moving headlong towards a sole source contract where the warfighter and the taxpayer ultimately pay the price.

This will be a stain on the integrity of DOD's procurement process that will not be removed for decades. It is not too late. Secretary Gates has said the purpose for the RFP comment period is to allow for the DOD to correct flaws. The DOD must listen and take action.

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

Mr. SESSIONS. This is a matter of such importance that I will need to speak about it again in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

HEALTH CARE REFORM

Mr. UDALL of New Mexico. Mr. President, this effort to reform our Nation's health care system is finding ways to make quality health coverage affordable and accessible to all Americans. I believe the bill we are considering in this Chamber as it currently stands goes a long way toward making that vision a reality. But even with this solid legislation, there is still a large group of Americans who continue to be left behind. I am talking about our country's first Americans, the 1.9 million American Indian and Alaska Natives who are suffering because the Federal Government isn't living up to its propositions.

The law that provides the framework under which the health care programs for Native Americans are delivered hasn't been reauthorized for more than 10 years.

This means that the Indian Health Services' delivery system is chron-

ically underfunded and, given the rapid advance of health care technology, outdated. As a result, too many Native Americans are struggling to receive quality, timely health care.

This agency is supposed to be the principal health care provider and health advocate for Indian people. Yet every day, because we fail to act, the health care situation in Indian Country grows more urgent. Native Americans are diagnosed with diabetes at almost three times the rate of any other ethnic group. They often don't have access to preventive care. And Native American youth are attempting and committing suicide at devastating and alarming rates. Just 2 months ago, in New Mexico, a 14-year-old girl from the Mescalero Apache Reservation became the fourth young person from that tribe to take her own life—in a little more than 1 month. That is four young people in 1 month on one reservation. Tell me this doesn't cry out for action.

The Senate Indian Affairs Committee has reported the reauthorization bill. The House has put in its health care package the same kind of reauthorization bill. Both of these bills would bring us much-needed reform to the Indian health care system.

This legislation, the Senate must act upon it. We can no longer delay. For the past several years, Congress has failed to get this legislation across the finish line. It has passed both bodies in the last several years—the House at one point and the Senate at one point—but it is still not law. Now is the time to put this in the health care bill and get the job done.

I know my colleagues on both sides of the aisle are in agreement that our Nation's health care system needs reform. We know health care reform is needed now. We know the status quo is unacceptable. But what is missing is the same sense of urgency for our Native American community, this despite the alarming statistics from the Civil Rights Commission several years ago that the United States spent more than twice the amount on a Federal prisoner's health care than that of a Native American man, woman, or child; that is, \$3,800 per year per Federal inmate, versus \$1,900 per year per Native American. That is right, our inmates have better health care than the population with whom we signed treaties and made a promise to provide health services. American Indian and Alaskan Natives are three times as likely as Whites to be uninsured, and almost half of our low-income American Indians and Alaskan Natives lack health coverage.

The longer we wait, the more Native Americans suffer needlessly. The longer way wait, the more Native Americans go without treatment for chronic conditions such as diabetes and heart disease. The longer we wait, the more Native American teens who may take their own lives because they are not getting the help they need.

America has an obligation to provide quality, accessible health care for our

country's first Americans. So I say again, it is time to act on this important piece of legislation. It is time to reform the Indian health care system and permanently reauthorize the Indian Health Care Improvement Act.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Mr. President, I rise today to support the health care reform legislation that is before us. I want to talk a little bit, specifically, about what the bill does to reform our health care delivery system. That is really health care jargon for the way we provide health care to people who need it.

I heard a lot of debate earlier this afternoon about the fact that the health care bill doesn't do anything to address costs. I think that is just wrong. The fact is, this health care bill does begin to address costs in our system. That is one of the reasons we have to pass it. In fact, we know that over the next 10 years it is going to reduce our deficit by \$130 billion.

But more important than that are the changes that I believe this is going to begin to make in how we provide health care for the people of this country. The fact is—we all know it, even our colleagues on the other side of the aisle—our current health care system is not working; it costs too much; and for too many families quality health care is simply out of reach. One of the problems is that 30 percent of the \$2.5 trillion we spend right now each year on health care goes to unnecessary, inappropriate care and administrative functions that do little to improve our health.

Our health care system didn't get this way overnight. Years of perverse incentives have encouraged health care professionals to practice more medicine rather than better medicine. They struggle to see more patients and do more procedures to keep up. Hospitals race to build new wings and state-of-the-art units. As patients, we too often live unhealthy lifestyles, and we expect the newest high-tech services to fix it. In the meantime, we have undervalued things such as primary care, preventive care, and mental health services. Despite all of our spending, we are not any healthier.

Over the past few months, I have joined, as the Presiding Officer has, with all of our freshman colleagues on the floor to discuss why we can't continue this current system. It is too costly and too inefficient.

Last week, the freshman Senators introduced a package of amendments that emphasizes cost containment. The provisions contained in our package may not be those that are currently grabbing headlines, but I believe they really go to the crux of our reform efforts. They are the delivery system reforms that will improve quality and control costs over the long run. How are these going to work? Well, our delivery system reforms build upon the

current underlying bill. They reward improvement in providing care for a better health outcome.

One way we can be more efficient in delivering care is through what are called accountable care organizations or ACOs. These ACOs allow medical providers to work in teams, to take responsibility for decisionmaking, and they offer financial rewards for better health outcomes. Our amendments allow medical providers to align Medicare, Medicaid, and private sector strategies for improving care. Doing this will help ensure all Americans receive high-quality care no matter how they are insured. ACOs provide the right kind of incentives and promote value over volume.

For years, the Dartmouth Institute of Health Policy and Clinical Practice has shown us that there are regional differences in the way care is delivered and how health care dollars are spent. Over the summer, Dr. Atul Gawande eloquently highlighted Dartmouth's findings in an article he wrote for *New Yorker Magazine*. He clearly made the case that higher quantity do not necessarily translate into higher quality, so that more procedures do not necessarily mean better care. Dr. Gawande's article has had a tremendous influence on the health care debate. It has been quoted frequently by President Obama and referenced right here on the floor of the Senate.

In his latest article, which just came out recently, Dr. Gawande has once again made an important contribution to the health care reform dialog. In this article, he emphasizes the importance of delivery system reforms and fixing our health care system. He points out that there is not one single answer, there is no silver bullet to what we need to do to change our health care system.

While we can all agree that something must be done, what we can't agree on is what specific model or provision will be the best and have the most desirable outcomes.

Dr. Gawande pointed out that our country faced a similar challenge before. In the article, Dr. Gawande draws a parallel between our current health care system—one that is very costly, a money drain, one that is fragmented, disorganized, and inconsistent. He compares our current health care system to the agricultural system at the start of the 20th century. At that time, more than 40 percent of a family's income went to paying for food. The inefficiency of farms meant lower crop yields, higher prices, limited choice, and uneven quality. Agriculture was on an unsustainable path. Dr. Gawande points out that the Federal Government did not, however, offer a grand solution; rather, it provided incentives to change the way farmers produced crops. Through innovation, the promotion of best practices, and smart dissemination, today food only accounts for about 8 percent of a family's income compared to that 40 percent at the start of the last century.

As you know, as we have heard discussed on the floor, we have examples of great innovation and excellence in health care, such as Dartmouth in my State; the Mayo Clinic in Minnesota, which Senator KLOBUCHAR can speak to; Intermountain in Utah, and numerous other places of excellence around the country. These institutions have developed integrated health care systems that are patient focused. Their practices have promoted high value and excellent outcomes, best practices, which should be shared throughout the country.

The Patient Protection and Affordable Choices Act identifies some of these best practices and provides the types of incentives for doctors, nurses, and patients to change the status quo and to experiment with innovation and excellence. The many programs supported in the bill before us move us in the direction of delivery system reform, which is so important to our effort.

By promoting innovative practices, such as accountable care organizations, payment reform, and medical homes, we can move away from the current fee-for-service system that rewards volume over value. That is true reform.

I urge my colleagues to support the bill.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from New Hampshire for mentioning the Mayo Clinic, along with several other great facilities in this country that have done things a little differently. They have done it by focusing on the patient, by saying what is best for the patient is best for all of us. When you do what is best for the patient, you get higher quality care. When you get higher quality care, you actually get lower costs.

I think of people when they go in to pay for a hotel room and they say: If I pay more, I will get a better view and a bigger room. That is usually true. Not in health care. If you look at trends across the country, the States, the metropolitan areas that have the least efficient health care tend to cost the most. That is what we need to change if we want true cost reform. It is good in States such as Minnesota, New Hampshire, and Wisconsin. Why? Because we tend to have higher quality care at lower costs. We are rewarded for that.

It is also good for the States that need to get their quality of care up, so that we don't see massive readmissions to hospitals. Who, when they go to a hospital and are sick, wants to go back in because they get sick in the hospital? Who wants to have something go wrong in the hospital so they have to go back? Who wants to go to an area where they have massive fraud, so all this money gets drained in the amount of \$62 billion a year in Medicare fraud? That is what happens.

That is why, on delivery system reform, the courageous thing is to step

back and say: How do we do this better? How do we do it so we are rewarding quality and not just quantity, so that we are putting the patients first?

That is what this bill is about. Why does this matter? I think anybody who has a checkbook understands what this means. At \$2.4 trillion a year, health care spending represents close to 17 percent of the American economy, and it will exceed 20 percent by 2018 if the current trend continues. Hospitals and clinics in every part of the country are providing an estimated \$56 billion in uncompensated care. That is taxpayer money going down the tubes—\$2.4 trillion per year. That is where we are now. Everybody knows it is costing them and making it very difficult for big businesses to compete against businesses from other countries that have more efficient health care systems. It is making it impossible for small businesses to keep all of their employees on health care. Why? Well, their costs are 20 percent more than big businesses.

The small businesses have created 64 percent of the jobs in the last decades in this country. We have to allow them to continue to thrive, not with these health care costs that are a drag on these small businesses.

I always tell people to remember three numbers: 6, 12, and 24. Ten years ago, the average American family was paying about \$6,000 in premiums. Now they are paying \$12,000. That is average. We have a lot of small business owners all over our State paying \$20,000 a year, \$23,000 a year. If we do not do anything, if we do not do anything at all, 10 years from now it is going to cost between \$24,000 and \$36,000 average in this country for individual families to buy health care—\$24,000 to \$36,000 average per family. That is why we must act. We know inaction is not an option. If we do not act, costs will continue to skyrocket, and 14,000 Americans will continue to lose their health insurance every single day.

What does this bill do? First, it gives coverage to 31 million people who do not have coverage now. People are saying: Wow, where are they getting health care now? I will tell you where: the emergency room, such as in the hospital I used to represent when I was the county attorney for the biggest county in Minnesota. That was paid for by the taxpayers. When someone does not have insurance, when they don't have a doctor, they have diabetes, they are supposed to be doing their insulin and watching their diet and they wait and wait and they end up in the emergency room and they get their leg cut off and have big costs for all taxpayers, not to mention the disastrous quality of life for the person involved. That is going on in this country.

Last year, I was down in one of our smaller towns in southern Minnesota. I heard how one science hospital had three people come in with stomach problems, appendicitis attacks. Their appendixes burst. This was over a period of several months. They asked:

How come you didn't come in earlier? Two of them said: We work at a small business; we didn't want the premiums to go up. It would hurt everyone at the small business. Another said: I had such high premiums I would have to pay I didn't want to come in and have it checked out.

If you do not have that kind of safety net in place for people, you get more expenses on the far end. That is what this bill does. It changes the delivery system, insuring 31 million more people.

What else does it do? It helps to reduce the deficit. That is what I said from the beginning. I do not want to support a bill that adds to the deficit. Actually, this bill we are talking about—some changes are being made—reduces the deficit by billions and billions of dollars.

A third thing: What does this bill have? Insurance reforms. What does that mean? It means if you have a sick kid, you no longer are going to lose your insurance. You cannot be pushed off, put off in the deep end all by yourself if your kid gets sick. It means if you have a kid going to college, you can keep them on your insurance until they are 26 years old. That is what the bill does. It gives a safety net, consumer protections that people in this country have demanded.

Finally, with Medicare, it adds 9 years onto the life of Medicare. Right now, Medicare is scheduled to go into the red by 2017. No one wants to talk about it. We need to talk about it. What this bill does is keep it solvent for 9 more years.

I can tell you, my mom, who is 82, wants to stay on Medicare until she is way into her nineties. People in their fifties who want to get on Medicare at 65 want to make sure it is there for them, that it is solvent.

What this bill does with the reforms that are in it, with the promotion of high quality, closing that doughnut hole, which is difficult for seniors, it helps our seniors. This is an idea, someone said today—I was listening to other Members—whose time has come. This bill is not going to be perfect for everyone. I think about the people I heard from, such as the woman who wrote to me from northern Minnesota. She wrote this heartfelt letter about how she had gotten a call from her daughter whose husband worked at a small business. She said that husband, her son-in-law, had just found out they were not going to have insurance anymore at his small business. The woman who wrote, the mom, said she couldn't even understand her daughter. The daughter was sobbing, sobbing: What is wrong? What is wrong? What happened? I lost my insurance.

Do you know why this mattered so much for her family? Her daughter has cystic fibrosis. Her daughter needs this insurance every moment of her life. When that small business yanked that insurance coverage because they probably had to—I am sure they didn't

want to, but they just couldn't afford it anymore—that daughter has to go on the open market now which, if you have a preexisting condition, is not an easy thing to do. She may not get insurance. That is what we are talking about when we talk about this bill.

At the end of the letter, the mom said: I need you to be my daughter's voice. She is not going to be able to go to Washington, DC, and lobby for this like all the companies that have come over here and lobbied for this thing and that thing. She needs us to be her voice, and that is what this is about.

The good thing here is that, as we look at some of the things in the bill, I didn't get everything I wanted to reduce costs, I can tell you that right now. But there are some great provisions in this bill.

Look at this. According to researchers at Dartmouth Medical School, nearly \$700 billion per year is wasted on unnecessary or ineffective health care. That is 30 percent of total health care spending.

To rein in costs, we introduced a value index. I introduced a bill—Senator CANTWELL, Senator GREGG are co-authors of this bill. Senator CANTWELL got it on the Finance Committee bill and it is still in the merged bill today. What that does is it says, when you look at the Medicare fees, evaluate them on a lot of things but make sure you evaluate them on value. This indexing will help reduce unnecessary procedures because those who produce more volume will need to also improve care or the increased volume will negatively impact their fees.

Doctors will have a financial incentive to maximize quality and value of their services instead of quantity. My doctors in the State of Minnesota support this. They have supported this bill. They have endorsed this bill. They understand that if we want to get that high-quality care like we see in Minnesota in places such as the Mayo Clinic, the Cleveland Clinic, Intermountain, Kaiser—all over the country—you have to have those kinds of incentives in place.

This bill also focuses on bundling and integrated care. I was thinking, as I watched the Vikings game this weekend—I do not know if you noticed, but the Vikings won again; Brett Favre is quarterback—we are talking about a primary care provider who works with a team. We do not have 15 wide receivers running into each other. We have one person in charge—a quarterback in football, a primary care doctor in medicine—working with a team, with a wide receiver, with a tight end, with all the team they have working together, whether it is a cardiologist, whether it is a urologist, whether it is any kind of a doctor they want to work with as a team, depending on what the illness is. That is what integrated care is. You work as a team, share medical records. Patients do not get lost in the shuffle. They do not get sent to one specialist and another specialist without anyone

watching over their care. That is what integrated care is about, a quarterback with a team.

The other thing about this bill is, we start to focus much more, as I mentioned, on reducing readmissions, on rewarding places such as Health Partners or St. Mary's in Duluth, places that work to have this integrated care, places that make sure we have less readmissions in the hospitals.

Finally—and I am pleased we got this in the freshman package that is coming out—there is a much bigger focus on fraud in the system. Mr. President, \$60 billion a year is going down the tubes, going to fraudsters, to con men, siphoning off the system by storefronts that are not doctors' clinics that claim they should get some of the reimbursements that should be going to our seniors. That is \$60 billion in Medicare fraud alone every single year.

There are increased penalties with tools to make sure we are better enforcing the law. We can reclaim some of that money and give it to the American taxpayers, give it to our seniors.

Those are a few things. I will be talking more about this, this week, when we focus on and talk about cost control in this bill.

Thank you for allowing me to share some of my thoughts on cost. Again, remember 6, 12, 24. Ten years ago, the average American family was paying \$6,000 for their premiums. Now what are they spending? They are spending \$12,000. What are they going to spend 10 years from now if we don't do anything? They will spend \$24,000 to \$36,000 a year. We know this is not going to be easy to bend this cost curve. We know there are going to be bumps in the road. We know it is not going to automatically turn itself around. To do nothing, to put our heads in the sand at this moment in history is just plain wrong. The American people deserve to have better health care. They deserve to have that high-quality, low-cost care, and this bill is the beginning.

I yield the floor.

OMNIBUS APPROPRIATIONS

Mr. AKAKA. Mr. President, I want to express my strong support for the Omnibus appropriations act for fiscal year 2010, H.R. 3288. This bill combines six appropriations bills that provide funding for essential programs related to improving education, housing, and transportation; increasing research opportunities; providing justice; strengthening our foreign operations; constructing needed military facilities; and caring for our Nation's veterans. I thank the chairman and ranking member of the Senate Appropriations Committee, Senators INOUE and COCHRAN, as well as the various subcommittee chairmen and ranking members, for their efforts to bring this important bill to the floor.

I am pleased that included in this bill is funding for a number of K-12 and postsecondary educational initiatives,

as well as cultural and financial literacy efforts. These programs will benefit Hawaii and the Nation and are especially critical now when States are facing increased financial pressure. These investments in education will aid individuals and society as a whole by helping to better prepare our keiki, our children, for tomorrow's challenges.

For elementary and secondary education, resources in the act support such areas as history, science, literacy, and college prep. I supported additional resources for National History Day, a program that encourages more than half a million students each year to research, synthesize, and interpret primary and secondary sources in order to create an original work for the programs' annual contest. As science, technology, engineering, and math, STEM, are four subjects whose study is critical to national goals, the Maui Economic Development Board and Kauai Economic Development Board will work to advance STEM education and careers for students from underrepresented groups on Maui and Kauai using appropriations in this act. I also joined a number of my colleagues in working to fund Reach Out and Read, a nonprofit organization that makes use of pediatric doctor's visits as a teachable moment on the importance of parents reading to their children. Additionally, the Consolidated Appropriations Act will assist programs that prepare high school students for college at Hawaii Community College, Leeward Community College, and the Pacific Islands Center for Educational Development.

Included among the postsecondary initiatives in the bill are two programs at the Richardson School of Law at the University of Hawaii at Manoa, one of which comprehensively works to address issues relating to Native Hawaiians and the law and a second that will create a center on health policy. The bill will also allow the University of Hawaii at Hilo to expand programs at the Imiloa Astronomy Education Center and to establish a clinical training and applied science programs at the state's only pharmacy school.

I believe that historic preservation is necessary to ensure that future generations benefit from an understanding of their heritage and that cultural programs are integral to a broad-based education in a multicultural nation and interconnected world. Therefore, I am pleased that the Henry Giugni Kupuna Memorial Archives at the University of Hawaii, Bishop Museum, and Polynesian Voyaging Society will receive funding.

In addition, this bill includes vital financial education resources. My Excellence in Economic Education, EEE, Act program will receive \$1.447 million for fiscal year 2010. The Triple-E funds a range of activities such as teacher training, research and evaluation, and school-based activities to further economic principles and ensure that our

students are more financially literate. Financial literacy in schools is essential to ensure that students are able to be prepared to effectively participate in the modern complex economy. Moreover, I was pleased to continue my efforts in championing financial literacy efforts by backing provisions for the Council for Economic Education and Center for Civic Education.

Additionally, the Department of Treasury's Office of Financial Education will have an increase of \$1 million to further their efforts, revise the national strategy on financial literacy, and develop measurable goals and objectives for the Financial Literacy and Education Commission.

One of the fundamental causes of the financial crisis was that people were steered into mortgages with risks and costs they could not afford or even understand. The Financial Education and Pre-Home Counseling Pilot Program was authorized pursuant to section 1132 of the Housing and Economic Recovery Act of 2008, Public Law 110-289. I am proud that the chairman of the Appropriations Committee and I were able to secure \$3.15 million for a demonstration program in Hawaii. This program will strengthen the CDFI Fund's support for a range of financial education and counseling services to prospective homebuyers and address critical financial literacy needs of families.

This is a competitive grant that will be awarded by the Department of the Treasury's Community Development Financial Institutions Fund. Grants awarded through the Pilot Program will have the ultimate goal of identifying successful methods of financial education and counseling services that result in positive behavioral change for financial empowerment and establishing program models for organizations to deliver effective financial education and counseling services to prospective homebuyers.

The National Low Income Housing Coalition's Out of Reach report ranked Hawaii as the most expensive State for housing. As credit has become harder to obtain and downpayment requirements for home purchases have significantly increased, working families in Hawaii need assistance to better prepare for purchasing a home. These services can include credit counseling, assisting with savings planning, and educating potential home buyers about mortgage products and available programs intended to support home ownership. Pre-home ownership counseling helps prepare prospective homeowners to be better able to purchase a home and select an appropriate mortgage product and increases the likelihood that families will be able to remain in their homes. This project will focus on providing assistance to low-and moderate-income prospective home buyers in under served communities. The Government Accountability Office is required to study the impact and effectiveness of the demonstration grants authorized by section 1132.

Additionally, the legislation provides necessary resources for housing and transportation. Thirteen million dollars is provided for the Native Hawaiian Housing Block Grant, which is administered in the State of Hawaii by the Department of Hawaiian Home Lands, DHHL. These resources are extremely important to support additional home ownership opportunities for residents throughout Hawaii. DHHL is the largest housing developer in the State of Hawaii.

In addition to having high housing costs, Honolulu has among the Nation's worst driving travel times. That is why I am pleased that this bill contains Federal dollars to supplement the substantial local investment in the Honolulu High-Capacity Transit Corridor Project. Furthermore, I am glad that the Neighbor Islands will receive needed resources for their rural bus service. These projects will help to reduce our reliance on imported fuels that pollute our islands, promote economic development and provide additional transportation options for our State's families.

A number of programs through the National Oceanic and Atmospheric Administration in the Consolidated Appropriations Act will also assist my State. Funding for Hawaiian monk seal recovery plan implementation furthers work to protect the less than 1,200 monk seals living today, while funds for coral reef maintenance are important to coastal communities in terms of supporting tourism, fisheries, biodiversity, carbon sequestration, and shoreline protection. The bill's funding of \$2 million facilitates a University of Hawaii, University of Mississippi, University of Alaska Fairbanks, and University of California San Diego consortium dedicated to employing infrasound, or low-frequency sound, as a warning tool for natural hazards, such as volcanic eruptions and tsunamis, having the potential for catastrophic human and economic impacts to taxpayers. Efforts at the International Pacific Research Center, IPRC, within the University of Hawaii School of Ocean and Earth Science and Technology are also supported by \$1.5 million in funding. The IPRC makes data resources readily accessible and usable to researchers and the general public and conducts data-intensive climate research activities.

The bill also includes provisions that will help to improve the effectiveness of State and local justice systems to enforce the laws, bring criminals to justice, address the needs of crime victims, and prevent crime and delinquency. In particular, this bill includes \$500,000 for the National Center for State Courts, NCSC, which serves as a think tank, forum, and voice for 30,000 judges, and 20,000 courthouses, in the State court system in the 50 States, DC, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa, where annually 98 percent of court filings are submitted. Funding in this bill

will implement the NCSC's State Courts Improvement Initiative to provide increased support services to judges, administrators, and other personnel in the State court system as well as help to shape and bolster Americans' understanding of and confidence in the Nation's judicial system. I am also pleased that this bill provides \$300,000 to the Hawaii Innocence Project, which provides pro bono assistance to Hawaii prisoners with credible claims of actual innocence who no longer have access to legal resources and whose innocence may now be proven by technology unavailable at the time of their trials.

To address the needs of victims and prevent crime and delinquency, I am pleased that the bill provides \$400,000 to enable both the Hawaii and Kauai YWCAs to continue their programs to address sexual and domestic violence and provide services for victims of such violence. It also provides \$500,000 for A Child Is Missing, ACIM, Hawaii, which will provide the critical rapid response that will assist Hawaii law enforcement agencies to locate missing children and adults. In addition, \$350,000 is provided for Ka Wili Pu—Native Hawaiian for "the blend"—which will provide 400 at-risk youth on Maui with adult guidance and adult role models and one-on-one instruction to encourage them to remain in school, fulfill their promise, avoid a problematic future with few meaningful options while promoting a healthy and stable society. To help provide cost-effective legal, medical, psychological, and social services to indigent immigrant women, the bill also provides \$200,000 for the Hawaii Immigrant Justice Center to help prevent violence against women.

In addition to providing for our domestic needs, the bill provides critical funding to improve our foreign relations. I am particularly pleased by two programs funded by this bill: the East West Center, which will receive \$23 million, and the U.S. Institute of Peace, which will receive \$19.2 million. The Hawaii-based East West Center is a premier U.S. public diplomacy program focusing on Asia and the Pacific and is a vital tool to promote U.S. values and interests in the region. The funding provided by this bill will allow existing programs to continue and provide additional funds for program enhancements and some facility upgrades.

The U.S. Institute of Peace, a national center of research, education, and training on conflict management, works to resolve international conflicts by peaceful means without violence and war. The USIP was championed by former Senator Spark Matsunaga, and I am pleased to see the vital work of this institution continue, especially in this current international climate.

Significant funding for military construction projects is also included in this bill, which will support the construction of troop barracks, mission critical operational facilities, support

the construction needs of the Guard and Reserves, and the construction of military family housing, child care centers, and chapels. We must continue to provide for our troops and their families as they sacrifice so much for this Nation.

I am particularly pleased that my request for a shipyard modernization project at the Pearl Harbor Naval Station was authorized and appropriated at \$25 million. Shipyard modernization is essential to give our workers the opportunity to most efficiently maintain and repair our fleet. The Production Services Support Facility is a much needed step in the right direction. In addition, my request for an additional runway at Kona was approved as funding was included for the planning and design of a C-17 short auxiliary airfield. Once completed, this will allow Hickam AFB C-17 aircrews to complete their required training in the local area instead of travelling the 16-hour round trip to the mainland.

In addition to ensuring that our military members have the facilities necessary to assist in the performance of their duties, this bill ensures that our military members are taken care of when they return home. As chairman of the Committee on Veterans' Affairs, I am pleased that the Omnibus appropriations bill includes strong funding for the Department of Veterans Affairs, VA, in recognition of the fact that caring for veterans is a cost of war and must be funded as such. Funding for VA would be substantially increased, billions of dollars above the previous budget. This funding will allow VA to improve care for veterans of all service-eras and further the administration's goal of opening enrollment for more than 500,000 veterans of modest incomes by providing VA with the resources to prepare for them in the coming years. The bill also fully funds VA's research programs, which are vital to improving the Department's ability to treat the signature wounds of the current conflicts and develop other improvements that will help veterans and nonveterans alike.

I am delighted that for the first time VA will receive advance appropriations for fiscal year 2011 for three VA medical care accounts. This coincides with the landmark legislation, Veterans Health Care Budget Reform and Transparency Act of 2009, which was signed into law as Public Law 111-81 by the President on October 22, 2009. Funding VA health care in advance will go a long way toward resolving the problematic underfunding of VA health care, which left so many of the Nation's veterans with unmet health care needs.

Importantly, this bill contains an amendment I offered that will extend VA's authority to operate the Manila VA Regional Office. I extend my deepest thanks to the staff of the Manila Regional Office who have continued to demonstrate unwavering dedication to their duty to assist Filipino World War

II veterans and indeed all veterans who apply for benefits from VA. Earlier this year, more than 60 years after the end of the World War II, surviving Filipino World War II veterans who served under U.S. military command received a measure of compensation for their service in the form of a one-time lump sum payment. Dispersing these payments has been a significant challenge as a series of steps are required to authenticate their World War II service. In addition, the Manila Regional Office administers Social Security in the Philippines while at the same time administering compensation, pension, vocational rehabilitation, employment, and education benefits to over 18,000 individuals. Without this extension, VA's authority to operate the Manila VA Regional Office would have expired on December 31, 2009.

These are just some of the projects and programs this important bill will fund for the 2010 fiscal year. Once again, I want to thank the hard work of the Appropriations Committee for bringing this bill before us today, and I urge my colleagues to support it.

VOTE EXPLANATION

Mr. DORGAN. Mr. President, the Senate voted Sunday on final passage of the conference report to accompany H.R. 3288, the Transportation, Housing and Urban Development and Related Agencies Appropriations Act for 2010. I was unable to vote because I was attending my son's college graduation ceremony at the University of Minnesota, which occurred at the same time as the Senate vote. Had I been present during the vote, I would have voted in favor of the legislation.

CRIMINAL SENTENCING

Mr. HARKIN. Mr. President, with over 2 million inmates, many who are in prison for nonviolent drug offenses, the United States has the highest rate of incarceration in the world. In recent years, we have rightly begun to question how our criminal justice system can better ensure our communities are safe and free of drugs and violence, while fostering healthy families and communities through drug treatment and rehabilitation for those who are not violent or a danger to society. That is why I cosponsored the Second Chance Act, which became law last Congress. It is also why I am a proud cosponsor of S. 714, the National Criminal Justice Commission Act of 2009, introduced by Senator WEBB.

As we engage in a dialogue regarding the criminal justice system, I strongly recommend to my colleagues recent remarks Chief Judge Robert W. Pratt of the Southern District of Iowa made before the U.S. Sentencing Commission. Chief Judge Pratt authored the trial court decision in *Gall v. United States*, where the Supreme Court provided for greater discretion for Federal court judges in imposing criminal sentences, and he has become one of the leading

legal thinkers in our country on criminal sentencing. While I do not necessarily endorse every idea Chief Judge Pratt discusses, I commend to my colleagues his incredibly thought-provoking speech on this complex and challenging topic.

Mr. President, I ask unanimous consent that the entire text of Chief Judge Pratt's statement be printed in the RECORD.

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

SENTENCING COMMISSION TESTIMONY

Judge Robert Pratt

Thank you for the invitation to testify regarding the work of the Sentencing Commission. Like almost every district judge with whom I have discussed the matter, I believe that sentencing is the single most important task performed by district court judges. According to the Sentencing Commission, federal district judges sentenced 72,865 criminal defendants in 2007. I would be remiss in my testimony if I did not remark upon the difficult emotional toll that sentencing places on a judge. Even when sentences are fair and appropriate, and even when a defendant "deserves" the particular term of imprisonment, it is not a pleasant task to pronounce the judgment of the law. I am not complaining about the job. Rather, I am just stating my personal belief, shared by many judges, that it is impossible for any human being to be confident that he or she has imposed the "correct" sentence. It is important to state this fact from the outset of my testimony because we too often lapse into a recounting of judicial statistics that fail to capture the enormity of the single act of pronouncing a sentence.

I want to begin by remarking that these hearings are very much in keeping with the Sentencing Reform Act of 1984, which advised that one of the purposes of the Sentencing Commission was to "establish sentencing policies and practices for the federal criminal justice system that" assure that the purposes of sentencing set forth in Title 18, United States Code, §3553(a)(2) are met. Section 991 of Title 28, which established the Sentencing Commission, goes on to state that the Commission was also intended to "provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices" and to "reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." The Commission is further charged with "develop[ing] means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code."

I will try and follow the questions that were posed to me when I was asked to come and testify, so as to properly limit the scope of my presentation. The federal sentencing system is not working well. Sentences are routinely more harsh and punitive than they need to be, especially in run-of-the-mill narcotics and pornography cases. The starting point for this result, of course, is with the United States Attorneys and their general charging authority. "Prosecutors decide whether and how to charge an individual.

They decide whether to offer a plea to a lesser charge, set the terms of the plea, and assess whether the conditions have been met." Angela Davis, *The American Prosecutor: Independence, Power, and the Threat of Tyranny*, 86 Iowa L. Rev. 393, 408 (2001); see also Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry* 188 (1969) ("Viewed in broad perspective, the American legal system seems to be shot through with many excessive and uncontrolled discretionary powers but the one that stands out above all others is the power to prosecute or not to prosecute."). While "disparities," both warranted and unwarranted, are often discussed in the context of sentencing, the reality of federal sentencing today is that federal sentences are dramatically longer than state sentences for similar offenses. As well, the time that offenders actually serve is substantially longer in the federal system than in the state system. While federal sentences are categorically harsher, the unanswered question that remains is: What legitimate penological reasons exist that can account for the difference? With few exceptions, the Sentencing Guidelines advise sentences that are simply too punitive. The very first thing the Sentencing Commission should do is to advise Congress to eliminate all mandatory sentences. Mandatory sentences come in two types—the mandatory minimum, which requires a sentence of "x years" upon a plea of guilty or a conviction, and the sentencing enhancement, where a plea or conviction will trigger a specific sentence. The overly punitive Sentencing Guidelines and the mandatory minimum sentences (which include the enhancement statutes) all have their origins in the mistrust of judges. This mistrust of life-tenured judges does not find a similar mistrust of executive branch actions by politically appointed United States Attorneys serving at the pleasure of the President. Mandatory minimum sentences have the effect of letting the prosecutor determine the sentence. This is simply untenable in a sentencing regime that advises judges to render sentences that are "sufficient but not greater than necessary." For the very first time in our legal history, we now have a regime under the Booker advisory guideline system where the United States Attorney will be involved in sentencing justice. Under the pre-mandatory guideline system, the United States Attorney played virtually no part in the determination of the appropriate sentence. Indeed, in the indeterminate sentencing system, judges had almost unfettered discretion to individualize sentences for particular defendants. While prosecutors cared about what the ultimate sentence was, questions of sentencing justice could be left to the judge and to the parole board. With the advent of the Sentencing Reform Act and the mandatory Sentencing Guidelines, prosecutors merely needed to "prove up" sentencing facts and argue Guideline law in order to effectively restrain judicial discretion. The prosecutors, however, still were not concerned with the justice of the sentence—a matter left to the Sentencing Commission and, to a much lesser extent, to the judge. To quote from Professor Simons' article:

"Superficially, this limiting of the prosecutor's involvement at sentencing made sense and was consistent with traditional institutional roles: the prosecutor decided the charge, the jury decided guilt or innocence, and the judge decided the sentence. This division of roles, however, had one major exception: mandatory sentences. At the same time it created the Sentencing Guidelines, Congress also began creating a variety of crimes that carried mandatory minimum sentences, typically for offenses involving drugs and guns. Because these mandatory

sentences "trump" the Sentencing Guidelines, the charge often determined the sentence. In other words, by charging (or not charging) an offense with a mandatory minimum sentence, the prosecutor effectively became the sentencer. In a system in which sentencing is viewed as a judicial function and in which prosecutors are typically not asked to engage with questions of sentencing justice, this "sentencing by charge" increases the risk of unjust sentences."

Michael A. Simons, *Prosecutors as Punishment Theorists: Seeking Sentencing Justice*, 16 Geo. Mason L. Rev. 303, 305-06 (Winter 2009).

As a result of *Booker*, the Supreme Court has created a third system that merges some of the elements of the pre-Guidelines and post-Guidelines systems. The Supreme Court has decided that sentences should be decided based not only on the "advice" a judge receives from the Sentencing Commission, but also on the traditional purposes of punishment: retribution, deterrence, incapacitation, and rehabilitation. The Court also announced that a trial judge's decision would be reviewed based upon a concept of "reasonableness." Now, prosecutors not only prove up sentencing facts and argue guidelines law, but also are in the unfamiliar role of arguing both at sentencing and on appeal that a particular sentence is or is not reasonable. Within this framework, the Government and the Court, as well as defense counsel, should remember what the Supreme Court said about the role of the United States Attorney in *Berger v. United States*, 295 U.S. 78, 88 (1935):

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

If prosecutors thought and acted this way about sentencing, it would animate their charging decisions with respect to mandatory minimums, sentencing enhancements, and arguments about sentences that are considered to be "sufficient but not greater than necessary." The end result of a prosecution—"substantive justice" regarding the sentence—should be considered an integral part of the United States Attorney's job. This is the indirect result of *Booker* and its progeny. An oft-quoted inscription on the walls of the Department of Justice states: "The United States wins its point whenever justice is done its citizens." (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). Simply asking these questions before charging decisions are made can truly improve the sentencing system under the post-*Booker* advisory regime.

There is no question in my view that the now-advisory system of guideline sentencing has improved the quality of sentences that I have rendered. The entitlement that the defendant has at sentencing is to an "individualized assessment" based upon the facts presented has improved the ability of judges to consider factors that were not permitted to be taken into account pre-*Booker*. See *Gall v. United States*, 522 U.S. 38 (2007). This rationale, of course, built upon what the Supreme Court has called "the uniqueness of

the individual case," as well as the following practice of the federal courts that Justice Kennedy referred to in *Koon*: "It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Gall*, 552 U.S. at 598 (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)). Prior to *Booker*, federal district court judges were almost always prevented from considering the defendant's age, see U.S.S.G. 5H1.1, education and vocational skills, *id.* 5H1.2, mental and emotional condition, *id.* 5H1.3, physical condition, including drug or alcohol dependence, *id.* 5H1.4, employment record, *id.* 5H1.5, family ties and responsibilities, *id.* 5H1.6, socio-economic status, *id.* 5H1.10, civic and military contributions, *id.* 5H1.11, or lack of guidance as a youth, *id.* 5H1.12. These guideline prohibitions are directly at odds with many of the sentencing statute's directives contained in 18 U.S.C. §3553(a). While sentencing is now more complex and demanding than it was when courts merely had to plug in the numbers that Rule 32 required and impose the mandatory provisions of the Sentencing Guidelines severed in *Booker*, it now leads more frequently to a sentence that is "sufficient but not greater than necessary." Post-*Booker* sentencing has also led to more innovative and imaginative advocacy on the part of many defense lawyers. Courts are now presented with sentencing alternatives that can better suit offenders' needs and that will lead to more community based solutions. Such alternatives in sentencing are sometimes far more appropriate than imposing sentences of incarceration, where offenders are commonly deprived of familial and other support mechanisms. Breaking the cycle of parentless children, many of whom will fail in the same way as their parents, must be inculcated into sentencing practices.

The Sentencing Guidelines should continue to be advisory and should play a role in helping judges achieve the goals of sentencing. The preference of the Guidelines, however, for custodial sentences as opposed to non-custodial sentences should be eliminated by promulgating guidelines that encourage non-custodial sentences—particularly for first time and non-violent offenders. These new guidelines should be based upon empirical research into such emerging topics as the effects of brain maturity and should encourage analyzing the "whole person," which would include psychological and vocational evaluations, intelligence tests, and risk factor identification. This would require judges to look at the sentencing goal of rehabilitation, rather than mere retribution. The current preference in the Guidelines for custodial sentences also does not appropriately permit the sentencing judge to employ the "institutional advantages" that Justice Stevens referred to in *Gall*. Many times, a judge can "feel" or sense the sincerity of a defendant during allocution, and such a factor can never be properly "conveyed by the record" of the proceedings. Some acknowledgment should be made in an advisory guideline or in a policy statement regarding the importance of a defendant's right of allocution, as well as to the right of allocution of any victims of the offense. Such an acknowledgment will add to the record available to counsel, to the sentencing judge, and to any reviewing court that must determine the reasonableness of a sentence. Indeed, it seems to me that offering this type of advice to sentencing judges would keep with the initial Congressional intent in passing the Sentencing Reform Act of 1984, which delegated to the Commission the responsibility of developing sentencing poli-

cies and practices that achieve certainty and assure fairness.

Another suggested advisory guideline or policy statement that could be added to the sentencing practices is one that I have used in my post-sentencing work. The opportunity to talk with ex-offenders about their incarceration experience, rehabilitative efforts, educational programs, and attitudes about their upcoming supervised release term is an "institutional advantage" that can only add to a judge's sentencing expertise. Seeing what a probationary sentence or a short or long sentence does to a defendant is a useful tool in knowing what sentence to give in a similar case. At a minimum, it provides insight to the sentencing judge that no one else has. These changes with respect to sentencing, while not mandatory, could certainly be useful to judges on some level. The Sentencing Commission currently issues reports that relate a statistical approach to sentencing and that continues to center judges' attentions on the Sentencing Guidelines, as if a certain percentage of "within Guidelines" sentences can be determinative of the quality of those sentences. While I do believe that these reports are helpful to judges in that they tell us something about sentencing, I also believe that these reports tend to erroneously "anchor" a judge into thinking that a guideline sentence is preferred or even that an unwritten presumption for the guideline sentence exists.

A final set of suggestions for the Sentencing Commission would be, first, to reconsider aforementioned Guideline provisions that all but dismiss an offender's family and community contributions. Our law should recognize and value those rare offenders who consistently provide financial support for their children, participate positively in their children's lives, and benefit the community through consistent charitable or public service. These traits speak not only to an offender's overall character but also to their ability to reintegrate into society. Moreover, the Sentencing Commission should reconsider the sheer number of enhancements that are applicable in many drug, firearm, and pornography cases, as they place many offenders' guideline ranges near the statutory maximum, despite the dramatic differences in culpability among the offenders. Perhaps, the Sentencing Commission should also reconsider utilizing a higher standard of proof, more in tune with other criminal law principles, for all enhancements. Indeed, the use of acquitted conduct, for example, proven only by a preponderance of the evidence, to dramatically increase an offender's guideline range serves to functionally undercut the jury system and discredit the Sentencing Commission and the larger criminal justice system in the eyes of the public.

With respect to the balance between uniformity and discretion, I believe that any system that allows judges to individually assess a defendant within the broad parameters of the sentencing statute will necessarily sometimes appear to be "non-uniform or disparate" in terms of the ultimate sentence. This "unwarranted disparity" is a price worth paying because sentencing is inherently fact based and because human beings (including judges) are unique. Thus, any appearance of disparity, and indeed, any actual disparity, should be viewed as a necessary consequence of an appropriately individualized process. As in many arenas of the law where "discretion" is the rule, there will always be different results in different cases. While we should attempt to limit unequal results where all other factors are equal, no system can ever truly and adequately account for the disparate acts of police, prosecutors, probation officers, and judges—all

players that interact in a system that will eventually result in an offender's conviction. The current perception in working-class and poor-America is that society has one set of rules that apply to well-to-do people, and another set of rules that impacts on them. Certainly, any statistical analysis of the impact of the Sentencing Reform Act on the federal prison population would show that incarceration rates have doubled or even tripled for poor people and minorities, but have remained steady for well-to-do people and non-minorities. The Supreme Court in *Gall* made reference to my own comment in the underlying sentencing of Mr. Gall that "respect for the law" has to mean something more than long sentences. Indeed, in sentencing Mr. Gall to 36 months of probation, I specifically found that "a sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing." *Gall*, 552 U.S. at 599 (quoting the district court decision). The current law overlooks, or at least gives less weight to, the collateral consequences of conviction in our country and in the majority of our states. The offender is deprived of the right to vote in most states, the right to serve on a jury, the right to run for elective office, and the right to possess firearms (whatever the eventual Supreme Court view of that right entails). Moreover, a conviction will inevitably forever harm an offender's employment opportunities, and in turn, the chances the offender's children will have to get an education and succeed on their own merits. The fact is that, unlike most, if not all, democracies, we condemn more than the conduct of the offender. We also condemn the convicted individual personally, telling them, in effect, that society no longer wants their contributions or values their existence. Limiting the stigma of conviction after a sentence is completed should be one of the primary goals of the sentencing commission.

With respect to analyzing a sentence within or outside the Sentencing Guideline range, I think determining a sentence with the Guideline as the "norm" gives too much weight to the Sentencing Guidelines which, after all, are just one of the §3553(a) factors to be considered. The Supreme Court has instructed us that the "overarching" provision of the Sentencing Reform Act that must be given effect is the "parsimony provision"—that is, the Court is charged with arriving at a sentence that is "sufficient but not greater than necessary." This provision has a long pedigree. As early as 1748, Baron Charles de Montesquieu wrote in *The Spirit of the Laws*, Bk. XIX, 14 (G. Bell & Sons 1914): "All punishment which is not derived from necessity is tyrannical." I think a better approach is the sentencing statute itself, which allows the sentencing judge to gather evidence on each of the §3553(a) factors and to determine what, if any, incarceration is necessary, and then to determine, if the circumstances warrant, the length of confinement that would best serve the purposes set forth in the statute. While the *Gall* Court properly instructed sentencing judges to start with correctly calculating the advisory Sentencing Guideline range, it employed this starting point to aid in "secur[ing] nationwide consistency" in sentencing, not because Guideline calculations are entitled to greater weight than any other sentencing factor. While the Sentencing Guidelines attempt to render a "wholesale" overview to the sentencing considerations outlined in §3553(a), the *Rita* Court explained that guidelines certainly cannot routinely provide a "sufficient but not greater than necessary" sentence if the district court is engaged in an individualized

assessment of the offender and the offense. See *Rita v. United States*, 551 U.S. 338 (2007). Accordingly, a sentencing judge must use his or her experience and common sense when determining what value the “starting point” should have in the final analysis. As Judge Cabranes and Professor Stith point out in their book, “the explosion of case law on federal sentencing contains almost no discussion of the purposes of sentencing generally or in the specific case—almost no articulated concern as to whether a particular defendant should be sentenced in the interest of general deterrence, rehabilitation, retribution, and/or incapacitation.” Kate Stith & Jose Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* (Univ. of Chicago Press 1998). Now that judges are free to discuss these purposes of sentencing within the context of the individualized facts of the offender and the case, an exchange among the courts, defenders, prosecutors, probation officers, victims, and the Sentencing Commission can take place and a “common law” of sentencing can and should emerge. A great example of this “common law” of sentencing that actually addresses the purposes of sentencing can be found in *United States v. Cole*, 622 F. Supp. 2d 632 (N.D. Ohio 2008), where the trial court discussed the purposes of sentencing in the following manner:

“We have long understood that sentencing serves the purposes of retribution, deterrence, incapacitation, and rehabilitation. Deterrence, incapacitation, and rehabilitation are prospective and societal—each looks forwards and asks: What amount and kind of punishment will help make society safe? In contrast, retribution imposes punishment based upon moral culpability and asks: What penalty is needed to restore the offender to moral standing within the community?”

The Cole court went on to describe how each of these purposes was consistent with the sentencing statute found at §3553, and how the law and the facts (which involved a financial crime) should be analyzed given these sentencing concerns.

With respect to appellate review, I believe that the “abuse of discretion” standard has worked well and will continue to do so. District court judges “live with a case” for a substantial period of time and have face-to-face interactions with the offender. Appellate courts do not have these advantages available to district judges in formulating an appropriate sentence, making a less deferential, “de novo” standard of review inappropriate. While district judges can and do get it wrong from time to time, I believe the current “abuse of discretion” standard adequately allows appellate courts to determine the point at which the latitude afforded district court judges has been transgressed. If a Court of Appeals canvasses the entire record and is left with a “firm and abiding” conviction that the sentence is not “reasonable,” then the Court of Appeals can and should intervene and reverse the district judge. I am not certain that this is a test which “shocks the judicial conscience,” but I am confident that Court of Appeals judges will be able to identify an unreasonable sentence when they see it and articulate the reasons why the sentence is unreasonable in the context of the particular facts of a case.

Lastly, with respect to changes in either the sentencing statutes or the Federal Rules of Criminal Procedure, I would emphasize the necessity of eliminating all mandatory minimum statutes and sentencing enhancement statutes. These statutes unfairly and improperly shift the sentencing function of government from the judicial branch to the executive branch. With respect to Federal Rule of Criminal Procedure 32, it should be expanded to permit a broader exchange of in-

formation in advance of the actual sentencing proceedings. Additional authority should be provided within the Rules to allow medical, psychological, or vocational testing when such testing would aid the sentencing judge in formulating an appropriate sentence.

Thank you for the invitation to submit testimony before the commission. I look forward to the opportunity to verbally address any concerns or questions you may have about my testimony.

HONORING OUR ARMED FORCES

STAFF SERGEANT STEPHEN MURPHY

Mrs. SHAHEEN. Mr. President, today I wish to express my sincerest condolences and deepest sympathies to the family of SSG Stephen F. Murphy, who died in Al Asad, Iraq, on November 8. Staff Sergeant Murphy, a native of Troy, NH, served his country for 16 years as a member of the U.S. Marine Corps. The American people will forever be grateful for his service.

Staff Sergeant Murphy exemplified the best in America’s long tradition of duty, sacrifice and service. Despite being turned away from a Marine recruiting station as a teenager for being too small and still lacking a high school diploma, Stephen was determined to enlist and rededicated himself to his studies and weight training until he could join the Corps. The selfless determination he displayed is what makes our Armed Forces the best in the world.

When he formally established Veterans Day in 1954, President Eisenhower described the importance of a national day of remembrance: “On that day let us solemnly remember the sacrifices of all those who fought so valiantly, on the seas, in the air, and on foreign shores, to preserve our heritage of freedom, and let us reconsecrate ourselves to the task of promoting an enduring peace so that their efforts shall not have been in vain.”

In the town of Troy this past Veterans Day, those words undoubtedly took on a new poignancy as the community came together to honor the sacrifice of one of its own. Our nation can never fully repay this sacrifice, nor fully assuage the loss to Stephen’s family. Through his years of service, he helped preserve the safety and security of the American people. It now falls to all of us to honor his memory by supporting our veterans and their families and ensuring America’s continued security.

I ask my colleagues to join me and all Americans in honoring the life of SSG Stephen Murphy.

REMEMBERING AMBASSADOR THOMAS F. STROOCK

Mr. BARRASSO. Mr. President. Wyoming has lost a statesman. On Sunday, December 13, 2009, Ambassador Thomas F. Stroock passed away at the age of 84. Tom once said, “I don’t know why God gave me this wonderful life. Good fortune, I guess.” Those of us who had

the benefit of knowing Tom are certain that his wonderful life was a result of his determination, toughness, and confidence.

Tom served our Nation as a marine in WWII. In 1948, he graduated from Yale University and then found his way to Wyoming. His first job was as a roughneck on an oil rig. The following year, the lovely Marta Freyre de Andrade agreed to be his wife.

Tom was a man who saw possibilities and opportunities. He started his own oil and gas properties firm in 1952, Stroock Leasing Corporation and Alpha Exploration, Inc. It grew to be one of Wyoming’s most respected and successful oil and gas businesses.

While he was busy with his successful energy endeavors, Tom still had much to give Wyoming and our Nation. He served for 16 years in the Wyoming Legislature. He was chairman of the local school board, as well as the Wyoming School Boards Association and Wyoming Higher Education Council. Tom used his energy and business acumen to lead the industry though his service on the Wyoming Natural Gas Pipeline Authority and the Enhanced Oil Recovery Commission.

In 1989, his good friend and college classmate, President George H. W. Bush, tapped him to be the U.S. Ambassador to the Republic of Guatemala. It was a tough assignment. Guatemala was in the midst of a decades-long civil war. Tom approached this job as he did all of his other challenges—with forthrightness and courage. Ambassador Stroock provided challenge and support to our friends in Guatemala as they worked toward a more stable economy, a decrease in political violence and perhaps most notable to the outside world, increased internal safety measures. Tom helped bring about changes that greatly impacted the daily lives of Guatemalans.

Tom Stroock’s accomplishments were numerous. Throughout his lifetime of leadership and service, Marta was at his side. The couple, married for 60 years, served as a pillar of the Casper, WY, community. Their daughters Margie, Sandy, Betty, and Anne, are carrying on their father’s commitment to business and public service.

Mr. President, while we are saddened by the passing of Ambassador Thomas F. Stroock, we are left with the example of a life well lived.

TRIBUTE TO ERNIE LOMBARD

Mr. RISCH. Mr. President, I rise today to give recognition to Ernie Lombard who has been at the forefront of preserving and recording Idaho’s great past.

For more than 20 years, Ernie has had a vision of a State park that would showcase Idaho’s mining history and allow for motorized recreation. In 2009, the vision was realized when thanks to Ernie’s leadership, the Bayhorse ghost town in Custer County became the newest addition to Idaho’s State park system.

It was not an easy task. Many parcels in the park needed to have century-old toxic mine waste removed. Bayhorse was one of the first sites in the country to use brownfields grant funds to accomplish that feat. The work was such a success the Bayhorse project was awarded the Partners in Conservation Award by the U.S. Department of the Interior for outstanding conservation results among many partners.

As an architect, Ernie has had a hand in designing several of Idaho's most significant buildings. His talents and passion for architecture and history, along with a strong interest in photography and art, have preserved Idaho's rugged and unique past. Ernie's photographic library includes more than 3,000 images of historic Idaho buildings. His presentation, "Ghost Towns of Idaho" has been presented to audiences more than 200 times. Every school district in the State has the video created from this presentation to use in teaching Idaho history.

His work on a county historical advisory board led to the preservation of the historic Guffey railroad bridge across the Snake River between Canyon and Owyhee Counties. This bridge is a centerpiece for Celebration Park.

Ernie also conducts historical "safaris" to ghost towns such as Silver City and teaches about Idaho ghost towns and photography in the Boise Community Education Program. He is the longest continuing education instructor in the history of the program having taught 27 years.

Recently, the Idaho State Historical Society awarded Ernie Lombard with their "Esto Perpetua" award for significant contributions to the preservation of Idaho history.

It is indeed an honor for me to give recognition to Ernie Lombard for his vision and many years of work to preserve Idaho's significant history and his passion and willingness to educate Idahoans and others about our wonderful State. Future generations of Idahoans have received a great gift from Ernie Lombard, and we are very grateful.

ADDITIONAL STATEMENTS

TRIBUTE TO DALE HANINGTON

• Ms. COLLINS. Mr. President, I wish to congratulate the president and CEO of Maine Motor Transport Association, Dale Hanington, on his retirement. The men and women of Maine's trucking industry are grateful for his determined and effective leadership. I am grateful for his guidance and support on transportation legislation, and for his friendship.

Dale, a Maine native who earned his bachelor's degree in business administration, retired from the Maine State police at the rank of lieutenant after 20 years of service. After retiring from the Maine State police, he served as a safety engineer with a large construc-

tion company for 2 years. In 1989, Dale joined the Maine Motor Transport Association as assistant to the executive director, and he became the president and CEO of the association in 1993.

Dale has been a strong advocate for Maine's most important transportation needs, including raising the Federal truck weight limit in Maine, which we have worked together tirelessly to address. With Dale's help and support, we finally have made progress in securing a 1-year truck weight pilot project for Maine.

I am grateful for our strong working relationship over the years. I offer my sincerest appreciation to Dale for his service and congratulations on a well-deserved retirement.●

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 2:04 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 4165. An act to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

H.R. 4217. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

H.R. 4218. An act to amend titles II and XVI of the Social Security Act to prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators.

The enrolled bills were subsequently signed by the President pro tempore (Mr. BYRD).

At 5 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4284. An act to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes.

ENROLLED BILL SIGNED

At 7:24 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 3288. An act making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1471. An act to expand the boundary of the Jimmy Carter National Historic Site in the State of Georgia, to redesignate the unit as a National Historical Park, and for other

purposes; to the Committee on Energy and Natural Resources.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-3995. A communication from the Assistant Chief Counsel for General Law, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines" (RIN2137-AE15) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3996. A communication from the Assistant Chief Counsel for General Law, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Pipeline Safety: Control Room Management/Human Factors" (RIN2137-AE28) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3997. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Worker Visibility" (RIN2125-AF28) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3998. A communication from the Staff Assistant, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Schedule of Fees Authorized by 49 U.S.C. 30141 Offer of Cash Deposits or Obligations of the United States in Lieu of Sureties on DOT Conformance Bonds" (RIN2127-AK10) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3999. A communication from the Staff Assistant, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Federal Motor Vehicle Safety Standards, Child Restraint Systems" (RIN2127-AK36) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4000. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Oversales and Denied Boarding Compensation" (RIN2105-AD63) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4001. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Procedures for Non-Evidential Alcohol Screening Devices" (RIN2105-AD64) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4002. A communication from the Senior Regulations Analyst, Office of the Secretary

of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (RIN2105—AD55) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4003. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs: State Laws Requiring Drug and Alcohol Rule Violation Information" (RIN2105—AD67) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4004. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Television Broadcasting Services; Fort Meyers, Florida" (MB Docket No. 09—170) received in the Office of the President of the Senate on December 4, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4005. A communication from the Acting Assistant Administrator of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Longline and Purse Seine Fisheries in the Eastern Pacific Ocean in 2009, 2010, and 2011" (RIN0648—AY08) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4006. A communication from the Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries" (RIN0648—XS77) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4007. A communication from the Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #8, #9, #10, #11, and #12" (RIN0648—XS52) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4008. A communication from the Acting Assistant Administrator of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders" (RIN0648—XS30) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4009. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska" (RIN0648—XT10) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4010. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Harvested for New Jersey" (RIN0648—XT09) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4011. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Gear Restriction for the U.S./Canada Management Area" (RIN0648—XS87) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4012. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area" (RIN0648—XS96) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4013. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1A" (RIN0648—XT10) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. GILLIBRAND:

S. 2880. A bill to amend the Rural Electrification Act of 1936 to establish an Office of Rural Broadband Initiatives in the Department of Agriculture, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. SNOWE (for herself and Mr. WARNER):

S. 2881. A bill to provide greater technical resources to FCC Commissioners; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. LINCOLN (for herself, Mr. HARKIN, and Mr. CHAMBLISS):

S. Res. 374. A resolution recognizing the cooperative efforts of hunters, sportsmen's associations, meat processors, hunger relief organizations, and State wildlife, health, and food safety agencies to establish programs that provide game meat to feed the hungry; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. VOINOVICH (for himself and Mr. BROWN):

S. Res. 375. A resolution honoring the life and service of breast cancer advocate, Stefanie Spielman; considered and agreed to.

ADDITIONAL COSPONSORS

S. 428

At the request of Mr. DORGAN, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 428, a bill to allow travel between the United States and Cuba.

S. 448

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 448, a bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

S. 455

At the request of Mr. ROBERTS, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. 455, a bill to require the Secretary of the Treasury to mint coins in recognition of 5 United States Army Five-Star Generals, George Marshall, Douglas MacArthur, Dwight Eisenhower, Henry "Hap" Arnold, and Omar Bradley, alumni of the United States Army Command and General Staff College, Fort Leavenworth, Kansas, to coincide with the celebration of the 132nd Anniversary of the founding of the United States Army Command and General Staff College.

S. 583

At the request of Mr. PRYOR, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 583, a bill to provide grants and loan guarantees for the development and construction of science parks to promote the clustering of innovation through high technology activities.

S. 825

At the request of Mrs. LINCOLN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 825, a bill to amend the Internal Revenue Code of 1986 to restore, increase, and make permanent the exclusion from gross income for amounts received under qualified group legal services plans.

S. 850

At the request of Mr. KERRY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 850, a bill to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

S. 891

At the request of Mr. BROWNBACK, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 891, a bill to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the

Democratic Republic of Congo, and for other purposes.

S. 1038

At the request of Mrs. FEINSTEIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1038, a bill to improve agricultural job opportunities, benefits, and security for aliens in the United States and for other purposes.

S. 1067

At the request of Mr. FEINGOLD, the names of the Senator from North Carolina (Mrs. HAGAN) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1076

At the request of Mr. MENENDEZ, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1089

At the request of Mr. BAUCUS, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 1089, a bill to facilitate the export of United States agricultural commodities and products to Cuba as authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000, to establish an agricultural export promotion program with respect to Cuba, to remove impediments to the export to Cuba of medical devices and medicines, to allow travel to Cuba by United States citizens and legal residents, to establish an agricultural export promotion program with respect to Cuba, and for other purposes.

S. 1121

At the request of Mr. HARKIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1121, a bill to amend part D of title V of the Elementary and Secondary Education Act of 1965 to provide grants for the repair, renovation, and construction of elementary and secondary schools, including early learning facilities at the elementary schools.

S. 1584

At the request of Mr. MERKLEY, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1584, a bill to prohibit employment discrimination on the basis of sexual orientation or gender identity.

S. 1611

At the request of Mr. GREGG, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1611, a bill to provide collec-

tive bargaining rights for public safety officers employed by States or their political subdivisions.

S. 1857

At the request of Ms. STABENOW, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 1857, a bill to establish national centers of excellence for the treatment of depressive and bipolar disorders.

S. 1859

At the request of Mr. ROCKEFELLER, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from Delaware (Mr. KAUFMAN) were added as cosponsors of S. 1859, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 2862

At the request of Ms. SNOWE, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 2862, a bill to amend the Small Business Act to improve the Office of International Trade, and for other purposes.

S. 2869

At the request of Ms. LANDRIEU, the names of the Senator from Pennsylvania (Mr. CASEY), the Senator from Arkansas (Mr. PRYOR), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Illinois (Mr. BURRIS), the Senator from Minnesota (Ms. KLOBUCHAR) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 2869, a bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

AMENDMENT NO. 2795

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of amendment No. 2795 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2869

At the request of Mr. NELSON of Florida, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2869 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2883

At the request of Ms. STABENOW, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of amendment No. 2883 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2991

At the request of Mr. MENENDEZ, the name of the Senator from Massachusetts (Mr. KIRK) was added as a cosponsor of amendment No. 2991 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3014

At the request of Ms. LANDRIEU, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 3014 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3046

At the request of Mr. KERRY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of amendment No. 3046 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3047

At the request of Mr. KERRY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of amendment No. 3047 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3115

At the request of Mr. CASEY, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of amendment No. 3115 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3135

At the request of Mr. SANDERS, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of amendment No. 3135 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed

Forces and certain other Federal employees, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE (for herself and Mr. WARNER):

S. 2881. A bill to provide greater technical resources to FCC Commissioners; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today, along with Senator WARNER, to introduce legislation that provides greater technical resources to the Commissioners of the Federal Communications Commission.

Specifically, this legislation simply proposes modifying existing law so that each Commissioner may hire an additional staff member—an electrical engineer or computer scientist—to provide in-depth technical consultation. Currently, the statute allows each Commissioner to appoint only three professional assistants and a secretary. Typically, these professional assistants have been legal advisors covering the wireline, wireless, and cable/media sectors. However, in order to properly regulate communications, Commissioners must be well-versed in both the legal and technical aspects of the issues.

With the rapid advancement of technologies and innovation within the telecommunications industry, it is imperative that Commissioners have the technical expertise on their staff to make well informed regulatory decisions. As one Commissioner recently remarked, “not one of us is an engineer. Do you really want us making these highly technical decisions?” We should not expect every Commissioner to be an engineer, but having one on staff is prudent. Having both technical and legal advisors provides the requisite complement of staff experience for the Commissioners to properly address increasingly complex technical and legal matters.

While the Office of Engineering and Technology, OET, has been and will continue to be a valuable resource, there has been concern in the technical community about the depletion of engineering expertise at the Commission. From 1995 to 2001, the FCC’s engineering staff dropped by more than 20 percent. And at the time, more than 40 percent of the engineering staff were to be eligible for retirement between 2001 and 2005. More recently, the FCC’s Managing Director has identified that the Commission has a shortage of network engineers.

In addition, several engineering membership and standards bodies have weighed in voicing concern about the lack of technical depth at the FCC. The Institute of Electrical and Electronics Engineers, IEEE, the largest technical professional organization in the world, sent a letter in June of 2008 to then-Chairman Martin writing “despite the generally excellent nature of its internal staff, given all of the technical

issues within the FCC’s jurisdiction, it may be prudent to seek means to supplement the internal technical capabilities of the Commission.” The Society of Broadcast Engineers has outlined that one of its legislative goals for 2009–10 is “to promote the maintenance or increase of technical expertise within the FCC to ensure that decision-making by the FCC is based on technical investigation, studies and evaluation rather than political expenditures.” I would like to thank these two organizations for supporting this beneficial legislation.

This bill takes a step towards properly addressing a glaring deficiency by ensuring each Commissioner has a technical expert on staff to provide individual technical advisement. This is absolutely critical given how rapidly technologies are changing and the implications that regulation could have on the underlying technical catalysts of innovation. That is why I sincerely hope that my colleagues join Senator WARNER and me in supporting this critical legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 374—RECOGNIZING THE COOPERATIVE EFFORTS OF HUNTERS, SPORTSMEN’S ASSOCIATIONS, MEAT PROCESSORS, HUNGER RELIEF ORGANIZATIONS, AND STATE WILDLIFE, HEALTH, AND FOOD SAFETY AGENCIES TO ESTABLISH PROGRAMS THAT PROVIDE GAME MEAT TO FEED THE HUNGRY

Mrs. LINCOLN (for herself, Mr. HARKIN, and Mr. CHAMBLISS) submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 374

Whereas almost every State has a program in which hunters may donate game meat to feed the hungry;

Whereas hunters, sportsmen’s associations, meat processors, community hunger organizations, and State wildlife, health, and food safety agencies work together successfully to operate such programs whereby hunters feed the hungry; and

Whereas such programs have brought hundreds of thousands of pounds of game meat to homeless shelters, soup kitchens, and food banks: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the cooperative efforts of hunters, sportsmen’s associations, meat processors, hunger relief organizations, and State wildlife, health and food safety agencies to establish programs that provide game meat to feed the hungry across the United States; and

(2) recognizes the contributions of such programs to efforts to decrease hunger and feed individuals in need.

SENATE RESOLUTION 375—HONORING THE LIFE AND SERVICE OF BREAST CANCER ADVOCATE, STEFANIE SPIELMAN

Mr. VOINOVICH (for himself and Mr. BROWN) submitted the following resolu-

tion; which was considered and agreed to:

S. RES. 375

Whereas Stefanie Spielman, a tremendous advocate and a true champion for the cause of breast cancer research, passed away on November 19, 2009, after a decade-long battle with breast cancer;

Whereas despite her constant battle with her own illness, Stefanie showed grace and compassion for others, touching countless lives in Ohio and beyond;

Whereas Stefanie tirelessly advocated for additional research into the prevention and treatment of breast cancer, and along with her husband, Chris, founded the Stefanie Spielman Fund for Breast Cancer Research at the Ohio State University Comprehensive Cancer Center—James Cancer Hospital and Solove Research Institute shortly after her diagnosis;

Whereas Stefanie and Chris later established the Stefanie Spielman Fund for Patient Assistance, which to date has generated more than \$6,500,000 to help translate laboratory discoveries into effective treatments for breast cancer patients;

Whereas Stefanie served as an active and vital member of the James Cancer Hospital and Solove Research Institute Foundation Board;

Whereas Stefanie was actively engaged in advocacy issues, including Ohio Mammography Day, which received the strong support of former Ohio First Lady Janet Voinovich and was designated by the Ohio General Assembly as the third Thursday in October;

Whereas in 2000, Stefanie and Chris established “Stefanie’s Champions” to honor one of the most important factors in cancer treatment—the loving and healing presence of a devoted caregiver;

Whereas Stefanie gave the first Champion award to her beloved husband after Chris put his professional football career on hold to care for her when she was first treated; and

Whereas Stefanie was a loving mother to her 4 children: Now, therefore, be it

Resolved, That the Senate—

(1) acknowledges the outstanding achievements and profound impact of Stefanie Spielman in the fight against breast cancer;

(2) commends Stefanie for her commitment to caring for others suffering from breast cancer; and

(3) celebrates her life as a wife, mother, and advocate for breast cancer awareness, research, and treatment.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3201. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3202. Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3203. Mr. BAYH (for himself, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. KOHL, Mr. KERRY, Ms. STABENOW, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3204. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3205. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3206. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3207. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3208. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3209. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3210. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3211. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3212. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3213. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3214. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3215. Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. SPECTER, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3216. Mr. NELSON, of Florida submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3217. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3218. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID

(for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3201. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 377, between lines 14 and 15, insert the following:

SEC. 1562. CONSCIENCE PROTECTION.

(a) PERMISSIBLE ACCOMMODATIONS.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) require a health plan or health insurance issuer to provide coverage of any item or service to which the health insurance issuer, purchaser, or plan sponsor has a moral or religious objection, or require such coverage for the purpose of—

(A) qualifying as a qualified health plan or participating in an Exchange; or

(B) being eligible for a premium tax credit or cost-sharing reduction or avoiding an assessable payment under section 4980H of the Internal Revenue Code of 1986 (as added by section 1513) or any other tax, assessment, or penalty; or

(2) require an individual or institutional health care provider to provide, participate in, or refer for an item or service to which such provider has a moral or religious objection, or require such conduct as a condition of contracting with a qualified health plan.

(b) NONDISCRIMINATION.—No person implementing this Act (or an amendment made by this Act) shall discriminate against a health plan, health insurance issuer, purchaser, plan sponsor, or individual or institutional health care provider based in whole or in part on an accommodation permitted under subsection (a).

(c) EXCEPTION.—Nothing in this section authorizes a health plan, health insurance issuer, or individual or institutional health care provider to deny all medical care or to deny life-preserving care to an individual based on the view that, because of a disability or other characteristic of such individual, extending the life or preserving the health of such individual is less valuable than extending the life or preserving the health of another individual who does not have such disability or other characteristic.

SA 3202. Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:

SEC. 9. DISALLOWANCE OF DEDUCTION FOR DIRECT TO CONSUMER ADVERTISING EXPENSES FOR PRESCRIPTION PHARMACEUTICALS.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A of the Internal Rev-

enue Code of 1986 (relating to items not deductible) is amended by adding at the end the following new section:

“SEC. 280I. DISALLOWANCE OF DEDUCTION FOR DIRECT TO CONSUMER ADVERTISING EXPENSES FOR PRESCRIPTION PHARMACEUTICALS.

“No deduction shall be allowed under this chapter for expenses relating to direct to consumer advertising in any media for the sale and use of prescription pharmaceuticals for any taxable year.”.

(b) CONFORMING AMENDMENT.—The table of sections for such part IX of the Internal Revenue Code of 1986 is amended by adding after the item relating to section 280H the following new item:

“Sec. 280I. Disallowance of deduction for direct to consumer advertising expenses for prescription pharmaceuticals.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 9. PHYSICAL LIFESTYLES FOR AMERICA'S YOUTH (PLAY) DEDUCTION.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by redesignating section 224 as section 225 and inserting after section 223 the following new section:

“SEC. 224. FEES FOR ORGANIZATIONS PROMOTING CHILDREN'S PHYSICAL ACTIVITY.

“(a) GENERAL RULE.—There shall be allowed as a deduction under this chapter an amount equal to the lesser of—

“(1) the amount paid or incurred by the taxpayer during the taxable year for the participation of a qualifying child (as defined in section 152(c)) of the taxpayer in a qualified organization, or

“(2) \$500.

“(b) LIMITATIONS.—

“(1) IN GENERAL.—No deduction shall be allowed under subsection (a) with respect to any taxpayer whose adjusted gross income for the taxable year exceeds \$250,000.

“(2) ADJUSTED GROSS INCOME.—For purposes of this subsection, adjusted gross income shall be determined—

“(A) without regard to this section and sections 199, 911, 931, and 933, and

“(B) after the application of sections 86, 135, 137, 219, 221, 222, and 469.

“(c) QUALIFIED ORGANIZATION.—For purposes of this section, the term ‘qualified organization’ means any other organization the principal activities of which are designed to promote or provide for the physical activity of children, as determined under guidelines published by the Secretary in consultation with the Secretary of Health and Human Services.”.

(b) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by redesignating the item relating to section 224 as relating to section 225 and inserting after the item relating to section 223 the following new item:

“Sec. 224. Fees for organizations promoting children's physical activity.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SA 3203. Mr. BAYH (for himself, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. KOHL, Mr. KERRY, Ms. STABENOW, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr.

HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2046, after line 24, add the following:

SEC. 9. MODIFICATION OF ANNUAL FEE ON MEDICAL DEVICE MANUFACTURERS AND IMPORTERS.

(a) DELAY IN IMPOSITION OF FEE.—

(1) IN GENERAL.—Section 9009(i) of this Act is amended by striking “2008” and inserting “2011”.

(2) CONFORMING AMENDMENT.—Section 9009(a)(1) of this Act is amended by striking “2009” and inserting “2012”.

(b) INCREASE IN AGGREGATE FEE AMOUNT.—Section 9009(b)(1) of this Act is amended by striking “\$2,000,000,000” and inserting “\$3,800,000,000 (\$2,660,000 for calendar years after 2019)”.

(c) INCREASE IN GROSS RECEIPTS FROM SALES TAKEN INTO ACCOUNT.—The table in paragraph (2) of section 9009(b) of this Act is amended to read as follows:

“With respect to a covered entity’s aggregate gross receipts from medical device sales during the calendar year that are:	The percentage of gross receipts takes into account is:
Not more than \$100,000,000.	0 percent
More than \$100,000,000 but not more than \$150,000,000.	50 percent
More than \$150,000,000	100 percent.”.

(d) TAX TREATMENT OF FEES.—Subsection (e) of section 9009 of this Act is amended to read as follows:

“(e) TAX TREATMENT OF FEES.—For purposes of subtitle F of the Internal Revenue Code of 1986, the fees imposed by this section shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply.”.

SA 3204. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1783, between lines 2 and 3, insert the following:

SEC. 6412. MANDATORY REPORTING OF FRAUD BY MEDICARE ADVANTAGE PLANS, PRESCRIPTION DRUG PLANS, AND PROVIDERS OF SERVICES AND SUPPLIERS.

(a) MANDATORY REPORTING BY MEDICARE ADVANTAGE PLANS AND PRESCRIPTION DRUG PLANS.—Section 1857(d) of the Social Security Act (42 U.S.C. 1395w-27(d)) is amended by adding at the end the following new paragraph:

“(7) REPORTING OF PROBABLE FRAUD.—

“(A) IN GENERAL.—Each Medicare Advantage organization and, in accordance with section 1860D-12(b)(3)(C), each PDP sponsor of a prescription drug plan shall, in accordance with regulations established by the Secretary under subparagraph (B), report to the Secretary and to the appropriate law enforcement or oversight agencies any matter for which the organization or sponsor has

identified, from any source (including the organization or sponsor itself), credible evidence of fraud by subcontractors or others related to the program under this part or part D, whether self-identified or reported by another party.

“(B) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish regulations to carry out this paragraph.”.

(b) MANDATORY REPORTING BY PROVIDERS OF SERVICES AND SUPPLIERS.—Section 1866(j)(7)(B) of the Social Security Act, as inserted by section 6401, is amended by adding at the end the following sentence: “Such core elements shall include, to the extent determined appropriate by the Secretary, internal monitoring and auditing of, and responding to, identified deficiencies. Such response shall include reporting to the Secretary and to the appropriate law enforcement or oversight agency credible evidence of fraud related to the program under this title, title XIX, or title XXI.”.

(c) PROMPT AND APPROPRIATE ACTION BY THE SECRETARY.—The Secretary shall take prompt and appropriate action to forward information on fraud reported under sections 1857(d)(7) and 1866(j)(7)(B) of the Social Security Act, as added by subsection (a) and amended by subsection (b), respectively, to the appropriate agencies.

(d) ANNUAL REPORT TO CONGRESS.—Not later than October 1 of each year, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall submit to Congress a report on general trends and conditions that give rise to waste, fraud, and abuse, including identified patterns of incidents, and general actions taken to address such trends and conditions, together with recommendations for such legislation and administrative action as the Secretary determines as appropriate.

SA 3205. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1542, between lines 10 and 11, insert the following:

(c) EXCEPTION FOR CERTAIN HOSPITALS.—Section 1877 of the Social Security Act (42 U.S.C. 1395nn), as amended by subsection (a), is further amended—

(1) in subsection (d)(2)(C), by striking “in the case” and inserting “except as provided in subsection (j), in the case”; and

(2) by adding at the end the following new subsection:

“(j) EXCEPTION FOR CERTAIN HOSPITALS.—The requirements of paragraph (3)(D) shall not apply to any hospital which is in development as of the date of enactment of the Patient Protection and Affordable Care Act.”.

SA 3206. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other

purposes; which was ordered to lie on the table; as follows:

On page 1542, between lines 10 and 11, insert the following:

(c) ADDITIONAL TIME FOR HOSPITALS TO MEET REQUIREMENTS.—

(1) IN GENERAL.—Section 1877 of the Social Security Act (42 U.S.C. 1395nn), as amended by subsection (a), is further amended—

(A) in subsection (d)(3)(D), by striking “not later than 18 months after the date of the enactment of this subparagraph” and inserting “not later than January 1, 2014”; and

(B) in subsection (i)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking “February 1, 2010” and inserting “January 1, 2014”;

(II) in subparagraph (D), by striking “the date of enactment of this subsection” and inserting “January 1, 2014”; and

(III) in subparagraph (F), by striking “the date of enactment of this subsection” and inserting “January 1, 2014”; and

(ii) in paragraph (3)—

(I) in subparagraph (A)—

(aa) in clause (iii), by striking “August 1, 2011” and inserting “January 1, 2014”; and

(bb) in clause (iv), by striking “July 1, 2011” and inserting “December 1, 2013”; and

(II) in subparagraph (C)(iii), by striking “the date of enactment of this subsection” and inserting “January 1, 2014”.

(2) CONFORMING AMENDMENT REGARDING CONDUCT OF AUDITS.—Subsection (b)(2) is amended by striking “November 1, 2011” and inserting “February 1, 2014”.

SA 3207. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 268, after line 19, insert the following:

SEC. 1403. FAIL-SAFE MECHANISM TO PREVENT INCREASE IN FEDERAL BUDGET DEFICIT.

(a) ESTIMATE AND CERTIFICATION OF EFFECT OF ACT ON BUDGET DEFICIT.—

(1) IN GENERAL.—The President shall include in the submission under section 1105 of title 31, United States Code, of the budget of the United States Government for fiscal year 2013 and each fiscal year thereafter an estimate of the budgetary effects for the fiscal year of the provisions of (and the amendments made by) this Act, based on the information available as of the date of such submission.

(2) CERTIFICATION.—The President shall include with the estimate under paragraph (1) for any fiscal year a certification as to whether the sum of the decreases in revenues and increases in outlays for the fiscal year by reason of the provisions of (and the amendments made by) this Act exceed (or do not exceed) the sum of the increases in revenues and decreases in outlays for the fiscal year by reason of the provisions and amendments.

(b) EFFECT OF DEFICIT.—If the President certifies an excess under subsection (a)(2) for any fiscal year—

(1) the President shall include with the certification the percentage by which the credits allowable under section 36B of the Internal Revenue Code of 1986 and the cost-sharing subsidies under section 1402 must be reduced for plan years beginning during such

fiscal year such that there is an aggregate decrease in the amount of such credits and subsidies equal to the amount of such excess; and

(2) the President shall instruct the Secretary of Health and Human Services and the Secretary of the Treasury to reduce such credits and subsidies for such plan years by such percentage.

SA 3208. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1783, between lines 2 and 3, insert the following:

SEC. 6412. EXTENSION OF NUMBER OF DAYS IN WHICH MEDICARE CLAIMS ARE REQUIRED TO BE PAID IN ORDER TO PREVENT OR COMBAT FRAUD, WASTE, OR ABUSE.

(a) PART A CLAIMS.—Section 1816(c)(2) of the Social Security Act (42 U.S.C. 1395h(c)(2)) is amended—

(1) in subparagraph (B)(ii)(V), by striking “with respect” and inserting “subject to subparagraph (D), with respect”; and

(2) by adding at the end the following new subparagraph:

“(D)(i) Upon a determination by the Secretary that there is a likelihood of fraud, waste, or abuse involving a particular category of providers of services or suppliers, categories of providers of services or suppliers in a certain geographic area, or individual providers of services or suppliers, the Secretary shall extend the number of calendar days described in subparagraph (B)(ii)(V) to—

“(I) up to 365 calendar days with respect to claims submitted by—

“(aa) categories of providers of services or suppliers; or

“(bb) categories of providers of services or suppliers in a certain geographic area; or

“(II) such time that the Secretary determines is necessary to ensure that the claims with respect to individual providers of services or suppliers are clean claims.

“(ii) During the extended period of time under subclauses (I) and (II) of clause (i), the Secretary shall engage in heightened scrutiny of claims, such as prepayment review and other methods the Secretary determines to be appropriate.

“(iii) Not later than 90 days after the date of enactment of this subparagraph and not less than annually thereafter, the Inspector General of the Department of Health and Human Services shall submit to the Secretary a report containing recommendations with respect to the application of this subparagraph and section 1842(c)(2)(D). Not later than 60 days after receiving such a report, the Secretary shall submit to the Inspector General a written response to the recommendations contained in the report.

“(iv) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the implementation of this subparagraph by the Secretary.”

(b) PART B CLAIMS.—Section 1842(c)(2) of the Social Security Act (42 U.S.C. 1395u(c)(2)) is amended—

(1) in subparagraph (B)(ii)(V), by striking “with respect” and inserting “subject to subparagraph (D), with respect”; and

(2) by adding at the end the following new subparagraph:

“(D)(i) Upon a determination by the Secretary that there is a likelihood of fraud, waste, or abuse involving a particular category of providers of services or suppliers, categories of providers of services or suppliers in a certain geographic area, or individual providers of services or suppliers, the Secretary shall extend the number of calendar days described in subparagraph (B)(ii)(V) to—

“(I) up to 365 calendar days with respect to claims submitted by—

“(aa) categories of providers of services or suppliers; or

“(bb) categories of providers of services or suppliers in a certain geographic area; or

“(II) such time that the Secretary determines is necessary to ensure that the claims with respect to individual providers of services or suppliers are clean claims.

“(ii) During the extended period of time under subclauses (I) and (II) of clause (i), the Secretary shall engage in heightened scrutiny of claims, such as prepayment review and other methods the Secretary determines to be appropriate.

“(iii) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the implementation of this subparagraph by the Secretary.”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the day that is 6 months after the date of the enactment of this Act.

(2) EXPEDITING IMPLEMENTATION.—The Secretary shall promulgate regulations to carry out the amendments made by this section which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comment on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.

SA 3209. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 823, after line 22, insert the following:

SEC. 3125A. ADJUSTMENT TO LOW-VOLUME HOSPITAL PROVISION; QUALITY REPORTING FOR PSYCHIATRIC HOSPITALS.

(a) ADJUSTMENT TO LOW-VOLUME HOSPITAL PROVISION.—Section 1886(d)(12) of the Social Security Act (42 U.S.C. 1395ww(d)(12)), as amended by section 3125, is amended—

(1) in subparagraph (C)(i), by striking “1,500 discharges” and inserting “1,600 discharges”; and

(2) in subparagraph (D), by striking “1,500 discharges” and inserting “1,600 discharges”.

(b) QUALITY REPORTING FOR PSYCHIATRIC HOSPITALS.—Section 1886(s) of the Social Security Act, as added by section 3401(f), is amended by adding at the end the following new paragraph:

“(4) QUALITY REPORTING.—

“(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

“(i) IN GENERAL.—Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of

a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.

“(ii) SPECIAL RULE.—The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

“(C) SUBMISSION OF QUALITY DATA.—For rate year 2014 and each subsequent rate year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

“(D) QUALITY MEASURES.—

“(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).

“(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.

“(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a psychiatric hospital and a psychiatric unit has the opportunity to review the data that is to be made public with respect to the hospital or unit prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in psychiatric hospitals and psychiatric units on the Internet website of the Centers for Medicare & Medicaid Services.”

SA 3210. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 309, strike lines 1 through 5, and insert the following:

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is an

amount equal to 1.5 times such dollar amount.

On page 309, line 14, strike “twice” and insert “2.5 times”.

On page 314, line 3, strike “2-consecutive-taxable year” and insert “4-consecutive-taxable year”.

On page 318, line 6, strike “2-year” and insert “4-year”.

At the end of the amendment, insert:

**TITLE X—MEDICAL CARE ACCESS
PROTECTION**

SECTION 10001. SHORT TITLE.

This title may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

SEC. 10002. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this title to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 10003. DEFINITIONS.

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not

limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this Act, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and

not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 10004. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

- (1) fraud;
- (2) intentional concealment; or
- (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this Act applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

SEC. 10005. COMPENSATING PATIENT INJURY.

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

SEC. 10006. MAXIMIZING PATIENT RECOVERY.

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claim-

ant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) **EXPERT WITNESSES.**—

(1) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) **LIMITATION.**—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanence of medical or physical impairment.

SEC. 10007. ADDITIONAL HEALTH BENEFITS.

(a) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits

has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. 10008. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indica-

tion of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. 10009. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

SEC. 10010. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 10011. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set

forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this title shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section 10005(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. 10012. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3211. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 136, between lines 3 and 4, insert the following:

(6) RESTRICTIONS ON ENROLLMENT.—The following restrictions on enrollment in a qualified health plan offered through an Exchange, during any enrollment period described in paragraph (5), shall apply:

(A) During any enrollment period or upon any qualifying event (described in section 603 of the Employee Retirement Income Security Act of 1974), an individual who, in the previous year was enrolled in a qualified health plan through an Exchange, may not enroll in a qualified health plan offering a level of coverage (as defined in section 1302(d)(1)) that is more than one level greater than the level at which the individual received coverage in the previous year.

(B) If an individual misses the first enrollment period for which such individual is eligible to enroll in a qualified health plan offered through an Exchange, if such individual enrolls in a health plan through an Exchange during the next enrollment period, for a period of not more than 90 days after first enrolling in such plan, such individual shall not receive coverage for elective services that are not of urgent medical necessity, except where the denial of services could pose significant risk to the life of such individual, or could be reasonably assumed to exacerbate an underlying condition. At no time after an individual described in the preceding sentence enrolls in a qualified health plan offered through an Exchange may such individual be denied coverage for preventive health services (as described in section 2713 of the Public Health Service Act, as added by section 1001) or the treatment of chronic conditions that otherwise are available under the health plan.

SA 3212. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 18, strike “may” and insert “shall”.

SA 3213. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 436, between lines 14 and 15, insert the following:

SEC. 2008. APPLICATION OF MEDICAID PROMPT PAY REQUIREMENTS TO NURSING FACILITIES AND HOSPITALS.

Section 1902(a)(37) of the Social Security Act (42 U.S.C. 1396a(a)(37)) is amended by striking “and (B)” and inserting “(B) insofar as nursing facilities or hospitals are paid under the State plan on the basis of submission of claims, ensure that 90 percent of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by all such facilities or hospitals that are paid on that basis are paid within 30 days of the date of receipt of such claims and that 99 percent of such claims are paid within 90 days of the date of receipt of such claims, and (C)”.

SA 3214. Ms. SNOWE submitted an amendment intended to be proposed to

amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 34, line 16, insert before the semicolon the following: “operated by a non-profit consumer-based community group or groups”.

On page 35, strike lines 3 through 6, and insert the following:

“(2) CRITERIA.—The Secretary in collaboration with the Administrator of the Center for Medicaid & Medicare Services shall develop standards that must be met by all entities that provide consumer assistance, including standards relating to—

“(A) adequate capacity and training to respond to consumer concerns;

“(B) a review process for monitoring accuracy of responses;

“(C) cultural and linguistic competency to meet the needs of the community; and

“(D) documented experience working with the target population.”.

On page 36, line 6, insert before the period the following: “, including regular and timely accounting of types of problems and inquiries; income, zip code, gender, race or ethnicity and language spoken by persons served; enrollment and outreach activities provided; and implementation issues encountered or identified, if any”.

On page 36, line 15, strike “\$30,000,000” and insert “\$100,000,000”.

SA 3215. Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. SPECTER, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1134, between lines 3 and 4, insert the following:

Subtitle G—Additional Health Care Quality and Efficiency Improvements

SEC. 3601. REPORT ON DEMONSTRATION AND PILOT PROGRAMS.

(a) REPORT.—Not later than 12 months after the date of enactment of this Act, and every 3 years thereafter, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a report that describes all pilot programs and demonstration projects that the Secretary has authority to carry out (regardless of whether such programs or projects are actually implemented), as authorized by law, during the period for which the report is submitted.

(b) REQUIREMENTS.—A report under subsection (a) shall—

(1) list all pilot programs or demonstration projects involved and indicate whether each program or project is—

(A) not yet being implemented;

(B) currently being implemented; or

(C) complete and awaiting further determinations; and

(2) with respect to programs or projects described in subparagraphs (A) or (B) of para-

graph (1), include the recommendations of the Secretary as to whether such programs or projects are necessary.

(c) ACTIONS BASED ON RECOMMENDATIONS.—Based on the recommendations of the Secretary under subsection (b)(2)—

(1) if the Secretary determines that a program or project is necessary, the Secretary shall submit to Congress a strategic plan for the implementation of the program or project and may transfer such program or project into the jurisdiction of the Innovation Center of the Centers for Medicare & Medicaid Services; or

(2) if the Secretary determines that a program or project is unnecessary, the Secretary may terminate the program.

(d) ACTION BY CONGRESS.—Congress may continue in effect any program or project terminated by the Secretary under subsection (c)(2) through the enactment of a Concurrent Resolution expressing the sense of Congress to continue the program or project involved.

SEC. 3602. AVAILABILITY OF DATA ON DENIAL OF CLAIMS.

Section 2715(b)(3) of the Public Health Service Act, as added by section 1001, is amended—

(1) in subparagraph (H), by striking “and” at the end;

(2) by redesignating subparagraph (I) as subparagraph (J); and

(3) by inserting after subparagraph (H) the following new subparagraph:

“(I) a statement relating to claims procedures including the percentage of claims that are annually denied by the plan or coverage and the percentage of such denials that are overturned on appeal; and”.

SEC. 3603. ACCELERATION AND INCREASE OF THE PAYMENT ADJUSTMENT FOR CONDITIONS ACQUIRED IN HOSPITALS.

Section 1886(p) of the Social Security Act (42 U.S.C. 1395(p)), as added by section 3008(a), is amended—

(1) in paragraph (1)—

(A) by striking “2015” and inserting “2013”; and

(B) by striking “99 percent” and inserting “98 percent”; and

(2) in paragraph (5), by striking “2015” and inserting “2013”.

SEC. 3604. IMPROVEMENTS TO NATIONAL PILOT PROGRAM ON PAYMENT BUNDLING.

Section 1866D of the Social Security Act, as added by section 3023, is amended—

(1) in subsection (a)(3), by striking “January 1, 2013” and inserting “January 1, 2012”; and

(2) by amending subsection (g) to read as follows:

“(g) AUTHORITY TO EXPAND IMPLEMENTATION.—

“(1) IN GENERAL.—Taking into account the evaluation under subparagraph (e), the Secretary may, through rulemaking, expand (including implementation nationwide on a voluntary basis) the duration and the scope of the pilot program, to the extent determined appropriate by the Secretary, if—

“(A) the Secretary determines that such expansion is expected to—

“(i) reduce spending under this title without reducing the quality of care; or

“(ii) improve the quality of care and reduce spending; and

“(B) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under this title.

“(2) IMPLEMENTATION PLAN.—In the case where the Secretary does not exercise the authority under paragraph (1) by January 1, 2015, not later than such date, the Secretary shall submit a plan for the implementation of an expansion of the pilot program if the

Secretary determines that such expansion will result in improving or not reducing the quality of patient care and reducing spending under this title.”.

SEC. 3605. PUBLIC REPORTING OF PERFORMANCE INFORMATION.

(a) IN GENERAL.—

(1) DEVELOPMENT.—Not later than January 1, 2011, the Secretary shall develop a Physician Compare Internet website with information on physicians enrolled in the Medicare program under section 1866(j) of the Social Security Act (42 U.S.C. 1395cc(j)) and other eligible professionals who participate in the Physician Quality Reporting Initiative under section 1848 of such Act (42 U.S.C. 1395w-4).

(2) PLAN.—Not later than January 1, 2013, and with respect to reporting periods that begin no earlier than January 1, 2012, the Secretary shall also implement a plan for making publicly available through Physician Compare, consistent with subsection (c), information on physician performance that provides comparable information for the public on quality and patient experience measures with respect to physicians enrolled in the Medicare program under such section 1866(j). To the extent scientifically sound measures that are developed consistent with the requirements of this section are available, such information, to the extent practicable, shall include—

(A) measures collected under the Physician Quality Reporting Initiative;

(B) an assessment of patient health outcomes and the functional status of patients;

(C) an assessment of the continuity and coordination of care and care transitions, including episodes of care and risk-adjusted resource use;

(D) an assessment of efficiency;

(E) an assessment of patient experience and patient, caregiver, and family engagement;

(F) an assessment of the safety, effectiveness, and timeliness of care; and

(G) other information as determined appropriate by the Secretary.

(b) OTHER REQUIRED CONSIDERATIONS.—In developing and implementing the plan described in subsection (a)(2), the Secretary shall, to the extent practicable, include—

(1) processes to assure that data made public, either by the Centers for Medicare & Medicaid Services or by other entities, is statistically valid and reliable, including risk adjustment mechanisms used by the Secretary;

(2) processes by which a physician or other eligible professional whose performance on measures is being publicly reported has a reasonable opportunity, as determined by the Secretary, to review his or her individual results before they are made public;

(3) processes by the Secretary to assure that the implementation of the plan and the data made available on Physician Compare provide a robust and accurate portrayal of a physician's performance;

(4) data that reflects the care provided to all patients seen by physicians, under both the Medicare program and, to the extent practicable, other payers, to the extent such information would provide a more accurate portrayal of physician performance;

(5) processes to ensure appropriate attribution of care when multiple physicians and other providers are involved in the care of a patient;

(6) processes to ensure timely statistical performance feedback is provided to physicians concerning the data reported under any program subject to public reporting under this section; and

(7) implementation of computer and data systems of the Centers for Medicare & Medicaid Services that support valid, reliable,

and accurate public reporting activities authorized under this section.

(c) ENSURING PATIENT PRIVACY.—The Secretary shall ensure that information on physician performance and patient experience is not disclosed under this section in a manner that violates sections 552 or 552a of title 5, United States Code, with regard to the privacy of individually identifiable health information.

(d) FEEDBACK FROM MULTI-STAKEHOLDER GROUPS.—The Secretary shall take into consideration input provided by multi-stakeholder groups, consistent with sections 1890(b)(7) and 1890A of the Social Security Act, as added by section 3014 of this Act, in selecting quality measures for use under this section.

(e) CONSIDERATION OF TRANSITION TO VALUE-BASED PURCHASING.—In developing the plan under this subsection (a)(2), the Secretary shall, as the Secretary determines appropriate, consider the plan to transition to a value-based purchasing program for physicians and other practitioners developed under section 131 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275).

(f) REPORT TO CONGRESS.—Not later than January 1, 2015, the Secretary shall submit to Congress a report on the Physician Compare Internet website developed under subsection (a)(1). Such report shall include information on the efforts of and plans made by the Secretary to collect and publish data on physician quality and efficiency and on patient experience of care in support of value-based purchasing and consumer choice, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(g) EXPANSION.—At any time before the date on which the report is submitted under subsection (f), the Secretary may expand (including expansion to other providers of services and suppliers under title XVIII of the Social Security Act) the information made available on such website.

(h) FINANCIAL INCENTIVES TO ENCOURAGE CONSUMERS TO CHOOSE HIGH QUALITY PROVIDERS.—The Secretary may establish a demonstration program, not later than January 1, 2019, to provide financial incentives to Medicare beneficiaries who are furnished services by high quality physicians, as determined by the Secretary based on factors in subparagraphs (A) through (G) of subsection (a)(2). In no case may Medicare beneficiaries be required to pay increased premiums or cost sharing or be subject to a reduction in benefits under title XVIII of the Social Security Act as a result of such demonstration program. The Secretary shall ensure that any such demonstration program does not disadvantage those beneficiaries without reasonable access to high performing physicians or create financial inequities under such title.

(i) DEFINITIONS.—In this section:

(1) ELIGIBLE PROFESSIONAL.—The term “eligible professional” has the meaning given that term for purposes of the Physician Quality Reporting Initiative under section 1848 of the Social Security Act (42 U.S.C. 1395w-4).

(2) PHYSICIAN.—The term “physician” has the meaning given that term in section 1861(r) of such Act (42 U.S.C. 1395x(r)).

(3) PHYSICIAN COMPARE.—The term “Physician Compare” means the Internet website developed under subsection (a)(1).

(4) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

SA 3216. Mr. NELSON of Florida submitted an amendment intended to be proposed to amendment SA 2786 pro-

posed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2046, after line 24, add the following:

SEC. _____ . INCREASE IN MEDICAL DEVICE RECEIPTS EXEMPT FROM ANNUAL FEE.

The table contained in paragraph (2) of section 9009(b) is amended—

(1) by striking “\$5,000,000” both places it appears and inserting “\$100,000,000”, and

(2) by striking “\$25,000,000” both places it appears and inserting “\$150,000,000”.

SA 3217. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 131, between lines 2 and 3, insert the following:

(3) PRESUMPTION FOR EXISTING SMALL EMPLOYER EXCHANGES.—

(A) IN GENERAL.—Notwithstanding the requirements of subsection (d)(1), or other provisions of this Act, in the case of an entity that—

(i) was approved by the appropriate agency of a State to operate as the functional equivalent of a small employer health benefit exchange under State law;

(ii) was fully operational as of January 1, 2010; and

(iii) had enrolled a minimum of 50,000 covered lives through small business employers as of January 1, 2010, and offers and administers coverage on behalf of a minimum of 3 unaffiliated health plans;

the Secretary shall deem such exchange to be a SHOP Exchange for purposes of this title, unless the Secretary determines, after completion of the process established under subparagraph (B), that the exchange does not comply with the standards for SHOP Exchanges under this section.

(B) PROCESS.—The Secretary shall establish a process to work with an entity described in subparagraph (A) to assist the entity in achieving compliance with the requirements and standards applicable to SHOP Exchanges under this title as soon as practicable, but not later than January 1, 2014, including the requirements of a SHOP Exchange to offer all applicable private and public sector health care coverage products and programs described in this title, including, without limitation, the enrollment of small employers in all such products and programs, and to service the premium assistance and cost-sharing programs available under this title to eligible small employers and their employees.

SA 3218. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time

homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 99, between lines 4 and 5, insert the following:

(e) APPLICATION OF LIFETIME AGGREGATE LIMITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, the provisions of section 2711 of the Public Health Service Act (as added by section 1001) that relate to lifetime limits shall apply to grandfathered health plans (including group health plans and individual health insurance coverage), except as provided for in paragraph (2).

(2) PHASE-OUT.—A grandfathered health plan—

(A) may not apply a lifetime limit that is less than \$5,000,000 during the first two plan years beginning after the date of enactment of this Act;

(B) may not apply a lifetime limit that is less than \$10,000,000 during the third and fourth plan years beginning after the date of enactment of this Act; and

(C) shall not apply any lifetime limit for plans years beginning on or after January 1, 2014.

PRIVILEGES OF THE FLOOR

Mr. DODD. Mr. President, I ask unanimous consent that Lia Lopez, an intern in my office, be granted floor privileges for the remainder of consideration of H.R. 3590.

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 3590

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the vote order with respect to the Lautenberg and Dorgan amendments to H.R. 3590 be reversed to Dorgan and then Lautenberg.

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

AMATEUR RADIO EMERGENCY COMMUNICATIONS ENHANCEMENT ACT OF 2009

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 224, S. 1755.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1755) to direct the Department of Homeland Security to undertake a study on emergency communications.

There being no objection, the Senate proceeded to consider the bill.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The bill (S. 1755) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1755

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Amateur Radio Emergency Communications Enhancement Act of 2009”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Nearly 700,000 amateur radio operators in the United States are licensed by the Federal Communications Commission in the Amateur Radio Service.

(2) Amateur Radio Service operators provide, on a volunteer basis, a valuable public sector service to their communities, their States, and to the Nation, especially in the area of national and international disaster communications.

(3) Emergency and disaster relief communications services by volunteer Amateur Radio Service operators have consistently and reliably been provided before, during, and after floods, hurricanes, tornadoes, forest fires, earthquakes, blizzards, train accidents, chemical spills and other disasters. These communications services include services in connection with significant examples, such as—

(A) hurricanes Katrina, Rita, Hugo, and Andrew;

(B) the relief effort at the World Trade Center and the Pentagon following the 2001 terrorist attacks; and

(C) the Oklahoma City bombing in April 1995.

(4) Amateur Radio Service has formal agreements for the provision of volunteer emergency communications activities with the Department of Homeland Security, the Federal Emergency Management Agency, the National Weather Service, the National Communications System, and the Association of Public Safety Communications Officials, as well as with disaster relief agencies, including the American National Red Cross and the Salvation Army.

(5) Section 1 of the joint resolution entitled “Joint Resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy”, approved October 22, 1994 (Public Law 103-408), included a finding that stated: “Reasonable accommodation should be made for the effective operation of amateur radio from residences, private vehicles and public areas, and the regulation at all levels of government should facilitate and encourage amateur radio operations as a public benefit.”.

(6) Section 1805(c) of the Homeland Security Act of 2002 (6 U.S.C. 757(c)) directs the Regional Emergency Communications Coordinating Working Group of the Department of Homeland Security to coordinate their activities with ham and amateur radio operators among the 11 other emergency organizations such as ambulance services, law enforcement, and others.

(7) Amateur Radio Service, at no cost to taxpayers, provides a fertile ground for technical self-training in modern telecommunications, electronic technology, and emergency communications techniques and protocols.

(8) There is a strong Federal interest in the effective performance of Amateur Radio Service stations, and that performance must be given—

(A) support at all levels of government; and

(B) protection against unreasonable regulation and impediments to the provision of the valuable communications provided by such stations.

SEC. 3. STUDY OF ENHANCED USES OF AMATEUR RADIO IN EMERGENCY AND DISASTER RELIEF COMMUNICATIONS AND FOR RELIEF OF RESTRICTIONS.

(a) AUTHORITY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall—

(1) undertake a study on the uses and capabilities of Amateur Radio Service communications in emergencies and disaster relief; and

(2) submit a report on the findings of the Secretary to Congress.

(b) SCOPE OF THE STUDY.—The study required by this section shall—

(1) include a review of the importance of amateur radio emergency communications in furtherance of homeland security missions relating to disasters, severe weather, and other threats to lives and property in the United States, as well as recommendations for—

(A) enhancements in the voluntary deployment of amateur radio licensees in disaster and emergency communications and disaster relief efforts; and

(B) improved integration of amateur radio operators in planning and furtherance of the Department of Homeland Security initiatives; and

(2)(A) identify impediments to enhanced Amateur Radio Service communications, such as the effects of unreasonable or unnecessary private land use regulations on residential antenna installations; and

(B) make recommendations regarding such impediments for consideration by other Federal departments, agencies, and Congress.

(c) USE OF EXPERTISE AND INFORMATION.—In conducting the study required by this section, the Secretary of Homeland Security shall utilize the expertise of stakeholder entities and organizations, including the amateur radio, emergency response, and disaster communications communities.

CONVENING OF 2ND SESSION OF 111TH CONGRESS

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 62, which was received from the House.

The PRESIDING OFFICER. The clerk will report the joint resolution by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 62) appointing the day for the convening of the second session of the One Hundred Eleventh Congress.

There being no objection, the Senate proceeded to consider the joint resolution.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the joint resolution be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the joint resolution be printed in the RECORD.

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

The joint resolution (H.J. Res 62) was ordered to a third reading, was read the third time, and passed, as follows:

H.J. RES. 62

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the second regular session of the One Hundred Eleventh Congress shall begin at noon on Tuesday, January 5, 2010.

HONORING BREAST CANCER
ADVOCATE STEFANIE SPIELMAN

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 375, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A Resolution (S. Res. 375) honoring the life and service of breast cancer advocate Stefanie Spielman.

There being no objection, the Senate proceeded to consider the resolution.

Ms. KLOBUCHAR. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

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

The resolution (S. Res. 375) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 375

Whereas Stefanie Spielman, a tremendous advocate and a true champion for the cause of breast cancer research, passed away on November 19, 2009, after a decade-long battle with breast cancer;

Whereas despite her constant battle with her own illness, Stefanie showed grace and compassion for others, touching countless lives in Ohio and beyond;

Whereas Stefanie tirelessly advocated for additional research into the prevention and treatment of breast cancer, and along with her husband, Chris, founded the Stefanie Spielman Fund for Breast Cancer Research at the Ohio State University Comprehensive Cancer Center—James Cancer Hospital and Solove Research Institute shortly after her diagnosis;

Whereas Stefanie and Chris later established the Stefanie Spielman Fund for Patient Assistance, which to date has generated more than \$6,500,000 to help translate

laboratory discoveries into effective treatments for breast cancer patients;

Whereas Stefanie served as an active and vital member of the James Cancer Hospital and Solove Research Institute Foundation Board;

Whereas Stefanie was actively engaged in advocacy issues, including Ohio Mammography Day, which received the strong support of former Ohio First Lady Janet Voinovich and was designated by the Ohio General Assembly as the third Thursday in October;

Whereas in 2000, Stefanie and Chris established “Stefanie’s Champions” to honor one of the most important factors in cancer treatment—the loving and healing presence of a devoted caregiver;

Whereas Stefanie gave the first Champion award to her beloved husband after Chris put his professional football career on hold to care for her when she was first treated; and

Whereas Stefanie was a loving mother to her 4 children: Now, therefore, be it

Resolved, That the Senate—

(1) acknowledges the outstanding achievements and profound impact of Stefanie Spielman in the fight against breast cancer;

(2) commends Stefanie for her commitment to caring for others suffering from breast cancer; and

(3) celebrates her life as a wife, mother, and advocate for breast cancer awareness, research, and treatment.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 106-398, as amended by Public Law 108-7, in accordance with the qualification specified under section 1238(b)(3)(E) of Public Law 106-398, and upon the recommendation of the Republican leader, in consultation with the ranking members of the Senate Committee on Armed Services and the Senate Committee on Finance, reappoints the following individual to the United States-China Economic Security Review Commission: Daniel Blumenthal of Maryland, for a term beginning January 1, 2010, and expiring December 31, 2011.

The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appoints the following Senator as Vice Chairman of the U.S.-China interparliamentary Group conference during the 111th Congress: the Honorable CHRISTOPHER BOND of Missouri.

ORDERS FOR TUESDAY,
DECEMBER 15, 2009

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, December 15; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 3590, the health care reform legislation, as provided for under the previous order.

Finally, I ask the Senate recess from 12:45 p.m. until 3:15 p.m. to allow for the weekly caucus luncheons.

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

PROGRAM

Ms. KLOBUCHAR. Mr. President, Senators should expect a series of four rollcall votes to begin around 6 p.m. tomorrow.

ADJOURNMENT UNTIL 10 A.M.
TOMORROW

Ms. KLOBUCHAR. If there is no further business to come before the Senate, I ask unanimous consent it adjourn until 10 a.m. tomorrow.

There being no objection, the Senate, at 8:15 p.m., adjourned until Tuesday, December 15, 2009, at 10 a.m.