United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, WEDNESDAY, DECEMBER 23, 2009 No. 200

House of Representatives

The House met at noon and was called to order by the Speaker pro tempore (Mr. MORAN of Virginia).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC.
December 23, 2009.

I hereby appoint the Honorable JAMES P. MORAN to act as Speaker pro tempore on this day.

NANCY PELOSI,
Speaker of the House of Representatives.

PRAYER

The Reverend Gene Hemrick, Washington Theological Union, Washington, D.C., offered the following prayer:

In the Old Testament, the Canticle of the prophet Daniel rings with the exaltation of God's Mother Nature:

Cold and Chill bless the Lord
Ice and Snow bless the Lord
Nights and Days bless the Lord
Light and Darkness bless the Lord
Lightning and Clouds bless the Lord

O Lord, the recent snowstorm in our Nation's capital reminds us of this canticle and of the wise means You employ in maintaining the order and rhythms of nature with which You blessed this world.

Bless this Congress with the heavenly wisdom that is needed to be prudent stewards of Your ecological systems. Endow it with Your divine counsel and understanding as it seeks the most efficient and effective means for preserving their God-given order and balance. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

NOTICE

If the 111th Congress, 1st Session, adjourns sine die on or before December 26, 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.

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By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman.*

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The Chair will lead the House in the Pledge of Allegiance.

The SPEAKER pro tempore 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.

COMMUNICATION FROM THE HON. JOHN B. LARSON, CHAIRMAN, DEMOCRATIC CAUCUS

The SPEAKER pro tempore laid before the House the following communication from the Honorable JOHN B. LARSON, Chairman, Democratic Caucus:

DEMOCRATIC CAUCUS,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 23, 2009.

Hon. NANCY PELOSI,
Speaker of the House, U.S. Capitol, Washington DC.

DEAR MADAM SPEAKER: This is to notify you that the Honorable Parker Griffith of Alabama has resigned as a Member of the Democratic Caucus.

Sincerely,

JOHN B. LARSON,
Chairman.

COMMUNICATION FROM THE SPEAKER

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

HOUSE OF REPRESENTATIVES,
December 23, 2009.

Hon. JAMES L. OBERSTAR,
Chairman, Committee on Transportation and Infrastructure, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIR: This is to advise you that Representative Parker Griffith's election to the Committee on Transportation and Infrastructure has been automatically vacated pursuant to clause 5(b) of rule X effective today.

Best regards,

NANCY PELOSI,
Speaker of the House.

COMMUNICATION FROM THE SPEAKER

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

HOUSE OF REPRESENTATIVES,
December 23, 2009.

Hon. NYDIA M. VELÁZQUES,
Chairman, Committee on Small Business, Rayburn House Office Building, Washington, DC.

DEAR MADAM CHAIR: This is to advise you that Representative Parker Griffith's election to the Committee on Small Business has been automatically vacated pursuant to clause 5(b) of rule X effective today.

NANCY PELOSI,
Speaker of the House.

COMMUNICATION FROM THE SPEAKER

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

HOUSE OF REPRESENTATIVES,
December 23, 2009.

Hon. BART GORDON,
Chairman, Committee on Science and Technology, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIR: This is to advise you that Representative Parker Griffith's election to the Committee on Science and Technology has been automatically vacated pursuant to clause 5(b) of rule X effective today.

Best regards,

NANCY PELOSI,
Speaker of the House.

ADJOURNMENT

The SPEAKER pro tempore. Pursuant to section 11(b) of House Resolution 976, the House shall stand adjourned until 10 a.m. on Saturday, December 26, 2009, unless the conditions specified in section 11(c) of that resolution have been met, in which case the House shall stand adjourned sine die pursuant to House Concurrent Resolution 223.

Accordingly (at 12 o'clock and 4 minutes p.m.), the House adjourned.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5189. A letter from the Assistant to the Board, Board of Governors of the Federal Reserve System, transmitting the System's final rule — Truth in Lending [Regulation Z; Docket No. R1378] received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5190. A letter from the Chief Counsel, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations [Docket ID: FEMA-2008-0020] received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5191. A letter from the Chief Counsel, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations [Docket ID: FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1063] received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5192. A letter from the Chief Counsel, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations [Docket ID: FEMA-2008-0020] received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5193. A letter from the Chief Counsel, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations [Docket ID: FEMA-2008-0020] received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5194. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2009 Commercial Harvest of Gulf of Mexico Greater Amberjack [Docket No.: 040205043-4043-01] (RIN: 0648-XP56) received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5195. A letter from the Deputy Assistant Administrator For Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Pacific Halibut Fisheries; Subsistence Fishing [Docket No.: 0812191631-91238-03] (RIN: 0648-AX53) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5196. A letter from the Acting Assistant Administrator for Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 85 [Docket No.: 0811201490-91372-03] (RIN: 0648-AX42) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5197. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific cod in the Bering Sea and Aleutian Islands Management Area [Docket No.: 0801041351-9087-02] (RIN: 0648-XS69) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5198. A letter from the Deputy Assistant Administrator For Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the United States Exclusive Economic Zone Off Alaska; Fisheries of the Arctic Management Area; Bering Sea Subarea [Docket No.: 090218204-91211-04] (RIN: 0648-AX71) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

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Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

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

Let us pray.

Eternal God, the source of peace on Earth, good will toward humanity, we feel delight because You are sovereign, causing all things to work together for good to those who love You, who are called according to Your purpose.

Help our lawmakers to see that each difficulty is an opportunity to see You work and that in Your time You will bring them to a place of abundance. May they face waiting tasks and challenges with Your gifts of understanding, kindness, civility, and self-control. Lord, astound them with new insight and fresh vision they could not conceive without Your blessings. Give them the faith to believe that if they listen to You, You will give them answers they cannot find by themselves.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL 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 assistant legislative clerk read the following letter:

NOTICE

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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.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 23, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. UDALL of New Mexico 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 resume consideration of the health reform legislation. The time until 10 a.m. is equally divided between the two leaders or their designees. From 9 a.m. until 2 p.m. today, there will be 1-hour alternating blocks of time, with the majority controlling the first hour. The time between 2 p.m. and 2:13 p.m. will be equally divided and controlled between the two leaders, with the majority leader controlling the final half. The Senate will then proceed to a series of five or six rollcall votes in relation to the health care bill.

I note the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I note the absence of a quorum. No one is here.

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

The assistant legislative clerk proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

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

SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will report.

The assistant legislative clerk read as follows:

A 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.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

REID (for CARDIN) amendment No. 2878 (to amendment No. 2786), to provide for the establishment of Offices of Minority Health.

Reid amendment No. 3292 (to amendment No. 2878), to change the effective date.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. will be equally divided between the two leaders.

The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I just received this morning—and I am sure it is on the CBO Web site, the Congressional Budget Office Web site—an analysis of the health care bill we are considering today. That analysis is crystal-clear and confirms what CMS has told us; that is, the proponents of the legislation before us have been double-counting—double-counting—the savings from Medicare, and as a result, it cannot be said that this bill is going to create a surplus in the Treasury but, in fact, will put us in a deficit.

I think every Member of this body needs to read this communication before they cast their vote. I know a lot of Members of the Senate who voted for the bill did so under the belief that it would be deficit neutral. They have said so publicly. The President has repeatedly stated—and he did to the Joint Session of Congress—that not one dime will be added to the national debt, and that is not so.

I will reveal what we were told by CBO this morning in their report. This is what the CBO said to us, and it is very simple. It is actually stunning that we have been confused about this issue when we are talking about hundreds of billions of dollars. It is absolutely an amazing event that the U.S. Congress can't get its act together when we are talking about hundreds of billions of dollars.

They say this:

The key point is that the savings to the HI trust fund—

Talking about Medicare—

under the PPACA—

That is the health care bill we are considering—

would be received by the government only once, so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.

That is exactly what this bill proposes to do.

Just 2 days ago at this press conference, the President said:

Medicare will be stronger and its solvency extended by nearly a decade.

Then he goes on to say this:

The Congressional Budget Office now reports that this bill will reduce our deficit by $132 billion over the first decade.

That is counting the money twice. It cannot be done. That is wrong, and it must not be allowed to occur.

Senator GREGG, the former chairman of the Budget Committee and ranking Republican on that committee, proposed an amendment that said any savings in Medicare stay in Medicare, and our colleague who voted it down—Senator HARKIN said: You have to vote it down—to our colleagues in his speech on the floor—you have to vote it down because it will kill the bill. Why would it kill the bill? Because they are planning to use the money both ways, and it cannot be done and ought not to be done.

This is very much consistent, entirely consistent with the communication from the Chief Actuary, Richard S. Foster, of the Center for Medicare and Medicaid Services. Mr. Foster laid it out. We should have seen this back on December 10. It is really what piqued my interest in this whole matter because I was wondering how this could be done. It didn't make sense to me. And I read his letter, and he says this:

The combination of lower Part A costs—

And that is Part A of Medicare, the hospital part—

and higher tax revenues results in a lower Federal deficit based on budget accounting rules.

He goes on to say:

However, trust fund accounting considers the same lower expenditures and additional revenues as extending the exhaustion date of the Part A trust fund.

They are running out of money, and if you cut the cost to Part A, you would extend, according to the trust fund accounting, the lifetime of the trust fund before it goes broke.

He adds:

In practice, the improved Part A financing cannot be simultaneously used to finance other Federal outlays.

Then he put in parentheses:

such as the covered expansions under the PPACA—

Which is the health care bill—

and to extend the trust fund, despite the appearance of this result from the respective accounting conventions.

So there are two different accountings. The one from CMS says one thing. The one from CBO, which is a unified accounting, a different process of accounting for Federal expenditures—both say good things. But both can't be accurate. Both Members say, CBO says you can't count it twice, and CMS also says that.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair and urge my colleagues to access this information on the CBO Web site and mine if they would like.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 2 p.m. will be controlled in alternating 1-hour blocks of time, with the majority controlling the first hour.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, it has been nearly 5 weeks since the majority

leader moved to proceed to the health care reform bill before us today. And it has been more than 2 months since the Finance Committee reported its bill, a great deal of which is reflected in the bill before us today.

It has been 3 months since the Finance Committee publicly posted the 564 amendments that Senators filed for consideration in the committee.

It has been 7 months since the Finance Committee convened three bipartisan roundtable discussions on each of the three major areas of reform: delivery system reform, insurance coverage, and options for financing reform.

It has been 7 months since the Finance Committee issued three bipartisan policy papers detailing the options from which the committee chose to craft its bill.

It has been 18 months since the Finance Committee convened a bipartisan, day-long health care summit at the Library of Congress.

It has been 19 months since the Finance Committee began holding open hearings to prepare for the bill before us today.

It has been more than 15 long years since the last time that the Senate took on this fight to enact comprehensive health care reform.

It has been 38 years since our late Colleague, Ted Kennedy, proposed a plan to extend health insurance coverage to all.

It has been 44 years since Congress created Medicare, providing health care for America's seniors, and Medicaid, providing health care for the poorest among us.

It has been 64 years since President Harry Truman asked the Congress to enact a national insurance program ''to assure the right to adequate medical care and protection from the economic fears of sickness.''

It has been 97 years since President Theodore Roosevelt ran on a platform that called for ''the protection of home life against the hazards of sickness . . . through the adoption of a system of social insurance adapted to American use.''

And it is now only hours until this Senate will pass meaningful health care reform.

It will not be long now until the law will prohibit insurance companies from cancelling insurance policies when people get sick.

It will not be long now until people with preexisting conditions will have access to health care.

It will not be long now until the law will prohibit insurance companies from imposing lifetime or annual limits on benefits.

It will not be long now until parents will be able to include their children up to age 26 on their insurance policies.

It will not be long now until the law will require insurance companies to report on the share of premium dollars that goes to pay medical care, and the share that doesn't.

It will not be long now until consumers will be able to shop for quality insurance in new Internet Web sites, where insurance companies will compete for their business.

It will not be too long now until millions of uninsured Americans will be able to buy insurance on new exchanges with tax credits to help make it affordable.

It will not be too long now until the law will prohibit insurance companies from discriminating against women in setting premiums.

It will not be too long now until the law will limit insurance companies in how much more they can charge when people get older.

It will not be too long now until more than 30 million Americans who otherwise would not have health care coverage will finally get that peace of mind.

It will not be too long now until more than 30 million Americans will have a better chance to live longer, healthier, less pain-ridden lives.

It will not be too long now until more than 30 million Americans will be able to share their family Christmas free of the fears of medical bankruptcy.

Mr. President, it will not be long now. It has been a long time coming.

I thank God that I have lived to see this day. I thank God for sustaining us and for enabling us to reach this time. Let us now, at long last, pass this historic legislation.

Mr. President, I yield 20 minutes to the Senator from Maryland.

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

Mr. CARDIN. Mr. President, first, it will not be long now until we achieve universal health care coverage affordable care for all Americans. I thank Senator BAUCUS for making this moment possible. I know how hard he has worked for so many weeks, so many months, so that we could bring very different views together but all focused on the goal of achieving affordable health care for every American.

Senator BAUCUS never lost sight of that goal. As a result, we are now just hours away from the last procedural hurdle until we will have a chance in the Senate to vote on a bill that for the 23 years I have been in Congress I have told the people of the Third Congressional District and the people of Maryland that I am going to fight to change our health care system so that every American has access to affordable, quality health care.

We are going to take a giant step forward to reaching that goal in the legislation we have before us today. Through the Chair, I thank Senator BAUCUS very much for his extraordinary patience and leadership to bring us to this moment.

Mr. President, there is a lot of discussion on both sides as to what the facts of the bill are. I am going to use the CBO because that is what we agreed to. That is the objective scorekeeper. They are not partisan. Everybody agrees to that.

The CBO tells us that for the under-65 group we are going to increase the number of insured from 83 percent to 94 percent. For all Americans, we are going to have 98 percent covered by health insurance. That is universal. We are going to have a framework so that at long last America joins every other industrialized nation in the world with a health care system where everyone is included.

To me, this is a moral issue. It is an issue of whether health care is a privilege or a right. I believe the values of America teach us that health care should be a right for all Americans.

The bill we will be voting on will take us very much in the direction of achieving that goal. Today in America too many people fall through the cracks. Too many families are literally destroyed because they cannot afford access to health care. Therefore, they don't get the tests they need, and perhaps a disease that could have been caught early or prevented is lost, and a person has to go through tremendous health care treatment; perhaps even losing their life.

We have seen too many families go through bankruptcy because they cannot afford the health care they need. We see too many literally cutting their prescription pills in half in the hopes of being able to keep their medicine for a longer period of time because they cannot afford it, knowing full well they are compromising their health.

I have mentioned the case of Deamonte Driver which, to me, is representative of so many tragedies in our community that could be avoided. Deamonte Driver, a 12-year-old in Prince George's County, MD, very close to here, had a tooth ache. His mom tried to get him to a dentist, but he had no insurance, and they couldn't find a dentist. They went to a social worker and made dozens of calls and still couldn't find a dentist. Deamonte was complaining of severe headaches. After weeks of not being able to get to a dentist, he went to the emergency room—the only option that was still available. They found out the tooth had become abscessed, which went into his brain. He had emergency surgery. He lost his life because our health care system didn't provide access to affordable, quality care for all Americans.

Mr. President, that is about to change. I am proud to be a part of it. I have been asked by many in recent days as to what is in it for the people of Maryland. The people of Maryland are going to get a national health care system that makes a lot more sense, a rational system for care in America. With the current system, too many people are being left out. Small employers have a hard time finding affordable products.

I have gotten many letters from constituents that I have read. I must tell you about the letter I received from a small business owner in Montgomery

County. She and her husband had to take out two separate policies to cover their family of four. The private insurance companies discriminated and said each has preexisting conditions, and the only way to have full coverage is to have two policies with two separate deductibles—which the family cannot afford—two separate premiums that the family cannot afford.

There is not competition to provide coverage to small businesses in America. Small businesses in Maryland want to have the opportunity to cover their employees, and they know competition will work, and this bill provides for a lot more competition.

This bill will help those who are losing coverage today. Many people in Maryland are losing their health care coverage every day. Hundreds lose their health insurance in my State every day. We live in the wealthiest Nation in the world, and Maryland is the wealthiest State, and we are still losing health coverage today.

Our Medicare beneficiaries are finding their program under attack. They want to have the stability of knowing Medicare will be there not just this year but for decades to come. This bill starts to reform Medicare by reforming health care so we can sustain it and fill in the prescription drug doughnut hole under which so many seniors are finding it very difficult to afford their medicine.

For the people of Maryland, this bill will provide a rational way in which they can maintain their existing coverage, find it more affordable, and certainly sustain coverage for our Medicare population and provide competition for small business owners to find affordable health care. It ought to bring down health care costs. Marylanders are very interested in that.

Again, let me use the CBO, the objective scorekeeper. They say for the overwhelming majority of Americans, their health premiums will go down because health care costs are coming down. This legislation invests in prevention and wellness. We know prevention and wellness works. We know if you can detect a disease early, you cannot only save lives, but you can save health care costs because the preventive services only cost a couple hundred dollars, and an operation you can avoid is tens of thousands of dollars. Screening and early detection works. Management of diseases works.

Most of our health care costs in America are spent on the leading diseases such as cardiac care and diabetes. We know we spend a lot of money, but we can manage those diseases more effectively, and this bill takes us down that path. We can save money by investing in health information technology. Think about that—about how much paper we receive every year from our health care system. Think about our own medical records and how that could be used to help us each manage our own health care and take more responsibility. We are not doing that today. We know that we can use a card to go anywhere in the world, and they can track our financial records. But for health care, that is not true today.

By investing in health information technology, we can reduce a significant amount of administrative costs in health care and better manage each of our own health care needs. That is what this bill does.

This bill will cover 31 million more Americans. That is not what I am saying as a Democratic Senator from Maryland; that is what the CBO is saying this bill will achieve—31 million more Americans that will not have to go to an emergency room to get their primary care needs met.

Think about how much it costs each one of us when that person whose only option is to go to an emergency room, how much that costs us. You see, many of those individuals cannot afford those hospital charges, so it becomes uncompensated care. It is added to the rates at the hospital that you and I pay—those of us who have health insurance.

The people in Maryland who have health insurance have a hidden tax of $1,100 every year. It is not only a waste of money that we have to pay, it is an efficient way to work the system. There should be facilities available so that everybody can get care in a much more cost-effective way. This bill moves us toward those goals. It provides competition so we can bring down the cost of health insurance through the local exchanges.

Another provision in the bill that I am very excited about is that we can cross State lines for competition, so if you are an employer in Maryland and you hire workers in Maryland and Virginia and Pennsylvania, you are able to get the regional and national competition so you have more choice on the health insurance companies. That will also bring down costs but also increase quality, which is what we are trying to do.

For Marylanders, this bill is important. This bill will help reduce the Federal deficit. How many of us have talked about that? I know that people who watch us say: Gee, I hear a Republican Senator and then a Democratic Senator; is this the same bill they are talking about?

Let's talk about the Congressional Budget Office, the objective scorekeeper. The Congressional Budget Office says this bill will reduce the Federal deficit by $132 billion—billion, that is a B, billion. That is quite an accomplishment when you realize that to get everyone covered, the Federal Government is providing subsidies which will cost us some additional investments. To make sure small businesses can afford it, we provide tax credits. That costs revenues—people insured, they have tax preferences. Yet the Congressional Budget Office has confirmed that this bill brings down the deficit by $132 billion in the first 10 years.

Let's look at the second 10 years because a lot of us want to look at the long-term impact. The Congressional Budget Office, the objective scorekeepers, tell us it will reduce the deficit by one-half of 1 percent of the GDP or about $1.3 trillion. It is quite an accomplishment to get everybody covered and reduce the deficit and have that confirmed by the Congressional Budget Office. That helps the people of Maryland, and that is why the people of Maryland benefit from this bill, as do the citizens of every State in the Nation.

I wish to talk about protecting consumers. Senator BAUCUS talked about this. I wish to make sure people understand what is involved. Senator BAUCUS mentioned a lot of the provisions that are in the bill about preexisting conditions and pediatrics for children take effect immediately, the caps we bring in, the lifetime caps we deal with covering children under the age of 26, the reinsurance program for 55- to 64-year-olds, the loss ratios that were added to the bill by the managers' amendment to make sure insurance companies are using your premium dollar to pay for benefits, the independent review of a decision made by an insurance company whether to cover a charge.

But I wish to talk about the Patients' Bill of Rights because I think the people of this Nation would be surprised to find out we have not yet enacted the Patients' Bill of Rights.

It was 1997 when we started talking about a Patients' Bill of Rights, about enacting it so we had national protection against the arbitrary practices of private insurance companies. In 1998, President Clinton, by Executive order, applied the Patients' Bill of Rights to the government insurance programs. But today there is still no protection against private insurance companies with a Patients' Bill of Rights.

I am very pleased the managers' amendment has added four very important provisions I authored by an amendment, that I have been working with Democrats and Republicans over the last decade to get into Federal law.

Access to emergency care—let me talk about that for a moment because today there are people who live in New Mexico and live in Montana and live in Maryland who go to their emergency rooms. They read the fine print of their insurance plan. It says: Before you go to an emergency room, you have to call for preauthorization or you need to go to the emergency room that is in network or we may second-guess whether you needed to go to that emergency room, if, in fact, your final diagnosis was you did not have an emergency need or condition. You may have sweating, the traditional chest pains, the traditional symptoms for a heart attack. You did exactly what a prudent layperson would do: get to that emergency room as quickly as possible. Then you find out it was not a heart attack. Today the insurance companies can second-guess your coverage.

Thanks to the managers' amendment Senator BAUCUS helped us put together,

we now are going to cover access to emergency care as a requirement for every private insurance company. Prudent layperson standards, no preauthorizations, get to the closest emergency room as quickly as you can—those are important protections to get into Federal law.

Then there is the ability to choose your primary care doctor. Your primary care doctor is the person you have to have confidence in. If you are a woman, if you want it to be OB/GYN, you should have that right. Many insurance companies deny you that today. If you are a parent and you want a pediatrician for your child, you should be able to have a pediatrician as a primary physician for your child. It is not guaranteed to today. Many insurance plans deny it. This will make sure it is in law.

I am pleased, and I know the people of Maryland will be glad to know, at long last, we get the Patients' Bill of Rights protected.

There are a lot of groups that supported this over the years. I wish to acknowledge the long list of people, the long list of groups, bipartisan groups, that have worked on this issue, from AARP to the Consumers Union to the NAACP to the SEIU, YMCA—the list goes on and on of groups that have supported the Patients' Bill of Rights against private insurance companies. At long last, we have the ability, with the passage of this bill on the Senate floor, to move it one step closer to passage and to be the law of the land.

I wish to talk about minority health. The reasons I wish to talk about minority health are twofold. First, I know my colleagues are interested to know that the amendment that is currently pending that the leader filed, technically on my behalf, which establishes the minority health protections within the different Federal agencies—I wish to assure my colleagues that it is in the underlying bill. It is in the package. It is in the managers' package which has been adopted.

I am going to suggest to the body that we withdraw the amendment because we do not need it to pass; it is already in the underlying bill. This was the original amendment I submitted. I wished to explain that because the amendment I filed to establish the Minority Health Office at the Department of Health and Human Services and also within NIH will be in the underlying bill because of the managers' package.

This is an important moment because there are huge disparities in our health care delivery systems in America, bringing about huge disparities among different ethnic communities. The life expectancy of African Americans, for example, is 5.3 years lower than Whites. When we look at diabetes in America, the incidence of diabetes is two times greater among minorities than the general population. That means we need to have a strategy to deal with it. We need to know how can we reach out to minority communities to deal with their special needs. Unless you have a focus within the Department of Health and Human Services, unless you have a focus within NIH and the other agencies, you will not deal with it as effectively as we should. I, again, thank Senator BAUCUS, Senator DODD, Senator REID, and the rest who understood this and put it into the managers' package because we can then develop a national strategy to help deal with the issues of the minorities.

I also will mention heart disease. African Americans have a 33-percent higher death rate due to heart disease. The list goes on and on. That is why this bill codifies the Office of Minority Health in the Office of the Secretary of Health and Human Services, establishes individual Offices of Minority Health at the Centers for Disease Control and Prevention, Health Resources and Services Administration, Substance Abuse and Mental Health Services Administration, Agency for Health Care Research and Quality, Food and Drug Administration, the Centers for Medicare & Medicaid Services, and it elevates the current Center on Minority Health and Health Disparities at NIH into an institute. That is good news for this Nation in dealing with this issue.

I, again, thank those who helped me get this into the managers' package—and it is now in the bill—that we will be taking up for a vote tomorrow.

I also compliment Senator SANDERS—I have done this before—on the community health centers. I mention that because as we deal with the disparities in health care in America, we deal with minority health care issues, yes, we have to get people health insurance, we have to get people the financial wherewithal to provide health care, but you also have to have the facilities in place if you are going to deal with health care needs. It is one thing to say we will cover the costs, it is another thing to say we will have the doctors available.

I met with one of the leaders at Johns Hopkins University, which is located in the urban part of Baltimore city. He said: We need help. We need more community health centers. We need more primary care doctors. We need more nurses. We need help with more people seeking care through traditional channels rather than using emergency rooms. That is great news. With them being able to afford insurance, that is great news, but let us have the facilities.

There are many underserved in Maryland and around the Nation who just need facilities. Thanks to the Sanders amendment, of which I am proud to be a cosponsor and worked with him, that is in this bill. We are going to see $10 billion to expand community health centers and 25 million more Americans will be able to get access to care through our community health centers. That is good news and that will help and we invest in creating more primary care doctors, which is a very valuable part of this bill. I applaud all those.

Let me point out this bill will help families in America. The choice is whether we pass this bill which sets up the framework for America to finally become a nation that provides universal coverage or we maintain the status quo. Let me tell you what happens if we maintain the status quo. These are the numbers. Right now, the average cost for a family for health insurance is $13,244. If we do not take action, by 2016—that is not too many years away—it is going to be $24,291.

The ACTING PRESIDENT pro tempore. The Senator has consumed the 20 minutes he was yielded.

Mr. CARDIN. May I have 2 more minutes, if that is possible?

Mr. BAUCUS. I yield the Senator 2 more minutes.

Mr. CARDIN. Mr. President, if people are going to be able to maintain their existing coverage, we have to act, and this bill will allow us to act. That is why the American Medical Association supports the bill. This bill will help our Medicare population because it strengthens Medicare, as I pointed out before. That is why the AARP supports it. We will be able to provide preventive services, such as annual physicals, for our seniors. This bill is important for small business owners who no longer will be discriminated against by paying 20 percent more than comparable large companies pay for the same type of insurance product.

This bill is good for Marylanders. It is good for every American. It moves us toward universal coverage. The bill is not perfect. I am disappointed with some of the things in the bill and some of the things that did not make it into the bill. But this bill establishes the framework for universal, affordable, quality care for every American. It speaks to the values of our Nation.

I am proud to support this legislation, and I know we will look back at this day as being one of the bright moments for America, where we said to the people of our Nation that, indeed, we will provide affordable, quality health care for every American.

I yield the floor.

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

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

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

Mr. KAUFMAN. Mr. President, I thank the manager not just for this but for the many things he has done to make this bill a possibility. It is truly historic, transformational. To a large degree, it is because of his hard work. I appreciate that.

Also, I yield him 30 minutes of my postcloture time.

The ACTING PRESIDENT pro tempore. The time will be so yielded.

Mr. KAUFMAN. Mr. President, I rise, once again, to express my support for this historic health care legislation before us. After more than a year of debate and months and months of negotiations, I welcome the extraordinary opportunity finally to enact meaningful health care reform. Yes, I mean years and months, since this reform effort has been a long and deliberative process, not the rush job opponents of this effort have been claiming.

I must admit, however, there were times during this debate when I was not sure if we were ever going to reach this point. In fact, I was convinced we were not. But I found in my life that when you think things are never going to happen, as with every important thing I have ever done, you reach a point when you say this is never going to happen, and this is another example. There are many times I never thought this would happen.

From the bogus charge of death panels—which was just named politifact.com's ''Lie of the Year''—to the tension over whether the bill will contain a public option, which I supported, there were some long days where it was hard to see how we were going to get to the end point.

But thanks to the hard work of the majority leader, as well as Senators BAUCUS, DODD and HARKIN and their staffs, we are finally here.

As many of you know, I have worked in and around the Congress for more than 36 years. I have learned quite a bit about how things operate in the Senate.

The Senate is commonly referred to as the most deliberative body in the world. But such deliberations are not always pretty. Sometimes tempers flare, sometimes debate does not reach the level we aspire to or the American people deserve. Sometimes the most important legislation actually fails to get the votes necessary to pass.

We all know what happened to health care reform the last time we attempted a major overhaul 15 years ago when President Clinton tried to pass his version of health care reform. The debate was just as passionate with charges and countercharges on both sides of the aisle. Because of the coarseness of that debate, because of the seemingly intractable opposition to health care reform, Congress has been wary in the intervening 15 years to take up this cause again, and it is understandable.

But over the past 15 years, our health care system has gotten more expensive. Rising medical costs, skyrocketing premiums, increasing numbers of the uninsured and the strain on both business and providers have brought the critical need for health reform back to the Senate this year.

Make no mistake, we need health care reform now. The status quo—what I call the present health care system—is simply unsustainable.

Medical costs account for one-sixth of domestic spending and are headed upward. In 1979, we spent approximately $220 billion as a nation on health care. In 1992, we spent close to $850 billion. In 2009, we will spend $2.5 trillion on health care. Listen to this: $220 billion in 1979, $850 billion in 1992, and $2.5 trillion in 2009. How can anyone argue it is not time to deal with health care reform and that the need is urgent? The trajectory of our national health care expenditures is out of control.

In addition, one of the biggest—if not the biggest—forces behind our Federal deficit, which we hear so much about on this floor, are the skyrocketing costs of Medicare and Medicaid. In 1996, Medicare and Medicaid accounted for only 1 percent of all government expenditures; they now account for 20 percent. If we do nothing to start bending the cost curve down for Medicare and Medicaid, we will eventually spend more on these two programs than on all other Federal programs combined. We must slow the level of growth in the Medicare and Medicaid Programs if we are to ever get our budget situation under control.

In addition to the fiscal pressures crushing our Federal and State governments, the present health care system is also crushing families and workers. Just look at the rise in the insurance premiums in my home State of Delaware. In 2000, the average premium for family health coverage was just over $7,500. That is $7,500. By 2008, the number had jumped to $14,900—that is $14,900—almost doubling in just 8 years. If we fail to enact the pending health care reform legislation, the same premium for family coverage is expected in Delaware to reach $29,000 in 2016.

Let me repeat that: $29,000 for family coverage in Delaware in 2016 if we don't pass health care reform now.

States around the country will see similar increases, which are simply unaffordable. Too many people are going bankrupt paying for their medical care. Today, the inability to pay for skyrocketing medical bills accounts for more than 60 percent of U.S. personal bankruptcies, a rate of 1½ times what it was just 6 years ago. Keep this in mind: More than 75 percent of families entering bankruptcy due to health care costs actually have health insurance.

Let me repeat this because it is a critical point: Three-quarters of all Americans filing for bankruptcy because of medical bills already have insurance. We also need reform to stop the worst abuses in the health insurance industry. In my year as serving as the Senator from Delaware, I have heard from far too many constituents who have been refused an insurance policy because they have a preexisting condition.

I have heard from fathers who were denied family insurance coverage because they were told their children had preexisting conditions too expensive to cover. Much to my shock—and I have talked about this on the Senate floor—I have received letters from women who have been turned down for coverage because their pregnancy was considered a preexisting condition. Pregnancy a preexisting condition? That is simply intolerable. Even worse, however—if that is possible—is the practice of rescission, where insurance companies drop coverage for individuals the moment they get sick and need their insurance the most. Being denied coverage after you have already paid your premiums is just plain cruel.

For all those reasons and more, we must reform the present health care system. Thankfully, we now have the opportunity to bring about meaningful health care reform through the Patient Protection and Affordable Care Act, and I would like to take just a couple more minutes to discuss why this legislation has earned my support.

First off, it is fiscally responsible. President Obama laid down a marker that any health care reform legislation that landed on his desk could not add to our Nation's debt. I am happy to say this legislation passes this test.

According to the Congressional Budget Office, the Patient Protection and Affordable Care Act will reduce the deficit by $132 billion over the first 10 years. This bill is fully paid for.

Second, the bill helps stabilize Medicare and Medicare Programs. In the absence of this legislation, the Medicare trust fund is expected to go bankrupt in 2017. According to the head actuary at the Centers for Medicare and Medicaid Services, passing this bill would extend the solvency of the trust fund for an additional 9 years—9 years. Medicare is a sacred trust with Americans, and this bill ensures this trust is preserved.

In addition to reducing the deficit and shoring up the Medicare Program, this bill contains numerous provisions that will help Americans afford their premiums and prevent them from filing for bankruptcy protection. Starting next year, insurers will no longer be able to place lifetime caps on health care benefits. For the next several years, insurers will also be restricted in the annual limits they can place on benefits, and then these will be eliminated altogether in 2014.

These are huge changes for people with debilitating diseases and those who experience unexpected catastrophic events costing millions of dollars in treatment.

In addition, premium subsidies for families with incomes under 400 percent of the poverty level—or $88,000 for a family of four—will be available to help them afford their premiums once the new insurance exchange is up and running. There will also be annual limits on out-of-pocket costs for individuals, and dependents will be able to be covered under their parents' insurance policies until the age of 26.

All of these are meaningful reforms that will dramatically lower the rate of bankruptcies associated with medical costs.

The bill also contains some other great consumer protections that don't currently exist in our present health care system. I have already highlighted the problems in the current system with insurers denying coverage for people with preexisting conditions and rescinding coverage when people get sick. Under this bill, Americans will finally be freed from the shackles of preexisting clauses that have kept so many from obtaining much needed health insurance.

Starting next year, insurers will no longer be able to deny coverage to children with preexisting medical conditions. This ban on not covering preexisting conditions will be extended to all Americans in 2014.

The bill also forbids insurers from rescinding health insurance after Americans have already paid their premiums. Americans will no longer lose their coverage when they get sick and need it most.

In addition, the bill dramatically expands coverage of prevention and wellness services. It provides incentives for employers to implement wellness programs and offers a new annual wellness checkup for seniors enrolled in Medicare.

These are all good, positive reforms to our health care system.

Now that we are close to finishing this debate, the media has focused its attention on particular deals that benefit certain Senators and specific States, but I want to point out that all the benefits I have talked about—all of them—are available to every American in every State.

Most every Senator has brought something to this debate and to this bill. I am very pleased that the managers' package includes the health care fraud enforcement amendment, which I introduced, along with Senators LEAHY, SPECTER, KLOBUCHAR, and SCHUMER as cosponsors. Again, this benefits all Americans not just Delawareans.

The National Health Care Anti-Fraud Association conservatively estimates that 3 percent of all health care spending—some $72 billion—is lost to health care fraud in both public and private health care plans. That is $72 billion lost in health care fraud in both public and private health care plans. Other estimates place the figure as high as 10 percent over $220 billion.

Fraud hits every one of us in every corner of our Nation where we can least afford it—our health care premiums—while simultaneously driving down the quality of, and our trust in, the health care system. This amendment increases funding for fighting fraud in public programs.

It improves screening of providers and suppliers and requires implementation of meaningful compliance programs. This section tightens requirements for claims submissions and provides new tools to deter fraud and abuse in the private insurance market.

It also strengthens criminal investigations and prosecution. Today, outdated laws and punishments insufficient to provide effective deterrence hamper prosecutors and agents. This may seem incredible, but many criminals have told law enforcement officers that they switched to health care fraud from the drug trade because the reward-to-risk ratio is so much higher. Can you imagine that? There is actually an incentive for crooks in the present health care system to commit health care fraud.

This antifraud amendment can begin to reverse this trend. Significantly reducing costs attributable to fraud will go a long way toward bending the cost curve down. What this bill does is it increases the sentencing requirements for people who commit health care fraud to make it much less attractive for them to get into the health care fraud business. It gives us the prosecutors and the agents we need—just like we did in the financial regulatory reform—to go after these folks and catch them, then put them in jail. With these new sentencing guidelines, we can put them there for a longer time, discouraging people from getting into the health care fraud business to begin with.

In addition, the package of amendments I cosponsored with my fellow freshman Democrats will also improve the bill and benefit all Americans.

I am lucky to be a member of a dynamic freshman class, including the Presiding Officer, and I have enjoyed teaming up with them in our morning speeches and colloquies to push the health care reform effort forward. I am pleased that our amendment package was accepted by the bill's managers and that it provides commonsense, practical solutions that help further contain costs, improve value, and increase quality.

For example, it quickens the implementation of uniform administrative standards, allowing for more efficient exchange of information among patients, doctors, and insurers. It provides more flexibility in establishing accountable care organizations that realign financial incentives and help ensure that Americans receive high-quality care. It provides greater incentives to insurers in the exchange to reduce health care disparities affecting underserved minority communities.

For all the reasons listed above, from the original text to the additions added to the managers' package, this bill should and must be passed. It brings quality, affordable health care within the reach of all Americans, including more than 30 million Americans who are currently uninsured. It strengthens the Medicare Program, extending its insolvency for 9 years. It helps restore fiscal order by reducing the deficit by approximately $132 billion over 10 years and more than $1 trillion over 20 years. It offers much needed consumer protections that provide stable coverage at an affordable cost.

In closing, I again want to acknowledge the hard work of Senators BAUCUS, REID, DODD, HARKIN, as well as their staffs—especially their staffs—because the staff has done incredible work on this piece of legislation. They have enabled us to reach this historic legislative moment.

I have ended many speeches by noting that it is time to gather our collective will and do the right thing to join this historic opportunity by passing health care reform. I think we may have finally reached that goal. We certainly can't afford to wait any longer. We need to act now. We can do no less. The American people deserve no less.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. KIRK). The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I yield the remainder of the time we have in our hour to the Senator from North Dakota, Mr. CONRAD.

Mr. CONRAD. Mr. President, I rise this morning not to talk about health care but to talk about the other critical matter that faces this body before we leave this session for the holidays and that is the matter of extending the debt limit of the United States. Let me start by saying it is imperative that we extend the debt limit. If we do not, the United States would default on its debt. The consequences for this country and the global economy would be nothing short of catastrophic.

If you think about the problems created in world markets by the fact that Dubai defaulted on $40 billion of debt, think of what it would mean to global markets if the United States were to default on $12 trillion of debt.

For those who say this is Obama's fault—no. This is not Obama's fault. He has been in office 11 months. I remind everyone that he walked into the biggest mess in 70 years—deficits and debt exploding, joblessness skyrocketing, economic growth plummeting. All that was happening before Barack Obama became President of the United States. He did not create the economic mess, he inherited it. He did not create the fiscal mess, he inherited it. Those are things he had to take on as the new President.

There were record deficits and a doubling of the national debt, there was the worst recession since the Great Depression, financial market and housing crises, ongoing wars in Iraq and Afghanistan, and an unsustainable long-term budget outlook with everything going in the wrong direction.

This is what was happening to deficits before President Obama took office. The deficits were skyrocketing. In fact, we have never held Presidents responsible for the fiscal affairs during the first year of their term of office because everybody here knows they inherit a budget from the previous President for the first year. That is not Barack Obama's responsibility, that is the responsibility of the previous administration.

For those who say President Obama made things worse—no, he didn't make

things worse, he made things better. Yes, he added short term to the deficit, about $300 billion in 2009 because of the economic recovery package, but I remind people the difference the economic recovery package has made. We have gone from private-sector job losses of 749,000 jobs a month when he came in—this is January of 2009, the month he came in. Job losses had mounted to 749,000 jobs a month. Look at the trend. Because of the recovery package and other measures that were put in place, the changes in private nonfarm payrolls have improved dramatically, from losses of over 700,000 a month in January to losses of 18,000 last month. We now believe that, in the first quarter of next year, those job losses will have become job gains.

The same thing happened on economic growth. Economic growth was sharply negative when President Obama came into office. In the last quarter, we now know the economy actually grew at a rate of 2.2 percent. That is a dramatic change. The fact is President Obama made things better. He inherited a disaster and he went to work to get America back on track.

Let's look for a moment at the debt. This is what happened under the previous administration. The gross debt of the United States skyrocketed, more than doubling under the previous administration. So this is what the current President inherited. He did not create it. He wasn't the architect of it. He didn't produce these deficits and debt. He inherited them.

It is true we are still on a course for long-term debt that is unsustainable. This was the cover of Newsweek on December 7, Pearl Harbor day. The Newsweek cover said this: ''How great powers fall; steep debt, slow growth, and high spending kill empires—and America could be next.''

When you went inside to the story, it said this:

> This is how empires decline. It begins with a debt explosion. It ends with an inexorable reduction in the resources available for the Army, Navy, and the Air Force . . . If the United States doesn't come up soon with a credible plan to restore the Federal budget to balance over the next 5 to 10 years, the danger is very real that a debt crisis could lead to a major weakening of American power.

I don't know what could be more clear than that. Here is what has happened since 2001. Again, most of this is on the shoulders, the responsibility of the previous administration, because the debt absolutely skyrocketed under their watch. But it is continuing to grow and we must face up to that.

What is even more alarming is the longer term outlook. On the trend we are on, the debt, which will reach over 100 percent of the gross domestic product by 2019, is projected to hit 400 percent of gross domestic product by 2050. That is the trendline we are on. That is the trendline we have been on since 2001, a trendline of massively growing debt. The question is, can we face up to it? Do we have the strength, do we have the will to take on the burgeoning debt?

This is what the National Journal wrote on November 7 of this year:

> The debt problem is worse than you think. Simply put, even alarmists may be underestimating the size of the (debt) problem, how quickly it will become unbearable and how poorly prepared our political system is to deal with it.

The reality we confront tomorrow morning is whether we will extend the debt limit of the United States. We have no choice. If we fail to pay the debts we have already accrued, the United States and other markets around the world would collapse. That is just the fact. We cannot permit that to happen.

How we got to this point is very clear to me. The previous administration put forward a fiscal policy that doubled the debt of the United States and put us on track to continue doubling it every 8 years. The current administration has taken action to get the economy moving and growing again. Had they not taken those steps, which add to the deficit in the short term, the long-term debt outlook would be even worse. That does not take away from the fact that we have to deal with the reality that confronts us now. That reality is we are on a trendline that is absolutely unsustainable.

To those who say if you deal with the debt, you are going to have to do something about Social Security and Medicare and revenue—I say yes. That is true. We are going to have to do something about all of those. To those who say dealing with the debt means facing up to the hard reality that confronts this country and the fact that we are on a course that is unsustainable—I say yes. That is true. We are going to have to make changes in the entitlement programs. We are going to have to make changes in the revenue system.

When I say that, I don't mean by that the first thing we do is raise taxes. The first thing we ought to do is collect the taxes that are already owed but are not being paid because of these offshore tax havens and abusive tax shelters and all the rest. We can get more revenue. We do not need to raise taxes to get more revenue. We need to collect the revenue that is currently owed and we need to get it from the people who are cheating all the rest of us by engaging in these tax schemes—offshore tax havens, abusive tax shelters. We even have companies now that are leasing sewer systems, buying them from European cities in order to depreciate them on the books in the United States to reduce their taxes here, then leasing those same sewer systems back to the European cities that built them in the first place. That is happening right now.

If you doubt we are losing money to offshore tax havens, Google ''offshore tax havens'' and see how many hits you get. You get over a million. Those sites describe a life of luxury, living offshore, tax free, on income received in this country, income on which taxes are owed in this country but not paid. That is the kind of thing that has to be stopped.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5½ minutes.

Mr. CONRAD. Let me talk for a minute about what Senator GREGG and I have proposed: a bipartisan task force to deal with this long-term debt threat. Our proposal has 35 cosponsors now. The idea is to give a group of our colleagues and members of the administration the responsibility to come up with a plan to reduce the deficits and debt. If a plan enjoyed a supermajority among the group of 18 who would be given the responsibility to come up with such a plan—if 14 of the 18 could agree on a plan—it would have to come here for a vote. It would come here for a vote. Every Senator would retain their rights to vote up or down. Every Senator would retain their rights. And it would require 60 votes in the Senate to pass, it would require 60 percent of the House to pass and the President would be able to veto it if he didn't like it.

I think it is clear that we have a real challenge facing our country and it is going to take some special process to deal with it. What we have outlined would put everything on the table with 18 Members, 10 Democrats, 2 from the administration, and 8 Republicans. All task force Members would need to be currently serving in Congress or the administration. If 14 of the 18 could agree, that report would have to come to the Congress for a vote. The report would be submitted after the 2010 election and there would be fast-track consideration in the Senate and the House. There would be a final vote before the 111th Congress adjourned.

To those who say that is going to shred Social Security and Medicare—I say no. What threatens Social Security and Medicare is our doing nothing. Both of those programs are already cash negative. The trustees of Medicare tell us the program will be insolvent by 2017 if we do nothing. The answer can not be to do nothing. I believe this is a challenge that requires us to come together now, Republicans and Democrats, House, Senate, the administration, as we came together to deal with fiscal crises in the past. The Social Security Commission in the 1980s, the Andrews Air Force Base Summit in the 1990s—those were special procedures to deal with a special challenge and that is what is required now. We are on a course that is absolutely and utterly unsustainable.

Let me go back to the vote tomorrow, because a group of us have said we are not going to vote for any long-term extension of the debt without consideration of a special process to deal with the debt, but we are also prepared to extend the debt on a short-term basis. That is absolutely essential. That is

the responsible thing to do. A failure to extend the debt tomorrow would send a message to markets around the globe that the United States is not going to pay its debt. The United States cannot renege on its commitment to pay the $12 trillion of debt that has already been run up. Those are not future debts but debts that have already been incurred. Those are debts that are due now and will be due in the weeks to come.

The United States has never defaulted on its debt and it never can without grave consequences to our economy and to the world economy.

Let me say again as clearly as I can: for those who want to blame President Obama, that won't wash. He has been in office only 11 months. He walked into the biggest mess in over 70 years—deficits and debt exploding, job losses skyrocketing, economic growth plummeting. President Obama didn't create that economic mess, he inherited it. He did not create the fiscal mess, he inherited it.

Tomorrow will be a key vote for this country. Those of us who are concerned about the growing debt and are willing to take it on must also be responsible about making certain that the United States does not default on its already accrued debts. To do otherwise would be disastrous for this country.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 10 seconds.

Mr. CONRAD. Perfect. Merry Christmas.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I would inquire how much time is allotted to me?

The PRESIDING OFFICER. The minority has 60 minutes.

Mr. CORKER. I have 10 minutes. I wonder if the Presiding Officer might let me know when I have 2 minutes remaining.

The PRESIDING OFFICER. The Chair will do so.

Mr. CORKER. I thank the Chair.

Mr. President, I have watched this body over the last period we have been discussing health care. The body itself, the integrity of this body has been challenged. I have watched as individuals have challenged each other's integrity as it relates to this bill. I choose not to do that today.

I wish to say, as I do constantly in my State, that I consider it a privilege to wake up each day and come to work in this body. Obviously, things don't always go as one might expect, but I do consider it a privilege. I thank the folks back home for allowing me to serve and to deal with these important issues.

I don't think I will ever quite understand why this bill was put together the way it was. I certainly understand there are differences of opinion and differences of interest, but I don't think I will ever understand why Medicare moneys, from an insolvent program, were used to fund a new entitlement.

CBO has come out this morning clearly stating what we have been saying for over 6 months. The fact is, taking Medicare savings and using them to create another entitlement does not work. It takes away from the solvency of Medicare itself. It is kind of late, but I am glad CBO has actually come out and said today, finally, after months of debate, what we have been saying from day one, that you could not take Medicare savings and use them to create a new entitlement without challenging the solvency of Medicare itself.

I will never understand why that building block, a flawed building block, was used to create this bill. Everybody knows it was that use of inappropriate funding that began this whole partisan divide. My guess is, we might have ended up with a bill that would stand the test of time had we not utilized that basic flawed building block in the bill.

There has been one, though, that I have found equally problematic; that is, the whole issue of creating an unfunded mandate for the State of Tennessee and for States across the country. The challenge to people's personal integrity has been centered more around this issue than anything else, as various Senators trying to protect their States from an unfunded mandate have been challenged in that regard.

Many people who serve in this body used to be mayors, they used to be Governors, people who had to deal with budgets in their own States. Years ago, in a bipartisan effort, a bill was passed to ensure that we in Washington didn't pass laws that increased costs for cities. I was a mayor of a city. I was commissioner of finance for a State. In those capacities, there was nothing that was more offensive than for the Federal Government to pass a law and send down a mandate to a city or a State that costs money and yet not send the money that went with it. There was nothing more infuriating. We had to actually balance our budgets. We didn't have the ability to borrow money from overseas and to continue to operate in the red.

Back in 1995, a law was passed called the Unfunded Mandates Reform Act. It was done to do away with the arrogance that existed up until that time—and unfortunately, continues to exist—where the Federal Government would create laws that would increase costs on cities and States. It was passed in a bipartisan way. As a matter of fact, 15 Members from the other side of the aisle supported this law, voted for this law, and put this law in place. Many of the people who made this bill, created this bill participated. The chairman of the Finance Committee voted for this law. The majority leader voted for this law. The distinguished chairman of the Budget Committee voted for this law. The chairman of the HELP Committee who drafted a big part of this bill voted for this law. What this law said was that we could not pass legislation out of this body, out of Congress, that placed an unfunded mandate on States, on cities, and caused them to have to do things that raised expenses by laws we created without sending the money themselves.

Our Governor of Tennessee is a Democrat. He is on the other side of the aisle. We have worked closely on a number of economic development issues. I have talked with him all the way through this process. He actually had hoped to work with this administration on health care and on health care legislation. He has been involved in health care all of his life. He has managed our State well. He has dealt with many challenging health care issues. Much has been documented about the travails our State has had as it relates to Medicaid and our desire to try to fix that. He has called this bill, which appears to be ready to pass this body, the mother of unfunded mandates. He has talked about the more than $750 million in cost this bill is going to cause the State of Tennessee to deal with at a time when they are hoping their State's revenues will be at 2008 levels by the year 2014.

Again, I will never understand why we have raided an insolvent entitlement to create a new entitlement, weakening Medicare. I will never understand why we have done that to create this bill. I will never understand why this body chose to create such a large unfunded mandate for States through the provisions we have put in place as it relates to Medicaid, telling States they have to raise the levels at which they insure citizens across their State to 133 percent of federal poverty.

There is no question this bill violates the law put in place in 1995.

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. CORKER. I thank the Chair.

I talked about the fact that it is a privilege to serve in this body. Generally speaking, people try to live up to the standards this body has set for all of us and that citizens across the country expect us to live up to. For that reason, I am going to raise a budget point of order. There is no question, per what CBO has said, the fact that this bill is going to cause cities and States to pay more for the health insurance of their employees—CBO has stated that clearly. There is no question this bill is going to cause States to have to utilize dollars that otherwise might be used for education or public safety.

I raise a point of order. Section 425(a)(2) of the Congressional Budget Act of 1974 makes it out of order to consider any legislation that contains an unfunded intergovernmental mandate in excess of the statutory limit unless the bill provides new direct spending authority or includes an authorization for appropriations in an amount equal to or exceeding the direct cost of such mandate in the Senate.

The pending bill includes an unfunded intergovernmental mandate in excess of the annual statutory limit of $69 million within the next 5 years. Therefore, I raise a point of order against the substitute amendment pursuant to section 425(a)(2) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I move to waive the point of order for consideration of the pending legislation and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays are ordered.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask my friend from Montana, Senator BAUCUS, to be alert because I want to raise a similar request to set aside. But before I do that, I want to explain why I am doing this. I worked for 6 years to pass the Congressional Accountability Act, which was signed into law by President Clinton in 1995. I worked so hard because I strongly believed there should only be one set of laws in this country.

Prior to 1995, there were two sets of laws—one for Capitol Hill and one for the rest of the country because Congress exempted itself. That is why, following on that practice of 1995, I offered an amendment during the Finance Committee markup to require that Members of Congress and congressional staff get their employer-based health insurance through the same exchanges as our constituents. That is something for which I also heard complaints from the grassroots of Iowa during my town meetings. I did offer that amendment, and it was adopted without objection.

But then after careful consideration and examination of the bill Senator REID put together—and this was done by the Congressional Research Service—it was revealed that my amendment was changed under this closed-door merger process. Something cute happened. Under the bill we now have before us, this requirement would not apply to staff for committees of the Congress or leadership offices, it would apply to Members and their personal staff but not leadership. That is a real cute thing, to give exemptions for some people on Capitol Hill but not for others.

I ask unanimous consent to have printed in the RECORD an analysis from the Congressional Research Service.

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

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, Dec. 2, 2009.

MEMORANDUM

To: Senate Finance Committee. Attention: Andrew McKechnie.

From: Ida Brudnick, Analyst on the Congress, Government and Finance Division; Todd B. Tatelman, Legislative Attorney, American Law Division.

Subject: Potential Statutory Interpretation of 1312(d)(2)(D)(ii)(II) of H.R. 3590, The Patient Protection and Affordable Care Act.

This memorandum responds to your request for a review and potential statutory interpretation of 1312(d)(2)(D)(ii)(II) of H.R. 3590, The Patient Protection and Affordable Care Act.[1] Specifically, you have asked whether the definition of the term ''congressional staff'' could be interpreted to exclude committee staff, leadership staff, or other employees of the Congress. The definition used by the bill covers ''all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.''[2] In addition, you have asked CRS to review the language used by S. 1796, America's Healthy Future Act of 2009, which was reported from the Senate Finance Committee.[3] S. 1796 used the term ''congressional employee,'' which it defined as ''an employee whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.''[4] Finally, you have requested that CRS examine what, if any, other Legislative Branch employees might be covered should language similar to that in S. 1796 ultimately be adopted.

Based on our review of the financial practices of the Congress with respect to payment of employees, the bill language, and applicable canons of statutory construction, it appears possible to argue that the definition of ''congressional staff' used by 1312(d)(2)(D)(ii)(II) excludes any staff not directly affiliated with a Member's individual or personal office. Should this interpretation be adopted by an implementing body or a court, it would appear that it would exclude professional committee staff, joint committee staff, some shared staff, as well as potentially those staff employed by leadership offices including, but not limited to, the Speaker of the House, Majority Leader of the Senate, Minority Leader of the House, Minority Leader of the Senate, as well as the Whip offices in both the House and Senate. Moreover, this interpretation would arguably exclude other congressional employees, for example, those employed by the Office of the House Clerk, House Parliamentarian, House Historian, Secretary of the Senate, Senate Legal Counsel, House and Senate Legislative Counsel offices.

LEGISLATIVE BRANCH APPROPRIATIONS ACCOUNTS

The legislative branch appropriations acts funds the: Senate; House of Representatives; Joint Items;[5] Capitol Police; Office of Compliance; Congressional Budget Office; Architect of the Capitol, including the Capitol Visitor Center; Library of Congress, including the Congressional Research Service; Government Printing Office; Government Accountability Office; and Open World Leadership Program.

Both the House and Senate portions of the annual legislative branch appropriations bills contain one line item that provides for salaries and expenses within Member offices. The House and Senate sections contain additional line items for employees of leadership offices, committees, and officers.

In the Senate, the Senators' Official Personnel and Office Expense Account provides each Senator with funds to administer a personal office. It consists of an administrative and clerical assistance allowance, a legislative assistance allowance, and an official office expense allowance. The funds may be interchanged by the Senator, subject to limitations on official mail. The FY2010 legislative branch appropriations act provided $422 million.

The Senate portion of the bill includes the following additional headings: Expense Allowances and Representation; Salaries, Officers, and Employees; Office of Legislative Counsel; Office of Legal Counsel; Expense Allowances for Secretary of Senate, Sergeant at Arms and Doorkeeper of the Senate, and Secretaries for the Majority and Minority of the Senate; and Contingent Expenses. The ''Contingent Expenses'' account includes funding for Inquiries and Investigations; Expenses of the United States Senate Caucus on International Narcotics Control; Secretary of the Senate; Sergeant at Arms and Doorkeeper of the Senate; Miscellaneous Items; and, Official Mail Costs.

Staff in personal offices in the House of Representatives are paid through funding provided for Members' Representational Allowances (MRA). The MRA, which was preceded by multiple allowances for each Member covering different categories of spending, was first established in 1996.[6] The FY2010 legislative branch appropriations act provided $660.0 million for MRAs.

The House ''Salaries and Expenses'' account provides funding under the following additional headings: House Leadership Offices; Committee Employees; Salaries, Officers And Employees; And Allowances And Expenses. Many of these categories include multiple line items. In FY2010, the ''House Leadership Offices'' heading provided funding for the: Office of the Speaker; Office of the Majority Floor Leader; Office of the Minority Floor Leader; Office of the Majority Whip; Office of the Minority Whip; Speaker's Office for Legislative Floor Activities; Republican Steering Committee; Republican Conference Committee; Democratic Steering and Policy Committee; Democratic Caucus; Nine Minority employees; training and program development—majority; training and program development—minority; Cloakroom Personnel—majority; and Cloakroom Personnel—minority. ''Committee Employees'' provides funding in separate headings for ''Standing Committees, Special And Select,'' and ''Committee on Appropriations.'' Funding for ''Salaries, Officers And Employees'' is divided among various financial, administrative, legal, ceremonial, and security offices, including, for example, the offices of the Clerk of the House, Chief Administrative Office, Sergeant at Arms, Inspector General, and General Counsel.

POTENTIAL STATUTORY INTERPRETATION

When interpreting the meaning of legislative language, courts will often use methods of statutory construction commonly referred to as ''canons,'' or general principles for drawing inferences about language. Perhaps the most common ''canon of construction'' is the plain meaning rule, which assumes that the legislative body meant what it said when it adopted the language in the statute. Phrased another way, if the meaning of the statutory language is ''plain,'' the court will simply apply that meaning and end its inquiry.[7] As the United States Supreme Court stated in Connecticut National Bank v. Germain:

[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there . . . .

When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.[8]

Applying the plain meaning canon to the language in H.R. 3590, it appears possible to argue that the phrase ''official office of a Member of Congress'' most naturally refers to Member's personal offices and, therefore, excludes other employees that a Member may utilize for other purposes. For example, Members who serve as committee chairman or ranking members may have staff affiliated with their service on a given committee. While the Member may have control over hiring, promotion, and even termination, those staff are paid by the committee and not the Member. Moreover, the Member's position on the committee is not commonly considered their ''official office,'' as committee assignments may change during a Congress and are determined by the chamber caucuses. Furthermore, it is worth noting that CRS has been unable to locate any previous use of the phrase ''official office of a Member of Congress'' in statute or appropriations laws.

Alternatively, applying the plain meaning canon to the language used in S. 1796, it appears possible to argue that this language includes committee staff, leadership staff and most other congressional employees. The language, unlike that in H.R. 3590, turns on who the disbursing agent of the funds is, rather than who the employer is. As a result, the language in S. 1796 appears to be much broader, as most ''congressional employees'' have their pay disbursed from either the Secretary of the Senate or the Chief Administrative Office (CAO) of the House, regardless of whether they are employed in a Member's personal office, by a committee, leadership official, or in another capacity by the Congress. Moreover, unlike the language in H.R. 3590, similar text to that in S. 1796 has been used previously to categorize congressional staff for salary and benefits purposes.[9]

OTHER POTENTIAL ISSUES

The language in H.R. 3590 raises additional possible concerns in light of the way that the House and Senate conduct business. For example, one potential issue with proposing different standards for employees in Member office accounts and employees paid through other House and Senate accounts arises from the use of shared staff. Although the House and Senate have different rules regarding shared staff, both chambers allow types of shared staffing arrangements that could result in an employee being both on the payroll of a Member office and another type of office.

In the Senate, 2 U.S.C. 61–la authorizes limited sharing of staff:

Notwithstanding any other provision of law, appropriated funds are available for payment to an individual of pay from more than one position, each of which is either in the office of a Senator and the pay of which is disbursed by the Secretary of the Senate or is in another office and the pay of which is disbursed by the Secretary of the Senate out of an appropriation under the heading ''Salaries, Officers, and Employees'', if the aggregate gross pay from those positions does not exceed the maximum rate specified in section 61–1(d)(2) of this title.

The Senate Handbook summarizes these laws, stating:[10]

An employee may be on the payroll of more than one Senator's office or on the payroll of a Senator's office and a leadership or administrative office, providing the aggregate pay received does not exceed the maximum annual salary for a Senator's office (2 U.S.C. 61–1a). An employee can only be shared between offices which are funded through the appropriations, ''Senators' Official Personnel and Office Expense Account'' (Senators' personal staff), and ''Salaries, Officers, and Employees''.

The House Member's Handbook, as compiled by the Committee on House Administration, states the following about shared employees:[11]

The term shared employee means an employee who is paid by more than one employing authority of the House of Representatives.

Two or more employing authorities of the House may employ an individual.

Such shared employees must work out of the office of an employing authority, but are not required to work in the office of each employing authority. The pay from each employing authority shall reflect the duties actually performed for each employing authority. The name, title, and pay of such an individual will appear on each employing authority's Payroll Certification. Such employees may not receive pay totaling more than the highest rate of basic pay in the Speaker's Pay Order applicable to the positions they occupy.

Employees may not be shared between a Member or Committee office and the office of an Officer of the House if the employee, in the course of duties for an Officer, has access to the financial information, payroll information, equipment account information, or information systems of either Member, Committee, or Leadership offices.

Applying the interpretation of H.R. 3590 suggested above, it is possible that certain shared staff could be covered by the provision, while other shared staff, even in the same office, would not be covered.

Because the bill does not propose a standard for determining coverage, it is potentially left to the implementing authority to establish such a standard. The implementing authority would appear to arguably have wide discretion in setting such a standard. As a result, it is not unreasonable to assume that an implementing authority could use a majority time or similar standard in making coverage determinations. In other words, shared employees would need to declare whom they spent a majority of time working for. If the staffer's declaration was the Member's official office, they could arguably be covered. On the other hand, if the majority of a staffer's time was spent on committee or leadership work, they may arguably not be covered. It is important to note that this is but one possible standard and that unless otherwise stated in the bill, it will up to the implementing authority to determine the standard.

The language of S. 1793 arguably avoids this problem as it appears to encompass all shared employees because they all receive salaries through either the CAO or Secretary of the Senate.

Another potential issue is the scope of the disbursing authority of the CAO of the House and the Secretary of the Senate. The CAO has served as the disbursing officer for the House of Representatives since 1995. The Secretary of the Senate serves as the disbursing officer for the Senate. Both of these officers are required to publish reports on disbursement.[12] Pursuant to the FY2010 legislative branch appropriations act, the Secretary and CAO are each responsible for the disbursements for two accounts included as ''joint items.'' Additional disbursements by the Secretary include salaries and expenses of the Joint Economic Committee and Office of Congressional Accessibility Services.[13] The CAO serves as the disbursing officer for the Joint Committee on Taxation and the Office of Attending Physician. In addition, the CAO and Secretary also have disbursing authority for a number of House and Senate revolving funds.[14] Thus, it appears possible to argue that, should the language of H.R. 3590 be interpreted as suggested above, these employees would be excluded from coverage. Conversely, should the language from S. 1793 be utilized, it would appear that employees of these committees would be covered as they are paid by the CAO or Secretary of the Senate.

Finally, there is the issue of what, if any, other entities or employees of the Legislative Branch the CAO and/or Secretary of the Senate may serve as the disbursing officers. Our research indicates that although the CAO and Secretary of the Senate served as the disbursing officers for the U.S. Capitol Police (USCP) prior to 2003, the Chief of the Capitol Police currently serves as the disbursing officer for the USCP.[15] Moreover, it appears that other Legislative Branch agencies such as the Architect of the Capitol and the Congressional Budget Office each have their own disbursing agents and do not use either the CAO or the Secretary of the Senate. In addition, it appears that the CAO and/or Secretary of the Senate may serve as the disbursing agent for some, but not all, congressional commissions. Thus, some employees of such commissions may be covered by the language used in S. 1793, however, none would appear to be covered by the language used in H.R. 3590.

ENDNOTES

[1] Patient Protection and Affordable Care Act, H.R. 3590, §1312(d)(2)(D)(ii)(II), 111th Cong. (2009).

[2] See id.

[3] America's Healthy Future Act of 2009, S. 1796, §2231(3)(C), 111th Cong. (2009).

[4] Id.

[5] In the FY2010 legislative branch appropriations act, these included the: Joint Economic Committee, Joint Committee on Taxation, Office of the Attending Physician, Office of Congressional Accessibility Services.

[6] Committee Order No. 41, effective September 1, 1995, in notes to 2 U.S.C. §57; P.L. 104–53, 109 Stat. 519 (Nov. 19, 1995); U.S. Congress, House Committee on Appropriations, Legislative Branch Appropriations Bill, 1996, report to accompany H.R. 1854, 104th Cong., 1st sess., H. Rept. 104–141 (Washington: GPO, 1995), p. 10; P.L. 104–186, 110 Stat. 1719 (Aug. 20, 1996); 2 U.S.C. §57b; P.L. 106–57, 113 Stat. 415 (Sept. 29, 1999).

[7] See Hartford Underwriters Insurance Co. v. Union Planters Bank, N.A., 530 U.S. 1 (2000); see also Robinson v. Shell Oil Co., 519 U.S. 337 (1997); Connecticut National Bank v. Germain, 503 U.S. 249 (1992); Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 300 (1989).

[8] Connecticut National Bank, 503 U.S. at 253–54 (citations and quotation marks omitted).

[9] See, e.g., 2 U.S.C. §60a–1 (2006); 2 U.S.C. §60j (2006); 2 U.S.C. §130b (2006); 2 U.S.C. §1301 (2006); 2 U.S.C. §1977 (2006); 5 U.S.C. §5306 (2006); 5 U.S.C. §5515 (2006); 18 U.S.C. §207 (2006).

[10] U.S. Senate, Committee on Rules and Administration, Senate Handbook, version of Nov. 2006, 1V–31.

[11] U.S. House of Representatives, Member's Handbook, available at, http://cha.house.gov/staff.aspx.

[12] 2 U.S.C. §§104a and 104b.

[13] P.L. 111–68, 123 Stat. 2030, Oct. 1, 2009.

[14] For additional information, see: CRS Report R40939, Legislative Branch Revolving Funds, by Ida A. Brudnick and Jacob R. Straus.

[15] P.L. 108–7, Feb. 20, 2003, 117 Stat. 366; 2 U.S.C. 1907.

Mr. GRASSLEY. This carve-out creates a double standard and is totally

unacceptable. This amendment goes beyond just going where my original amendment went to cover all people on Capitol Hill. The amendment I am asking consent for would also include the President, Vice President, political appointees, and senior-level staff of the executive branch. It is only fair that if this bill becomes law, these leaders should themselves be subject to the reforms that make our constituents go through the exchange.

I ask unanimous consent to set aside the pending amendment in order to offer amendment No. 3178 which is at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. GRASSLEY. Mr. President, Democratic leadership and the White House have spent months talking about accountability. With this objection, the majority will not even consider an amendment to make sure the White House and all Members employed on Capitol Hill, not just those in our personal offices, live under the same new health care system the rest of the country lives under. That sure doesn't sound like accountability to me.

There is widespread agreement that the health care system in this country has serious problems. Costs are rising at three times the rate of inflation. Many Americans are uninsured. Millions more fear losing their insurance in a weak economy or because of preexisting conditions. Doctors are ready to close their doors over high malpractice costs and lower government reimbursements, and we do not do anything in this bill about high malpractice costs.

Something has to be done, everyone seems to agree. But tomorrow the Senate will vote on a bill that makes a bad situation worse. It is unfortunate that we are voting on a bill that a significant majority—61 percent—of Americans oppose. The American people, providers, advocacy groups as well, are simply reacting to the fact that this bill slid rapidly down the slippery slope to more and more government control of health care.

It contains the biggest expansion of Medicaid since 1965. It creates a long-term care insurance program called the CLASS Act that the CMS Actuary says runs a significant risk of being unsustainable, and one of the most significant Members of this body referred to it as a Ponzi scheme similar to what Madoff did. It imposes an unprecedented Federal mandate for coverage backed by the enforcement authority of the Internal Revenue Service. It increases the size of government by $2.5 trillion when fully implemented. It creates dozens of new Federal bureaucracies and programs to increase the scope of the Federal role in health care. That is a lot of power over people's lives concentrated in the Federal Government, and there are 1,697 delegations of authority to the Secretary of HHS to do things beyond authorities specifically given in this legislation.

The excesses of this bill appear willfully ignorant of what is going on in the rest of the economy outside of health care. These excesses make it far worse than doing nothing.

At this point in our Nation's history, we are facing very challenging economic times. We have seen the auto industry go into bankruptcy. We have seen banks shutter their doors. The chart behind me shows how the Federal debt has increased by $1.4 trillion since inauguration. The chart also shows the growing amount of debt the Federal Government is taking on. The amount of increased debt added just since inauguration puts $11,000 more of debt on each household, and that total debt now exceeds $12 trillion for the first time in history.

At the beginning of this debate, one of the key promises of health care reform was that it would bring down health care costs. This needs to be done before health spending sinks the Federal budget and saddles taxpayers. I have a chart that illustrates the upward expenditures of health care costs by $160 billion over the next decade, and that comes from this bill. The red area on this chart is the net additional Federal health spending according to not this Senator but the Congressional Budget Office.

Americans have rightly lost faith when, in the face of the current economic crisis, Congress thinks this $2.5 trillion restructuring of the health care system is a good idea. From rationing care to infringing on the doctor-patient relationship, this government-run system will guarantee U.S. taxpayers a staggering tax burden for generations to come.

When the debate began last year, interested legislators of both parties set forth benchmarks that were at the time no-brainers and still are. But this bill does not conform. Health care reform should lower the cost of premiums. It should reduce the deficit. Now, this bill does over the 10-year window, but if you look at when the program really starts, 4 years from now, and look ahead 10 years at that time, you will find it does not. It should bend the cost curve of health care the right way, but it does not do that. The Reid bill does not do any of these things we set out to do at the beginning of the debate.

As we end this debate, I urge my colleagues to listen to the American people. The Reid bill is the wrong direction.

Mr. President, with widespread agreement that our health care system has serious problems, why do we have a partisan debate?

There is a column from the Financial Times by a commentator, Clive Crook, that sheds some light on the cause of the partisanship.

Mr. Crook, a Brit, is sympathetic to the goals and methods of my friends on the other side. But, as one who knows a system of the universal coverage our friends on the other side seek, he is sober about the consequences.

I ask unanimous consent that a copy of Mr. Crook's article entitled ''The Honest Case for a Bungled Health Care Reform,'' be printed in the RECORD.

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

[From the Financial Times, Dec. 20, 2009]

THE HONEST CASE FOR A BUNGLED HEALTHCARE REFORM

(By Clive Crook)

The US system of government has a lot in its favour, in my view, but if you wanted to argue the opposite, the fiasco of healthcare reform has it all.

The measure being fought over in the Senate—if a bill gets passed, ordeal by House-Senate conference comes next—is detested with equal passion by left and right. A majority of the public is now opposed as well. Even its supporters do not like it all that much. Yet if the system fails to spit this thing up for the president's signature, the country will be deemed ungovernable and the Obama administration will be pronounced dead. Expect the rending of garments either way.

It does not matter that conservatives oppose this reform. Of course they do. Conservatives are unmoved by the plight of the uninsured, want to block this administration's domestic initiatives regardless, and are incapable of uniting behind an alternative proposal. They have nothing to offer on the issue.

It does not matter that the loony left of the Democratic party opposes this reform either. In fact, that is a plus. Progressives who want to kill the most far-reaching US social reform in decades because it would send more customers, public subsidy in hand, to private insurance companies are as stonehearted on this matter—and as far from understanding the concerns of most voters—as their hard-right enemies. Their opposition is an endorsement.

What matters is the failure to rally the country behind an initiative that, at the outset, voters strongly supported. A telling instance of the administration's ineffectiveness as a spokesman for its own project came just last week. Howard Dean, speaking for the progressive wing of the Democratic party, said the reform would do more harm than good—that this was the policy the insurance companies had dreamed of. White House spokesmen rushed to explain that, on the contrary, the insurance companies hate the bill.

Think about that. At the beginning Barack Obama promised people that if they liked their existing insurance arrangements—which are mostly private, of course—nothing would change. This entire effort is based on preserving, by popular demand, a mostly private model of insurance. And here is the administration endorsing the progressives' view that private insurers are evil, and citing the companies' opposition to the reform as an argument in its favour.

The White House cannot have it both ways. If progressives are right about the wickedness of private insurance, they are right that the whole reform is misconceived. The administration cannot appease leftist opinion and also make the strongest possible case for this reform to the middle of the electorate. Since it cannot appease leftist opinion in any case, why even try? Make a virtue of opposition from that quarter. Mr Obama's reluctance to cross that line has hobbled his administration from the start.

Be that as it may, the healthcare bill in its current form is a mess—and an unpopular mess to boot. Popular fears that the bill will drive up insurance premiums and add to public borrowing are probably justified. The measure is timid about changing incentives to promote efficiency: it proposes lots of experiments, but little compulsion.

Adverse selection is likely to be a bigger problem than the reformers say: new rules would stop insurance companies denying coverage to the sick, and the quid pro quo of mandatory insurance may be insufficient to offset this. If the insurers' risk pools deteriorate, premiums will rise. Deep cuts in Medicare, the public insurance programme for the elderly, are needed to balance the books, but are unlikely to materialise in full. Higher taxes as well as higher premiums are the likely result of this reform.

Would it therefore be better to abandon the effort altogether and start again? One can think of simpler, better blueprints, but the politics that led the country here would still be the same—and so would the economic constraints. It is delusional to suppose that you can significantly widen access to healthcare at no net public cost. You cannot both transform a system and leave its basic structure unaltered. Trying to squirm around these unavoidable realities has brought the effort to its current pass. Why expect things to be different next time?

In the end, I think, everything depends on the weight one attaches to achieving security of coverage as quickly as possible. In my view, this is the overriding consideration. Abandoning the effort now might postpone that goal for another decade or more. The country should regard this as unacceptable. Once the reform is law, though, the real work begins. Getting a grip on costs will be even more urgent than it is already—especially when you recall the broader fiscal calamity that awaits the country during the next decade.

The honest case for reform along the lines of the Senate bill is not that it fixes US healthcare; still less that, as the White House blithely maintains, it alleviates the country's fiscal distress. The truth is, it will create more problems than it solves. But the one big thing it gets right—the assurance of affordable health insurance for all Americans—is of surpassing importance.

Enacting this reform is not the end of the healthcare argument, but the beginning. If it does pass, it may well be looked back on as a mistake once its financial implications sink in. Yet the principle of universal coverage will have been accepted, and with luck there will be no going back. The price will be high, but is worth it.

Mr. GRASSLEY. I am going to try and break through the partisan wall and connect with my friends on the other side.

Costs are rising at three times the rate of inflation.

Many Americans are uninsured, millions more fear losing their insurance in a weak economy or because of preexisting conditions.

Doctors are ready to close their doors over high malpractice costs and low government reimbursement rates.

Something has to be done. Everyone agrees on that much.

But tomorrow, the Senate will vote on a bill that makes a bad situation worse. Mr. Crook describes the state of play well:

[t]he health care bill in its current state is a mess—and an unpopular mess to boot.

It is unfortunate that we are voting on a bill that a significant majority—61 percent—of Americans oppose.

The American people, providers, and advocacy groups are simply reacting to the fact that this bill slid rapidly down the slippery slope to more and more government control of health care.

Mr. Crook states:

Popular fears that the bill will drive up insurance premiums and add to public borrowing are probably justified. The measure is timid about changing incentives to promote efficiency: it proposes lots of experiments, but little compulsion.

All through this process, it is as if Republicans and Democrats have been living in parallel universes. Republicans have focused on the elements of the policy and asked tough questions about the cost of the change.

Mr. Clive captures that sobering reality:

Adverse selection is likely to be a bigger problem than reformers say: new rules would stop insurance companies denying coverage to the sick, and the quid pro quo of mandatory insurance may be insufficient to offset this. If the insurers' risk pools deteriorate, premiums will rise. . . . Higher taxes as well as higher premiums are the likely result of this reform.

Members on this side of the aisle, at each stage of the process, have focused on this reality. While recognizing the worthy goal of expanding coverage, we have been concerned about the effect on the currently insured.

This bill contains the biggest expansion of Medicaid since it was created in 1965.

It cuts Medicare by a staggering half a trillion dollars over the next decade.

It creates a long-term care insurance program called the CLASS Act that the CMS Actuary says runs a significant risk of being unsustainable.

It imposes an unprecedented Federal mandate for coverage backed by the enforcement authority of the Internal Revenue Service.

It increases the size of the government by $2.5 trillion when fully implemented.

It creates dozens of new Federal bureaucracies and programs to increase the scope of the Federal role in health care.

That is a lot of power over people's lives concentrated in the Federal Government.

And the excesses of this bill appear willfully ignorant of what is going on in the rest of the economy outside of health care.

The cost of these excesses make this bill far worse than doing nothing.

This summer, official scorekeepers fleshed out the size of this cost of achieving the other side's noble, but costly goal of expanded coverage. As on who agrees with the goal of universal coverage, Mr. Crook acknowledges it:

It is delusional to suppose that you can significantly widen access to healthcare at no net public cost. You cannot both transform a system and leave its basic structure unaltered. Trying to squirm around these unavoidable realities has brought the effort to its current pass.

And yet, despite these cold hard facts, our Democratic friends continue to quest for the Holy Grail of expanded coverage. Mr. Cook captures that sentiment:

In the end, I think, everything depends on the weight one attaches to achieving security of coverage as quickly as possible. In my view, this is the overriding consideration. Abandoning the effort now might postpone that goal for another decade or more. The country should regard this as unacceptable.

Does anyone doubt this is where our Members on the other side are coming from? Some are explicit about it, like my friend, the majority whip. I recognize that transparency. But to them the price—for everyone else, the insured, businesses, Federal and State taxpayers, and Medicare patients—is secondary.

Go back and look at the many pages in the RECORD and you will see two themes prove my point. One is the Democratic theme. Most of the debate from those on the other side has been about what they want this bill to do. They want it to expand the role of the Federal Government in health care. Hence, the prideful references to past efforts, successful and unsuccessful, in that regard. They want it to solve all problems the uninsured face. They recite case after case of uninsured and underinsured. The stories they tell are compelling. On our side, we see the point the other side is making.

Go look at all those pages of debate again. You will see another theme. It is the Republican theme. That theme is not about what we want the bill to do for the uninsured. It is about understanding and explaining what the costs and benefits of this bill are to all Americans: Insured and uninsured, young, middle-aged, and elderly, suburban, and rural. In this regard, Republicans reflect where the vast majority of Americans are right now.

Mr. Crook, again, firmly where our friends on the other side are, captures the polarity of the debate:

Once the reform is law . . . the real work begins. Getting a grip on costs will be even more urgent than it is already—especially when you recall the broader fiscal calamity that awaits the country during the next decade.

Mr. Crook is correct. At this point in our Nation's history, we are a Nation facing very challenging economic times. We have seen the auto industry go into bankruptcy. We have seen banks shutter their doors.

The Federal debt has increased by $1.4 trillion since inauguration. This chart shows the growing amount of debt that the Federal Government is taking on. Just the amount of increased debt added just since the inauguration is $11,535 per household.

It now exceeds $12 trillion for the first time in history.

In these perilous times, Mr. Crook notes the public is extremely sensitive to the fiscal consequences of the bill before the Senate. And that is where Republicans have focused all along. Mr. Crook describes the tension between

the goal he shares with our Democratic Members and the public's focus on the questions Republicans have asked for almost a year now. On one side of that tension are the answers to Republican inquiries:

The honest case for reform along the lines of the Senate bill is not that it fixes U.S. healthcare; still less that, as the White House blithely maintains, it alleviates the country's fiscal distress. The truth is, it will create more problems than it solves.

On the other side of that tension is the goal Democratic Members seek. Their goal of trying to achieve ''universal coverage'' overrides all other considerations. As Crook puts it ''of surpassing importance.''

And, if the other side prevails, what does it mean for the future. From Mr. Crook, who shares my Democratic friends' goals, I quote:

Enacting this reform is not the end of the healthcare argument, but the beginning. If it does pass, it may well be looked back on as a mistake once its financial implications sink in. Yet the principle of universal coverage will have been accepted, and with luck there will be no going back, The price will be high, but is it worth it?

What is that price, Mr. President? To a certain extent, what we do know is that it is high for everyone, but the uninsured population. To the extent we don't and cannot know, it is likely to be higher.

From rationing care to infringing on the doctor-patient relationship, this government-run system will guarantee U.S. taxpayers a staggering tax burden for generations to come.

When the debate began last year, interested legislators of both parties set forth benchmarks that were no-brainers. Health care reform should lower the cost of premiums. It should reduce the deficit. It should bend the growth curve in health care the right way.

How does the Reid bill measure up?

CBO tells us premiums rise.

What about health spending? As this chart here illustrates, this bill bends the Federal spending curve further upward by $160 billion over the next decade. The red area on this chart is that net additional Federal health spending according to the Congressional Budget Office.

How about deficit reduction? Americans have rightly lost faith when in the face of the current economic crisis, Congress thinks this $2.5 trillion restructuring of the health care system is a good idea.

The Reid bill doesn't measure up on any of those things.

The unfortunate state of this partisan floor debate goes to the tension Mr. Crook identified:

I was raised by FDR Democrats. From a lifetime of public service, I know a little bit about my Democratic friends' political DNA. A big part of that political DNA is one principle. It is this. Expanding health insurance trumps everything else.

I respect and understand that view.

Where we, on our side, differ, is whether it is an absolute or relative principle. Does the principle of universal coverage trump everything else? Does it trump cost containment? Does it trump the tax burden it brings with higher Federal and State taxes?

Does it trump the financial burden it places on small businesses and other employers? Does it trump the financial burden related premium cost increases will bring? Does it trump the negative impact it will have on the Medicare Program that our seniors count on?

For those of us, on this side, expanding coverage is a worthy goal. But it is not an absolute goal. We prefer to expand coverage through better access and affordability. But that goal of expanded coverage must be balanced with other goals.

We view it as relative to those other goals. It is relative to whether the related Federal and State tax burden is bearable. It is relative to realistic cost containment reforms. It is relative to whether the cost burden on employers, especially small businesses, is bearable. It is relative to whether the impact on Medicare services and solvency is bearable.

The American people have tuned into this debate. They don't like the partisanship. They agree with all of us that reform is needed. They have been telling us that expanding coverage is important, but not absolute.

I urge the other side to make the honest case for reform to the American people. That will lead to a bipartisan response, process, and product. Americans don't want bungled health care reform.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I want to associate myself with the comments of the Senator from Iowa. In fact, I would like to incorporate them by reference in my comments because they were so on point on the issue of substance as to what this bill does not do and what it does do. In both instances, he is absolutely right. The bill does not accomplish what we set out to do, which was cover all Americans, which was to bend health care costs down, which was to let you keep your insurance if you had it and not have your premiums go up. It does just the opposite.

It is a $2.3 trillion increase in health care spending—$2.3 trillion. That is how much it grows the government. Health care costs go up by over $230 billion in the first 10 years. We know premiums are going up.

Now we have this interesting issue involving Medicare. We have heard a lot of talk from the other side of the aisle about how Medicare is not being cut, and if it is being cut, it is just being used to help a new entitlement, and therefore it should be counted as part of the basic effort to bring fiscal responsibility to this bill. Well, that is hokum, just pure unadulterated hokum. Medicare is being cut by $500 billion the next 10 years, $1 trillion over the first 10 years of full implementation, and $3 trillion over the first 20 years. And then the money is being spent not to make Medicare more solvent, not to make Medicare stronger so it does not have a huge unfunded liability, it is being spent to create this brandnew entitlement—an entitlement that is massively going to expand the size of government by $2.3 trillion.

The American people understand this does not work. Common sense kicks in with the American people. They know—they know—from common sense that you cannot possibly cut Medicare by $3 trillion, spend it on a new entitlement, and have fiscal responsibility around here and claim Medicare is better off for it. And they do not have to know it through common sense; all they have to do now is listen to the CBO, which has now written us a letter. Let me quote from this letter because it is a devastating letter. I just wish this bill was going to be on the floor long enough for it to actually be open to public view and have some sunshine on it. It is being rushed through here just before Christmas so nobody can see what is actually in it. But here is what CBO says:

The key point is that the savings to the HI trust fund—

That is the Medicare trust fund—

under the [bill]—

They use the acronym for it—

would be received by the government only once, so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.

Exactly what this bill does: It spends the Medicare money on other programs.

They go on to say—and this is CBO speaking, not me:

To describe the full amount of the [Medicare] trust fund—

Again, they use ''HI trust fund''—

savings as both improving the government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count—

I repeat: ''double count''—

a large share of those savings and thus overstate the improvement in the government's fiscal position.

The simple fact is, what is happening here is a scam, a pure and simple scam on the American people and especially on the seniors in this country because Medicare is being cut by billions of dollars in order to create a new entitlement, and it is going to have a massively negative effect on the fiscal health of this Nation because we know that new entitlement will not be fully funded and we know Medicare has $35 trillion of unfunded liability out there.

If you are going to cut Medicare by $3 trillion, as the other side of the aisle is proposing, if you are going to eliminate Medicare Advantage for a large number of seniors—except those who live in southern Florida—then that money ought to be used to reduce the debt so that the Medicare system becomes more solvent. It is that simple in the

long run. It is not being done here. CBO has pulled the curtain back from this game and made it very clear that it is not going to be done. Of course, nobody is going to learn this because they are going to pass this bill through here before anybody can figure that out and even listen to CBO.

It is just an outrage the way this bill was put together. We all know that. Dark of night, back rooms, deals everywhere, only a few people in the room; those people who really drafted the bill, very small crowd. Nobody else was allowed in. No cameras, no information about what was going on. And then you would bring in a Senator here and a Senator there and say: What do you need from me to get your vote, and something would appear in the bill, I guess. Then the bill arrived here.

It is not unusual around here to have earmarks in bills. If they were within the budget and the budget was reasonable, I would even ask for earmarks. But this goes way beyond the concept of earmarks—this bill. This bill fundamentally changes policy—that has never happened around here—for one part of the country versus another part of the country. In other words, all of America—all American seniors—will have to live by massive cuts in Medicare Advantage. That is a pretty good health insurance program for a lot of seniors; I think there are 11 million seniors on that program. All of America has to live by that policy except for three counties in southern Florida. All of America has to live by an insurance situation where insurance companies are taxed at a certain rate, except insurance companies in Nebraska. All of America has to live by Medicaid reimbursement rates, which are going to cost the States billions of dollars—New Hampshire, $120 million over 10 years—except for Vermont and Massachusetts. And then there is a special exemption in here for New York and a couple of other States—Louisiana, $300 million. That is a total corruption of the concept of policy. Policy in America is supposed to cover everyone. When the Federal Government acts, it is supposed to be a policy that affects everyone equally. You are not supposed to have little cadres of exceptions for those policies.

This bill has been called historic—historic—by my colleagues on the other side of the aisle. Well, the most historic thing about this bill is the fundamental damage it has done to the concept of open, thorough, and public debate that was at the heart of the thought process of Adams and Madison, our Founding Fathers, when they created the checks and balances system, with the Senate at the center. The Senate was supposed to be the place where bills come to the floor, they are open to debate, there are amendments, and you have a process where things get aired and there is sunshine. No sunshine here—no, not at all. This is not majority rule, as conceived by our Founding Fathers in Philadelphia. This is closer to the single-party state system we see in Europe—or have seen in Europe. The minority is ignored, and there are no checks in this process on the autocratic rule of the majority. The irony, of course, is that the bill never went through the public's consideration, never went through committee, and was drafted behind closed doors and has been on the floor for less than 72 hours. As a result, we are delivered a health care bill that has been corrupted by special interests, especially on the issue of policy, that is extraordinarily expensive and has a massive expansion in the Federal bureaucracy, to which, if you applied the word ''reform,'' you would have to call Bernie Madoff ''honest.'' The terms just simply do not apply here.

Unfortunately, this bill in its present form, I believe, will lead to fundamental harm to the fiscal health of this Nation. There is no question in my mind but that if we load $2.3 trillion of cost onto our government, expand our government in this manner, our children are going to be passed a nation where they have less opportunity than our generation had. Further, I do not think it is going to help the Nation's people, our people relative to their health care. I think it will lead to a significant contraction of the quality of health care, especially for seniors but for all Americans, as we lose the innovation, the energy for innovation, and the resources for innovation. As a result, this bill, in my opinion, should be sent back to the drawing boards and should be reconsidered.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Texas.

Mr. CORNYN. Mr. President, over the last few days, as we have dug into this bill and the process by which it was written behind closed doors, we have discovered the bill is chock-full of sweetheart deals.

When Americans voted to change Washington last year, they did not think it would be politics as usual here, but unfortunately it has sunk to a whole new level. It is painful for me to read the editorials in hometown newspapers back in Texas and elsewhere around the country to see what editorial opinion and other opinion leaders are saying about the process by which this bill was written, but let me read a couple of lines from the Fort Worth Star-Telegram:

> The tawdry use of earmarks to bury the doubts of recalcitrant moderate Democrats was a cynical display of ends-justifies-the-means horse-trading that President Barack Obama campaigned against as a Senator and a candidate.
>
> This was an administration that was elected on the campaign slogan: ''Change You Can Believe In.''

But when David Axelrod, one of the masterminds of the campaign, one of the advisers to the President, was asked about that, he said:

> Well, this is just the way it is. This is the way Washington works.

I, for one, want to stand up and say this is not the way it should work. I know Presidents campaign for office saying they are going to change Washington, but the truth is the hardest fight is to keep Washington from changing you. Unfortunately, it seems as though that is what has happened here.

Rather than listening to the American people, the creators of this health care bill started with the special interests first. That is where the meetings behind closed doors started—with the pharmaceutical industry, to cut a deal with them; with the insurance industry, to cut a deal with them. The insurance industry will get $476 billion worth of tax credits from this bill alone, and the hospital industry, and the list goes on and on.

Colleagues will stand up and tout the endorsement of organizations such as AARP that has backed nearly $½ trillion in cuts out of Medicare because, as it turns out, they are in the insurance business and they can sell more Medigap policies when they cut Medicare Advantage, as this bill does.

In order to get the 60 votes for cloture on the motion to proceed, we didn't hear high-minded and idealistic debates about what is the right policy for this country when it comes to reforming our health care system. If this bill could have passed or mustered 60 votes because it was such great policy and the American people were embracing it, you wouldn't need to make all the sweetheart deals that were made behind closed doors to induce recalcitrant Senators to vote for cloture, not because they think it is the right policy but because their State got a special deal.

We know well about what happened in Louisiana and now in Nebraska, but of course there were special deals for Vermont that included $600 million in the managers' package. We know that in California, the so-called ''Botax'' has been replaced now by another tax on tanning beds at the insistence of one of the businesses named Allergan out in California which led the lobbying campaign to defeat the cosmetic surgery tax.

We have heard this is all about keeping insurance companies honest, but the fact is there were special deals here for insurance companies in Nebraska—what has been coined the ''Omaha Prime Cuts,'' the carve-out from new fees for Mutual of Omaha and other insurance companies doing business in Nebraska that no other insurance company in the Nation is going to benefit from.

Then there is the so-called ''Gator Aid'' special deal for insurance companies in Florida.

There is a $100 million hospital deal in Connecticut—something called ''U Con.''

And, of course, there were deals for Montana that were slipped in the bill. Although, you know what, no one actually had the courage to mention the name of the State. You had to start to dig into it, like the Louisiana deal. At

least the Senator from Nebraska was brazen enough to actually have Nebraska listed by name. The rest of them you have to dig out by trying to figure out: Who benefits from this deal and who doesn't?

I want to ask: What about the other States? My State, under this unfunded mandate in this legislation, will have to pay the State taxpayers $21 billion in unfunded Medicaid liabilities over the next 10 years. We didn't make a sweetheart deal to vote for bad policy because my State could get some extra money, because I think that is unprincipled. I wouldn't do it. But what about the other States that voted for the bill without getting the sweetheart money, such as Arkansas, which faces an unfunded Medicaid mandate of $335 million; Colorado, $624 million; California, $3.5 billion—a State that is already nearly bankrupt. This is going to make their situation enormously worse, as Governor Schwarzenegger has acknowledged.

I am not saying other States should somehow get the sweetheart deals that were negotiated for these other votes, but I am saying this entire bill is a bad deal and we need to kill it and start over, strip out all the earmarks, and bring the kind of transparency the President campaigned on and that I think the American people have a right to expect.

These sweetheart deals are egregious in and of themselves. What is worse—and I have been on the telephone talking to constituents back in Texas—there are some people who paint with such a broad brush, they say, Well, we think all of you are corrupt, because this verifies some of the most cynical suspicions that people have about government. I, for one, resent it. We have many honest and honorable people who serve in public life, and this taints us all with a broad brush and, simply stated, makes me furious. I resent it. I resent those who brought us to this position, because I think it sullies the reputation of the Senate.

In a moment I am going to offer a point of order, but let me first note that one of Senator REID's first acts as majority leader was to pass the Honest Leadership and Open Government Act. Let me tell my colleagues the name of that again. It is called the Honest Leadership and Open Government Act.

In 2007, President Obama, then Senator, said:

> To earn back the trust to show people that we are working for them and looking out for their interests, we have to start acting like it.

Unfortunately, for the American people, Washington has not yet started to act like it.

This landmark ethics reform legislation required Senators to publicly disclose earmarks and who requested them. Senator GRASSLEY and I have both made parliamentary inquiries about whether this provision has been complied with, which is now contained in rule LXIV of the Senate Standing Rules, and we found that the majority leader has so far not complied with these public disclosure rules that he himself championed. Since my friends on the other side of the aisle don't seem to care a lot about this, we have to insist that this provision be complied with. In a moment I will raise a point of order about this violation of the Senate rules. We need to force the Members of this body to be honest about who has required special favors and earmarks, tax treatments and benefits in this bill.

I have a parliamentary inquiry.

According to rule XLIV, paragraph 4(a) of the Standing Rules of the Senate states:

> If during the consideration of a bill or joint resolution, a Senator proposes an amendment containing a congressionally directed spending item, limited tax benefit, or limited tariff benefit which was not included in the bill or joint resolution as placed on the calendar or as reported by any committee, in a committee report on such bill or joint resolution, or a committee report of the Senate on a companion measure, then as soon as practicable, the Senator shall ensure that a list of such items (and the name of any Senator who submitted a request to the Senate for each respective item included in the list) is printed in the CONGRESSIONAL RECORD.

I would simply inquire of the Chair: Is the Chair aware whether this list of congressionally directed spending items and their Senate sponsors has been printed in the CONGRESSIONAL RECORD?

The PRESIDING OFFICER. The Chair is not aware if such a disclosure has been made.

Mr. CORNYN. Mr. President, under those circumstances, I raise a point of order that the amendment is not in order since it violates the provisions of Senate rule XLIV, paragraph 4(a).

The PRESIDING OFFICER. Paragraph 4(a) of rule XLIV requires that the Senator who proposes an amendment containing any congressionally directed spending item ensure as soon as practicable that the list of such items be printed in the CONGRESSIONAL RECORD. The provision is not enforceable and no point of order lies.

Mr. CORNYN. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I move to table the appeal of the ruling of the Chair and I ask that the vote occur upon the expiration of all postcloture time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays are ordered.

The Senator from Missouri is recognized.

Mr. BOND. Mr. President, last week I had a little fun with an old holiday classic: Clemente Clark Moore's ''The Night Before Christmas'' which you can still find on YouTube, by the way. While I meant this parody to bring some much needed levity to the process, the points I made are very serious. For the American people, there is nothing more serious than the reform bill we are considering today.

The majority's so-called reform package will restructure one-sixth of our struggling economy, drive health care costs higher, force millions off their current plan, put health care decisions in the hands of bureaucrats, cut seniors' Medicare, raise taxes, and hurt small businesses and cost jobs.

There is nothing funny about this health care bill. Americans faced with rising premiums asked for bipartisan reform to make health care costs affordable. But the Democratic bill fails to give the American people what they want, which is why Senator REID has written bill after bill behind closed doors with no Republicans. The majority party doesn't want Americans to know they are getting a lump of coal for Christmas until it is too late.

But Leader REID has outdone himself on the latest deal he cut. His is Chicago-style politics at its worst: a 2,700-page backroom deal written behind closed doors, full of political payoffs, vampire votes in the dead of night, all to pass a health care bill before Christmas that the American people don't want, that will increase health care costs, raise taxes, and cut Medicare for seniors, operating under an arbitrary deadline which seems designed to minimize transparency, understanding, and public involvement.

But I want the American people to know what they are getting from the majority this holiday season. I don't want my good friend from Nevada to be known as Hurry-up-and-Reid, so let's talk about what is in this bill.

Under the majority's latest backroom deal, Americans are getting more taxes. This deal imposes about $500 billion in fees and taxes on individuals, families, and businesses.

Under the majority's latest backroom deal, Americans who own small businesses—the backbone of our economy—are getting more taxes and costly regulation. For small businesses who employ a large number of those currently uninsured, this bill does nothing to help make insurance more affordable or accessible.

The bill contains a costly employer mandate which destroys job creation opportunities for employers. It doesn't take a rocket scientist or an economist to figure out that the multiple penalties small businesses will pay for full-time workers will result in these companies forcing workers from full time to part time and discouraging new hiring. Companies are going to have to think twice before hiring new full-time

workers if it is going to cost them a pretty penny, at a time when the companies are trying to pinch pennies.

There is also a paperwork mandate which is a new administrative burden on small business which, according to the National Federation of Independent Business, will impose a direct $17 billion burden on businesses.

Unfortunately for small businesses, unlike larger businesses or unions, the news gets even worse. Unlike large businesses, most small businesses can only find and purchase health insurance in the private insurance marketplace. That means to insure their employees, small businesses have to go to the big insurance companies on which the Reid bill is placing hefty new fees. Most folks don't have a problem with putting more fees on insurance companies. It seems to be politically popular, but it is economics 101 that these insurance companies are not going to suck it up and swallow all of these new fees themselves. CBO has stated so explicitly. Instead, they will pass the fees on to small businesses that will have no choice but to purchase their services.

One of the gimmicks the majority is using to hide the cost of the bill is a weak tax credit that is supposed to help small businesses in purchasing health insurance.

The hitch is that small businesses will only receive the full tax benefits if they have less than 10 employees. If they hire that 11th employee, the tax credit is reduced. At 25 employees the tax credit is no longer available.

In addition, a small business can only get full credit if it pays its employees an average of $25,000 a year or less. So no salary increase, no wage increases.

In other words, in what is already a horrible economic situation, where businesses are shuttering their doors and workers are being laid off, we are actually going to punish small businesses for hiring new employees and paying workers more.

This tax credit is also a case of bait and switch. If your small business happens to fit in the narrow qualifications, it is only temporary—after 6 years the credit goes away—but the mandates and burdens on small businesses stay.

That is why the National Federation of Independent Businesses, in their strong opposition to the majority's plan, stated that it:

> will not only fail to reduce and control the constantly climbing healthcare costs small business owners face, but it will result in new and greater costs on their businesses. Reform that was supposed to be all about small business has turned out to be more about big business and other late-night dealmakers, all at the expense of our nation's job creators.

That is not the kind of reform small businesses can afford.

Under the majority's latest backroom deal, Americans are getting hundreds of millions of dollars in cuts to critical health care programs, such as $118 billion in cuts to Medicare Advantage, as well as cuts to hospitals, nursing homes, home health agencies, and hospices.

When government forced through massive cuts to home health in the late 1990s, the unintended consequences were costly and tragic in Missouri. A significant number of agencies closed, forcing patients into more expensive care.

One example is in one county in Missouri, the county's only home health agency closed. The provider had 40 patients they served in homes at a cost of $400,000 a year. When those patients were cut off, 30 were forced into hospitals or nursing homes. The cost skyrocketed for these patients to a staggering $1.4 million on the government tab or a $1 million larger hit to taxpayers. We don't even know what happened to the other 10 patients who lost this critical care.

This is not the kind of reform Americans can afford. Under the majority's latest backroom deal, States are also getting hit hard. For example, the majority's big plan is to expand Medicaid, but their big plan for paying for it is to put the burden on the States; that is, unless you were able to cut a backroom deal like Nebraska, which leaves other States holding the bag for their costs.

That brings me to my next point. Under the majority's latest backroom deal, Americans are forced to fund a number of political payoffs. There are such a large number of political payoffs, which is why this bill is starting to be dubbed ''cash for cloture.''

There is a carve-out for the insurance industry in Michigan and Nebraska. There is an extra $300 million in Medicaid funding for Louisiana, now known as the ''Louisiana purchase.'' What was the mysterious $100 million for a ''health care facility'' turns out to be a hospital in Connecticut.

Sadly, this isn't even the entire list of sweetheart deals in REID's latest backroom deal. That is not the kind of reform Americans want.

With Chicago politics and backroom deals such as this, it is no surprise that poll after poll makes clear the American people are saying no to the Democrats' proposals.

The latest poll released by Quinnipiac University found that American voters ''mostly disapprove'' of the plan—53 to 36 percent.

A recent Washington Post/ABC News poll, detailed in a Post article, found the American public generally fearful that a revamped system would bring higher costs while worsening the quality of their care.

The American public is absolutely right. Americans don't want this bill. In the classic tale called ''The Christmas Carol,'' Scrooge is given the opportunity to see the ghosts of Christmas past, present, and future. While the Democrats are trying to paint the GOP as ''Scrooge,'' they would do well to look at what the Christmas future would look like if their bill were to pass.

We don't want to wake up next Christmas and have Americans paying more for health care or being unable to get it or losing their jobs. But under the majority's latest backroom deal, that is the future.

Next Christmas, we don't want to see small businesses that still cannot afford to offer health insurance to employees or, worse, small businesses struggling to keep their doors open because of the costly new burdens in this bill. Under the majority's latest backroom deal, that is the future. A year from now we don't want to hear that seniors have lost access to services and care. Unfortunately, that is the Christmas future we face if the bill passes. Christmas future—several years from now—could look even worse.

That is why in my ''The Night Before Christmas'' parody it was not funny as much as it was scary and true when I said:

> But I could not catch the holiday spirit myself; how far away from common sense we've been led, our kids and our grandkids have their futures to dread.

In the last year, my colleagues on this side of the aisle watched with dismay as the wheels have come off Federal spending; a trillion dollars of taxpayer money here and a trillion dollars there. Got a problem? Throw money at it. Will historians look back and say the 111th Congress is where the decline of American economic power began in earnest? I don't want that on my watch. We can reform health care without spending trillions of our children's and grandchildren's money.

If the majority were to bring up a bill that made health insurance more affordable for small business owners to purchase for their employees, that eliminated frivolous lawsuits, that emphasized wellness and prevention programs, they could go a long way to solving the problems of the uninsured and underinsured, and they could probably get 80 or 90 truly bipartisan votes. Instead, what they want, apparently, is to take over health care, at a tremendous cost to individuals, families, and businesses, and to increase the dependency on the Federal Government. That is not a Christmas present I want, and I don't want to give it to the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. I thank the Senator from Missouri for his comments. He has been chairman of the Small Business Committee. Small business plays a huge role, the biggest role, in the economy of the United States.

We could have, and we should have, spent the last 4 weeks talking about what needed to be done with small business. It is a big issue and it is important. I appreciate the emphasis the Senator from Missouri has put on it through the years.

I want to talk about the whole bill today, because a quote I ran into was that ''absolute power corrupts—absolutely.''

The Democrats have absolute power right now. Under the biggest requirement for votes, it only takes 60 in the

Senate. The Democrats have 60 votes. In the House, they have a clear majority of the votes, and that is all that is required to pass a bill there. They are under the impression that they won the election, so they get to write the bills. Never before has that happened on a major piece of legislation.

Everyone in this country should be upset when the majority refers to bills like ending slavery and civil rights and Medicare and welfare reform and paint the Republicans as the opposition. Substantial numbers on both sides of the aisle made those bills possible. I am pretty sure people remember that it was Lincoln, a Republican, who led the fight to abolish slavery. Leader Mansfield gives Everett Dirksen, a Republican from Illinois, credit for the leadership that made the civil rights bill possible. In every instance, until now, Republicans have had a leadership role and both sides have substantially participated in making and voting for those laws. In politics, that is how it has to work for our country to be successful.

Only one party, and especially one person, ''gains'' from this so-called health care reform bill. The President will be able to show how he was able to accomplish something against all odds. Why against all odds? Because the Democrats of the Senate wrote off the 40 votes of the Republicans. That is right, we were written off from the start. Oh, yes, we were allowed to participate to see if we couldn't be persuaded to take what the Democrats wanted to write and foist on America. Anything short of buying the whole Democratic plan and we could be and would be thrown overboard because our votes aren't needed. We were thrown overboard with the excuse of phony time deadlines, when it was needing to do just the Democratic ideas.

Senator Kennedy and I were able to work through an incredible number of bills because we recognized that both sides had good ideas and both sides had bad ideas. The trick was to take as many of the good ideas as possible and have the courage to tell some on both sides that their idea wasn't ready for prime time. With evenhandedness and both leaders promoting the surviving ideas, many of the bills were unanimous on both ends of the building. Were there flaws in some of the bills? Yes. No bill is perfect. On the simplest solutions, nobody, particularly those who have never been involved in that business or that area, can comprehend all of the unintended consequences. But when it is both parties acting in concert, when problems come up, solutions are sought. When bills are done by one party—and no all-encompassing bill has been done this way ever before—when the bills are done by one party, those inevitable flaws result in justified finger pointing.

You can't change such a basic part of the economy—something that affects every single person—by ignoring many who have experience in the business and in the area and not expect major flaws. The American people even recognize the flaws—already. Of course, everybody has some knowledge of health care, since it affects us all. When those flaws develop, and they will, in an avalanche, everybody will point to one party, the Democratic party, and say why did you have to prove your power? Why didn't you work to get it right? Why did you have to polarize the issue to show you were the only ones concerned about people?

Of course, the Republicans will be compelled to pull out the proof that we warned about the flaws but were ignored, because the Democrats are focused on proving that they won the election. Normally, there is plenty of blame to go around, but not on this one.

The Republicans were thrown overboard. That only left the 60 votes needed to pass the bill. Well, you cannot get 60 people to agree on 100 percent of anything. You could not get 60 people to agree on a place to eat dinner. But all 60 had to agree. That is where you have to move away from legislating and into dealmaking. That is when you have to start playing games like ''Let's Make a Deal'' or ''The Price is Right.'' I don't want to downplay how masterful the leader was. Everyone has to be in awe of his ability to give much to a few and none to many and get 100 percent to stay on what they can see from the polls is a sinking ship. How can a person discriminate between Members, between States? Usually, we do earmarks in appropriations bills. Now we are starting to do them in policy bills. Why? To buy votes. The leader is buying votes with taxpayer money for things the majority of the taxpayers will never benefit from.

I don't have time to go into the way the groups have made hidden deals for this bill, such as the American Medical Association and big pharmaceuticals.

I don't have time to talk about how taxes will go up and premiums will be up. As an accountant in the Senate, you are going to be shocked by the numbers—but not until it is too late. I don't have time to explain to you how the Democrats are planning to spend the same money twice. That is a pretty neat trick, too.

I don't have time to explain how the government will tell you what the minimum amount of insurance is. It is more insurance than most Americans have right now. If you don't find a way to buy this better package, there will be fines for you to pay. If the government can force you to buy insurance and force you to buy what Washington thinks is the best, what is next? Will they be able to tell you what kind of car to buy? Remember, the government now owns a car company.

I hope I have time to remind you we all agree that Medicare is going broke. But this bill takes almost $500 billion of Medicare money and uses it to do new programs—new programs outside of Medicare—that will go on forever and need money forever, even after Medicare is broke. They even recognize the problem and form a commission to tell us where to cut Medicare. That is so they can shift the blame to a commission. But the difficulty is they have made special deals that take away the commission's ability to make cuts—except to the benefits of seniors. They are the only ones left standing. There will have to be cuts—real cuts.

They made a deal. I saw a letter from those who said they support the bill. For a while, they had a whole year's worth of change in their pay. Now they have 2 months where they will be paid what they think is less than adequate but OK to stay in business. Evidently, they think that even though the Senate turned it down, because they couldn't afford to pay for it, $250 billion in adjustments to what they get paid because it wasn't paid for, and we are going to come back and do that without it being paid for. It could have been paid for out of the Medicare money if they were using it for Medicare only.

I ask unanimous consent to have printed in the RECORD the Effects of the Patient Protection and Affordable Care Act on the Federal Budget and the Balance in the Hospital Insurance Trust Fund.

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

CBO has been asked for additional information about the projected effects of the Patient Protection and Affordable Care Act (PPACA), incorporating the manager's amendment, on the Federal budget and on the balance in the Hospital Insurance (HI) trust fund, from which Medicare Part A benefits are paid. Specifically, CBO has been asked whether the reductions in projected Part A outlays and increases in projected HI revenues under the legislation can provide additional resources to pay future Medicare benefits while simultaneously providing resources to pay for new programs outside of Medicare.

HOW THE HI TRUST FUND WORKS

The HI trust fund, like other Federal trust funds, is essentially an accounting mechanism. In a given year, the sum of specified HI receipts and the interest that is credited on the previous trust fund balance, less spending for Medicare Part A benefits, represents the surplus (or deficit, if the latter is greater) in the trust fund for that year. Any cash generated when there is an excess of receipts over spending is not retained by the trust fund; rather, it is turned over to the Treasury, which provides government bonds to the trust fund in exchange and uses the cash to finance the government's ongoing activities. This same description applies to the Social Security trust funds; those funds have run cash surpluses for many years, and those surpluses have reduced the government's need to borrow to fund other federal activities. The HI trust fund is not currently running an annual surplus.

The HI trust fund is part of the Federal government, so transactions between the trust fund and the Treasury are intragovernmental and leave no imprint on the unified budget. From a unified budget perspective, any increase in revenues or decrease in outlays in the HI trust fund represents cash that can be used to finance

other government activities without requiring new government borrowing from the public. Similarly, any increase in outlays or decrease in revenues in the HI trust fund in some future year represents a draw on the government's cash in that year. Thus, the resources to redeem government bonds in the HI trust fund and thereby pay for Medicare benefits in some future year will have to be generated from taxes, other government income, or government borrowing in that year.

Reports on HI trust fund balances from the Medicare trustees and others show the extent of prefunding of benefits that theoretically is occurring in the trust fund. However, because the government has used the cash from the trust fund surpluses to finance other current activities rather than saving the cash by running unified budget surpluses, the government as a whole has not been truly prefunding Medicare benefits. The nature of trust fund accounting within a unified budget framework implies that trust fund balances convey little information about the extent to which the Federal government has prepared for future financial burdens, and therefore that trust funds have important legal meaning but little economic meaning.

THE IMPACT OF THE PPACA ON THE HI TRUST FUND AND ON THE BUDGET AS A WHOLE

Several weeks ago CBO analyzed the effect of the PPACA as originally proposed on the HI trust fund (http://www.cbo.gov/ftpdocs/107xx/doc10731/Estimated_Effects_of_PPACA_on_HI_TF.pdf). CBO and the staff of the Joint Committee on Taxation (JCT) estimated that the act would reduce Part A outlays by $246 billion and increase HI revenues by $69 billion during the 2010–2019 period. Those changes would increase the trust fund's balances sufficiently to postpone exhaustion for several years beyond 2017, when the fund's balance would have fallen to zero under the assumptions used for CBO's March 2009 baseline projections.

The improvement in Medicare's finances would not be matched by a corresponding improvement in the Federal government's overall finances. CBO and JCT estimated that the PPACA as originally proposed would add more than $300 billion ($246 billion + $69 billion + interest) to the balance of the HI trust fund by 2019, while reducing Federal budget deficits by a total of $130 billion by 2019. Thus, the trust fund would be recording additional saving of more than $300 billion during the next 10 years, but the government as a whole would be doing much less additional saving.

CBO has not undertaken a comparable quantitative analysis for the PPACA incorporating the manager's amendment, but the results would be qualitatively similar. The reductions in projected Part A outlays and increases in projected HI revenues would significantly raise balances in the HI trust fund and create the appearance that significant additional resources had been set aside to pay for future Medicare benefits. However, the additional savings by the government as a whole—which represent the true increase in the ability to pay for future Medicare benefits or other programs—would be a good deal smaller.

The key point is that the savings to the HI trust fund under the PPACA would be received by the government only once, so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs. Trust fund accounting shows the magnitude of the savings within the trust fund, and those savings indeed improve the solvency of that fund; however, that accounting ignores the burden that would be faced by the rest of the government later in redeeming the bonds held by the trust fund. Unified budget accounting shows that the majority of the HI trust fund savings would be used to pay for other spending under the PPACA and would not enhance the ability of the government to redeem the bonds credited to the trust fund to pay for future Medicare benefits. To describe the full amount of HI trust fund savings as both improving the government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count a large share of those savings and thus overstate the improvement in the government's fiscal position.

Mr. ENZI. Mr. President, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD a December 22 article from the Casper Star Tribune, by nationally syndicated columnist Cal Thomas.

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

[From the Casper Star Tribune, Dec. 22, 2009]

SNOW JOBS

(By Cal Thomas)

There were two snow jobs in Washington over the weekend. One came from the sky as a record December snowfall blanketed the city. The other came from Capitol Hill where the Senate labored to cover up the real effects of its massive ''health care reform'' bill.

All you need to know about this monstrosity is contained in a paragraph from page four of the Congressional Budget Office's 21-page letter to Senate Majority Leader Harry Reid: ''According to CBO and (the Joint Committee on Taxation's) assessment, enacting the Patient Protection and Affordable Care Act with the manager's amendment would result in a net reduction in federal budget deficits of $132 billion over the 2010–2019 period. In the subsequent decade, the collective effect of its provisions would probably be continued reductions in federal budget deficits if all of the provisions continued to be fully implemented. Those estimates are subject to substantial uncertainty.''

So uncertain are they that the CBO later noticed an error in its calculations and a day later on Sunday, Dec. 20 delivered another letter to Senate leaders that said: ''Correcting that error has no impact on the estimated effects of the legislation during the 2010–2019 period. However, the correction reduces the degree to which the legislation would lower federal deficits in the decade after 2019.''

The public is being asked to swallow a bill that most senators haven't read, contains cost projections that are substantially uncertain, and touts outcomes that can be reasonably predicted to be nothing that resembles what Democrats are promising.

Senator Ben Nelson, Nebraska Democrat and a supposedly staunch pro-lifer, agreed to vote for the bill after, as the Washington Post put it, he got ''abortion language'' he wanted and ''also secured other favors for his home state.'' That's what it's ultimately about: getting favors for your home state so you can be re-elected. Re-election trumps the Constitution and the will of the people, most of whom oppose the Senate and House health care ''reform'' bills.

Even one's stand on a moral issue like abortion can be compromised for the right deal. Inserting language that supposedly restricts federal funding of abortion in order to provide political cover to Sen. Nelson turns out to be a sham. According to House Minority Leader John Boehner, whose office wrote a critique of Reid's 383-page Manager's Amendment, ''Everyone enrolled in these (health) plans must pay a monthly abortion premium and these funds will be used to pay for the elective abortion services. The Reid amendment directs insurance companies to assess the cost of elective abortion coverage and charge a minimum of $1 per enrollee every month.''

Some defenders of this deal argue that federal money will be magically segregated when it comes to abortion and that money going to abortion providers will be for other ''services.'' Even if this were true—and there is little truth coming out of Washington these days—that is like saying the government won't pay for the actual procedure, but it will subsidize other costs, such as the electric bill and the rent on the clinic's office space.

Republicans have done a good job highlighting the multiple flaws in the Senate bill (and the similarly long House bill). Most importantly for seniors, the Senate bill slashes hundreds of billions of dollars from Medicare to pay for a new-government program. It includes massive tax increases on individuals businesses, which means businesses are unlikely to hire workers at a time of double-digit unemployment. It includes a massive new entitlement program—the CLASS Act (short for Community Living Assistance and Support Services)—which Budget Committee Chairman Kent Conrad has described as ''a Ponzi scheme of the first order'' and which was recently opposed by a bipartisan majority, including 11 Democrats.

To their credit, Republicans have stood together in opposition to this health care fiasco. Their pledge to voters in the November 2010, election should be to repeal the measure and to offer real insurance and health care reform that will not include an abortion provision, new taxes, more entitlements and a bigger bureaucracy.

Yes, it can be done.

He says:

There were two snow jobs in Washington over the weekend. One came from the sky as a record December snowfall blanketed the city. The other came from Capitol Hill where the Senate labored to cover up the real effects of its massive ''health care reform'' bill.

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

Mr. ENZI. Mr. President, I ask unanimous consent to have printed in the RECORD a Wall Street Journal article called ''ObamaCare's Longshoremen Rules.''

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

[From the Wall Street Journal]

OBAMACARE'S LONGSHOREMEN RULES

President Obama praised the Senate yesterday for clearing a 60–40 procedural vote on his health plan in the dead of night and ''standing up to the special interests who've prevented reform for decades and who are furiously lobbying against it now.'' They're furiously lobbying all right—not against ObamaCare but for the sundry preferences in the Senate bill.

Start with the special tax carve-outs included in the ''manager's amendment'' that Harry Reid dropped Saturday morning. White House budget director Peter Orszag has claimed that the bill's 40% excise tax on high-cost insurance plans is key to reducing health costs. Yet the Senate Majority Leader's new version specifically exempts ''individuals whose primary work is longshore work.'' That would be the longshoremen's

union, which has negotiated very costly insurance benefits. The well-connected dock workers join other union interests such as miners, electrical linemen, EMTs, construction workers, some farmers, fishermen, foresters, early retirees and others who are absolved from this tax.

In other words, controlling insurance costs is enormously important, unless your very costly insurance is provided by an important Democratic constituency.

The Reid bill also gives a pass on the excise tax to the 17 states with the highest health costs. This provision applied to only 10 states in a prior version, but other Senators made a fuss. So controlling health costs is enormously important, except in the places where health costs need the most control.

Naturally, the Secretary of Health and Human Services will decide how to measure ''costs'' and therefore which 17 states qualify. (Prediction: Swing states that voted for Mr. Obama in 2008 or have powerful Democratic Senators.)

These 11th-hour indulgences make a hash of Mr. Orszag's cost-control theories and Mr. Obama's cost-control claims. Their spin has been that wise men would convene and make benevolent decisions about everyone's health care based only on evidence and the public good. But as the Reid bill shows, politics will always dominate when Washington is directing a U.S. health industry that is larger than the economy of France.

Or take a separate $6.7 billion annual ''fee'' on insurance companies that is supposed to be divvied up by market share. This beaut doesn't claim to be anything more than a revenue grab, but at the behest of Michigan Senator CARL LEVIN Democrats chose to apply it to some insurers and not others. Select companies incorporated as nonprofits will be exempt, even though nonprofits typically have net income exceeding for-profit companies because they pay no taxes.

Since this new tax will merely be passed through as higher premiums, the carve-outs mean that cost increases will be even higher for workers whose employer contracts with a nonfavored insurer. These gyrations to tax law are so complex that it still isn't clear which nonprofits would qualify, but the protections are sure to apply to certain insurers in Michigan, Illinois and California. The poor saps stuck with higher premiums everywhere else can thank Mr. Levin and Senators Debbie Stabenow, Dick Durbin, Barbara Boxer and Dianne Feinstein.

The press corps is passing this favoritism off as sausage-making necessary to ''make history,'' but that's an insult to sausages. What this special-interest discrimination illustrates in how all health-care choices will soon be made as Washington expands its political control over one-seventh of the U.S. economy.

Mr. ENZI. It points out how there will be an excise tax in 17 States with the highest costs, but yet we made an exception for a number of unions, particularly the longshoremen's union not being subject to some of the taxes in the bill.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from a number of contractors.

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

DECEMBER 21, 2009.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: We are writing to express our strong opposition to language contained in the Manager's Amendment to H.R. 3590, which excludes the construction industry from the small business exemption contained in the bill. We regret that this is our first opportunity to address this issue, though the fact that the Manager's Amendment was made public less than two days before the first vote on the matter has increased the difficulty of playing a constructive role in the legislative process.

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

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

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

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

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

Sincerely,

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

Mr. ENZI. It points out how most businesses have an exclusion of 50 employees or less, but they have singled out the construction industry with an exemption of 5 employees.

Mr. President, I ask unanimous consent to have printed in the RECORD a Wall Street Journal article that covers that same topic.

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

[From The Wall Street Journal, Dec. 22, 2009].

SENATE HEALTH BILL UNFAIR TO CONSTRUCTION INDUSTRY—NAHB

''In their rush to pass massive health care reform before Christmas, Senate Democrats included a last-minute provision overtly targeting the construction industry, including home builders,'' the National Association of Home Builders said in an e-mail alert to its 200,000 members Monday. ''In order to find the 60 votes needed to pass health-care reform, a provision was slipped into the health-care bill to exclude the construction industry from the small business health-care exemption contained in the bill.''

Employers with more than 50 employees would be required to offer insurance or pay a fine of up to $750 per employee if any employee obtains federal subsidies for coverage. But the builder group says the bill singles out the construction industry by ''only giving construction firms an exemption from the bill's employer mandates if a firm employs less than five people. Every other industry is granted an exemption if they have fewer than 50 employees.''

Many home builders are small, private organizations working to survive the worst downturn in decades. More than half of the NAHB's members have fewer than five employees. ''You might as well take an industry that has been a cornerstone of the economy and kick it while it's down,'' said Jerry Howard, the Washington-based group's chief executive. ''It makes no sense . . . and it's really bad public policy.''

The NAHB is urging its members to quickly contact their senators to derail the measure. The Senate, however, is marching toward a Christmas Eve vote. The Senate version needs to be reconciled with a House-passed bill, but is likely to form the core of any final legislation presented to President Barack Obama for his signature.

If the Senate bill passes and goes to a conference committee with the House, as expected, the House is likely to do most of the reconciling. That's because Senate Majority Leader Harry Reid—after battling for weeks to get the minimum number of votes needed to avert a Republican filibuster—has little room to maneuver. The House passed its version on Nov. 7 on a 220–215 vote.

President Obama hopes to sign a final bill before his State of the Union address after the first of the year so he can turn to other issues, in particular the economy and jobs.

Mr. ENZI. Mr. President, the Department of Labor recently reported that our Nation's unemployment rate is 10 percent. In States such as Michigan, California, Rhode Island, and Nevada, the average rate is over 12 percent.

Millions of Americans have lost their jobs and millions more go to work every day worried about keeping the job they have. Businesses of all sizes are struggling to keep their doors open and are finding it harder and harder to make ends meet.

Unfortunately, the policies in the Reid health care reform bill will only make matters worse for America's businesses and the workers they employ.

When I am home in Wyoming, which is nearly every weekend, my constituents ask me: What does health care reform mean for me? Unfortunately I

have to tell them that if the Reid bill is passed, their jobs and their paychecks will be in danger.

The bill being pushed through the Senate imposes $28 billion of new taxes on businesses that will eliminate jobs and reduce wages.

Many business owners cannot provide health insurance. They cannot afford insurance for their workers or for their own families. They have looked at their bottom lines and understand that they cannot afford to buy insurance and continue to stay in business—health insurance simply costs too much.

Rather than addressing the issue and enacting reforms that would lower health insurance costs, the majority's health care bill instead increase the taxes that these businesses will have to pay.

These are the same businesses that are already barely making it. These are the same businesses that are laying off workers to try to survive.

We know what the new employer taxes in the Reid bill will do, and who will ultimately have to pay the price for this misguided policy. These taxes will eliminate jobs and be paid for on the backs of American workers.

The Congressional Budget Office has told us that the new job killing taxes in the Reid bill will lower wages across this country by $28 billion.

We have shed 3.5 million jobs since January of this year and the average workweek is now down to 33 hours for the American worker. Yet the bill before us today will actually make that situation worse.

The workers who will be the hardest hit by the job killing tax in the Reid bill are those already making the lowest wages and with the fewest job opportunities. According to the Congressional Budget Office, employer mandates like those included in the Reid bill would quote ''reduce the hiring of low-wage workers.''

Low-income workers are already hit hard by the current economic conditions. These low-income workers typically have less formal education and find it even more difficult to find work. Workers without a high school diploma have a 50 percent higher unemployment rate than workers with higher education levels.

Harvard Professor Kate Baicker reported that an employer mandate, like the one in this bill, will mean that ''workers who would lose their jobs are disproportionately likely to be high school dropouts, minority and women''.

This is in part due to the fact that many of these workers are only making minimum wage. Their employers cannot reduce their wages, so consequently they will either have to reduce the number of hours these employees work or simply get rid of them to make up for the costs of the next tax.

Employer mandates and the job killing taxes that go with them are paid on the backs of low-income workers. The job killing taxes in this bill fall disproportionately on the people who struggle the most—putting the jobs they have at risk and making it even more difficult to find a new one.

At a time when Americans across this country are looking for signs of an economic recovery, the Senate should be debating a bill that helps the situation, rather than a bill that makes it worse.

The job killing tax in the Reid bill will also discourage employers from hiring new workers and growing their business. Any small business that currently has 50 or fewer employees will do everything they can to avoid hiring that 51st employee in order to avoid these new taxes.

I filed an amendment to the Reid bill that would protect businesses and their workers from the worst effects of the job killing tax. My amendment would simply suspend the employer mandate any time the unemployment rate goes above 6 percent.

Between 1999 and 2008, the unemployment rate was about 5 percent. But when our economy began to struggle, we saw the unemployment rate rise to a point that now we are seeing more than 10 percent unemployment.

It seems only logical to me that if our economy is struggling and people are losing their jobs, we would want to protect workers from having their wages cut and even losing their jobs because of the job killing tax in the Reid bill.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I now yield to Senator MURRAY from Washington—I suggest she be recognized to speak for 7 minutes.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, the health insurance system in our country has been broken for a very long time. For far too long, families and businesses across my home State of Washington have been forced to make some tough decisions, spending nights struggling or whispering after their kids go to bed about how to pay the bills and praying they do not get sick.

I am proud to say that is about to change. Over the course of months of work on this issue, I have noticed it is very easy for this debate to tip into the realm of abstractions, to focus on numbers and charts—to devolve into petty partisanship or ideological inflexibility. Too often real people get left out of this conversation—mothers and fathers who are scared they are going to lose their jobs; families scared they are going to lose their insurance; people with preexisting conditions who cannot get coverage and who know they are one hospital visit away from bankruptcy; small business owners who cannot afford another premium increase and who want to cover their employees but they cannot keep up with the rising costs; senior citizens who are forced to cut their pills in half to make them last twice as long; people who pay their premiums and like their doctors, but when they get sick they find out that some of the most personal choices in their lives are being made by their insurance companies.

These are the real people who need real health insurance reform. Most Americans seem to fall into one of those categories.

Over the past few months, I have tried to ensure that the struggles of people in my home State are represented in this debate. I told my colleagues the stories that I have received in over 10,000 letters and e-mails and at roundtables and on the phone, stories told to me too often by men and women with tears in their eyes or a quiver in their voice, people who are not looking for a handout or a free ride but who are pleading for a fair system—a system that works for families or businesses like theirs.

I shared the story of Janet from Seattle. She lost her job, lost her insurance, and succumbed to cancer after being forced to wait 6 weeks to see a specialist after her throat began to hurt. Janet's story is why we need to reform the health insurance system.

I told my colleagues the story of Joseph and his wife who was denied an MRI after complaining of pain in her chest, and only after 3 years of fighting her insurance company were they able to determine she had breast cancer and begin the treatment she desperately needed. Their story is why we need real health insurance reform.

I told the story of Mark Peters from Port Townsend who owns a small technology company. He told me he is being crushed by skyrocketing premiums. He offers health insurance to his employees. He does the right thing. But he told me he just got a letter from his insurance company raising his rates by 25 percent. Mark told me his small business cannot sustain increases such as that; no business can. But in our current health insurance system, small businesses are often at the mercy of the insurance companies. This company's story is why we need to reform the health insurance system.

I told the story of Patricia Jackson from Woodinville who has private insurance but cannot keep up with the rising premiums. To provide care for her family of four, Patricia told me she paid $840 a month in 2007. The next year it was $900 a month, and then $1,186 a month, and again her rates were raised recently to a hike of $1,400 a month. That is an increase of over 66 percent in just 3 years. Patricia and her family's story is why we need to reform the health insurance system.

I told my colleagues the story of Marcelas Owens. Marcelas Owens is a young man I have thought about every single day since I actually met him back in June. Marcelas is only 10 years old. He has two younger siblings whom you can see in the photo with him. This is his grandmother. He and his

siblings have been through a lot. Two years ago, their mother Tifanny lost her life because she was uninsured. She was 27 years old. Tifanny was a single mom who worked as an assistant manager in a fast food restaurant. She had health care coverage through her job. But in September of 2006, Marcelas told me that she got sick, she lost her job, she lost her insurance, and ultimately she lost her life. Marcelas and his sisters lost their mom.

Health insurance reform is coming too late for Tifanny. But her story and the story Marcelas tells me why we need to reform health insurance.

Real people, real stories, real needs—that is why we are here now and that is why we have to get this done. When we pass this bill, Americans will be able to shop for coverage that meets their needs. For the first time, insurance companies will have to compete for our business, for the business of the American people.

When we pass this bill, we will end discrimination based on preexisting conditions and make it illegal to drop people when they get sick.

When we pass this bill, we are going to give tax credits to small businesses and help the self-employed afford care.

When we pass this bill, we are going to make preventive services free, end lifetime coverage limits, and cap out-of-pocket fees. We are going to extend the life of Medicare without cutting guaranteed benefits while shrinking the doughnut hole gap in drug coverage for our seniors.

When we pass this bill, people such as Mark and Patricia and Joseph and his wife will be helped. The memories of people such as Janet and Tifanny will be honored. That is why we need to reform the health insurance system.

I thank the more than 10,000 people in my home State of Washington who sent me their personal health care stories. Their input has helped guide me as I worked on this bill and served as a constant and welcome reminder about who I am here to represent.

I urge my colleagues to stand with these families and with the families of the small business owners in their States and across the country who desperately need this reform.

Health insurance reform has been a long time coming. But today we stand closer than ever to making it a reality.

I yield the floor.

Mr. BAUCUS. Mr. President, I yield 18 minutes to the Senator from Minnesota, Mr. FRANKEN.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, we have been working on this bill for a long time, and I am proud of what we are doing here. Every Senator has had his or her chance to speak up and help make this a better bill or to make their case against the bill.

Unfortunately, it has been a bit rancorous, and I think that is too bad. There have been accusations flying back and forth. Umbrage has been taken. This place has become an umbrage factory. I even took umbrage once, and I feel badly about that. My colleagues across the aisle have taken great umbrage because we have accused them of using scare tactics.

May I point out that the title of the op-ed of my friend from Oklahoma in last Wednesday's Wall Street Journal is ''The Health Bill Is Scary.'' Exhibit A in our case that the other side has, indeed, used scare tactics—the op-ed entitled ''The Health Bill Is Scary.''

Seriously, when you are talking about people's health, there is more than enough fear to go around. Instead of scaring people, we should be debating the merits of the proposal in front of us. We have heard a lot of stories. We all know our health care system is screwed up. We can all agree on that. The most important things to know about the bill are what is actually in it and will it help.

You see, this bill is too important for us to hide it from our bosses, the American people. We have a duty to let the American people know exactly what we are doing on their behalf. That is why I have been so disappointed when my friends and colleagues have said—and I actually agree with them—that Americans are confused about what is in this bill. They would not be so confused if everyone was being honest and forthright about what is in the bill.

I have heard a lot of misinformation over the last several weeks: some on the airwaves and, unfortunately, some right here on the Senate floor. Very early Monday morning, I heard a colleague on the floor say this bill is going to add $2.5 trillion to our deficit. That is simply made up. The nonpartisan Congressional Budget Office, the official scorekeeper of Congress, said the bill reduces the debt by $132 billion in the next 10 years. They estimate the bill lowers the debt by at least five times that amount in the following decade.

CBO is like a referee, and we all agree to let the referee make the call about what things will cost. It is completely possible we will disagree on different calls the referee makes during the game. I do not always agree with CBO. For example, I do not think they score prevention as saving enough. I may be wrong or I may be right, but I accept the CBO score because the CBO is the ref. We would not walk away from a basketball game saying we won if the other team scored more points and just say: It is bad refereeing, we really won.

So we may not like how CBO scores certain provisions, but it is all we can go by. These are the rules of the games to which we agreed. So if you are talking on the Senate floor, you cannot just say this bill will add $2.5 trillion to the debt when it is not at all what the CBO says.

No wonder people are confused. People who are trying to kill health reform are deliberately confusing Americans, and it is working. A recent study found that more than half of respondents to health care polls say they do not know enough about the bill to give a hard opinion. Then opponents use the fact that people are confused as a reason to draw out this process.

The American people are confused and opponents of this bill want more time to confuse them even more.

I have heard a colleague on this floor say this bill would not add one day—he said ''not one day''—to the solvency of Medicare. That is simply not what the nonpartisan Chief Medicare Actuary found. This is the same Actuary who is often cited by opponents of the bill. He has determined that it keeps Medicare solvent for an extra 9 years.

Colleagues on my side are often making statements that might come under the heading of overselling, saying that for most people premiums will go down. It is true for many Americans, the out-of-pocket costs for better, more secure health insurance will go down. But it is also true that most health care premiums will continue to go up. It is just that they will go up at a slower rate than they would have if this bill were not adopted. That is a really good thing.

This bill is going to pass. So we want people to understand what is happening. We are slowing the growth and the cost of health care. I want to be crystal clear because I do not want to confuse people either. So today I am going to try to cut through all this rhetoric and tell you about what is actually in the bill and how it will affect you.

When I first spoke on this floor on health reform, I related three questions that I hear from most Minnesotans. I heard them when I was at the State fair, when I spoke with tea-partyers. I heard them in Minneapolis and St. Paul. I heard them in Willmar—all across the State—and on the Iron Range.

First, they say health care costs too much; what are we going to do about that.

Second, they ask: What am I going to do if I get sick or my spouse or one of my kids get sick and then someone in my family has a preexisting condition and then I lose my job? How am I going to get health insurance then?

Third, they ask: If something bad happens to me, am I going to lose everything; am I going to go bankrupt?

Well, now that we are about to pass this bill, let me take each question and tell you how this will affect you; what this bill will do and what it will not do. Remember, this legislation is an important first step but not the final word.

First, what does this bill do about health care costing so much? Let's take a look at a point Dr. Atul Gawande, a Harvard physician, makes. He points out that almost half this bill comprises programs to try out different ways to lower costs and improve quality. Some have criticized this as a

weakness in the bill, but I think it is a strength. Gawande makes the point that when a system is as complex as ours, there is no one-time fix. There is not one simple solution. As much as I wish it were true, the whole country probably can't be like the Mayo Clinic or HealthPartners or other insurance companies in my State or Inter-Mountain in Utah or Geisinger in Pennsylvania. So one size may not fit all.

But these projects and pilots will generate solutions to fix the biggest problems in health care, such as paying doctors fee for service, which rewards volume and not value. For example, thanks to the efforts of MARIA CANTWELL and my colleague, AMY KLOBUCHAR, and others, for the first time ever we will include what is called the value index in the Medicare payment structure. Doctors and States that provide high-quality care at a reasonable cost will no longer be punished for that. Instead, they will be rewarded for being effective partners in their patients' care.

The bill also calls for all health insurance companies to use a single uniform standard for claims, as we do in Minnesota now, which will save our State $60 million just this year. There are lots of ideas, and we don't know which ones yet will work the best. But the point is, all the key elements are in this bill.

One program in the bill I am particularly proud of is the Diabetes Prevention Program at CDC. I worked on these provisions with my Republican colleague, DICK LUGAR from Indiana, who is a hero of mine. The Diabetes Prevention Program is based on what we have learned in Minnesota and in Indiana—prediabetics can avoid becoming diabetic if they get access to community services such as nutritional counseling and gym memberships. These are proven to cut the risk of developing diabetes in half, so people can live healthier lives and their health care costs less. We will replicate this program across the country.

We will also guarantee routine checkups and recommended preventive care, such as colonoscopies and mammograms, are covered by all insurance plans at no cost. No copays for preventive care.

I am also happy the bill requires a minimum medical loss ratio, something I have been fighting for with Senator ROCKEFELLER. This is going to make health insurance companies put at least 85 percent of their premiums toward actual health services, not administrative costs, marketing campaigns or profits or bloated CEO salaries. Advocates have been trying to get these profit restrictions in place in many States, but it is usually too hard to fight these companies on a local level. So while I am disappointed we don't have the public option, the minimum medical loss ratio is a potent measure that will limit insurers' profits and put the brakes on skyrocketing premiums.

Diabetes prevention, minimum medical loss ratio, incentivizing value over volume—these are just a few of the innovative ways this bill will bring down costs. All the basic ingredients for success are here. Dr. John Gruber, professor of economics at MIT, agrees. He says this about our bill:

> It's really hard to figure out how to bend the cost curve, but I can't think of a thing to try that they didn't try. They really make the best effort anyone has ever made. Everything is in here. I can't think of anything I'd do that they are not doing in the bill.

So when two of my colleagues said 2 days ago: There is no health care reform in this bill, well, that is confusing.

The next question I hear from Minnesotans is: What if I get sick and lose my job, what will I do?

This bill reforms the insurance markets, guaranteeing that having health insurance equals security. Some of these reforms will kick in when the bill passes, others will kick in 4 years from now.

I wish we could do everything at once, but we are making a complex set of reforms and it will take time to implement them and generate the cost savings necessary to pay for the benefits you will receive.

For the Minnesotans who can't afford the coverage they have because they are sick or have a preexisting condition, what will this bill do for them?

Well, 6 months after this bill is passed, we will get rid of all preexisting condition exclusions for kids, and young adults will be able to stay on their parents' insurance until they turn 27. That is big.

Within 90 days, families who get turned down because of preexisting conditions will have access to nonprofit insurance coverage designed to cover people who can't pay for insurance on their own. These are called high-risk pools, and many States, as well as Minnesota, have these plans in some form. The good thing is, this bill will invest $5 billion to help people afford premiums in the high-risk pools.

In 2014, anybody who doesn't have an affordable plan through work or has been denied coverage will be able to go to a Web site and purchase coverage through a new insurance marketplace called the exchange. No one will be turned away or charged more because of their health status or because they happen to be a woman. It will let you compare plans and prices. What you pay will be based on your income. No one will pay more than 10.2 percent of their income toward premiums in the exchange. Lower income families will pay significantly less. If the coverage you are offered through your employer costs you more than 8 percent of your income, you can go to the exchange.

There are millions of people who have insurance and are worried about losing what they have; for instance, Minnesotans who work for small businesses that are squeezed by growing health care costs. Beginning in 2010, this bill will give small businesses tax credits to pay up to 35 percent of their employees' premiums.

More small businesses will be able to cover more employees more affordably. Then, in 2014, once the exchanges are up and running, small businesses can choose to go into the exchange so they can pool their risk with other small businesses.

These reforms will bring coverage to an additional 295,000 Minnesotans by 2019. There should be no confusion. This is real reform.

Lastly, Minnesotans ask me: Will I go bankrupt from health care costs? I hear from a lot of Minnesotans who have maxed out their health insurance or who are getting uncomfortably close to their annual or lifetime limits. These arbitrary limits let insurance companies off the hook and leave you holding the bill when you are sick and need help the most.

Fifty percent of personal bankruptcies in this country are due to a health care crisis. The good news is, within 6 months of passing this bill, new plans will not have lifetime limits on benefits and will stop companies from imposing annual limits on needed care. When the exchanges are operational, the use of annual limits will be banned entirely.

I would like to ban all limits on all plans, new and existing, right away. But this is an example of how we have had to compromise in order to keep the cost of the bill down so we are being fiscally responsible and not adding to the debt. I wish to be very clear on that. When this bill is fully implemented, it will give Americans access to affordable health care so they can avoid going bankrupt when they get very sick. That is very good.

There is more. We will start closing the Medicare prescription doughnut hole in 2010. We will invest in home visits for new mothers, more loan forgiveness for primary care providers and for doctors who practice in rural areas, the Public Health Investment Fund, stronger antifraud laws, support for people with disabilities to stay out of nursing homes, and funding for community health centers.

I said at the beginning of this debate there would be amendments that make it an even better bill and there would be amendments that make it less to my liking and, therefore, a less good bill from my point of view. But I also said I would only support a bill if it makes quality health care available to tens of thousands of additional Minnesotans and tens of millions more Americans. We have all compromised on many fronts, but the bill we have before us is real reform and deserves our support.

The bill deserves our support because Minnesotans and Americans can't wait any longer. As Martin Luther King, Jr., once said: ''Of all the forms of inequality, injustice in health care is the most shocking and inhumane.'' We have the opportunity to express our humanity

today, to make our country healthier and more secure for generations to come.

I would like to conclude by sharing a letter I received from John Goldfine in Duluth, MN. John operates a business on the shores of Lake Superior and wrote to share the requests he had received to donate money to fellow community members facing financial crises because of health care costs.

John was asked to donate to a cancer benefit for a woman who has melanoma.

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

Mr. FRANKEN. I ask unanimous consent for 2 more minutes.

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

Mr. FRANKEN. John was asked to donate to a cancer benefit for a woman who has melanoma, to attend a spaghetti dinner for an 11-year-old with brain cancer, a bake sale for a woman in need of a new kidney, and a pancake breakfast for a burn survivor. This is what John says:

> As a business owner in Duluth, these are just a few of the requests that we have received these last few years. We have given a donation towards these fundraisers to help people pay for their medical expenses. As I travel the country and go into grocery stores, restaurants and convenience stores, I always take a minute to look at what is going on in the area. Rare is the time that I do not see a fundraiser to help someone with their health care bills and expenses. I know you know how wrong this is, but I am left wondering what some of your fellow Congressmen and Senators are thinking. Maybe they need to go home and look at some of these community bulletin boards. Every time I look at one of these I want to cry. I know how hard this battle is. I know there will be more compromises, but please do not leave empty handed. There are so many people out there that really need some help.

I am proud I am voting for this bill to provide help for the people who need it.

I thank the Presiding Officer for the extra time, and I yield the floor.

The PRESIDING OFFICER. The deputy majority leader is recognized.

Mr. DURBIN. Mr. President, I wish to thank my colleague. That letter from his constituent is heartfelt and should be an inspiration to all of us to get this job done. We have sacrificed. This is the 24th day debating this bill. Some of these sessions have been early in the morning and late at night, but I think the time has been well spent. People have come to the floor and spoken at great length but no one more eloquently than your constituent who sent you that letter.

Come tomorrow morning, we will have the official vote—very early in the morning. I would like to say to my colleagues from West Virginia and Minnesota that we have a piece of news. A lot of what has been said on the floor has been said by others and said before, but this is a piece of news worth reporting. Our bill—the health care reform bill—has been endorsed by the American Medical Association, the largest physician organization in this country; endorsed by the American Hospital Association, the largest organization representing our hospitals; it has been endorsed by the American Association of Retired Persons, the largest senior citizens organization, which focuses intensely on the future of Medicare; and today we have received the endorsement of what is regarded by most as the most highly respected medical organization in America. If you ask most Americans whom do you respect the most, it is the nurses. You know why. Because when you are in a hospital with someone you love or in the care of a doctor, it is the nurse who is with you in those moments that make a lifetime. The nurses today have issued their formal endorsement of this health care reform bill.

The nurses today have Rose Gonzalez, director of government affairs for the American Nurses Association, who writes:

> Nurses across this country have waited decades for this historic moment and the time is at hand.
>
> Once again, the need for fundamental reform of the U.S. health care system is critical. ANA and nurses around the country are ready to work with you toward enactment of the strongest possible health care reform legislation.

For all of our critics from the other side of the aisle, the simple fact is this: The people who are on the front line of health care, the people to whom we turn every day for critical care and critical treatment of the people we love, endorse this measure. They have come out foursquare for it. I would rather have their endorsement than any political endorsement we might find.

Now let me tell you how this is significant. This bill will change many things. Some on the other side have criticized the bill because it is too big; they want a small bill. I want a bill that is large enough to treat the problem. It is like saying to a doctor: You can give me a prescription but only give me one; I can only take one prescription at a time.

In this bill we address problems existing in our health care system that go to the heart of the challenge that faces our Nation. We have great doctors and hospitals and nurses. But we spend more than twice as much as any other nation on Earth per person for health care in some areas. Many countries spend a fraction of what we spend and get much better results.

We know the cost of health care is getting beyond us. We know a family of four with a health insurance plan now through their employer pays, on average, $12,000 a year for premiums. Ten years ago it was $6,000. It is projected to double again in just 8 years. People would be working to earn $2,000 a month just to pay for health insurance. That is before you take the first penny home for your family. That is unsustainable.

The first thing we do is address affordability, start bringing down the increase in cost in health care. That is our first responsibility, and this bill does it. The second thing it does is extend the reach of health insurance protection.

As I stand here, one out of every six Americans has no health insurance. These are not lazy, shiftless people. These are people who can't afford it, who work at a place that doesn't offer it, or happen to be unemployed. At the end of the day, 60 percent of those people, 30 million, will have the protection of health insurance. That is critically important.

This bill provides protections needed by the people who have health insurance. How many times have you heard about a friend or a family member who has to fight an insurance company for the payment for critical care that the doctor has ordered, or over a prescription which the doctor believes will keep a person healthy or make that person well? Those battles are now going to tip to the side of the consumers of America. Health insurance companies will not be able to discriminate based on preexisting conditions or put caps on lifetime policies or tell kids that at age 24 they can no longer be covered by the family health care plans. All of those things are changed in this bill, giving consumers across America a fighting chance when it comes to health insurance.

Last night I met with several of my colleagues. We talked over dinner about how America is going to react to this. It is hard enough to digest the contents of this bill, to expect the average American who has so many other concerns to digest it may be too much to ask. But I asked my staff to give me a list of the things that most Americans can expect to see, the changes they can expect to see on a timely basis—not the long-term changes where 94 percent of people have health insurance or would have a better standing to fight health insurance companies when they complain, but what will we be able to see. My staff came up with a convenient top 10 list which most of us are familiar with from late night television shows.

Within 6 months or a year after this bill is enacted into law, here are the top 10 things Americans will notice changing when they buy a new health plan: No. 1, if you own a small business you will start receiving within 6 months tax credits to help your business pay for health insurance for your employees beginning with tax year 2010. Mr. President, 144,000 small businesses in my State of Illinois will be eligible for the small business tax credit so that small businesses can afford to offer health insurance for the owners of the business and for their employees. That is No. 1—and this is all within 90 days of enactment.

No. 2, we are going to create immediate options for people who can't get health insurance today. We estimate that 8 percent of the people in my State have diabetes; 28 percent have

high blood pressure, and all of them could be denied coverage because of this so-called preexisting condition. We are going to put in place high-risk pools so these people who can't buy health insurance today because of these preexisting conditions, have an option, a place to turn to, to buy health insurance. That is No. 2.

No. 3, and this is good news for every family and every parent: Within 6 months after the enactment of this bill, the parents of loved ones—3.6 million kids in my State—will sleep better knowing that whatever health insurance they have will be required to cover their child regardless of any preexisting condition. Any child under the age of 18 with a diagnosis of diabetes or a history of cancer or asthma or whatever it may be cannot be denied coverage under the family plan, within 6 months of this bill being enacted.

No. 4, you will no longer need to fear an insurance company dropping you from coverage once you get sick. It is called rescission, and it means as soon as you need the health insurance, the health insurance companies run away and say: We are not covering you anymore. Hire a lawyer and fight us if you don't like that. That comes to an end within 6 months after this bill passes.

No. 5, you will no longer need to worry if you get sick or get in an accident because you are out of town and out of the network of hospitals and doctors your insurance policy provides. This bill ensures access to emergency care in-network and out-of-network without additional cost sharing beginning 6 months after the date of enactment.

No. 6, you will have the freedom to choose your doctor, the person you think is right for you and your family. This bill protects your choice by allowing plan members to pick any participating primary care provider and prohibit insurers from requiring prior authorization before a woman, for example, goes in for a gynecological examination.

No. 7, you will no longer fear losing your home or going bankrupt because of a bad car accident or a serious illness such as cancer. This bill, when it becomes law, will bar insurance companies from limiting lifetime benefits and severely restricting annual benefits under health insurance policy.

No. 8, this bill will require providing preventive services and immunizations without copay. Mr. President, 41 percent of the people in my State have not had a colorectal cancer screening; 22 percent of women in Illinois over the age of 50 have not had a mammogram in the past 2 years. Health insurance reform will ensure that people can access preventive services for free through the health care plans. It makes sense. It is an ounce of prevention and built into the law 6 months after it passes.

No. 9, senior citizens are going to notice the difference within 6 months. They will have access to dramatic discounts in the purchase of name-brand prescription drugs under Medicare Part D beginning July 1, 2010. Roughly 314,000 Medicare beneficiaries in Illinois hit the so-called doughnut hole, the gap in coverage. They are going to have protection. It is going to be provided by this bill.

No. 10, seniors across America will be eligible for one free wellness visit each year without charge. Think about that: the peace of mind which it brings to you and to your family to know that you have had a checkup, and the doctor said you are doing fine and takes care of a problem before it becomes major.

Those are the top 10 things to expect in the first 6 months or a year, and more to follow. This is a bill worth voting for. This is a bill which finally puts us on record as a Nation that health care is not just the privilege of the lucky and the wealthy. It is a privilege of living in this great Nation. It is a right that comes to all of us. If we truly want to enshrine that guarantee of life, let's enshrine in this bill guaranteed access to quality health care.

We have had a long debate. Those on the other side have been critical of this bill. They have never offered an alternative—not one substitute comprehensive alternative. They just can't do it, and they won't. But we know we have the responsibility to do it.

With votes this afternoon, in just a couple of hours and again tomorrow morning, we are going to make this bill a bill that is passed by the Senate, on its way to conference with the House, and by the first of this new coming year, we will be able to offer that promise of quality care which the American people are asking for.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. HAGEN). The Senator from West Virginia.

Mr. ROCKEFELLER. Madam President, I thank you. I rise today to join with my colleagues, in fact, to stand very proudly with my colleagues, in support of the Senate passage of groundbreaking comprehensive health care reform. I have wanted to say that for decades. It has taken not just the better part of a year but, in fact, the better part of a generation.

The story of health care reform over the last 50 years has been one of narrow incremental change, some quite meaningful—the Children's Health Insurance Program, for example—but none truly comprehensive in the way the Americans want to have their health care.

It is a history of big ideas left unrealized for lack of political will, for lack of time—whatever—of leaders and lawmakers and the medical profession all trying boldly yet all failing badly; failing fundamentally to take away the fear of so many, the terror of living and getting sick in America today; the terror of becoming sick in a country that holds itself out as a beacon of hope, a beacon of fairness, yet denies men, women, and children access to doctors and nurses, tests and medicines that we know will prevent illness or will make them well; a country that allows people, especially low-income people, but not only low-income people, however, to suffer or watch a beloved family member suffer alone and outside the health care system—all at great cost to our national economy and our national productivity and our national sense of self-esteem but, even more importantly, to our national soul, to our moral compass, to our conscience.

Now in the final days of 2009 we have a profound opportunity to deliver on years and years of unmet promises and to begin a new decade by building a strong, new foundation for the American people, for all of them; to wit, a more secure and reliable health care system that works for virtually all Americans, where those who are uninsured finally have some place to go for health care; where those with insurance know that the coverage they count on and pay for will be there when they need it—they will know that—and where a profit-driven health insurance industry does not play mercilessly with people's lives or steal their hope so that the health insurance company can have a very prosperous future, a very gloomy chapter in our Nation's business history.

Each of us brings to this moment shared stories about the tragic and trying personal experiences of our friends and neighbors back home. We are all motivated by this bill. We are all moved by this bill. I know that West Virginia's struggles with the health care system are not unique in America, but they are unique to me because I represent them. They are what drive me to work so hard to make things better. That never changes.

I talked about the Bord family. The Bords are two dedicated schoolteachers with health insurance through their employer whose son Samuel had leukemia and needed treatment well beyond the onerous annual insurance limits imposed upon him, without his knowledge, and, therefore, his health insurance stopped producing any care for him at all at 8 years old. What was he to know?

Samuel's parents were desperate, and they feared for the worst. When he hit his $1 million cap on annual insurance, my office helped his parents to find some more resources, but those ran out too. So the Bords were left with two gut-wrenching suggestions: consider getting a divorce so that Samuel would qualify for Medicaid, or stop taking their other two children to the doctor and giving them health care so they could spend the money that they had been spending in part on Samuel—take it all away from the other two children to help with Samuel as best they could. When people are desperate, they try anything. The choices are all cruel.

So you get a device or you choose one child's health care needs over another's—that is not what parents want to be like. Those are the choices our

Nation offered to these caring, hardworking parents with a sick child. How can that be? How can we allow that to be? The answer is, of course, that we cannot.

They did everything in their power, but this fall Samuel passed away. There are no words. It breaks my heart to think of what his parents went through, not only the pain of watching their son fight a terrible disease but also the uncertainty of paying for his treatment as best as they could and then have the coverage they counted on and paid for suddenly cease to exist.

I say to my colleagues, when do we say collectively that enough is enough? When do we finally step in and try to solve such an enormous set of problems? So much is at stake, so many people's needs and expectations are so high, and so are mine and so are yours, I say to the Presiding Officer. I know all too well that reform is not about shying away from the tough issues or the tough decisions. Reform is not about reaching perfect agreements on a perfect piece of legislation. Reform is making things better for people, as much as you can for as long as you can, with as much money as you can possibly collect to pay for it.

There are real and serious differences of opinion among us, among our esteemed colleagues in the House of Representatives as well—the Senate, the House, there are differences. Within the Senate—one side of the aisle, the other side—there are differences. Within the Democratic Party, there are differences. We have struggled to find solutions that will make a difference, that we can afford. We have had to negotiate and compromise.

Now we vote in a few short hours. It is an extraordinary moment in history. There is nothing like it that I have ever seen. We vote, I believe, to improve access to affordable and meaningful coverage; to control runaway costs—we have to do that so the Medicare trust fund doesn't run out; and to rein in the health insurance industry's rapacious and, to me, lugubrious practices. I don't like them, and they don't like taking care of us, and they don't.

Am I disappointed that this legislation does not include a strong public option, like the one I first introduced, to keep private companies honest? Am I disappointed it does not include a sensible Medicare buy-in provision that should be a right for millions of Americans? Of course I am. Does that mean I turn my back and walk away from all of this because I didn't get everything I wanted? Of course not. I am a public official. I represent people, I represent their interests, even as they, maybe in the majority, oppose what we are doing here because they know not yet entirely what is in this bill. But when they do, they will feel differently. Am I disappointed that we were unable to expand Medicaid even more for our most vulnerable Americans? Yes, of course I am. I live in a State where, in the average hospital, 85 percent of all patients are either under Medicaid or Medicare. As my colleagues on the Finance Committee heard me say often, 50 percent of all babies born in West Virginia are born under Medicaid. That is the way it is there for the people I represent. Yes, of course I am disappointed that we do not have more, but I still believe those are among the best and right solutions in this bill for our health care system. They are the best we can do at this particular time, and it is a great deal that we are doing. It is an unavoidable fact that this bill does not do everything I had hoped for but, again, that would not justify turning my back on what the bill does achieve.

Why is it that we always seek out the negative and avoid the positive? It is because the negative is easier to talk about. It is easier to criticize than to do, than to collect people together under an umbrella.

The ultimate question cannot be what the bill does not do. It cannot end there because in so many ways what this bill does do is make good on the powerful promise of meaningful reform that millions of people have dreamt of, have prayed for, have fought for, for so long.

Passing health care reform will mean 31 million previously uninsured Americans will now get health care coverage. Excuse me, 31 million people—extraordinary. It is in the bill.

Passing health care reform will extend Medicaid so that vulnerable populations can get the health care they need.

Passing health care reform will close, almost, the doughnut hole that hurts 3.4 million seniors enrolled in the Medicare prescription drug program. Mr. President, 3.4 million seniors is a lot. So we close at least half the doughnut hole, and then we give people a bonus for this coming year. But by closing half, we are signaling that we are going to close it all. Health care now will be done each year, every year, to make things better.

Passing health care reform will mean the elimination of preexisting condition exclusions right away for our children. As soon as the exchanges are up and running, that will also apply to adults.

Passing health care reform will mean it is illegal for insurance companies to impose arbitrary limits, as they did annually on Samuel, or lifetime benefits, such as the Bord family faced so courageously.

Passing health care reform will mean insurance companies are required to spend more of their money—which comes from premiums we give them—on medical care, not fancy offices and executive salaries. They will be required to achieve a medical loss ratio of 85 to 90 percent. We shall see. They will have to prove it. We already have the numbers. We know where to go to get the numbers. Nobody has done it. So they can play in their shifty darkness and deprive people of things, take things away. People do not know where to go to complain, and they just get referred somewhere else. This will be the very first time they are held accountable—and they will be held accountable. They will be held accountable by the law, by congressional oversight, by a ferocity of attention on what health insurance has done to hurt so many people and how, now, they are going to behave in a very different manner whether they like it or whether they don't.

Passing health care reform will mean family coverage must include dependent children up to the age of 26. That is exciting. It is also immediate. But it is exciting because young people don't tend to get health insurance because they think nothing will happen to them. It actually doesn't work out like that, and when they get hurt, somebody else has to pay. They should have their own health insurance, and so they are going to get it. They will not be outside the health care system; they will be inside the health care system.

Passing health care reform will mean protecting the Children's Health Insurance Program, or CHIP, which John Chafee and I wrote back in the mid-1990s and Ted Kennedy and ORRIN HATCH first established through the HELP Committee in 1997 in a show of bipartisanship—which, frankly, I am nostalgic for these days—which will cover more than 14 million children by the year 2013. Today, CHIP covers 7 million, but you see it has run out of its 10 years, so it has to be reauthorized. Then we add on 2 more years, and the program will keep going on and on, and children will have health insurance forever.

Passing health care reform will mean guaranteed prevention and wellness benefits for seniors so they can get the regular checkups that are so important. It is a big deal. Somebody told me once that there are about 9 million American seniors who live alone. In West Virginia, it might be on the tops of hills or it might be on some dusty plain, but they are basically alone, by themselves. They are aged, they have problems. Does anybody check in on them? Does anybody call them? Do they have a telephone? Have you eaten your food today? Do you have food? Are you OK? Did you fall down? Did you break your hip? Is there somebody to check? We have to do a lot better than that. Through this bill, we will.

Passing health care reform will mean we finally begin to get politics and lobbyists out of the business of deciding Medicare payments. That is very important for me because we can create new hope—perhaps our only hope—for keeping Medicare stable and solvent for the long term.

The list goes on and on—real, meaningful, life-changing and in some cases lifesaving new laws and new policies that will become law. Not since the creation of Medicare and Medicaid nearly 45 years ago has this body or the

other body attempted to make a commitment as fundamental to our future in health care as we are doing here.

Fortunately, this commitment will not end with the passage of this legislation. We will not have to wait another 15 to 20 years to take up the cause of reform. Because of the intensity of the experience, the passion of the experience, the depth of the feeling in discussing the experience as we have talked back and forth with each other, this now becomes an annual commitment. We will be doing health care every single year until we get it exactly right. We have not gotten here by accident or by chance, and we will not get all the way across the finish line without more hard work and, hopefully, good will.

To those on the left who are disappointed in what this bill does not do—and in some cases, those folks are even calling for its demise—I implore you to reconsider, to be a part of this solution even as we keep working on others, which I promise you I will do, and I think you know that I mean what I say when I say it. To those on the right who in all these years somehow have not seen fit to accept any of the various options and ideas that are put on tables for comprehensive reform, I ask you to seek the facts, find the truth, follow the facts, follow the truth. There are legitimate disagreements between us about how best to solve the problems plaguing our health care system and hurting our people. But the status quo is unacceptable. Claims that we are rushing this process or have operated in secret are absurd. Claims that we will hurt seniors, close hospitals, take away people's choices are reckless and disingenuous.

Our work in this institution affects people's lives every single day in all the work we do for good or for ill. In public life, really, there is nothing neutral: you either do something that helps or you do something that hurts. We have a solemn responsibility to help our people in their hour of need, and that is the reason we are here. It is the only reason we are here—to achieve meaningful reform, not just in health care but in all other needs.

As somebody who has been involved in this debate from the very beginning and fought for strong reforms in the Senate Finance Committee, I know how far we have come to get here. And I, for one, am not going to allow this moment and its great promise to end in failure. The progress will be real. The greatly improved quality of life for millions of Americans will be its measure.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I ask unanimous consent that after Senator HUTCHISON raises a point of order that the Reid substitute amendment No. 2786 is a violation of the Constitution, the point of order be set aside until after all postcloture time expires.

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

The Senator from Texas.

Mrs. HUTCHISON. Madam President, I ask the distinguished Senator from Montana if, following the postcloture time, my point of order will be put in the queue for the votes if I ask for the yeas and nays?

Mr. BAUCUS. That is my understanding.

Mrs. HUTCHISON. Madam President, we truly are in uncharted waters. This bill has been written by the majority under a veil of secrecy. We are expected to vote on its final passage less than 2 days before families across the country will be sitting down for holiday celebrations. Over the last weeks, my colleagues and I have spoken about some of the things we know to be problematic, ranging from unsustainable cuts to Medicare that will result in catastrophic reductions in care—make no mistake about that—to oppressive new taxes on individuals, medical devices, prescription drugs, and insurance companies that will clearly raise costs to consumers and stifle innovation, to taxes on small businesses at a time when we know our economy is on the brink. We are in a recession. We are asking businesses to hire people. Yet we are forcing burdens on them, taxes on them that would have the opposite effect. It would cause them not to take a chance to hire someone who will have the result of new mandates that go beyond all the expenses of an employee today. We have talked about that for the last 3 weeks.

Today I wish to talk about the concerns we have been able to have about 3 days to find on the constitutionality of parts of this bill. We have not had too much time to consider this. Certainly, constitutional issues will take much thought. But we do believe some of the bill's provisions do violence to our constitutional protections. Members, staff, and legal experts are scrambling by the majority's decision to draft a bill that we didn't have a chance to look at in detail because it only was released on Saturday, and we haven't had very much debate time on these legal issues.

I commend many of my colleagues for identifying one of my biggest concerns. The majority claims the commerce clause of the Constitution gives Congress the authority to adopt much of what it is we are looking at in this substitute before us. What I disagree with and what I don't think has been mentioned is, the power to regulate interstate commerce has not been the basis for a robust role in insurance regulation. Our States have the experience, the infrastructure in place to carry out this important regulatory role. In comparison, the Federal role in regulating private insurance has been limited. In fact, following the decision by Congress to exclude Federal agencies from any antitrust role in the insurance market, it is our States that have been charged with providing this regulatory oversight during the last 60 years. Yet usurping the role of the States in regulating health insurance is precisely what the substitute that has been put forward will do.

Creating a big role for the Federal Government in health care will also usurp States, rights that have been in place for over 60 years. Consider, for a moment, that the commerce clause is being suggested to allow Congress to not only regulate a channel of commerce that historically has been addressed by States but for Congress to actually direct the American people to purchase a specific product or service. Everyone within the sound of my voice should be alarmed that Members of Congress actually believe our Constitution, which enumerates and protects our liberties and choices, can be perverted to require Americans to purchase something they may not want and may feel they do not need. Such a view is totally at odds with our Constitution. I believe strongly the individual insurance mandates in this bill are unconstitutional.

The person who has raised the point of order is also on the floor with me, Senator ENSIGN from Nevada. He is going to cover that area. It is essential we address it.

I wish to raise another area where I think we also have transgressed over the Constitution. That is the trampling of the rights of our States under the 10th amendment. I taught constitutional law. I have studied the background of the Constitution. I have looked at many facets of it. I can't say I am a constitutional scholar. I am a lawyer. I have taught this subject.

I wish to read the very clear and simple 10th amendment. The 10th amendment has made clear the following:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

That is it. The beauty of our Constitution is, it is a very limiting document. That is why it is short. Everything not specifically given to the Federal Government in the Constitution is reserved to the States or to the people. That is the beauty of our Constitution. The reason it is short is because the powers were meant to be limited. What was reserved to the Federal Government was meant to be limited because our Founders knew the government closest to the people and the people should be responsible for most of the laws of the country.

Today, in the bill we have before us, we have a State, such as my State of Texas and many States across the country, which have taken full responsibility for creating, maintaining, and providing oversight for a health insurance plan and will now have to justify changes to the terms of the insurance plan to the Federal bureaucrats.

My State of Texas has created a fully self-insured plan for State employees and for our teachers so creation, administration, and oversight will be

within the realm of the State. I believe it is very important, when we look at the bill before us, to see that the States now are going to be required, similar to every insurance provider, to justify with the Federal Government changes in premiums. The States are going to have to now put forward all the background, what they are doing in their self-insured plans, and justify it before the States, apparently, will be able to go forward.

Of course, there is going to be a book written on the meaning of ''justify.'' I can see it coming. What exactly does justify mean? I don't think we have to go that far to write the book on what justify means because this is an encroachment on the rights of the States guaranteed by the 10th amendment. Not only does it walk away from the words themselves of the 10th amendment but walks away from what the Founding Fathers intended; that is, that it is the prerogative of the States to make the laws that affect the people. Even Congress, for the last 60 years, has kept the Federal Government restrained pretty much—not completely but pretty much—from mandates and regulation of insurance plans. There are some, but it has largely been left to the States. The States have provided the infrastructure for what can be offered in a State. But here we go. In what is supposed to be the reform of our health care system, we are taking away the rights, the prerogatives of the States, and also the expertise the States have come to have put together and formed through the years. The big Federal Government takeover is going to begin.

Let me mention a 1992 case by the Supreme Court, which stated, in New York v. United States:

> The Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States.

I have asked the attorney general of Texas to use every resource at his disposal to investigate the provisions in this legislation and to challenge any unconstitutional attempt to limit the authority of Texas to carry out its regulatory responsibilities in the insurance market or to provide for the insurance needs of its employees and the teachers of Texas through the State health insurance plans. The attorney general of Texas has already said he is going to challenge the constitutionality of treating one State differently from all the other 49 and the taxation of our residents in Texas because of the exemption of the State of Nebraska from the Medicaid responsibilities that every other State is going to have. Of course, every other State will pick up the tab for this Nebraska exemption. The attorney general of Texas is on it, just like the attorney general of South Carolina and probably many more by the time we will end this day.

It is important we also stand on 10th amendment grounds for the States to be able to put forward a self-insurance plan for its employees without the permission of the Federal Government, and I feel-duty bound to question the constitutionality of this bill on 10th amendment grounds.

Therefore, Madam President, I make a constitutional point of order against the substitute amendment on the grounds that it violates the 10th amendment of the Constitution, and I ask for the yeas and nays.

The PRESIDING OFFICER. Under the precedents and practices of the Senate, the Chair has no power or authority to pass on such a point of order. The Chair, therefore, under the precedents of the Senate, submits the question to the Senate. Is the point of order well taken?

The yeas and nays have been requested.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the vote on this question will occur after all postcloture time expires.

Mrs. HUTCHISON. Thank you, Madam President. That is my understanding. I very much appreciate the opportunity to bring this forward.

I think now that we are finally beginning to digest this bill, we are seeing several areas where points of order have been raised, and I hope some of these will send this bill back to the drawing board, where it belongs, to have health care reform that will do what we intended to do when we started; that is, bring down the cost of health care, make more affordable health care possible for more people in this country. If we could do that, on a bipartisan basis, I think the people of America, as they sit down for their holiday celebrations with their families, would have been well served.

I implore my colleagues to look at the points of order that will be voted on postcloture today and think about the consequences of passing this monstrous piece of legislation that is going to alter the quality of life for every individual, every family, every small business in this country.

Let's start again and do it right. Doing it fast should not be the goal. Doing it right is what we should pursue. I hope my colleagues, before we finish this process, will come back with something we can all be proud of and not something that is going to pass on a strictly partisan vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, I wish to first compliment the Senator from Texas on her raising a different constitutional point of order. There are several ways in which this bill violates the Constitution. I have raised a constitutional point of order, where I believe this bill violates the enumerated powers under article I, section 8 of the Constitution, as well as the fifth amendment takings clause of the Constitution.

I see the senior Senator from Utah is in the Chamber. He is going to talk about several other problematic provisions in the bill that is before us today.

This is the Constitution of the United States, which I hold in my hand. There are several other documents in here, but that is how short the Constitution of the United States is—this short, concise document that limits the powers of the Federal Government. Our Founders were afraid of a powerful central government, so they put down on paper the powers they granted to this body, the House of Representatives, and the rest of the Federal Government.

When each one of us comes to this floor, after we are elected, we raise our right hand, put our hand on the Bible, and take an oath to defend and protect the Constitution of the United States. We do not take an oath to reform health care or to do anything else that we may think is good to do. Anything on health care or any other good provision we want to enact has to fit within the limited powers that are listed within the Constitution of the United States.

That is the oath, the solemn oath, each and every Senator takes. That is what each and every one of us needs to think about when we are voting on this constitutional point of order.

I wish to make a couple points very briefly in one area where I think, on the individual mandate, this bill violates the U.S. Constitution. Nowhere, at no time, has this government, this Federal Government, ever passed a law that requires people who do nothing to engage in economic activity. In other words, if this bill passes and then you choose not to buy health insurance, this bill requires you to purchase health insurance. If you do not do that, it charges you up to 2 percent of your income. So this bill is telling you, just because you exist as a citizen of the United States, you must do something.

The United States has never, in its history, ever passed something such as this. This will dramatically expand the powers of the Federal Government, if this bill is passed, and if, God forbid, the Supreme Court upholds this piece of legislation.

I have read a lot of articles—and I submitted several of them yesterday—by constitutional scholars, who believe this bill is unconstitutional. Even folks who believe it is constitutional, some folks on the left, concede that there are legitimate arguments against the bill's constitutionality. They also recognize that there is potential that it is unconstitutional. So this is not some wild-eyed radical debate. This is a legitimate debate about what this document, this Constitution of the United States, actually means.

I am not a lawyer similar to a lot of the other Members of the Senate, but I understand the importance of a pretty plain reading of the Constitution's text.

Within the enumerated powers, and within the fifth amendment, there are limitations on what this Congress can do. The Supreme Court has held that the interstate commerce clause, for instance—gives this body certain power to regulate commercial activity. Even activity of an individual that is intrastate in nature can be regulated if it has the potential to somehow substantially affect interstate commerce.

Unfortunately, this bill goes beyond even regulating any kind of commercial activity. It goes to regulating noneconomic inactivity. It says: If you choose not to do something, we are going to regulate you and we are going to tax you if you do not behave. This is a very dangerous precedent for the Congress to set. I made the point yesterday; others have made this point—if we could just require citizens to purchase certain things, why did we need a cash-for-clunkers bill? The reality is we lack the power to just tell people: Go out and buy a car.

The government is allowed to provide certain incentives for people to do activity that maybe they were not going to do. But Congress does not have the power to actually tell citizens what to do, in that case, to regulate inactivity.

There are all kinds of things this government could tell people what to do if something such as this precedent is upheld today. This is incredibly dangerous, and the people of America need to wake up and the people who are voting for this bill need to analyze the unintended consequences and the massive expansion of power this bill will provide for, if this bill passes, and if the Supreme Court does not strike it down.

I am going to yield because I have listened to the senior Senator from Utah talk eloquently about the provisions that are unconstitutional. He is much more of a constitutional scholar than I would ever dream to be. I hope everybody pays close attention to what he is saying and thinks about that oath each one of us made when we raised our right hand to defend and uphold the Constitution. Are we doing that if we vote for this bill?

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I thank my gracious colleague, and I am grateful for his kind words.

Each Member of this body has taken an oath to support and defend the Constitution of the United States. Not any Constitution, not their own personal Constitution, not a fake or pretend Constitution, but the real Constitution of the United States. That means that there will come times when politics says yes, but the Constitution says no. There will come times when the grand plans and good intentions of politicians meet the limits of the Constitution. I submit that this is one of those times, and the constitutional point of order raised by the Senator from Nevada presents each of us with the choice of whether politics or the Constitution will win the day. I choose the Constitution and will vote to support the point of order.

America's founders gave us a written Constitution that delegates certain powers to the Federal Government, separates those powers among three branches, and enumerates the powers given to Congress. They did all of that writing, delegating, separating, and enumerating for one overriding reason, to set limits on Federal Government power because liberty cannot survive without such limits. As Justice Sandra Day O'Connor reaffirmed in 1991 when writing the Supreme Court's opinion in Gregory v. Ashcroft, our system of federalism and the separation of powers ''was adopted by the Framers to ensure the protection of our fundamental liberties.'' Liberty requires limits on government power, it always has and it always will. The question for us today is whether liberty is still more important than power.

The Members of this body have our own, independent responsibility to ensure that the actions we take are consistent with the Constitution we have sworn to support and defend. We cannot simply assume that the Constitution necessarily allows us to do whatever we may want to do. And we cannot ignore this question by simply punting it to the courts. Litigation is likely, to be sure, which means that the courts will be asked to decide certain legal questions, including whether this legislation is constitutional. Judges also take an oath to support and defend the Constitution and must exercise the powers it grants to them. Speculating about how courts may decide a hypothetical case in the future, however, is no substitute for Senators making a decision about an actual piece of legislation today.

The Constitution cannot limit government if government controls the Constitution. If the Constitution means whatever we want it to mean, then we might as well take an oath to support and defend ourselves. Frankly, that is what it seems like we do sometimes. But we cannot take the power the Constitution provides without the limits the Constitution sets.

Turning to the legislation before us, we all want to see a higher percentage of Americans covered by health insurance. That is a desirable goal, but my friends on the other side of the aisle would achieve that goal with a very blunt instrument, an order that Americans purchase health insurance. That is a means that the Constitution does not permit. While the Constitution gives Congress power to regulate interstate commerce, that power does not mean anything and everything we want to mean. Those words are not infinitely malleable. I agree with the 75 percent of Americans who say that this mandate to purchase health insurance is unconstitutional because Congress's power to regulate interstate commerce does not include telling Americans what they must buy.

When President Franklin D. Roosevelt chose Frances Perkins as his Secretary of Labor, they discussed social policy legislation including health insurance. As Secretary Perkins later described it, they agreed that such legislation would pose ''very severe constitutional problems,'' including fundamentally altering Federal-State relationships. That is why the Social Security Act uses the payroll tax. Even the Roosevelt administration, which oversaw the most dramatic expansion of federal power in our Nation's history, would not go as far as the legislation before us today would go. Even they knew that the Constitution put certain means off limits.

The goal of raising the percentage of Americans with health insurance could be achieved by constitutionally permissible means. My friends on the other side of the aisle know as well as I do, however, that those means are politically impossible. And so they have chosen politics over the Constitution, and that is why I will support the constitutional point of order.

In 1995, the Supreme Court reaffirmed that there are indeed limits on the means Congress may use to achieve its goals. The Court rejected a version of the power to regulate interstate commerce that would make it hard to imagine any activity by individuals that Congress could not regulate. The legislation before us would not only regulate economic transactions in which individuals choose to engage, it would require that they engage in those transactions. This is the first time that Congress has ever ordered Americans to use their own money to purchase a particular good or service. Crossing that line would do exactly what the Supreme Court said we may not do, and would virtually eliminate whatever limits remain on federal government power. That would deprive the Constitution not only of its meaning, but of its function as a guardian of liberty. I urge my colleagues to put the Constitution ahead of politics and support this point of order.

There is a lot of talk from the majority about why passing this bill is the right thing to do for the American people. It is a decision of conscience for them. Well, let us take a closer look at these decisions of conscience.

After weeks of closed-door, clandestine negotiations, Senator REID finally emerged with a 383-page Christmas list. This bill is a dark example of everything that is wrong with Washington today. Despite all the promises of accountability and transparency, this bill is a grab bag of Chicago-style, backroom buyoffs. It is nothing more than a private game of ''Let's Make A Deal'' with the special interest groups financed by American taxpayers.

So who won and who lost in this game? Well, let's take a closer look. The AARP issued a strong statement of support for this bill. The Reid bill slashes Medicare by almost a $½ trillion to finance additional government

spending. So why would the Nation's largest lobbying organization, avowed to protect the interests of seniors, support this legislation? To find the answer, similar to anything else in Washington, follow the money.

AARP takes in more than half its $1.1 billion budget in royalty fees from health insurers and other vendors. The sale of supplementary Medicare policies, called Medigap plans, make up a major share of this $1.1 billion royalty revenue. AARP has a direct interest in selling more Medigap plans. However, there is a strong competitor to Medigap policies, and that happens to be the Medicare Advantage plans.

These private plans provide comprehensive coverage, including vision and dental care, at lower premiums for nearly 11 million seniors across the country. Seniors enrolled in Medicare Advantage do not need Medigap policies. So what happens when the Reid bill slashes this program by almost $120 billion? That is with a ''b.''

Look at the Washington Post front-page story from October 27, questioning whether AARP has a conflict of interest. I quote:

> Democratic proposals to slash reimbursements for . . . Medicare Advantage are widely expected to drive up demand for private Medigap policies like the ones offered by AARP, according to health-care experts, legislative aides and documents.

One of the most disturbing developments in the Reid bill has been the perpetuation and even the doubling of the unconstitutional mandate tax from $8 billion to $15 billion. You heard me right. This unconstitutional mandate tax actually doubled behind closed doors. I have long argued that forcing Americans to either buy a Washington-defined level of coverage or face a tax penalty collected through the Internal Revenue Service is highly unconstitutional.

We hear a lot of rhetoric from the other side about Republicans defending the big, evil insurance companies while they are the defenders of American families. The insurance mandate is a clear example of this partisan hypocrisy. Let me ask one simple question. Who would benefit the most from this unprecedented, unconstitutional mandate to purchase insurance or face a stiff penalty enforced by our friends at the Internal Revenue Service?

The answer is pretty simple. There are two clear winners under this draconian policy—and neither is the American family. The first winner is the Federal Government, which could easily use this authority to increase the penalty—or impose similar ones—to create new streams of revenue to fund more out-of-control spending.

Second, the insurance companies are the most direct winners under this individual insurance mandate because it would force millions of Americans who would not otherwise do so to become their customers. I cannot think of a bigger giveaway for insurance companies than the Federal Government ordering Americans to buy their insurance products. If you do not believe me, then just look at the stock prices of the insurance companies that have recently shot to their 52-week highs.

Jane Hamsher, the publisher of the very liberal blog Firedoglake, said the following in a recent posting:

> Having to pay 2 percent of their income in annual fines for refusing to comply with the IRS acting as the collection agency just might wind up being the most widely hated legislation of the decade. Barack Obama just might achieve the bipartisan unity on health care he always wanted—Democrats and Republicans are coming together to say ''kill this bill.''

Now that we clearly understand the huge windfalls the Reid bill provides AARP and insurance companies, let me take a moment to talk about the winners and losers in the so-called abortion compromise.

The language to prevent taxpayer dollars from being used to fund abortions is completely unacceptable. The new abortion provisions are significantly weaker than the amendment I introduced with Senator BEN NELSON to ensure that the Hyde amendment, which prohibits use of Federal dollars for elective abortions, applies to any new Federal health programs created in this bill. The Hyde amendment has been public law since 1976.

The so-called abortion compromise does not stop there. The Reid bill creates a State opt-out charade. However, this provision does nothing about one State's tax dollars paying for abortions in other States. Tax dollars from Nebraska can pay for abortions in California or New York.

This bill also creates a new public option run by the Office of Personnel Management that will, for the first time, create a federally funded and managed plan that will cover elective abortions.

When you have Senator BOXER, the distinguished Senator from California, and Speaker PELOSI, the distinguished Speaker of the House of Representatives—two of the largest pro-abortion advocates in the Congress—supporting this sham so-called compromise and everyone from the U.S. Conference of Catholic Bishops to the National Right to Life Committee and the Family Research Council opposing it, there is only one clear loser, and that is the majority of Americans who believe in the sanctity of life and oppose the use of Federal dollars for elective abortions.

Last, but not least, I wish to spend a couple of minutes talking about the numerous special deals conferred on States in this $2.5 trillion spending bill.

How hefty are the price tags for decisions of conscience? Here are some highlights: $300 million for Louisiana, $600 million for Vermont, $500 million for Massachusetts, $100 million for Nebraska, and that is just the beginning.

At a recent news conference, when the authors of this legislation were asked about the Nebraska earmark for Medicaid funding, the majority leader simply replied:

> A number of States are treated differently than other States. That's what legislation is all about. That's compromise.

The next logical question is pretty straightforward: Who will pay for these special deals? The answer is simple: Every other State in the Union will pay for these special deals, including my home State of Utah. All of these States that are collectively facing $200 billion in deficits and are cutting jobs and educational services to survive will now pay to support these special deals.

According to the Congressional Budget Office, the Medicaid expansion in the Reid bill creates a $26 billion unfunded mandate on our cash-strapped States.

Coincidentally, only one State avoids this unfunded mandate; that is, the State of Nebraska.

Of course, let's not forget about the biggest loser in this bill: the hard-working American taxpayer. This bill imposes over $½ trillion worth of new taxes, fees, and penalties on individuals, families, and businesses. The new fees begin in 2010, while the major coverage provisions do not start until 2014. Almost $57 billion in new taxes are collected before any American sees the major benefits of this bill, which are largely delayed until 2014, assuming they are benefits at all.

It is also no coincidence that through the use of these budget gimmicks, the majority can claim this bill reduces our national deficit when we all know these reductions will never, ever be realized.

Based on data from the Joint Committee on Taxation, the nonpartisan congressional scorekeeper, this bill would break another one of President Obama's campaign promises by increasing taxes on 42 million individuals and families making less than $250,000 a year. At a time when we are struggling to fight a double-digit unemployment rate, the Reid bill not only increases payroll taxes by nearly $87 billion but also imposes $28 billion in new taxes on employers that do not provide government-approved health plans. These new taxes will ultimately be paid by American workers in the form of reduced wages and lost jobs.

However, it is hard to say we didn't see these new taxes coming. For years now, many of us have warned that the out-of-control spending in Washington would eventually have to be repaid on the backs of American families. In this bill, the repayment comes in the form of stifled economic growth, lost jobs, and new and increasing taxes—and they are just the first installment of what will be a long and painful extortion of taxpayers if Congress doesn't stand up and stop these terrible bills. According to a recent study of similar proposals by the Heritage Foundation, these new job-killing taxes will place approximately 5.2 million low-income workers at risk of losing their jobs or having their hours reduced and an additional 10.2 million workers would see lower wages and reduced benefits.

Poll after poll tells us about the growing opposition against this tax-and-spend health care bill. The latest Rasmussen poll shows that 55 percent of Americans are now opposed to this bill. The CNN poll is an even higher 61 percent. Among senior citizens, the group most likely to use the health care system, only 33 percent are in favor while 60 percent are opposed. Independent voters are also opposed 2 to 1. Opposition in certain State polls such as Nebraska is even higher at 67 percent.

So what is the majority doing to address these concerns? Nothing. In fact, despite the efforts by many of us here on this side of the aisle to express our substantive policy disagreements for months, one Senator recently said the following:

> They are desperate to break this President. They have ardent supporters who are nearly hysterical at the very election of President Barack Obama. The birthers, the fanatics, the people running around in right-wing militia and Aryan support groups, it is unbearable to them that President Barack Obama should exist.

That statement is outrageous. It was made by a very dear friend of mine, and I know he probably didn't mean it the way it comes out, but it is outrageous.

Instead of listening to the policy concerns of a majority of Americans, the other side is simply dismissing them as rants from the far right. If the majority refuses to listen to what Americans are telling them now, I am sure they are going to have a rude wake-up call later. It should come as no surprise that this kind of arrogance and power has led to congressional approval ratings rivaling the most hated institutions on the planet at a dismal 22 percent and falling.

One of the biggest tragedies of letting this bill move forward is that it will do nothing to address the fundamental issue of rising health care costs in this country. According to the Congressional Budget Office, CBO, this bill will actually raise our national health care costs by $200 billion. The administration's own Actuary at the Centers for Medicare and Medicaid Services, CMS, agrees with this assessment.

When this bill fails to work, Americans will no longer have anything in Congress to effectively address the issue of health care reform. The opportunity to save Medicare and Medicaid from their impending financial collapse will be lost for another generation.

The historic blizzard in Washington earlier this month was the perfect symbol of the anger and frustration brewing in the hearts of the American people against this bill. I urge the majority once again to listen to the voices of the American people. Every vote for this bill is the 60th vote. Let me repeat that again. Every vote for this bill is the 60th vote. My Republican colleagues and I are united with the American people in our fight against this $2.5 trillion tax-and-spend bill. I implore my colleagues not to do this to the American people. Don't foreclose on their futures. Don't stick them with even more government spending and more government intrusion.

We can fix health care. Many of us have been working to do just that for many years. A truly bipartisan bill that would garner 75 to 80 votes, which has always been the case in the past on these major pieces of legislation in the Senate, would be fiscally sound and provide the American people with the fixes they are asking for in the health care marketplace, and it would be easily achievable if we would just open our hearts and work together. Many of us are standing at the ready, and have been for months, to step forward and pass meaningful health care reform that truly would help American families and please American taxpayers. To date, we have been rebuffed by an unfailing determination by a few to pursue a nearly Socialist agenda.

I would ask my colleagues on the other side of the aisle who do not believe in the Europeanization of America, who believe in doing truly bipartisan work here in the Senate, to step forward and vote against advancing this bill and work with those of us on this side of the aisle who are committed to making a difference to craft a health care reform bill they can be proud to support.

Having said that, I do praise my colleague and friend from Montana, Senator BAUCUS, who literally did try for months in many meetings with first the Gang of 7—I was in that and then finally decided I could not support what they were going to come up with and expressed to my colleagues that I would have to in good conscience leave the negotiations. He tried, but he was too restricted in what he really could do, so that in the end no Republican supported what was done. We had a totally Democratic bill in the HELP Committee, a totally Democratic bill with the Pelosi bill in the House, and the Reid bill has been done in back rooms here with the White House, with very few even Democrats involved, and many of the things some of my friends worked so hard to get in the bill were no longer in it.

Let me just say there are good people in this body on both sides of the floor, but I have suggested in times past and I suggest it again: If you can't get 75 or 80 votes for a bill that affects every American, that is one-sixth of the American economy, then you know that bill is a lousy bill.

There are many on our side of the aisle who have stood ready, willing, and able to try to do something in a bipartisan way. I have spent 33 years here, and I have participated in a bipartisan way to help bring both sides together on all kinds of health care bills that work. This one would work, too, if we would just work in a bipartisan way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, I wish to make a couple of points regarding the constitutional point of order I raised on the individual mandate.

Some folks have said that States mandate car insurance, that is require people who drive to carry car insurance; therefore, the Federal Government can mandate the purchasing of health insurance to individuals. Well, I think that should be pretty obvious that States can do things that the Federal Government cannot. The Constitution limits the Federal Government as to what it can do and it reserves the power for the States and/or the people. Senator HUTCHISON raised this exact point in her constitutional point of order relating to the 10th amendment.

So this mandate of buying car insurance—comparing it to the mandate to buy health insurance from the Federal Government is a false comparison. The Federal Government cannot mandate you to buy car insurance, nor can it mandate you to buy health insurance. It is not within the enumerated powers given to this body and to this Federal Government in the Constitution.

This bill is a real threat to liberty because of the precedent it sets on the Federal Government being able to tell individuals what to do.

I wish to quote from a couple of articles that have been written. This one was written by David Rivkin and Lee Casey. I am quoting:

> But Congress cannot so simply avoid the constitutional limits on its power. Taxation can favor one industry or course of action over another, but a ''tax'' that falls exclusively on anyone who is uninsured is a penalty beyond Congress's authority. If the rule were otherwise, Congress could evade all constitutional limits by ''taxing'' anyone who doesn't follow an order of any kind—whether to obtain health-care insurance [in this case] . . . or even to eat your vegetables.

It literally sets the precedent to dramatically expand the powers of the Federal Government far beyond anything our Founders wrote and limited this Congress to doing in the Constitution.

I see the Republican whip here, and I wish to yield to him because of his expertise on the Constitution.

I want to make a real quick point reading from another article. I commend this article to our colleagues by Randy Barnett and Nathaniel Stewart and Todd Gaziano. It said:

> Never in the nation's history has the commerce power been used to require a person who does nothing to engage in economic activity.

There are constitutional experts out there telling us this bill is doing something the Federal Government has never done in its history. So I go back to this United States Constitution.

When we take an oath to defend the Constitution, we better take that as a solemn oath and think about whether we are violating that oath we swore to uphold and defend when we are voting on this bill.

You must uphold this constitutional point of order. It is not just up to the

Supreme Court; it is up to us. We don't just say we will pass anything, whether it is constitutional or not, and let the Supreme Court decide. That is the oath we take. It is our responsibility to uphold and defend the Constitution. We must think about that when we are passing something here. That is the reason we have this authority to bring a constitutional point of order, so that this body considers whether it is constitutional. That is why we must consider the consequences of greatly expanding the powers of the Federal Government in this bill, which are so dramatic that the threat to liberty is very real.

I yield the floor to the Republican whip so he can make some comments.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, I compliment my colleague who has raised a most important constitutional point. It is true, as Senators, we have an obligation not just to throw questions to the Supreme Court but to use our best judgment as to whether we would be violating the Constitution by adopting them.

I think the point of order he raises with respect to the 10th amendment is a very important question and should be carefully considered by our colleagues. I think you can only come to one conclusion. I support what he is trying to do.

I also want to make another point, which is that around the country people are calling in and raising questions about other aspects of the bill, also raising similar questions—the imposition of a supermajority rule, for example. Can one Congress bind another in that regard? We are only now learning of all of these things, and our constituents are only learning of them because the most recent amendment was filed just a few days ago.

As we read through it and begin to realize its implications, a lot of questions are being raised. The question I want to raise today goes right to the heart of the claim that supporters have made for this legislation; that is, that it reduces the Federal budget deficit. Many colleagues on the other side of the aisle have said: I could not vote for this bill if it did not reduce the Federal budget deficit, or at least if it were not deficit neutral.

It turns out that from information received today from the CBO, it is not deficit neutral. In fact, it adds at least $170 billion to the deficit, which, of course, is very important since tomorrow we are going to be asked to increase the temporary debt ceiling. This legislation will add to our Federal debt, not make the situation better, as many of our colleagues have claimed.

I will describe why that is so. I heard another colleague on the other side on a talk show this morning say that we are going to extend the fiscal life of Medicare by 9 years. That is a claim that directly conflicts with the claim that the bill is budget neutral.

What both the CMS Actuary and the CBO have now said is, no; both are not true. There is only one sum of money. You can either extend the life of Medicare with that money, or you can buy a new entitlement under the bill with that money. But you cannot do both.

So if that money is spent on the new entitlement, for example, it cannot extend the life of Medicare. It cannot show a budget surplus of $130 billion.

In effect, they are saying you can't sell the same pony twice. Here is exactly what the Congressional Budget Office had to say about it this morning. Incidentally, we were tipped off to this by a comment that was in the body of a letter from the CMS Actuary last week, or December 10, and as we read through it and tried to analyze the new amendment that was just filed, it became clear that, in effect, that is precisely what is being done by the other side.

I am not suggesting duplicity. What I am suggesting is that they, too, have been misled by the arcane accounting language, and until it became crystal clear with the language today, I can understand why there would be confusion—but no longer. You cannot vote for this bill this afternoon and claim not to have known that it both buys an extension of the trust fund for Medicare and claims to buy a surplus of $130 billion.

Here is what the CBO says today, December 23, which is posted on their Web site:

> The key point is that the savings to the HI trust fund under this bill would be received by the government only once, so they cannot be set aside to pay for future Medicare spending and at the same time pay for current spending on other parts of the legislation.

In other words, the new entitlements that are allegedly paid for under the bill. Here is the last sentence:

> To describe the full amount of the HI trust fund savings as both improving the government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count a large share of those savings and thus overstate the improvement in the government's fiscal position.

It would essentially double-count the money. That is the point Senator GREGG and Senator SESSIONS and I tried to make earlier this morning.

This is new information, I grant you. But it is an illustration of why we should not try to force this bill to a vote before Christmas, when we haven't tried to figure out what this all means and the American people haven't had an opportunity to react to it.

I quoted to you from the CBO, the nonpartisan office that tells us what the fiscal impact is. Here is what tipped us off: Richard Foster, the CMS Chief Actuary, had sent a letter. This phrase caught our attention. He said:

> In practice, the improved part A financing cannot be simultaneously used to finance other Federal outlays, such as the coverage expansion under this bill and to extend the trust fund. Despite the appearance of this result from the respective accounting conventions.

Despite the fact, in other words, that it appears you can do both because of the way the government accounting is, it is only one pot of money. You cannot use it to extend the life of Medicare on one hand and buy new entitlements and show a budget surplus on the other.

This is what happens when you try to rush a bill through like this too quickly. Many colleagues on the other side of the aisle have said: I will not vote for a bill that is not budget neutral or creates a budget deficit. Then they cannot vote for this legislation now that CBO has said what it has said. Some of them won't realize that. That is why I came to the floor.

I compliment Senator SESSIONS for talking to the Director of the Budget Office last night and confirming this, asking him if he would put it in writing, which he did.

I think this is a game changer, my friends. If, now that you have this knowledge, you still go forward and vote for the legislation, those of you who have made the pledge not to do so will be violating that pledge. You can't use the same pot of money to do two separate things, as the CBO said. They describe it this way: You can't do both of these things. You would essentially double-count a large share of that savings and thus overstate the situation.

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

Mr. KYL. Yes.

Mr. SESSIONS. The earlier statement from CBO was that the legislation would result in reducing the deficit by $132 billion, which was cited several times. Well, that was obviously before the statement that was issued today. In boiling it down—and the Senator is an accomplished lawyer—doesn't this say there is a misimpression created by that previous statement and that this statement today clarifies it, making absolutely clear that it is not creating a surplus or reducing the debt but, in fact, increasing the debt?

Mr. KYL. Madam President, that is exactly right. The title of the document is ''Effects of the Patient Protection and Affordable Care Act on the Federal Budget and the Balance in the Hospital Insurance Trust Fund.'' He starts out by saying CBO has been——

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

Mr. KYL. Madam President, I will be happy to in a moment. I ask unanimous consent that the CMS report, dated December 10, be printed in the RECORD following the colloquy so that people can follow what we have done.

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

DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR MEDICARE & MEDICAID SERVICES,
Security Boulevard, Baltimore, MD.
OFFICE OF THE ACTUARY

Date: December 10, 2009.
From: Richard S. Foster, F.S.A., *Chief Actuary*.
Subject: Estimated Effects of the ''Patient Protection and Affordable Care Act'' on the Year of Exhaustion for the Part A Trust Fund, Part B Premiums, and Part A and Part B Coinsurance Amounts.

In addition to proposals to expand health insurance coverage, the ''Patient Protection and Affordable Care Act of 2009'' (PPACA) includes numerous provisions that would reduce Medicare costs and one that would increase the Hospital Insurance payroll tax rate for high-income individuals and families. This memorandum describes the estimated impacts of the PPACA, as proposed by Senate Majority Leader Harry Reid on November 18, 2009, on the date of exhaustion for the Medicare Hospital Insurance (Part A) trust fund, on Part B beneficiary premiums, and on the average level of Part A and Part B beneficiary coinsurance.

We estimate that the aggregate net savings to the Part A trust fund under the PPACA would postpone the exhaustion of trust fund assets by 9 years—that is, from 2017 under current law to 2026 under the proposed legislation.

The combination of lower Part A costs and higher tax revenues results in a lower Federal deficit based on budget accounting rules. However, trust fund accounting considers the same lower expenditures and additional revenues as extending the exhaustion date of the Part A trust fund. In practice, the improved Part A financing cannot be simultaneously used to finance other Federal outlays (such as the coverage expansions under the PPACA) and to extend the trust fund, despite the appearance of this result from the respective accounting conventions.

The estimated postponement of asset exhaustion for the Part A trust fund does not reflect the relatively small impact on HI payroll taxes due to economic effects of the legislation or the small increase in administrative expenses under the legislation. As noted in our December 10, 2009 memorandum on the estimated financial and other effects of the PPACA, reductions in Medicare payment updates to Part A providers, based on economy-wide productivity gains, are unlikely to be sustainable on a permanent annual basis. If such reductions were to prove unworkable within the period 2010–2026, then the actual HI savings from these provisions would be less than estimated, and the postponement in the trust fund exhaustion date would be reduced.

The Medicare expenditure reductions under the PPACA would also affect the level of Part B premiums paid by enrollees and the Part A and Part B beneficiary coinsurance amounts. The following table presents these estimated impacts:

CY	Part B Premium Impact (change in monthly premium amount)	Coinsurance Impact (change in yearly per capita amount)	
		Part A	Part B
2010	$0.00	$0	$90
2011	1.80	−1	22
2012	−3.10	−4	−37
2013	−4.60	−8	−55
2014	−5.30	−13	−64
2015	−7.20	−18	−86
2016	−9.00	−23	−108
2017	−10.80	−28	−129
2018	−12.50	−34	−151

As indicated, Part B premiums and average coinsurance payments would initially increase, reflecting higher overall Part B costs under the PPACA in 2010 as a result of the provision to postpone the 21.3-percent reduction in physician payment rates that would be required for 2010 under current law. Thereafter, there would be steadily increasing savings to Part B and associated reductions in the Part B premium and coinsurance averages. Similarly, the Part A savings under the PPACA would result in lower beneficiary coinsurance payments for inpatient hospital and skilled nursing care. As before, all of these results are conditional on the continued application of the productivity adjustments to the Medicare ''market basket'' payment updates.

Expenditure reductions under Part B translate directly to lower financing requirements from general revenues and beneficiary premiums, since financing is re-established annually to match program costs. Thus, in the case of Part B, the savings under the PPACA are not needed to help pay for future Part B benefit costs, and the full reduction in Federal general revenues attributable to such savings can be used to offset other Federal costs, such as those arising under the PPACA coverage expansions.

Mr. KYL. I am now happy to yield.

Mr. BAUCUS. I ask my good friend from Arizona, is it not true that the last statement from CBO, on the degree to which the underlying legislation does or does not reduce the deficit, stated that the legislation reduces the deficit by $132 billion—that is the last statement after addressing the deficit—and also stating that at the end of the decade, the deficit will be reduced between $630 billion and $1.3 trillion? Isn't that the last statement from CBO addressing the question on whether this legislation reduces or increases the deficit. Isn't that true?

Mr. KYL. Madam President, I don't know the document that my friend is referring to as ''the last document.'' I think that document, dated December 23, today, is the last document.

Mr. BAUCUS. This is from a day or two ago. It is the CBO letter commenting on the modification.

Mr. KYL. I don't know. I am not aware of that. My point is this: The document released today, in order to clarify the situation again, said the key point is that you can't do both. The government only gets the money once. Therefore, they say, to describe the full amount as both providing a savings to Medicare and providing a surplus essentially double-counts the money and thus overstates the improvement in the government's position.

Mr. BAUCUS. Will the Senator further yield?

Mr. KYL. I will not yield now. I have a unanimous consent request.

I ask unanimous consent that a Washington Post op-ed by Michael Gerson, dated December 23, be printed in the RECORD.

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

[From the Washington Post, Dec. 23, 2009]

FOR SALE: ONE SENATOR (D–NEB.); NO PRINCIPLES, LOW PRICE

(By Michael Gerson)

Sometimes there is a fine ethical line between legislative maneuvering and bribery. At other times, that line is crossed by a speeding, honking tractor-trailer, with outlines of shapely women on mud flaps bouncing as it rumbles past.

Such was the case in the final hours of Senate Majority Leader Harry Reid's successful attempt to get cloture on health-care reform. Sen. Ben Nelson of Nebraska, the last Democratic holdout, was offered and accepted a permanent exemption from his state's share of Medicaid expansion, amounting to $100 million over 10 years.

Afterward, Reid was unapologetic. ''You'll find,'' he said, ''a number of states that are treated differently than other states. That's what legislating is all about.''

But legislating, presumably, is also about giving public reasons for the expenditure of public funds. Are Cornhuskers particularly sickly and fragile? Is there a malaria outbreak in Grand Island? Ebola detected in Lincoln?

Reid didn't even attempt to offer a reason why Medicaid in Nebraska should be treated differently from, say, Medicaid across the Missouri River in Iowa. The majority leader bought a vote with someone else's money. Does this conclusion sound harsh? Listen to Sen. Lindsey Graham of South Carolina, who accused the Senate leadership and the administration of ''backroom deals that amount to bribes'' and ''seedy Chicago politics'' that ''personifies the worst of Washington.''

This special deal for Nebraska raises an immediate question: Why doesn't every Democratic senator demand the same treatment for his or her state? Eventually, they will. After the Nelson deal was announced, Sen. Tom Harkin of Iowa enthused, ''When you look at it, I thought well, God, good, it is going to be the impetus for all the states to stay at 100 percent (coverage by the federal government). So he might have done all of us a favor.'' In a single concession, Reid undermined the theory of Medicaid—designed as a shared burden between states and the federal government—and added to future federal deficits.

Unless this little sweetener is stripped from the final bill by a House-Senate conference committee in January, which would leave Nelson with a choice. He could enrage his party by blocking health reform for the sake of $100 million—making the narrowness of his interests clear to everyone. Or he could give in—looking not only venal but also foolish.

How did Nelson gain such leverage in the legislative process in the first place? Because many assumed that his objections to abortion coverage in the health bill were serious—not a cover, but a conviction. Even though Nelson, a rare pro-life Democrat, joked in an interview that he might be considered a ''cheap date,'' Republican leadership staffers in the Senate thought he might insist on language in the health-care bill preventing public funds from going to insurance plans that cover abortion on demand, as Democratic Rep. Bart Stupak had done in the House.

Instead, Nelson caved. The ''compromise'' he accepted allows states to prohibit the coverage of elective abortions in their insurance exchanges. Which means that Nebraska taxpayers may not be forced to subsidize insurance plans that cover abortions in Nebraska. But they will certainly be required to subsidize such plans in California, New York and many other states.

In the end, Nelson not only surrendered his beliefs, he also betrayed the principle of the Hyde Amendment, which since 1976 has prevented the coverage of elective abortion in federally funded insurance. Nelson not only violated his pro-life convictions, he also may force millions of Americans to violate theirs as well.

I can respect those who are pro-life out of conviction and those who are pro-choice out of conviction. It is more difficult to respect politicians willing to use their deepest beliefs—and the deepest beliefs of others—as bargaining chips.

In a single evening, Nelson managed to undermine the logic of Medicaid, abandon three decades of protections under the Hyde Amendment and increase the public stock of cynicism. For what? For the sake of legislation that greatly expands a health entitlement without reforming the health system; that siphons hundreds of billions of dollars out of Medicare instead of using that money to reform Medicare; that imposes seven taxes on Americans making less than $250,000 a year, in direct violation of a presidential pledge; that employs Enron-style accounting methods to inflate future cost savings; that pretends to tame the insurance companies while making insurance companies the largest beneficiaries of reform.

And, yes, for $100 million. It is the cheap date equivalent of Taco Bell.

Mr. SESSIONS. The leader's time is up at 6 minutes after the hour; is that correct?

The PRESIDING OFFICER. The Republican leader has 6½ minutes reserved.

Mr. SESSIONS. I ask Senator KYL this: The CBO report this morning essentially says you cannot count the same money twice; correct?

Mr. KYL. Madam President, it doesn't say you cannot. It just says that is what would happen if you attempted to apply the money both to the trust fund and to the additional spending. It says it ''would essentially double count and thus overstate.''

What I am saying is that it doesn't say you can't do it, but they are saying you only have one pot of money to pay for two things and, obviously, you cannot do that and be honest about the accounting. That is my interpretation of what it says.

Mr. SESSIONS. I think that is correct. The Senator may not know this. I understand that at the request of our Democratic colleagues, they have returned to CBO and gotten another statement this morning, perhaps so they can continue to make the argument that somehow this creates a surplus. But staff having examined that, I am informed that it in no way refutes this morning's statement that this cannot simultaneously fund a new program and strengthen Medicare at the same time.

I think it is a matter, will Senator KYL not agree—I am not afraid to talk about it—if we need to slow down before we vote, so be it. First of all, is the Senator convinced, as Senator GREGG indicated this morning and CBO does, that we are, in fact, passing a bill that would, if it passes, add to the debt approximately $170 billion, as staff has calculated based on this letter, and would not reduce the debt by $132 billion?

Mr. KYL. Mr. President, I am absolutely convinced of that, yes.

Mr. SESSIONS. I do not think there is any dispute about it. I think that is the fact. It has been exposed. The President looked us in the eye in a joint session of Congress, did he not, and said this legislation would not add one dime or one dollar to the debt of the United States?

Mr. KYL. Mr. President, it is my recollection that is pretty close to what the President said. I guess maybe this would not be such a big deal unless you are trying to do two things with the same pot of money. As long as the other side is also claiming we are actually extending the life of Medicare, which I heard one of my colleagues do on television this morning, then you cannot make this other claim. You can claim one or the other but you cannot claim both. That is precisely what the head of CBO said:

To describe the full amount of HI trust fund savings as both improving the government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count a large share of those savings and thus overstate the improvement in the government's fiscal position.

Mr. SESSIONS. To follow up on that, is it not true—and President Obama Monday flatly stated in one press conference that it would reduce our deficit over 10 years by $130 billion and extend the Medicare Program by 9 years, which is patently false, it would appear. I am not sure he understood the complexities of all this accounting, but, in fact, I think he misspoke at that point. Would the Senator from Arizona not agree?

Mr. KYL. Mr. President, I obviously cannot get into the President's mind, but I must say that all of us had missed this point. I said before I ascribe no ill will to anybody on the other side. This is hard to understand. Accounting can be arcane. That is why this statement from the CMS was a little troubling to us when we first read it. They said:

Despite the appearance of this result from the respective accounting conventions—

Which is a fancy way of saying accountants have their way of showing things and that might have confused you—

in practice, improved party financing cannot be simultaneously used to finance other Federal outlays.

You cannot use the same pot of money of $10 to buy two different $10 benefits. You can buy one or the other or half of each, but you cannot buy both. As the old saying goes, you cannot sell the same pony twice.

Mr. SESSIONS. It said, did it not, in that CMS letter that was a fact ''despite the appearance of this result from the respective accounting conventions''? Were they not warning us that it might appear this way but it cannot be that way?

Mr. KYL. Mr. President, our colleague Senator GREGG, a respected member of the Budget Committee, pointed out this morning why that is so, and my colleague from Alabama can do that as well.

There are two different systems of accounting by two different parts of the government. The only way they can do this is by sending an IOU back to the Social Security trust fund, but, of course, the IOU comes out of the pocket of the taxpayers where we have to borrow it and it is still an obligation even though it shows up on accounting books as obligation satisfied.

Mr. BAUCUS. Will the Senator yield for a simple question?

Mr. KYL. Sure.

Mr. BAUCUS. I wonder if the Senator is aware that CBO this morning at 9:57 sent an e-mail to all relevant staff that its estimates with regard to budget deficit reduction still stand, still hold. CBO still estimates this legislation results in a $132 billion deficit reduction. That was an e-mail sent today. Is the Senator aware of that e-mail?

Mr. KYL. I did not see that e-mail. I assume that is the same communique about which the Senator from Alabama is talking. It shows you exactly why this is so confusing and why I am a little bit concerned about the politicization of the CBO.

Last night and again this morning, we have a memo that says you cannot pay twice. If after that he says I still show that as a surplus, then what he has to also be saying is, and therefore it does not extend the life of the Social Security trust fund. As I said, you can do one or the other, or roughly half of each, but you cannot do both. If he is choosing to say it is applied to one, then our colleagues cannot continue to say that it applies to the other.

Mr. President, Americans' biggest complaint about the current healthcare system is the increasing cost of health insurance premiums.

President Obama promised that his healthcare reform bill would address this problem. As he said during his campaign, ''I have made a solemn pledge that I will sign a universal healthcare bill into law . . . that will . . . cut the cost of a typical family's premium by up to $2,500 a year.''

By the President's own yardstick, this bill is a failure, since it actually increases premiums for many Americans and fails to restrain growths for the rest.''

Recently, the nonpartisan Congressional Budget Office (CBO) concluded that, under this bill, those in the individual market—that is, those without employer-sponsored insurance—will face premium increases between 10 and 13 percent. That's approximately $2,100 per family by 2016.

A second study, from the actuarial firm Oliver Wyman, also concluded premiums will rise under this legislation, thanks to burdensome new Federal mandates and requirements and several new taxes.

In the individual market, this study predicts, premiums will rise by $3,300 per year for family coverage and $1,500 for individuals. In my home State of Arizona premiums could rise by as much as 72 percent in the individual market.

This study also tells us that the small group market would see premium

increases. Small employers purchasing new policies in the reformed market would experience premiums up to 20 percent higher in 2019 than they would under current law.

Oliver Wyman also estimates that, if this bill is enacted, 2.9 million fewer Americans would have insurance through small-employer policies.

So what this bill does is raise the cost of insurance for many Americans and then force everyone to buy a policy—and not just any policy, one that is been approved by Washington!

Our friends on the other side of the aisle argue that many families will receive government subsidies to help with the increased cost of insurance brought on by new mandates, taxes, and Federal requirements.

There are a few problems with this argument.

First, not every family will qualify for such subsidies. Indeed, 14 million Americans who buy their own coverage would earn too much to get a subsidy, according to the Congressional Budget Office.

So 14 million Americans will be required, by Washington, to purchase unsubsidized insurance that is more expensive than they could get under current law. And this is being called reform?

Second, those who do receive a subsidy may find the subsidy does not begin to cover the total cost of the increase. So, those families, too, will actually be worse off.

And, finally, the heart of this debate is a basic question: What is the point of raising the price of insurance and then subsidizing a portion of the increase? You are still raising premiums and someone has to pay for subsidies.

Americans have asked us to lower healthcare costs, not raise them and then provide subsidies to those who qualify. And they certainly don't want to pay more in taxes to subsidize their own insurance—but that is what the Democrats' bill would have them do.

As the Wall Street Journal recently editorialized, ''The [Reid] bill will increase costs, but it will then disguise those costs by transferring them to taxpayers from individuals:''

Not surprisingly, small business associations, whose members would be overwhelmingly impacted by this legislation, are disappointed.

The Small Business Coalition for Affordable Healthcare, for one, opposes this bill.

Their name says it all. This organization believes, as all of us do here in the Senate, that the status quo is not acceptable and not sustainable. But they disapprove of this legislation because, as they wrote in a letter to Congress, ''it costs too much and delivers too little.''

Here are just a few of the dozens of businesses represented by this organization: The Americans Hotel and Lodging Association; American Bakers Association; the Independent Electrical Contractors; the National Association of Convenience Stores; the National Automobile Dealers Association; Printing Industries of America; the Society of American Florists. The list goes on and on.

These businesses wrote a letter to Congress expressing disapproval of the bill's huge costs and failure to bring down premiums, among other provisions that hurt small businesses. They believe that increased premiums have a domino effect, hurting both the employer and the employee, resulting in fewer jobs, depressed wages, and fewer choices.

I will share some excerpts from their letter, with regard to increased premiums and costs:

They write:

> The bill does little to make insurance more affordable and the [small business] tax credit is so limited, few will be able to obtain affordable insurance.

They go on:

> The impact on non-group premiums is . . . devastating, as they are expected to increase an average of 10–13 percent per person. Those estimates, in addition to the financing provisions in the bill, slam the ''savings'' door shut.

Another organization, the National Federation of Independent Business, has also raised major objections to this bill with regard to increased premiums.

Here is a telling excerpt from a letter they wrote to the two Senate party leaders:

> H.R. 3590 fails the small business test, and, therefore, fails small business. The most recent CBO study detailing the effect [this bill] will have on insurance premiums reinforces that, despite claims by its supporters, the bill will not deliver the widely-promised help to the small business community.

Bruce Josten of the U.S. Chamber of Commerce concurs. He recently said:

> The fundamental failure of the Senate bill is its failure to address cost containment. We have a bill that raises taxes on pretty much everything that moves in the healthcare space. And successful cost containment practices that are in the marketplace, like health savings accounts or flexible spending accounts, are dramatically weakened in this . . . Healthcare cost increases are going to crowd out the compensation pool.

The majority leader recently disagreed with the notion that this bill increases costs, citing a prediction by the President's Council of Economic Advisers that the bill before us would bring down costs.

This is the same council that told us unemployment would peak at 8 percent if only Congress would pass the stimulus. As Americans know, Congress passed the stimulus, and we are now at 10 percent unemployment.

Moreover, if the Council of Economic Advisors is supposed to be the Bible of economic analysis and administration officials know best, why is it that on the same day the President's top economic advisor Larry Summers declared on This Week, ''the recession is over,'' the Council's chair, Christina Romer, told Meet the Press viewers that ''of course'' the recession is not over? So, who should we believe on costs?

I submit that small business owners and their representatives have the most intimate knowledge of which policies will benefit them and which stand to hurt them. They are telling us this bill will hurt them.

Finally, I would like to point out that this bill does not even guarantee that all Americans have insurance. This bill leaves 24 million Americans uninsured.

We are going to spend $2.5 trillion to raise the price of insurance for millions of Americans and keep affordable insurance out of reach for millions more.

There are much better ways to give access to affordable healthcare to all Americans.

We should start with serious medical liability reform, which has been proven in Texas, Arizona, and Missouri to bring down costs for patients and doctors.

We need to allow Americans to buy insurance across State lines. This is one of the most commonsense reforms out there. Why should Americans be denied access to lower-cost policies just because they are being sold in other states?

We should also allow small businesses to band together to pool their risk and purchase insurance at the same rates large corporations get.

Enacting these simple reforms would cost little, if anything, and would be sure to bring down costs. That is the kind of reform Americans would be sure to support.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the Baucus motion to waive be set aside.

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

Mr. REID. Mr. President, I want to take a moment to talk about the motion to table the appeal by Senator CORNYN and the ruling of the Chair that no point of order lies under rule XLIV.

Senator CORNYN's appeal is not about transparency and certainly not about disclosure. It is about delay and obstruction. That is what the whole tenor of all the Republican statements has been regarding this legislation.

The vote is whether we create a whole new point of order even though Senate rules at this stage do not allow a point of order. They want to rewrite the rules at a whim, not for purpose of disclosure and transparency but for the purpose of delay and obstruction.

The legislative history of the Honest Leadership and Government Act specifically addresses the issue of whether a point of order lies in this instance:

> If rule XLIV does not expressly provide for a point of order with respect to a provision, then no point of order shall lie under the provision.

We open a Pandora's box if we reverse the ruling of the Chair on appeal. What would be the new rule? How

would the new rules be implemented? What happens to the health care bill? Who decides the answers to these questions?

Moreover, if we overrule the Chair, we would be setting a dangerous precedent that points of order lie even if not provided for in Senate rules, standing orders, or procedures.

It is clear the purpose of this is to obstruct and delay. I urge my colleagues to vote to table the Cornyn appeal of the ruling of the Chair when that comes.

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

Mr. REID. No, I will not. The health care votes we have held this week have been procedural in nature. Each has been a party-line vote and much of this debate is focused on politics. But health reform is not about procedure or partisanship or politics. It is about people—people like the thousands who write us every day.

At my desk, we have a few of the letters we have picked up in the last day or so. Sorry, staff has had to lift that and I didn't. This is a few we have gotten. Look at this. They are all basically the same. Each of these letters right here represents a story, a tragedy, a life, a death, but most of all, a person—a person, people who wake up every morning and struggle to get health care or struggle to hold on to what they have, people who lie awake every night second-guessing the agonizing decisions they have to make about what to sacrifice just to stay healthy.

Here is a letter that was written to Senator BOB CASEY of Pennsylvania. Listen to what this woman said:

> Dear Senator CASEY. In a country like the United States, we shouldn't need a tip jar in an ice cream shop to raise money for a kid with leukemia. Jennifer Wood.

Here is another one of those letters. This one is from a father in North Las Vegas, NV:

> Can you imagine what it is like to have a doctor look you in your eye when you hold your 1-year-old child and be told that you will likely outlive your son?

He goes on to say:

> I am certain my story is not unique, but it is real. Stop forcing Americans to use the most expensive point of service, the emergency room, to get what the system won't give them. Let's make all Americans equal in the eyes of health care, please.

This legislation is not about the number of pages of this bill. It is about the number of people—people such as the man whose letter I just read who was told by a doctor that he would likely outlive his son. It is about the number of people whom this bill will help. That is what this is all about. It is about fairness. So when people are hurt or sick, they can go see somebody who can help them and not lie awake at night wondering if they will outlive their 1-year-old son.

Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 1½ minutes remaining.

Mr. REID. I yield back that time and ask the vote start earlier.

I withdraw that request.

I ask unanimous consent that prior to each vote today there be 2 minutes of debate equally divided and controlled in the usual form.

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

There is now 2 minutes equally divided.

The majority leader.

Mr. REID. Mr. President, stop the 2 minutes from running. I do want to explain. We will shortly have a series of up to seven votes. As we noted in the last few days, if Members remain at their desks, the votes can be concluded much earlier.

ENSIGN POINT OF ORDER

The ACTING PRESIDENT pro tempore. There is now 2 minutes of debate equally divided prior to a vote on the constitutional point of order offered by the Senator from Nevada, Mr. ENSIGN.

Who yields time?

The majority leader.

Mr. REID. Mr. President, the vote sequence will be as follows: Ensign constitutional point of order; Corker unfunded mandates point of order; Baucus motion to table the Cornyn appeal ruling of the Chair; Hutchison constitutional point of order. I have been advised that a Republican Member will move to suspend the rules so he can offer his amendment under rule XXII. He is going to be allowed 10 minutes. This will require 67 votes because it is an effort to change the rules. Following that we will have adoption of the substitute amendment and cloture on H.R. 3590. So there is a series of seven votes.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I raise a constitutional point of order because I am concerned that the health reform bill violate's Congress's enumerated powers under article I, section 8 and the fifth amendment takings clause of the Constitution.

Each one of us takes an oath to defend the Constitution of the United States. We do not take an oath to reform health care. We do not take an oath to do anything else here but to defend the Constitution of these United States.

Health care reform needs to fit within the Constitution. The Constitution limits the powers we have. The Congress, the U.S. Government has never enacted anything that would regulate someone's inactivity in the way the individual mandate in this health care bill would. Anything we have ever done, somebody actually had to have an action before we could tax or regulate it. In this case, if you choose to not do something—in other words, if you do not choose health insurance—this bill will actually tax you. It will act as an onerous tax. So for the first time in the history of the United States this bill will do something the Federal Government has never done before. This bill would do something that is beyond Congress's powers to authorize. This bill is unconstitutional and I urge all Members to vote in support of the constitutional point of order.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, our committee and the HELP Committee have given a lot of thought to the provisions in this legislation. We also gave a lot of thought to the constitutionality of the provisions—how they work and the interrelationship between the power of Congress and the States and what States will be doing, particularly under the commerce clause and the tax-and-spending powers of the Constitution.

It is very strongly our considered judgment, and that of many constitutional scholars who have looked at these provisions—and many articles have been put in the Record—that clearly these provisions are constitutional. The commerce clause is constitutional, the tax-and-spending clause, and the provisions clearly are constitutional.

I yield back my time.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the constitutional point of order made by the Senator from Nevada, Mr. ENSIGN, that the amendment violates article I, section 8 of the Constitution, and the fifth amendment.

The question is, Is the point of order well taken?

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''yea.''

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 39, nays 60, as follows:

[Rollcall Vote No. 389 Leg.]

YEAS—39

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker

NAYS—60

Akaka	Burris	Dorgan
Baucus	Byrd	Durbin
Bayh	Cantwell	Feingold
Begich	Cardin	Feinstein
Bennet	Carper	Franken
Bingaman	Casey	Gillibrand
Boxer	Conrad	Hagan
Brown	Dodd	Harkin

Inouye	Lincoln	Sanders
Johnson	McCaskill	Schumer
Kaufman	Menendez	Shaheen
Kerry	Merkley	Specter
Kirk	Mikulski	Stabenow
Klobuchar	Murray	Tester
Kohl	Nelson (NE)	Udall (CO)
Landrieu	Nelson (FL)	Udall (NM)
Lautenberg	Pryor	Warner
Leahy	Reed	Webb
Levin	Reid	Whitehouse
Lieberman	Rockefeller	Wyden

NOT VOTING—1

Bunning

The ACTING PRESIDENT pro tempore. The point of order is not well-taken.

CORKER POINT OF ORDER

The ACTING PRESIDENT pro tempore. There is now 2 minutes equally divided prior to the vote on the motion to waive the point of order raised by the Senator from Tennessee, Mr. CORKER.

Who yields time?

The Senator from Tennessee is recognized.

Mr. CORKER. Mr. President, thank you so much.

There is almost nothing held in lower esteem than for the Senate to pass laws in this body that cause mayors and Governors to have budgetary problems because we create unfunded mandates.

Many of you have been mayors and Governors, and for that reason, in 1995, in a bipartisan way, a law was created—15 Senators on the other side of the aisle who are now serving supported this law—to keep us from passing unfunded mandates. CBO has stated without a doubt that this bill violates that.

I urge Members to vote against this motion to waive that. It is important. It says everything about the way we do business here in Washington. Please, let's not pass another huge unfunded mandate to the States at a time when they all are having budgetary problems. This speaks to the essence of who we are and the arrogance many people perceive us to have here in Washington.

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

Mr. BAUCUS. This point of order calls for legislation to impose an obligation on States to extend their coverage on Medicaid. Under existing law, on average, the Federal Government pays about 57 cents on the dollar for every dollar spent under Medicaid. Under this legislation, the Federal Government will pay 100 percent of that obligation for newly enrolled beneficiaries up through the year 2016. Afterward, the Federal Government will pay on average 90 percent of the cost of new enrollees. Therefore, I think this is a very fair deal for States, and I urge my colleagues to waive the point of order.

Mr. President, I also ask consent that this vote and all subsequent votes in this sequence be 10-minute votes.

The PRESIDING OFFICER (Mr. SANDERS). The question is on agreeing to the motion to waive the Budget Act point of order raised under section 425(a)(2).

The yeas and nays were previously ordered.

The clerk will call the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 390 Leg.]

YEAS—55

Akaka	Franken	Merkley
Baucus	Gillibrand	Mikulski
Begich	Hagan	Murray
Bennet	Harkin	Nelson (FL)
Bingaman	Inouye	Pryor
Boxer	Johnson	Reed
Brown	Kaufman	Reid
Burris	Kerry	Rockefeller
Byrd	Kirk	Sanders
Cantwell	Klobuchar	Schumer
Cardin	Kohl	Specter
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Conrad	Leahy	Udall (CO)
Dodd	Levin	Udall (NM)
Dorgan	Lieberman	Whitehouse
Durbin	Lincoln	Wyden
Feingold	McCaskill	
Feinstein	Menendez	

NAYS—44

Alexander	Ensign	Murkowski
Barrasso	Enzi	Nelson (NE)
Bayh	Graham	Risch
Bennett	Grassley	Roberts
Bond	Gregg	Sessions
Brownback	Hatch	Shaheen
Burr	Hutchison	Shelby
Chambliss	Inhofe	Snowe
Coburn	Isakson	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Warner
Cornyn	Lugar	Webb
Crapo	McCain	Wicker
DeMint	McConnell	

NOT VOTING—1

Bunning

The PRESIDING OFFICER. The motion to waive section 425(a)(2)requiring a simple majority is agreed to.

The point of order falls.

The majority leader is recognized.

Mr. REID. Mr. President, I have spoken to the Republican leader. Senators on both sides feel that it would be to their advantage if we had the vote on Christmas Eve at 7 a.m. rather than 8 a.m. That being the case, I ask unanimous consent that the vote start at 7 a.m. on Christmas Eve.

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

Mr. LEAHY. May I address a question to the distinguished majority leader.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, it will not affect my travel plans because I long ago decided——

Mr. REID. If I could interrupt my friend, quit while you are ahead.

Mr. LEAHY. You have your agreement on this. But is there any possibility that our friends on the other side, knowing that those who are traveling to the Midwest are going to face horrendous problems, that we could have that vote this evening? It will not affect the Senator from Vermont one way or the other, but it will affect a lot of Senators, Republicans and Democrats alike, who have to fly through the Midwest to get where they are going.

Mr. MCCONNELL. Regular order.

CORNYN APPEAL OF THE RULING OF THE CHAIR

The PRESIDING OFFICER. Regular order has been called for.

There is now 2 minutes equally divided prior to a vote on the motion to table the appeal of the ruling of the Chair.

The Senator from Texas.

Mr. CORNYN. Mr. President, upon passage of the Honest Leadership and Open Government Act, the majority leader said:

> I believe last November Americans . . . asked us to make Government honest. We have done that . . . This is the toughest reform bill in the history of this body as it relates to ethics and lawmaking.

This is an appeal to the ruling of the Chair that that provision of rule XLIV is unenforceable. Why would anybody who voted overwhelmingly to make this the toughest reform bill in the history of the body render this rule toothless by agreeing with the attempt to set this aside and to waive its effect?

I ask my colleagues to make sure we vote for transparency, for honesty, for open government. Vote no on this motion to waive.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the plain text of the language in rule XLIV provides that no point of order lies against amendments. That is the way the draftees intended it. That is the way they wrote rule XLIV. That is why the Presiding Officer ruled that way on the advice of the Parliamentarian. We should support the Chair and the Parliamentarian and vote for the motion to table the appeal of the ruling of the Chair.

I yield back the remainder of my time.

Mr. CORNYN. Do I have time remaining?

The PRESIDING OFFICER. One second.

Mr. CORNYN. I ask my colleagues to vote no on the motion to waive.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the appeal of the ruling of the Chair that there is no point of order under rule XLIV, paragraph 4(a).

The yeas and nays were previously ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 42, as follows:

[Rollcall Vote No. 391 Leg.]

YEAS—57

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bingaman	Inouye	Pryor
Boxer	Johnson	Reed
Brown	Kaufman	Reid
Burris	Kerry	Rockefeller
Byrd	Kirk	Sanders
Cantwell	Klobuchar	Schumer
Cardin	Kohl	Shaheen
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Conrad	Leahy	Tester
Dodd	Levin	Udall (CO)
Dorgan	Lieberman	Udall (NM)
Durbin	Lincoln	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden

NAYS—42

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bayh	Ensign	McCaskill
Bennet	Enzi	McConnell
Bennett	Graham	Murkowski
Bond	Grassley	Risch
Brownback	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Snowe
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kyl	Voinovich
Cornyn	LeMieux	Wicker

NOT VOTING—1

Bunning

The motion was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. DURBIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HUTCHISON POINT OF ORDER

The PRESIDING OFFICER. There is now 2 minutes, equally divided, prior to a vote on the constitutional point of order made by the Senator from Texas, Mrs. HUTCHISON.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, the 10th amendment says:

> The powers not delegated to the United States by the Constitution . . . are reserved to the States. . . .

In this bill, a State such as Texas and many other States that have taken full responsibility for insurance plans for their employees and teachers will have to justify any change in those terms to the Federal Government.

The majority claims the commerce clause gives them the power to do what is in this bill. But what they fail to mention is the power to regulate interstate commerce has not been the basis for a robust role in insurance regulation.

This is an encroachment of the Federal Government into a role left to the States in the Constitution. The 10th amendment is being eroded by an activist Congress, and it is time to stop it now.

I urge a vote to uphold this point of order.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the bill before us is clearly an appropriate exercise of the commerce clause. We further believe Congress has power to enact this legislation pursuant to the taxing and spending powers. This bill does not violate the 10th amendment because it is an appropriate exercise of powers delegated to the United States, and because our bill fundamentally gives States the choice to participate in the exchanges themselves or, if they do not choose to do so, to allow the Federal Government to set up the exchanges fully within the provisions as interpreted by the Supreme Court of the 10th amendment.

I urge my colleagues to vote against the point of order.

The PRESIDING OFFICER. The question is on the constitutional point of order made by the Senator from Texas, Mrs. HUTCHISON, that the amendment violates the 10th amendment.

The question is, Is the point of order well taken?

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 39, nays 60, as follows:

[Rollcall Vote No. 392 Leg.]

YEAS—39

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker

NAYS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NOT VOTING—1

Bunning

The PRESIDING OFFICER. The point of order is not agreed to.

The Senator from South Carolina.

Mr. DEMINT. Mr. President, since I have not used or yielded 10 minutes, I ask to be recognized for up to 10 minutes under rule XXII, paragraph 2.

The PRESIDING OFFICER. The Senator has that right.

The Senator from South Carolina.

DEMINT MOTION TO SUSPEND

Mr. DEMINT. Mr. President, in just a moment I will move to suspend the rules for the purpose of offering an amendment that would ban the practice of trading earmarks for votes.

While I want to be careful not to suggest wrongdoing by any Member, there has been growing public concern that earmarks were used to buy votes for this legislation. It has been argued by some that this practice is acceptable because it is necessary to get things done in the Senate. I reject that argument, and I urge my colleagues to put an end to business as usual here in the Senate.

The House of Representatives has a rule prohibiting the use of earmarks to buy votes for legislation. If we were in the House considering this bill, vote trading would be a direct violation of the ethics rules. Unfortunately, a vote-trading rule does not exist in the Senate.

During the debate on the lobbying and ethics reform bill in the 110th Congress, the senior Senator from Illinois, Mr. DURBIN, and I offered an earmark reform amendment which contained the following language:

> A Member may not condition the inclusion of language to provide funding for a congressional earmark . . . on any vote cast by another Member.

The Durbin-DeMint amendment was written to mirror Speaker PELOSI's earmark reforms in the House. The Durbin-DeMint amendment passed the Senate by a vote of 98 to 0 and was included in S. 1, the Honest Leadership and Open Government Act, which passed the Senate by a vote of 96 to 2.

The rule against trading votes for earmarks was in the bill when it left the Senate, but then the bill moved to a closed-door negotiation. Somehow, at some point in those closed-door negotiations, someone dropped the earmark-for-vote language. I have no idea who it was, and we may never know. Remember, this bill was called the Honest Leadership and Open Government Act. In any case, the vote-trading rule was dropped from the bill, which then passed the Senate and was signed by the President.

Just to confirm all of this, I wish to make a parliamentary inquiry to the Chair. Is the Chair aware of any prohibition in the Standing Rules of the Senate such as the previously referenced rule contained in the Durbin-DeMint amendment or in the Rules of the House of Representatives?

The PRESIDING OFFICER. No such rule exists in the Senate.

Mr. DEMINT. No such rule exists.

I have an amendment which would correct this error. It mirrors the Durbin-DeMint language which passed the Senate 98 to 0, and I will read the relevant parts. I quote:

> It shall not be in order in the Senate to consider a congressionally directed spending

item . . . if a Senator . . . has conditioned the inclusion of the language . . . on any vote cast by any Senator.

This language had unanimous bipartisan support in 2007, and it should be part of the rules today. This rule would provide needed accountability and allow any Senator to raise a point of order to strike any earmark that has been used to buy votes. This point of order could be waived and the ruling of the Chair could be appealed with the support of two-thirds of Senators present and voting.

Before I make this motion and we vote on this amendment, I wish to make a few things absolutely clear. First, this rule already won a unanimous vote in the Senate in 2007, so it is not controversial. Second, this rule only applies to earmarks used to buy votes in the future. It will not, unfortunately, apply to the earmarks in this bill. Third, this vote is not a trick. The amendment is written as a ''standing order,'' so it will not increase the number of votes required to pass this legislation. It will not slow down the health care bill in any way.

The only reason for Senators to oppose this amendment is if they want to use earmarks to buy votes for legislation. It is that simple. If you support business as usual, then oppose this motion. But if you want to start to clean this place up and bring some integrity back to the legislative process, then please support the motion.

Mr. President, I move to suspend the provisions of rule XXII, including germaneness requirements, for the purpose of proposing and considering my amendment No. 3297, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

It appears there is a sufficient second.

The yeas and nays were ordered.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, this proposed new point of order may sound good in theory, but it has many flaws, in fact, when you stop and think about it. If you think the Senate is tied up in knots now, if this were in effect, the current situation would pale in comparison to what the effect of this amendment would be.

The amendment is written in a way to become an endless source of delay. Senators could make one point of order after another under this provision, pointing to different provisions or indicting the integrity of different Senators.

The amendment provides no way for determining how to rule on a point of order raised under it. A point of order cannot be decided without solid guidance. Points of order make the most sense when they are based on objective criteria.

The proposed amendment to rule XXII would ask the Chair and the Parliamentarian to sort through purely subjective concepts such as the basis for a Senator's vote or the intent behind inclusion of a provision. How would the Chair be able to rule on such a point of order? Would the Parliamentarian have to question the chairman of a committee or a Senator who offers the amendment, under oath? Would the Parliamentarian have to question every Senator who requested a directed spending item, under oath, to ensure they did not condition their support on inclusion of the item?

The rule may sound good in theory, but it is totally unworkable as a practical matter.

I move to table the DeMint motion and ask for the yeas and nays.

The PRESIDING OFFICER. There is 1 minute left for those who favor the motion. Who yields time?

The Senator from South Carolina, 1 minute.

Mr. DEMINT. Mr. President, I would answer the questions of the Senator by suggesting that Senator DURBIN, who wrote the amendment, perhaps may wish to make a couple of comments about it because this is the mirror—

Mr. DURBIN. Are you yielding time?

Mr. DEMINT. Yes, I sure will.

Mr. DURBIN. I don't understand how this amendment would work. If the Senator happens to have a hurricane in his State and needs disaster aid and we put money in the bill, then would we have to question the Senator's motive for voting for the bill? I think it goes entirely too far, and I support this effort to table.

Mr. DEMINT. This a DeMint-Durbin amendment. It is mirrored after Speaker PELOSI's bill. They have this rule in the House. They can make it workable. Certainly, the integrity of this body is worth considering.

I would encourage my colleagues, at this point, when the public is looking at us, asking for some trust and integrity, we can make this bill work. I ask my colleagues to support my amendment and oppose the tabling motion.

Mr. BAUCUS. I move to table the motion and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table the motion to suspend the rules.

The clerk will call the roll.

The PRESIDING OFFICER (Mr. AKAKA). Are there any other Senators in the Chamber desiring to vote?

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''nay.''

The result was announced—yeas 53, nays 46, as follows:

[Rollcall Vote No. 393 Leg.]

YEAS—53

Akaka	Bennet	Brown
Baucus	Bingaman	Burris
Begich	Boxer	Byrd
Cantwell	Kaufman	Pryor
Cardin	Kerry	Reed
Carper	Kirk	Reid
Casey	Klobuchar	Rockefeller
Conrad	Kohl	Sanders
Dodd	Landrieu	Schumer
Dorgan	Lautenberg	Shaheen
Durbin	Leahy	Specter
Feinstein	Levin	Stabenow
Franken	Lieberman	Tester
Gillibrand	Lincoln	Udall (CO)
Hagan	Menendez	Udall (NM)
Harkin	Mikulski	Whitehouse
Inouye	Murray	Wyden
Johnson	Nelson (FL)	

NAYS—46

Alexander	Enzi	Merkley
Barrasso	Feingold	Murkowski
Bayh	Graham	Nelson (NE)
Bennett	Grassley	Risch
Bond	Gregg	Roberts
Brownback	Hatch	Sessions
Burr	Hutchison	Shelby
Chambliss	Inhofe	Snowe
Coburn	Isakson	Thune
Cochran	Johanns	Vitter
Collins	Kyl	Voinovich
Corker	LeMieux	Warner
Cornyn	Lugar	Webb
Crapo	McCain	Wicker
DeMint	McCaskill	
Ensign	McConnell	

NOT VOTING—1

Bunning

The motion was agreed to.

Mr. REID. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to table was agreed to.

AMENDMENT NO. 2878 WITHDRAWN

Mr. REID. Mr. President, I ask unanimous consent that amendment No. 2878 be withdrawn.

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

AMENDMENT NO. 2786, AS AMENDED

Mr. REID. Mr. President, what then is the pending business?

The PRESIDING OFFICER. There is now 2 minutes of debate prior to a vote on amendment No. 2786, as amended.

The Senator from Montana.

Mr. BAUCUS. Mr. President, this is a vote to adopt the substitute. This is another vote on whether we wish to reform health care.

I urge my colleagues to vote aye and move this process forward.

I yield back my the time.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Who yields time in opposition?

Mr. REID. I yield back the time on behalf of my Republican colleague.

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

The question is on agreeing to amendment No. 2786, as amended.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''no.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 394 Leg.]

YEAS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—39

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker

NOT VOTING—1

Bunning

The amendment (No. 2786), as amended, was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on H.R. 3590, the Service Members Home Ownership Tax Act of 2009.

Christopher Dodd, Richard Durbin, Mark Begich, Paul G. Kirk, Sheldon Whitehouse, Roland W. Burris, Max Baucus, Sherrod Brown, Claire McCaskill, Jon Tester, Barbara A. Mikulski, Bill Nelson, Maria Cantwell, Mark Udall, Arlen Specter, Kirsten E. Gillibrand, and Ron Wyden.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on H.R. 3590, the Service Members Home Ownership Tax Act of 2009, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 60, nays 39, as follows:

[Rollcall Vote No. 395 Leg.]

YEAS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—39

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker

NOT VOTING—1

Bunning

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 39. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion to invoke cloture on the underlying bill is agreed to.

Mr. REID. Mr. President, I think we all recognize that things have gotten pretty tense around the Senate as we have worked three weekends in a row, long hours, and approach the Christmas holiday. Sometimes the tension has boiled over into what has been said on and off the floor, and the way we treat each other, and that is very regrettable.

Two nights ago there was an unfortunate incident that deserves special mention, though. One of our colleagues, the Senator from South Carolina, attacked the office of the Senate Parliamentarian. We all know that the Senate Parliamentarian is a non-partisan referee. The Office of the Parliamentarian does their best to enforce the rules and procedures of the Senate in an impartial manner.

We have all come across situations when we were frustrated by the Parliamentarian's ruling because we were hoping that a given amendment was or was not germane, or that a given point of order was or was not well taken. But, we have all taken comfort in the fact that whatever the ruling in the instant case, the Parliamentarian was calling it straight and the same ruling would apply to similar amendments by other Senators and similar facts in the future.

So, it is simply not right and not fair to attack the Parliamentarians for doing their job. This is especially so when the issue is not a close call. Our colleague from South Carolina attacked the Parliamentarian over a ruling relating to the difference between amendments to the Standing Rules of the Senate and procedural changes adopted in less formal ways. The former requires a 2/3rds vote to achieve cloture; the latter is treated like any other piece of legislation. The distinction is an interesting quirk of Senate rules. But it is a venerable and well-established distinction. The Senate Manual includes 70 pages of Standing Orders. The Budget Act process—which the minority used to make a point of order just today—is almost entirely dependent on procedures that are not part of the Standing Rules of the Senate. In fact, in the last two Congresses, the Senator from South Carolina has authored or co-sponsored at least 17 bills or amendments that implicate the distinction. For the Parliamentarian to be accused of ''redefin[ing] words,'' ''ignoring a rule'' of the Senate, and a ''truly historic'' and unconstitutional ''subvert[sion of] the principle we have operated under'' for re-stating this longstanding distinction is completely unwarranted.

As I noted, tensions are running high and Senators are tired and, according to one recent article, cranky. But I hope that the body will do its best to ensure proper decorum as we proceed for the remainder of the year and the remainder of the Congress. We need to treat each other with respect. And we certainly need to treat the institution of the Senate and its hard-working employees with respect.

Mr. President, I ask unanimous consent there now be alternating blocks of time as follows: The first hour under the control of the Republicans; further, that after the first 2 hours, then there be alternating blocks of 30 minutes, with the Republicans controlling the first 30 minutes.

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

Mr. HARKIN. Mr. President, there have been a lot of conversations on this floor in the last couple hours. There are a lot of people who are facing tough timetables tomorrow. I know of one Senator——

Mr. VITTER. Mr. President, regular order. Regular order, Mr. President.

Mr. HARKIN. Mr. President, I ask consent I be given 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. VITTER. Mr. President, reserving the right to object. I would be happy for those 2 minutes to come out of the Democrats' 1 hour without asking for regular order.

Mr. HARKIN. That is fine.

The PRESIDING OFFICER. Without objection.

Mr. HARKIN. Mr. President, I know one Senator whose family is with their in-laws. The husband is from England

and the kids are over there and cannot make it for Christmas dinner tomorrow night. I know another person who has to get out to the West and there are a lot of storms out there. If they can get that early flight, they can make two legs and get home. If they have to go later in the day, they have to do three legs and they may not make it. There are a lot of people around here who are having a lot of problems that we are all here. There is no reason to hold over the vote so I am going to ask unanimous consent that the vote on the passage of the bill and the vote on the debt limit bill occur at 6 p.m. this evening.

The PRESIDING OFFICER. Is there objection?

Mr. VITTER. Addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, that request has not been cleared on this side. On behalf of my colleagues, I object. If the Senator would like to talk to all his colleagues about it, that would be fine, but in the meantime, I would object.

Mr. HARKIN. Mr. President, then I would further ask unanimous consent that the votes that are going to occur at 7 a.m. tomorrow occur at 12:15 a.m., in the morning.

The PRESIDING OFFICER. Is there objection?

Mr. VITTER. Mr. President, my response would be the same and I would object in the same vein.

The PRESIDING OFFICER. The objection is heard.

Mr. HARKIN. I want Members to know who is keeping us here.

Mr. RISCH. Mr. President?

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Mr. President, I ask unanimous consent that the vote referred to by Senator HARKIN take place at 2 p.m. on January 20, 2010, when we return.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. There are objections.

The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I ask unanimous consent that this first block of time on the minority side be divided equally between the following Senators: myself, Senators COBURN, THUNE, SESSIONS, KYL, and ENSIGN.

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

Mr. VITTER. I thank the Chair. Mr. President, I ask for order on the floor.

The PRESIDING OFFICER. The Senate will be in order.

Mr. VITTER. Mr. President, I ask that time not be counted against me until the floor is in order.

The PRESIDING OFFICER. The Senator will not be charged. The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I rise to talk about this important health care issue but also to talk about another vitally important issue directly connected, which is spending and debt because we will also have an enormously important vote tomorrow morning on increasing the debt limit. It is already over $12 trillion, but the proposal is to increase it further.

In starting, let me refer back to a couple comments and parts of the debate yesterday because I think it will provide a good segue into this important debate. First, yesterday, as we were debating health care, my colleague from Louisiana, the distinguished senior Senator, Ms. LANDRIEU, was on C–SPAN's ''Washington Journal.'' In discussing the health care bill, my participation came up. She said: ''Senator VITTER has not lifted a finger to pass this bill.''

I wish to say that is a very kind and positive and generous comment of the Senator and I take it as a nice Christmas overture and I accept it in that vein. I wish her all the best this Christmas season as well. It is obviously very true, and I take it as a very positive comment.

I would go further. I fought hard against this bill. I fought hard for alternative reforms, focused reforms, reforms focused like a laser beam on real solutions in health care to real problems such as preexisting conditions. I would simply add, I don't think this fight is over by a long shot. I will continue fighting and I will continue offering those alternatives.

With regard to the bill and this enormously important issue of spending and debt, as I was leaving the floor to go to meetings in my office after speaking yesterday, Senator BAUCUS took issue, apparently, with some of my comments—specifically, my comments about Medicare. I had suggested that this bill cuts Medicare by $467 billion, almost $½ trillion. Although I needed to go to meetings, I think Senator BAUCUS took issue with that and characterized that as actually extending the life of Medicare.

The Congressional Budget Office answered that debate far better than I could have. They answered that debate in the last 24 hours with their report. They outline very clearly and we have been talking about it earlier today that, in fact, Medicare money and other pools of money are double counted in this analysis about the health care bill. ''The key point is that the savings to the HI trust fund under the health care bill would be received by the government only once so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.''

The same Congressional Budget Office report says ''to describe the full amount of HI trust fund savings and both improving the Government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double count a large share of those savings.''

So this answers the Senator's comments directly. You can't have it both ways. You can't say we have a bill that is paid for and also a bill that strengthens Medicare and extends solvency for additional years. That is double counting. That is exactly what the CBO is saying. The American people, in a much more basic, commonsense way, know better. They know this bill isn't paid for. They know this bill is going to expand the deficit and put us on an even worse fiscal road. They know that in their gut. They know that with their common sense. Of course, that gets us to the other big vote tomorrow extending the debt limit, yet again, well beyond $12 trillion.

These issues are connected. They are connected in the technical way I just suggested, and these issues are certainly connected in the hearts and minds of the American people. The American people have responded to this debate because health care is so vitally important and the health care issue is so personal.

There is even an overarching, larger reason the American people have responded so much to this debate. It is because they are connecting the dots. They are putting this as part of a larger pattern, and they are connecting the dots between bailing out and taking over insurance companies and financial companies and car companies, hiring and firing the CEO from the Oval Office to potentially one-sixth of the U.S. economy in health care. They are connecting those dots in terms of spending and debt, as well, because that has been the dominant trend over the last 12 months at least.

We have a debt limit today. It is over $12 trillion. The motion tomorrow suggests that is not enough. We need to go higher. The American people are connecting the dots, particularly in the last year, and they are scared to death about where it leads. How did we get this way? How did we come to this $12 trillion-plus point? Well, in July, 2008, Fannie Mae and Freddie Mac were given an unlimited line of credit from the Treasury that, so far, has been $400 billion, and that bill increased the debt limit from $9.8 trillion to $10.6 trillion. But that wasn't enough. Only 3 months later, in October, 2008, came the Wall Street bailouts, the $700 billion TARP that will raise the debt limit. That did raise the debt limit even further, to $11.3 trillion, but we weren't done yet. Only a few months after that, in February of this year, we passed the so-called stimulus bill. That will cost over $1 trillion before it is all over, and then the debt limit was raised to $12.1 trillion. Then we passed an omnibus spending bill earlier this year that increased spending about 8 percent over the previous fiscal year.

This month, we passed another omnibus spending bill that increased spending another 12 percent on top of that. That is what is leading to tomorrow's debt limit vote. That is what is leading to the statement that our debt limit is

now above $12 trillion. But that is not enough. Apparently, we need to go further.

The American people are connecting the dots. They see this trend, which has accelerated dramatically over the last 12 months, and they are truly scared for our collective future—for their kids' and their grandkids' future. All these things I mentioned plus this health care bill are part of that.

The American people know in their gut—they may not understand all of the Congressional Budget Office technicalities, but they know in their gut that you cannot have it both ways. You cannot count $467 billion of Medicare cuts as both helping pay for the other spending in the bill and strengthening Medicare. It is one or the other. It cannot be both. It is the same thing in the health care bill with regard to Social Security—$52 billion double-counted. But you cannot have that both ways. It is the same thing in this health care bill with regard to the CLASS Act—$72 billion double-counted. You can't have that both ways. Those factors alone put this bill out of balance, adding to the deficit, adding to the debt.

What about the doc fix, the fix of reimbursement rates under Medicare to health care professionals such as doctors, which is clearly needed. That was taken out of the health care bill. Why? Because that would cost money. It was taken out. It was just pushed down the road, the can was kicked down the road. That has to be revisited by March 1 of next year. If a real 10-year-or-more doc fix is passed, that will be another $200 billion unpaid for—more deficit and more debt.

The American people get it. They know in their hearts, in their gut, that we are on an unsustainable course. They know all these bailouts and so-called stimulus acts, all these spending bills and now this enormous health care bill, are part of that unsustainable course, and they are crying out. They are saying we must reverse course, we must save our Nation. I hope we do that starting here, starting now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma, Mr. COBURN, is recognized.

Mr. COBURN. Mr. President, I ask consent to have 3 minutes outside of the time allotted to make a point of personal privilege, and I ask unanimous consent for that. I would say the reason is today is my 41st wedding anniversary, and I was going to discuss that.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

HONORING MY WIFE ON MY 41ST ANNIVERSARY

Mr. COBURN. In 1953, I met a young lady—actually, it was 1954—a young lady when she was 6 years of age. Her name was Carolyn. I went through grade school with this young lady. I went through junior high with this young lady. I went through high school with this young lady. The only serious dating relationship I ever had in my life was with this young girl named Carolyn Denton. She became one of my best friends in high school. It just so happened that one weekend I couldn't get a date, she didn't have one, and I asked her out. From that point forward, I fell in love with somebody I have been married to for 41 years, my wife Carolyn Coburn.

On this day of significant votes in the Senate, and tomorrow, I wanted to take a moment to say how much I appreciate what she has meant to me the past 41 years, how much stronger she has made me as a man, how she has completed every aspect of my life being my partner as we walk through life, and the gift she gave me of three wonderful daughters.

So to my wife Carolyn, in front of the body, I tell you thank you and happy anniversary.

I would like to go to my prepared remarks.

The PRESIDING OFFICER. The Senator is recognized.

Mr. COBURN. Mr. President, I have spent 5 years in the Senate talking to my colleagues about spending. We find in front of us another opportunity to do the wrong thing. We have a debt limit increase. Yet, in those 5 years, after hundreds and hundreds of amendments the body has refused to agree to that would cut spending, we are going to increase the debt limit but we are not going to make any effort to cut the spending.

I have given seven complete speeches on the floor about the significant amount of waste in the Federal Government. I will not repeat those now. But that number is now annualized to $380 billion a year—every year, $380 billion worth of waste. Part of it is fraud, but a large part of it is duplication. Let me give some examples of the duplication because I think when Americans hear this they do not understand why.

The Government Accountability Office found that there are 13 Federal agencies that spend $3 billion to fund 207 Federal programs, 207 different programs, to encourage student standards in the fields of math and science—13 different agencies, 207 different programs. We could have spent one-tenth that amount of money and had exactly the same results and saved $2.7 trillion. But we will not do it.

Another example, according to GAO, to the tune of $30 billion, the Federal Government funded more than 44 job-training programs administered by 9 different Federal agencies across the Federal bureaucracy. According to the Catalog of Federal Domestic Assistance, we have 14 departments within the Federal Government and 49 independent agencies that operate exchange and study-abroad programs. We have 49 programs instead of 1. I have tons of other examples just like that.

We have failed to do our job, and the easiest thing in the world is to spend somebody else's money. Increasing the debt limit without having a rescission to get rid of programs just like this and have one program that is effective and efficient, that has metrics on it, that measures its goals and is accountable, instead of 49 or 72 or 64 across a large number of different agencies—we can do that, but there is no will here to do that. As a consequence, what we do, instead of making the Federal Government more efficient, we just raise the debt limit. I am not about to be a part of that anymore.

I know my colleagues get upset with me as I come to the floor year after year talking about what we do and the fact that we do not fix the real problems. I have been rather hard to get along with, by my colleagues, in terms of them advancing new programs when we do not eliminate the programs that are already doing the same thing.

I think at this time of Christmas, one of the things we ought to be doing is telling the American public that we will change. Next year, instead of creating new programs, we are going to look at all the programs and consolidate them and have one that does math and science, one that is for work-study programs abroad, not the numerous numbers we have for which we have no accountability.

America recognizes our incompetence, but we are going to spell it out. In this new year that comes forward, there is not going to be a week that comes by that I do not come to the floor and show another example to the American people of how we are not doing our work. It grieves me—not for me but for my children and everybody else's children, for my grandchildren and everybody else's grandchildren—that we fail to treat the real symptoms of our debt; that is, we will not do the hard work of oversight. We should be condemned for that. We are failing the American people. It ought not to be.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota, Mr. THUNE, is recognized.

Mr. THUNE. Mr. President, I appreciate the comments of both my colleagues from Louisiana and Oklahoma touching on an issue that I think is becoming increasingly important to a lot of Americans.

I was listening this morning to one of my colleagues on the other side as he came down here and talked about how all the spending problems and all these debt problems were all inherited from the previous administration. There is sort of a Bush-phobia or something around here among Members on the other side because they do not want to own up for the decisions they have made.

Granted, I would be the first one to admit that when Republicans were in control of the Congress, we didn't do it right all the time and we lost our way a little bit with regard to spending.

But having said that, we now have—since 2006—a Democratic Congress. I need to remind my colleagues that the President doesn't spend a dime under

our Constitution. Congress has the power of the purse. Congress appropriates funds. So if you look at the last several years in terms of appropriations, going back to the last couple of years that the Republicans were in control of the Congress, the amount of spending in the nondefense part of the budget was a negative 1 percent in 2007, 5 percent in 2006, and 8 percent in 2005. That is nondefense discretionary spending in our annual appropriations. If you go to total growth, which includes defense, you are talking about 8 percent in 2005, 5 percent in 2006, and 2 percent in 2007—more than most people would argue we needed to be spending in annual appropriations bills.

But the Democrats took control of the Congress after the 2006 election, so they started writing the budgets. We have ownership for the 2007 budget, but the Democrats have ownership for 2008, 2009, and 2010. The 2008 budget grew at 9 percent total growth. Nondefense discretionary spending grew at 6 percent. If you look at nondefense discretionary spending in 2009, the last fiscal year, it was 12 percent. In this fiscal year, 2010, the estimate is that we will spend 17 percent over the previous year. So year-over-year spending in nondefense discretionary appropriations here in the Congress will have grown almost 30 percent in the last 2 years. That is not a problem that was created by the Bush administration. That is not a problem, obviously, for which the Republican majority was responsible. That is the Democrats, when they took control of the Congress after the 2006 elections, beginning in 2007. They write the budgets, they approve the appropriations bills. Obviously, as you can see, the numbers have gone up dramatically—12 percent in the 2009 budget year, and the 2010 estimate for which we are now funding appropriations bills—and we have funded most of them now with the omnibus or with the smaller appropriations bills, the six bills that were passed just a week or two ago—looking at 17 percent year-over-year spending in appropriations. So that is almost 30 percent in the last 2 budget years. That is not a problem the other side can hold the previous administration responsible for or attack them for.

I will also mention that the $1 trillion approved earlier this year in the stimulus funding was approved on almost party lines. There were a couple of Republicans who supported that, but for the most part that was something approved by the Democratic majority. It was proposed by the President of the United States. That is not spending for which the former President is responsible.

At some point around here, people have to own up and take responsibility for their own decisions. You cannot blame the past administration. You cannot blame inherited problems for all the spending that is going on right here, right now. The last year, as I said, appropriations spending—and this year again—was by any stretch way above anything we have seen or should see at a time when we have an economy in recession and most Americans are having to tighten their budgets—12 percent nondiscretionary increase in 2009 and 17 percent increase in spending in 2010.

With that and the stimulus spending, it brings us to where we are today, which is this massive expansion of the Federal Government—$2.5 trillion in new spending for a new entitlement program. That, too, is not something for which the previous administration is responsible. That is something this administration, the majority here in the Congress, has decided they want to push through. They want to finish it before the Christmas holiday. They want to get this in the rearview mirror before the American people have an opportunity to see what is in it, particularly in the last hurried rush here over the weekend where we got the 400-page amendment that included all the special last-minute deals that were made to try to get that elusive 60th vote. What we have seen is now the $2.5 trillion in new spending is filled with all kinds of goodies that are going to favor individual Senators and individual States.

The American people are starting to react.

The point I want to make about this is, the one thing that the President and a lot of our colleagues on the other side have been talking about is how this reduces the deficit. This saves $132 billion over the next 10 years. Just remember that is $132 billion over 10 years. If you look at what the deficit was for the month of October, if any of my colleagues know what the deficit was for the month of October, 1 month alone, this last October, it was $176 billion—in 1 month. They are crowing about $132 billion in savings over a 10-year period.

What is interesting about that $132 billion, if you take away all the gimmicks and you look at all the phony accounting that has been done to get to that number, it goes down in a real hurry.

For example, the SGR fix, the physician reimbursement issue is a $200 billion-plus item. Let's say they are saying they got $132 billion in savings over the next 10 years. But at some point you have to deal with that $200 billion SGR. If you take that away, you end up with a negative $68 billion already. Then you add in this CLASS Act, which everybody who has any sense, any actuary has absolutely denounced, including even the Washington Post. But if you look at what the CLASS Act does, they are using the revenues in the first early years that come from the premiums paid in. That money will be spent.

So when it comes time to pay out benefits, there isn't going to be any money there. But they are showing a $72 billion savings or addition to their so-called savings in that first 10 years from the CLASS Act. The chairman of the Budget Committee has called the CLASS Act a Ponzi scheme of the first order, something that Bernie Madoff would be proud of.

You take that $72 billion out, which the Congressional Budget Office says is going to add huge deficits in the outyears, you take out that $72 billion, and you are already at a $130 billion deficit. We haven't even dealt with the fact that because of the way they have set this up, by front end loading the tax increases and back end loading spending, that understates the total cost.

In the first 10 years, if you take those first 4 years when you have $56 billion of revenue coming in and only $9 billion of spending going out, that is another $47 billion that you could add to the deficit. So you have gone from $132 billion in savings to a $177 billion deficit. That is before you even get to the more important issue, which is what the CBO came out with today in response to a question by the Senator from Alabama asking: How can you count money that is going to come from these Medicare cuts, count that as revenue that will save and extend the life of Medicare, and still spend it for a new entitlement program on health care?

The CBO basically said that is double counting. In fact, I want to read what they said:

> To describe the full amount of HI trust fund savings as both improving the government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count a share of those savings and thus overstate the improvement in the government's fiscal position.

Every American knows you can't spend the same money twice. That is what this does. They are going to cut $1 trillion over 10 years, when fully implemented, out of Medicare, but they will spend that money on a new entitlement program and still count the savings in Medicare. You can't have it both ways. The American people have figured out this shell game.

When you take a $177 billion deficit after you take out all these accounting gimmicks, you are already running a significant deficit. Then when you add in the fact that what the CBO now says, what most of us have believed to be true and have been arguing, that you can't spend the same money twice, you cannot double-count that revenue, the Medicare trust fund is going to take a significantly big hit. I know the Senator from Alabama is going to talk more extensively about that. I want to point that out because we are going into a big debate about raising the debt limit. Everybody, now that the horse is out of the barn, wants to shut the gate. But you can't spend $2.5 trillion on a new entitlement program and then claim to be fiscally responsible or say that you are doing something to reduce the deficit.

Interestingly enough, the CMS Actuary said these Medicare cuts are unlikely to be sustainable on a permanent basis. We all know we are not

going to cut $1 trillion out of Medicare over the first 10 years. That just doesn't happen here. All that money is going to get borrowed and put on the debt or they will have to raise taxes to pay for it. You can't have it both ways.

As we get into the debate about the debt limit, it is important to put things into context. I want to say again that $132 billion in savings, which is what they are saying they get by this health care reform bill with all the tax increases and the Medicare cuts, is suspicious in the first place, given the fact that the SGR, the $200 billion is not included, the $72 billion CLASS Act, and the $47 billion that they achieve by front end loading tax increases and back end loading spending brings you to a $177 billion deficit in the first 10 years. That does not even include the funky accounting being used with regard to the Medicare trust fund. We will get into this debate about the debt limit, but nothing bears on that more heavily than what we do with health care.

We need to defeat this. I hope we will still see some courage by a few of my colleagues to help us take this health care bill down, to go back to the drawing board, to do it right and to actually put in place solutions that will meaningfully reduce the cost of health care for people in this country, not increase their premiums, and not add to the deficit and saddle future generations with an enormous debt they don't deserve. Remember, $176 billion was the deficit in the month of October alone. We are talking about, under their numbers, $132 billion in savings over 10 years which, when you sit down and figure it out, it just doesn't add up.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Florida). The Senator from Arizona.

Mr. KYL. Mr. President, when the recession hit last fall, many Americans had been living beyond their means and had to quickly scale back. Families all across America have been tightening their belts. They have been forgoing vacations, meals in restaurants, extra Christmas presents, cutting back wherever they can. The government needs to take a lesson from those families. It is time that Congress and the administration get serious about cutting spending in a meaningful way. Spending during President Obama's first year in office, to put it charitably, has not been what most would describe as responsible. Government spending grew by $705 billion in fiscal year 2009, an increase of 24 percent. Appropriations legislation enacted this year will increase spending by another 8 percent in the year 2010. All of this spending, of course, has an impact on both the Federal deficit and the Federal debt.

Let me clarify the difference between those two numbers. The deficit is the amount of total spending not covered by revenues in a given year. The debt is the sum of all of the Nation's yearly deficits. The 2009 deficit made history and not in a good way. It exceeded $1.4 trillion in the last fiscal year. That is the highest amount in history and more than three times as much as the highest deficit during the last administration. The budget President Obama submitted to Congress doubles the deficit in 5 years and triples it in 10. It also creates more debt than the combined debt under every President since George Washington. That seems almost impossible, but it is true.

The President's budget creates more debt than all of the debt ever combined throughout the history of the country, from George Washington all the way up through George Bush, more debt under President Obama's budget than all of that combined.

Even Management and Budget Director Peter Orszag has said that is not sustainable. The debt has reached an almost unimaginable sum of $12 trillion. To pay the Federal Government's bills for the next 2 months, tomorrow we are going to consider passing a roughly $300 billion increase in the allowable U.S. national debt known as the debt ceiling. That means our debt ceiling, now $12.1 trillion, will be $12.4 trillion. After those 2 months, we will need to add another $1.5 trillion to the debt ceiling to pay for the remaining spending in the year 2010.

Early next year our debt ceiling will be a whopping $13.9 trillion. Of the massive national debt, a paper by the Heritage Foundation tells us:

> The recession and excessive spending have caused the debt held by the public to grow sharply to 56 percent of the economy, topping the historic average of 36 percent. To make matters worse, entitlement programs will double in size over the next few decades and cause the national debt to reach 320 percent of the economy.

That is so obviously unsustainable that it has to be of great concern to us. It is like the size of a credit card being several times more than our income, such that we can never pay the debt on the credit card. That is even to ignore the interest payments. Let's not forget about that. That is another tab we have to pick up. I have only been talking about the principle. But in 2009 alone, interest payments were $209 billion. By the year 2019, interest payments are expected to reach $800 billion a year. That is just the interest on the debt.

How are we going to afford that? By the way, who do we pay that to? We pay it to all the people we borrow money from, one of which is the nation of China. Chinese officials have indicated that they are very nervous about the amount of debt the United States is taking on.

In mid-March, Chinese Premier Wen Jiabao voiced concerns about U.S. Government bond holdings:

> We have lent huge amounts of money to the United States. Of course we are concerned about the safety of our assets. To be honest, I am a little bit worried, and I would like to . . . call on the United States to honor its word and remain a credible nation and ensure the safety of Chinese assets.

What can a lender do when he or a nation becomes concerned that the borrower is going to have trouble paying back, when the borrower keeps coming back for more and more lending? What you do is you raise the interest rate to reflect the greater risk in the lending of the money. That is what is going to happen to us. That greater interest rate is going to be manifest in payments that we have to make by our productivity and the taxes we pay. That will decrease our standard of living and create an additional obligation on the American people.

President Obama has acknowledged the problem. He said:

> We can't keep on just borrowing from China. We have to pay interest on that debt, and that means we are mortgaging our children's future with more and more debt.

He is right. So why does he propose more spending and more borrowing and more than any other President in the history of the world?

It is time for words and actions to match. It is time for Congress and the President to start reining in this out-of-control spending and debt. I stand with my colleague from Alabama in support of his amendment to reinstate statutory spending caps. While this is not a panacea for solving the fiscal problems the Nation faces, it is a good way to start on the path to responsibility. I will bet that most of our colleagues on the other side of the aisle will vote against it. It is wrong for them to expect Republicans to extend the debt ceiling as long as they are unwilling to do anything to get spending under control.

Americans expect us to get this spending and debt under control. When we return to the Senate in January, our first item of business will be a long-term debt ceiling extension, including consideration of the Sessions amendment and others. After pushing the stimulus, the auto bailout, cash for clunkers, the massive $2.5 trillion health care bill, and others, I would hope our Democratic colleagues are ready to take a breather from their big spending and support a more reasonable course so that we don't have to continue to extend the Nation's debt ceiling.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator KYL for his consistent performance over his entire career in the Senate of trying to maintain financial responsibility in this body, and I respect him highly on that and many other issues.

There is so much we could say at this point on the debt limit, on which we expect the vote tomorrow. I am not going to vote on a debt limit increase until we accompany it with some action that will actually reduce the incredibly irresponsible path we are on. That is going to be one of my positions, and I think others will take the same view.

Saying we have to increase the debt—well, we have to do something

about reckless government spending. We really do. We have to do something about it. They always say: Next year. So I say: When? I believe we should condition any increase in the debt limit on the passage of legislation that would renew what has expired, spending caps on the discretionary spending accounts. I thank Senator KYL for supporting the legislation.

In other words, we can do that. We did it in 1990. You can see, as shown on this chart, the declining expenditures that resulted in those numbers. We passed it in 1990. As shown on this chart, those yellow lines represent the deficit—up to $300 billion, and it began to shrink. In late 2000, 2001, we had surpluses in our accounts. It is odd to show a surplus, shown below the line on this chart, but we accomplished that.

President Clinton liked to claim credit for it. I have a vague memory that Republicans shut the government down to contain President Clinton's spending. But there were battles over containing spending, and it worked. A big key to it was the spending limits, the spending caps. Those expired in 2002, and, look, we began to show the increases in deficits again. So I think as a condition of voting for a debt increase we should have a fix of the restoring of the caps.

Senator KYL made reference to the fact that under President Obama's 10-year budget he submitted earlier this year, which was scored by the Congressional Budget Office, a nonpartisan group, but the leaders were picked by the Democratic majority. What would it do to our deficit, I ask? He has a budget for 10 years. He shows what he expects to have in revenues during those 10 years and what he expects to spend. He does not show, however, what is spent in the health care legislation because that was not in law at the time the budget was submitted. So in truth it will be worse than this.

But let's look at this. In 2008, the debt was $5.8 trillion; in 2013 it doubles to $11.8 trillion; and by 2019, it triples to $17.3 trillion. That is a stunning tripling of the public debt of the United States of America. It is an unsustainable path. One of the most grim parts of the scoring of this deficit expansion is it is not getting better. In years 8, 9, 10, the deficit is going up to almost $1 trillion a year; in 2019—the 10th year—going up. They are not projecting during that 10 years any recession. In fact, they projected that we would come out of the recession we are in now faster than we are coming out of it. So the numbers probably will be worse there.

This is not made up. This is the President's budget. It is scored by this Congress's CBO, and it is the best numbers we have. It is a stunning development. We cannot continue. That is why people say it is unsustainable.

Senator KYL made reference to this. I made a chart on it some time ago. I just could not believe it. In 2009, the total interest this government paid on the debt we owe was $170 billion. You can see, this chart shows the annual interest payments we make that are surging year after year. It is the result of several things.

CBO is cautious, but they are acknowledging that interest rates are going to go up. We have virtually zero interest rates in short-term Treasuries today. That is not going to continue. So you have more debt and higher interest rates. You get surging interest payments.

In 2017, we have interest payments over $600 billion. It goes over, in 2019—1 year's interest—$799 billion. As I recall, the supplementals we have used to fund the war in Iraq represented about $70 billion a year. A couple years ago, our highway spending was about $40 billion a year. Aid to education is about $100 billion a year. In 2019, in 1 year, we will pay $799 billion, I think, at a minimum, just in interest. You see how huge those numbers are? It is unsustainable. We cannot continue to do this.

The American people understand it. CNN did a poll last month. They asked this question of the American people:

> Which of the following comes closer to your view of the budget deficit—the government should run a deficit if necessary when the country is in a recession and at war or the government should balance the budget even when the country is in a recession and is at war?

What do you favor? Sixty-seven percent say: ''Balance the budget.''

Well, what is Congress doing? Running the most incredible series of deficits we have ever seen, tripling the national debt in 10 years—all in furtherance, basically, of President Obama's budget, which calls for this.

Sure, President Bush was not as frugal and fiscally responsible as he should have been. Most, however, of his debt was driven by war costs. But regardless, he could have been more frugal and spent less. But the deficits he had would come in at half or less than half of the deficits we are going to see on average over the next 10 years. So I have to say, we are losing our perspective.

This health care reform bill is a serious matter. We have a report this morning from the Congressional Budget Office that clarifies what has been pretty obvious to us for some time, but it was difficult to get an official accounting of how these numbers are scored or added up by the Congressional Budget Office.

But, basically, what they say is pretty simple. They are saying that proposals in this bill that raise the payroll tax on Medicare and reduce expenditures within Medicare—cutting Medicare—saves money. It puts more money in the pot. But it is part of the Medicare trust fund pot. As to that savings, it is said: Well, we will just spend it over here and pay for this new health care program that was just voted on earlier today.

So we are going to take this savings and increased revenue to Medicare, and we are going to spend it over here. This is a chart I just put together to try to show that. As shown on this chart, here is Medicare. You raise Medicare income and you cut their costs and you create an extra surplus. We have some surplus still in Medicare. If we do not do something about it, Medicare will be in deficit in 2017—8 years. So this transfer of money then goes to the U.S. Treasury, and: Oh, we have extra money, let's spend it on a new health care reform that has never before been passed, creating benefits for people who have never received these kinds of benefits before because we want to be helpful to those people, create more insured people in America.

But as the CBO said, you cannot count this money twice. What about the people who are paying into Medicare, who have been paying into it for 40 years? They have not received a dime of benefit—until they get to age 65—and it is their money they are putting into Medicare. They are not just giving it over here to the U.S. Treasury.

As one of them wrote me: You are taking my money. I am 67. I am just now beginning to draw Medicare. You are taking my money and giving it to somebody else. I have never received any benefits from Medicare until now, and you are taking it from me.

So as a matter of the way our accounting occurs, the U.S. Treasury cannot take that money just free and clear. It is not extra, free money.

I see my colleague. I want Senator BAUCUS to recognize that according to the CBO Director—he told me last night, there are bonds issued. Treasury has to give a bond to Medicare, a Treasury note, an IOU. So when Medicare starts running in default—as it will within the next 15 years if this bill were to pass—when Medicare starts running into default, they are going to have the Treasury pay for it. So, in effect, this bond causes the U.S. Treasury to pay interest to Medicare.

During this first 10 years, the U.S. Treasury will pay interest to Medicare of $69 billion on the money they borrowed—this IOU here. Then, when it goes into default—as it is inevitably heading into default—the Treasury will have to pay those bonds. So it increases the debt.

What CBO says, without any equivocation, is—it is not disputable—the debt of the United States will be increased by this bill, not decreased. It will not be a $132 billion surplus in reality but will be a $170 billion deficit, just on that. Then, when you get to what Senator THUNE talked about, other gimmicks in the bill, it makes that even worse.

You say, well, the CBO has a score that says it is a $132 billion surplus. It reduces our debt $132 billion. Well, the way they are doing this, and the way that accounting is done, with trust funds and nontrust funds in a unified

government budget, they do not score this IOU because they seem to think it is all one government, and so what is one is not the other, and it is not debt. But it is a debt, and they said it explicitly. You cannot count the money over here as adding to the life of Medicare and at the same time score this as free money to be spent over here on this program.

President Obama, Monday, at a press conference, said it is going to reduce our deficit $132 billion, and it is going to extend the life of Medicare by 9 years. Well, you cannot do both, as they have explicitly stated in the letter we got from CBO, and it is just a matter of absolute fact.

They say:

To describe the full amount of HI trust fund savings—

Over here in Medicare—

as both improving the government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count a large share of those savings. . . .

Well, these kinds of gimmicks and manipulations have been done before, but it is time to end it. I think the American people have said: In a time of war, in a time of recession, we need to get busy about the budget—by a two-thirds vote.

They are right. We are going to work our way out of this recession. This American economy will respond sooner or later and, hopefully, sooner for the people of the United States.

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

Mr. SESSIONS. Mr. President, is that the 10 minutes on this side? And is there time left on this side? I ask unanimous consent to have 3 additional minutes.

Mr. THUNE. Mr. President, I think our side has another 10 minutes or so, with which I would perhaps enter into a colloquy with the Senator from Alabama.

I would ask the Senator, on the point he made—and I give the Senator great credit for raising that question to the CBO—because I think it is intuitive to most people that you cannot spend money twice; that you cannot somehow double-count it. That is essentially what the CBO said in their letter. I think the Senator quoted from it.

They went on to say—CBO has written ''that the savings to the HI trust fund . . . would be received by the government only once, so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.'' That is the argument we have been making all along. I guess finally it dawned on the CBO, evidently, and it took the Senator's question, I think, to get them to respond this way.

But the way the Senator explained the interaction between government trust funds, the unified budget, and the IOUs the government writes to itself, perhaps gives some explanation to how they came up with this actually achieving a savings. But the Senator made it very clear: $170 billion actually to the deficit. As I mentioned earlier, the accounting gimmicks that have been used have understated the 10-year cost of this. By the way, my staff corrected me. The off-the-top-of-my-head calculation was $177 billion in deficit; it is actually $187 billion. So you add that to what you mentioned, pretty soon you have what they are claiming is a $170 billion savings turns into a very sizable deficit.

So I would ask the Senator from Alabama—again, I give him great credit for bringing this to light, raising this issue with the CBO—what does that mean for this piece of legislation we are going to be voting on tomorrow, a $2½ trillion expansion of the government financed through tax increases and Medicare cuts. Yet even with all that, the assumption is, this is not going to meet the requirement the President set out; that is, that it doesn't add a single dime to the deficit.

What does that mean to that commitment made by the President and to this legislation's sort of fiscal situation as we move forward and to these negotiations or discussions, if this passes tomorrow, with the House of Representatives?

Mr. SESSIONS. This is a huge issue. I remember a few months ago, in a joint session of Congress, President Obama spoke to us. He looked out at the crowd and said: This bill will not add one dollar—or one dime—to the national debt. It was a firm commitment to all the American people who were listening, all the Congressmen and Senators in that room—it will not add to the debt. So what we now know is that this bill is going to add to the debt. There is no doubt about it. The debt of the United States will increase. It is a dangerous trend that happens in a lot of different ways that has put us onto this course.

I think he recognized you shouldn't increase the debt. He recognized, if he is going to create an entirely new health care program over here, it ought to be paid for, and he promised to do that. We have Members of this body, Members of the House who supported the bill, based on the promise it would not increase the debt. But we have now, conclusive proof, in any number of different ways but particularly with the CBO score, that it will increase the debt. It is a decisive issue as far as I can see.

Mr. THUNE. If the Senator will further yield, in addition to this revelation from the CBO, which I think does change the game and the whole debate about whether this is a budget buster, which it has been described as, in spite of the fact that our colleagues on the other side have been arguing it extends the life of Medicare, I think this statement by the CBO certainly shreds the notion that you can have it both ways; that you can double count this money; that you can spend it twice. You can't do that. I think the American people get that, which is why they believe it will add to the deficit as well.

But there are other things in this bill——

Mr. SESSIONS. I would just say my understanding, having looked at this at some length and given it thought, is the legislation will extend Medicare because it increases the Medicare tax, and that will bring in more money. It pretends we will slash provider payments on health care and others and save money that way. So, on paper, it definitely should extend the life of Medicare.

What do we do with the money? Well, the money that is saved is not staying in Medicare. It is being borrowed by the U.S. Treasury to spend on a new program, and the U.S. Treasury owes it to Medicare. We can see in the trends in Medicare it will not be too many years before Medicare is going to want that money. That is going to leave us over here, and that is why we have a debt. It increases our debt, and we are going to have to pay that back—our children, our grandchildren—sooner than that. Hopefully, we will be around to pay some of that back.

So that is the problem we have. It is a misrepresentation to say this creates money that can fund a program on a permanent basis. It does not. It is just an internal debt situation.

Mr. THUNE. If the Senator will further yield, a couple other items that are being used to get us to where this argument can be made, which is that there are savings from this, this $132 billion savings and deficit reduction the majority has talked about also includes the creation of an entirely new program called this CLASS Act.

There were eight Democratic Senators who wrote a letter, basically, asking that the CLASS Act not be included in this bill, recognizing what many have; that is, that the CBO has recognized that while it may show some savings in the early years, when people are paying premiums, it is similar to everything else. That money, when it gets spent on other things, isn't there to pay out benefits when the time comes to pay out benefits. So we get this artificial $72 billion infusion of cash in the early years, which is being used to, again, understate the cost of this and to demonstrate—or to make the argument that there is, in fact, $132 billion in savings here or deficit reduction.

There is $72 billion that this CLASS Act represents in that first 10-year window which, as I described earlier, our colleague on the other side has described it as a Ponzi scheme. But it does create an entirely new program, not unlike some of the entitlement programs that already exist, where payments are coming in now that are being used to spend for other purposes that someday, when the chickens come home to roost, there is going to be another reckoning. Again, I think it is another example of a program of a way

in which this financial picture, with regard to this health care bill, is understating its true costs and its impact on deficits in the long run.

I would ask my colleague from Alabama, having looked at that particular program, if he would agree that too is something that is going to cost us significantly in the outyears and whether that is something that ought to be included as counted toward the whole calculation on deficit reduction in this legislation.

Mr. SESSIONS. I thank Senator THUNE for his leadership in exposing this. The way I believe this operates—and you correct me if I am wrong—but the way I believe it operates is it requires a certain number of premiums now, and the actuaries who score these things say that in the years to come, there will be claims on those policies and people will claim more and more as they get older and the years go by and it becomes actuarially unsound. But in the first few years, on paper—on paper—for the first 2 years, it looks good because you have more coming in than going out. So they are scoring this short-term surplus—correct me if I am wrong—they are scoring this as an asset, as income to the Treasury, when the contracts people have when they start paying this money in protects them for years and years to come, and in the future they will be making more claims than are paid out.

That is why it is actuarially unsound and will increase the debt in the long run. Would the Senator describe it that way?

Mr. THUNE. Well, I think that is exactly how it would work. Again, it is another gimmick, if you will; another accounting tool.

Mr. SESSIONS. So it is dishonest. When you know a program is not actuarially sound and it is going to take additional Federal Government revenue to honor the contracts in the years to come, to count that today as an asset is wrong. It is improper to do that. We ought not to propose a plan that has a Ponzi scheme-type nature to it.

Mr. THUNE. Well, I don't disagree, and I think the American people agree with that.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SESSIONS. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this has been an interesting discussion we have heard in the last 15, 20 minutes. One can do anything with figures, numbers. I am not going to cite the often-used phrase that some category of people can figure, another category of people can do something else. But anyway, one can do anything with numbers, anything whatsoever. Frankly, this is an effort to confuse by pulling different figures out from one document and then another and concocting—they can put a board up here. It is just an effort to confuse. One can do anything with numbers.

The real question is, What are the facts?

Mr. SESSIONS. Will the Senator yield?

Mr. BAUCUS. I wish to first make a point, and I will yield later to the Senator.

The Congressional Budget Office stands by its analysis. I have before me an e-mail sent today, dated today's date, 2:56 p.m., and let me read it, from the Congressional Budget Office:

> The Congressional Budget Office has been asked whether our memo this morning discussing the effect of [this legislation] incorporating the manager's amendment, on the federal budget and on the balance in the Hospital Insurance trust fund alters CBO's earlier findings about the budgetary impact of the legislation. It does not. In particular, as described in our December 19 and December 20 letters to Senator Reid—

Let me continue reading and, hopefully, Senators are listening to this because this is a letter today, actually it is an e-mail today, at 2:56 p.m. CBO says:

> CBO and the staff of the Joint Committee on Taxation estimate that the legislation would reduce federal budget deficits by $132 billion during the 2010–2019 period.

Next:

> CBO expects that the legislation would reduce federal budget deficits during the decade beyond 2019 relative to those projected under current law—with a total effect during that decade that is in a broad range between one-quarter percent and one-half percent of GDP.

Of course, we know that is about $650 billion to $1.3 trillion. That is CBO today.

Third:

> CBO expects that the legislation would generate a reduction in the federal budgetary commitment to health care during the decade beyond 2019.

So what everyone says—and I might say to my good friend from Alabama, part of that chart he had before us today is accurate, I mean the flow of Medicare and the IOUs and so forth. The part that is inaccurate is the increasing debt and the double accounting part. There is no double accounting here. There are separate accounting regimes and procedures that are used for all trust funds, including Medicare. The Medicare trust fund issues dollars that are in surplus in the outyears, as the Senator said, that have been held by the trust fund—by the trustees—and dollars that are used in any way the Federal Government decides to spend dollars, either pursuant to legislation or maybe the administration on its own may be spending some dollars in one place or another.

This is not double accounting. Nobody has claimed there is double accounting. There are two different regimes and that is how—the Senator accurately described how the Medicare trust fund is accounted for. But it is also true that under our budget rules, we have a unified budget, there is one government—U.S. Government—there is Medicare and the rest of the government, and under that unified budget regime, the CBO still reaches the same conclusion it has always reached. I would like that to be on the RECORD.

The Senator has a question.

Mr. SESSIONS. Mr. Chairman, I would agree that—

The PRESIDING OFFICER. The Senator will address the other Senator through the Chair.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. BAUCUS. Mr. President, I yield for a question.

Mr. SESSIONS. I think that CBO's second statement is correct. I think the statement they did earlier about the $132 billion surplus reducing the debt over 10 years is technically accurate. But I think the statement they issued early this morning that this is—to count it in both places is a double count of the money, in effect.

My question to the Senator is, we are going to be talking about voting on the debt limit tomorrow.

Mr. BAUCUS. That is correct.

Mr. SESSIONS. The debt limit is the gross debt of the country.

Isn't it true the passage of this health care bill will increase the gross debt of the country, the gross debt being both the public debt and the intergovernmental debt?

Mr. BAUCUS. No, that is not——

Mr. SESSIONS. Will not the bill increase the gross debt of the United States?

Mr. BAUCUS. If I might respond and answer the question—no; the exact opposite. CBO says so. CBO says it actually reduces the debt by $1 billion.

Mr. SESSIONS. I am asking the difference. The question is gross debt. Does it reduce or increase the gross debt?

Mr. BAUCUS. If I might, Mr. President, as the Senator knows, the debt is the accumulation of deficits, and by definition, if a deficit is reduced, therefore, the national debt is also reduced. That is a mathematical truism. If the deficit is reduced, automatically the debt is reduced. That is mathematics.

The next point I want to make, there was substantial debate today about the constitutionality of this bill. As I have discussed before, we have confidence that the health care plan we have crafted is an appropriate exercise of the commerce clause and does not violate the 10th amendment. We further believe that ample power is available under the takings and spending power, as well.

I ask unanimous consent to have printed in the RECORD two articles by Prof. Erwin Chemerinsky and Prof. Michael Dorf.

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

[From Politico, Oct. 23, 2009]

HEALTH CARE REFORM IS CONSTITUTIONAL

(By Erwin Chemerinsky)

Those opposing health care reform are increasingly relying on an argument that has

no legal merit: that the health care reform legislation would be unconstitutional. There is, of course, much to debate about how to best reform America's health care system. But there is no doubt that bills passed by House and Senate committees are constitutional.

Some who object to the health care proposals claim that they are beyond the scope of congressional powers. Specifically, they argue that Congress lacks the authority to compel people to purchase health insurance or pay a tax or a fine.

Congress clearly could do this under its power pursuant to Article I, Section 8 of the Constitution to regulate commerce among the states. The Supreme Court has held that this includes authority to regulate activities that have a substantial effect on interstate commerce. In the area of economic activities, ''substantial effect'' can be found based on the cumulative impact of the activity across the country. For example, a few years ago, the Supreme Court held that Congress could use its commerce clause authority to prohibit individuals from cultivating and possessing small amounts of marijuana for personal medicinal use because marijuana is bought and sold in interstate commerce.

The relationship between health care coverage and the national economy is even stronger and more readily apparent. In 2007, health care expenditures amounted to $2.2 trillion, or $7,421 per person, and accounted for 16.2 percent of the gross domestic product.

Ken Klukowski, writing in POLITICO, argued that ''people who declined to purchase government-mandated insurance would not be engaging in commercial activity, so there's no interstate commerce.'' Klukowski's argument is flawed because the Supreme Court never has said that the commerce power is limited to regulating those who are engaged in commercial activity.

Quite the contrary: The court has said that Congress can use its commerce power to forbid hotels and restaurants from discriminating based on race, even though their conduct was refusing to engage in commercial activity. Likewise, the court has said that Congress can regulate the growing of marijuana for personal medicinal use, even if the person being punished never engaged in any commercial activity.

Under an unbroken line of precedents stretching back 70 years, Congress has the power to regulate activities that, taken cumulatively, have a substantial effect on interstate commerce. People not purchasing health insurance unquestionably has this effect.

There is a substantial likelihood that everyone will need medical care at some point. A person with a communicable disease will be treated whether or not he or she is insured. A person in an automobile accident will be rushed to the hospital for treatment, whether or not he or she is insured. Congress would simply be requiring everyone to be insured to cover their potential costs to the system.

Congress also could justify this as an exercise of its taxing and spending power. Congress can require the purchase of health insurance and then tax those who do not do so in order to pay their costs to the system. This is similar to Social Security taxes, which everyone pays to cover the costs of the Social Security system. Since the 1930s, the Supreme Court has accorded Congress broad powers to tax and spend for the general welfare and has left it to Congress to determine this.

Nor is there any basis for arguing that an insurance requirement violates individual liberties. No constitutionally protected freedom is infringed. There is no right to not have insurance. Most states now require automobile insurance as a condition for driving.

Since the 19th century, the Supreme Court has consistently held that a tax cannot be challenged as an impermissible take of private property for public use without just compensation. All taxes are a taking of private property for public use, but no tax has ever been invalidated on that basis.

Since the late 1930s, the Supreme Court has ruled that government economic regulations, including taxes, are to be upheld as long as they are reasonable. Virtually all economic regulations and taxes have been found to meet this standard for more than 70 years. There is thus no realistic chance that the mandate for health insurance would be invalidated for denying due process or equal protection.

Those who object to the health care proposals on constitutional grounds are making an argument that has no basis in the law. They are invoking the rhetorical power of the Constitution to support their opposition to health care reform, but the law is clear that Congress constitutionally has the power to do so. There is much to argue about in the debate over health care reform, but constitutionality is not among the hard questions to consider.

[From FindLaw Legal News, Nov. 2, 2009]

THE CONSTITUTIONALITY OF HEALTH INSURANCE REFORM, PART II: CONGRESSIONAL POWER

(By Michael C. Dorf)

Although many key details remain to be negotiated, Congress appears poised to enact some substantial reform of American health care that will build on, rather than replace, our patchwork of government, private, and non-profit insurance. The bill that the President signs will likely contain, among other things, an ''individual mandate'' requiring that everyone obtain health insurance or face a financial penalty. Would such a mandate be constitutional?

In my last column and an accompanying blog entry, I considered and rejected the objection that an individual mandate would be an unprecedented burden on liberty because it would affirmatively direct conduct, rather than either forbidding conduct or imposing affirmative obligations on only those who engage in conduct that the government has the power to forbid. As I explained, there are substantial precedents for such affirmative obligations and even if there were not, there is no reason in principle why an affirmative duty is a greater restriction on liberty than a prohibition or condition.

In this column, I consider a different objection to the individual mandate: the claim that the federal government lacks the authority under the Constitution to impose the mandate or to penalize those who do not comply. As I explain, this objection is also unsound as a matter of constitutional law. I conclude, however, that individual members of Congress ought to decide for themselves whether regulating health care in the manner of the proposed bills is an appropriate job for the federal government, or instead should be left to state regulation or the market.

IS A REGULATION OF HEALTH CARE A REGULATION OF INTERSTATE COMMERCE?

Under the Tenth Amendment, Congress may only enact legislation that falls within one or more of its enumerated powers. Most of those powers—and all of the powers that are potentially relevant in the health insurance reform debate—are found in Article I, Section 8. From the very earliest days of the Republic, there has been controversy about the scope of those powers.

Consider, for instance, that the Constitution does not expressly grant Congress the power to charter a bank. Accordingly, President George Washington asked two of his Cabinet members to prepare memoranda on whether that power could nonetheless be inferred from the powers that are enumerated in the Constitution—including the powers to regulate interstate and foreign commerce, to coin money, to lay and collect taxes, to spend money for the general welfare, and to enact such laws as are ''necessary and proper for carrying into execution the'' specifically enumerated powers.

Arguing for a position that would today be called ''states' rights,'' Thomas Jefferson said no. The enumerated powers had to be construed narrowly, he said, or else the federal government would completely overshadow the states. Alexander Hamilton disagreed, however. He explained that in order to carry out the powers it was expressly granted, Congress must have implied powers. Washington sided with Hamilton and, years later, in the landmark 1819 case of McCulloch v. Maryland, so did the Supreme Court.

At various points in American history, politicians and judges have flirted with the Jeffersonian view, but for the most part, the Hamiltonian position has prevailed, especially with respect to laws purporting to regulate interstate commerce. Thus, under the Supreme Court's 1942 decision in Wickard v. Filburn, Congress can forbid a farmer from growing more wheat than his federal quota allows on the theory that if he does not grow wheat, he will purchase it, which will affect the interstate market.

Likewise, in the 2005 case of Gonzales v. Raich, the Court said that in the course of regulating the national illegal market in marijuana, Congress could forbid the intrastate, noncommercial production and consumption of medical marijuana, even if it is legal under state law. The Court explained that Congress legitimately worried that making an exception to the general prohibition on marijuana use for medical marijuana use that is authorized by state law could substantially undermine the government's ability to police other marijuana production, distribution, and possession.

That same logic applies to the individual mandate in the health insurance context. As I explained in my last column, the main point of the individual mandate is to ensure that insurance companies cover people even though they have pre-existing conditions. Without the individual mandate, however, many young, healthy people would decline insurance until they got sick, creating a severe adverse selection problem. Thus, the individual mandate is closely connected with the regulation of health insurance, just as the Court said in Raich that the regulation of marijuana that is used for medical purposes is closely related to the regulation of the broader market for marijuana.

Health care is an enormous interstate business. It therefore counts as interstate commerce, regulable by Congress. Just as, in Raich, Congress acted constitutionally by declining to exempt individual acts of noncommercial intrastate marijuana possession from the Controlled Substances Act, so too Congress would act constitutionally by including an individual mandate within the ambit of its regulation of health care.

IS EXISTENCE AN ''ECONOMIC ACTIVITY''? THAT'S THE WRONG QUESTION

Skeptics nonetheless point to two Supreme Court cases—the 1995 ruling in United States v. Lopez and the 2000 decision in United States v. Morrison—as grounds for the conclusion that the individual mandate would be beyond the power of Congress under the Commerce Clause. In Lopez, the Court invalidated a federal criminal law forbidding

possession of a firearm near a schoolyard. In Morrison, the Court rejected a federal law providing victims of gender-motivated violence with a right to sue their attackers. Both decisions reasoned that Congress typically cannot regulate ''noneconomic'' intrastate activities on the ground that they affect interstate commerce.

Accordingly, lawyers David Casey and Lee Rivkin, writing in The Washington Post in August, concluded that Lopez and Morrison make the Commerce Clause unavailable as a source of congressional power for the individual mandate because a human being's mere existence is not a form of economic activity. Indeed, they might have added, existence is not an activity at all.

Although the issue is not entirely free from doubt, I do not think that Casey and Rivkin have correctly read the precedents. In Lopez and Morrison, Congress sought to prohibit activities—firearms possession near schools and gender-motivated violence, respectively—that were not, according to the Court, ''economic.'' In those two cases, it was only by several logical inferences of the handbone-connected-to-the-wristbone-wristbone-connected-to-the-elbow-bone sort that one could move from the regulated activity to an effect on commerce. For example, in Lopez, the theory went as follows: Guns near schools intimidate children; intimidated children have a hard time concentrating on their studies; they learn less; they then grow up to be less productive members of society; and thus the national economy suffers. Even though each link in this chain is plausible, the Lopez majority reasoned that if the Court were to allow this sort of inferential process, then virtually anything would count as a regulation of interstate commerce. Acknowledging that congressional power under the Commerce Clause is very broad, the Court in Lopez and Morrison nonetheless insisted that it is not infinitely broad.

By contrast with the laws that were invalidated in Lopez and Morrison, the individual mandate is quite close to the core of the Commerce Clause. Treating the mere existence of a human being as the predicate of regulation in the health care bills would miss the point. Whereas the Gun Free School Zones Act in Lopez and the civil remedy provision of the Violence Against Women Act in Morrison sought to discourage certain conduct, the point of the individual mandate is to encourage certain conduct. And crucially, the conduct the individual mandate seeks to encourage is quintessentially economic: It is the purchase of a service, namely health insurance.

Does Congress have the power to encourage people to engage in market transactions? Of course it does. That, after all, was the whole point of the law upheld in Filburn: By limiting the amount of wheat that farmer Filburn could grow, the government sought to encourage him to buy compensating amounts on the market. As the unanimous Court explained in a ruling that the more recent cases expressly reaffirm: ''The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon.''

In the end, then, the argument of Casey, Rivkin, and others who oppose the individual mandate on Article I grounds amounts to no more than the assertion that the Constitution forbids Congress from using the most direct means of encouraging market activity: a mandate that individuals do so. But there is nothing in the text or history of the Constitution to support that conclusion.

Indeed, the Ur-decision about Article I power, McCulloch, says the exact opposite: ''Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.''

As we have seen, the individual mandate is ''plainly adapted'' to the undoubtedly legitimate end of regulating the enormous and enormously important health-care sector of the national economy. It is therefore constitutional.

THE TAXATION POWER

In light of the broad interpretation the Supreme Court has given to the enumerated powers of Congress, an Act may be justified on more than one constitutional ground. Thus, the individual mandate could alternatively be upheld as a valid exercise of the Article I power to ''lay and collect taxes, duties, imposts and excises,'' as bolstered by the Sixteenth Amendment's authorization of an income tax. After all, in most versions of the individual mandate, Americans are not literally required to purchase health insurance: Instead, they are told to pay a tax from which they can be exempted if they have health insurance.

To be sure, as Casey and Rivkin observe, a 1922 case, Bailey v. Drexel Furniture Co., holds that Congress may not use taxation as a pretext for accomplishing a regulatory objective that it could not accomplish directly. But subsequent cases upholding ''occupational taxes'' on businesses that Congress clearly intended to discourage, have made clear that a tax that serves a revenue-raising purpose is not invalid simply because it also serves a regulatory purpose. And there is no doubt that the tax on uninsured income earners would serve a valid revenue-raising purpose—namely, to defray the costs of subsidizing health insurance for those who could not otherwise afford it.

Thus, even if Congress lacked the power to adopt the individual mandate under the Commerce Clause, the taxing power would separately authorize a properly-worded tax on the uninsured, despite its regulatory impact.

FEDERALISM IN CONGRESS: ITS MEMBERS, TOO, CAN CONSIDER THE CONSTITUTIONAL DIMENSIONS OF LEGISLATION

The foregoing analysis shows why an individual mandate would be upheld against a court challenge, so long as the courts faithfully apply the current Supreme Court precedents. Nonetheless, members of Congress are entitled—indeed, some might say they are obligated—to reach their own constitutional judgment about any bill that comes before them. And that is especially true when there is a question about the proper role of the federal government and the states.

In its cases involving challenges to congressional power, the Supreme Court has sometimes said that the broad deference given to Congress arises out of institutional concerns: Except in extreme cases, the Justices lack the fact-finding capacity and democratic legitimacy to make all of the fine-grained judgments about what matters should be federalized and what matters should be best left to the states. In the words of the late constitutional law scholar Herbert Wechsler, the Court relies on ''the political safeguards of federalism'' to do most of the work of ensuring a constitutional balance between national and state regulation.

Wechsler pointed to a variety of ways in which the interests of the states are represented in Congress itself. Chief among these are the facts that each state has two Senators, and that electoral districts respect state lines. In addition, as Stanford Law School Dean Larry Kramer has noted in more recent scholarship, the national political parties tie members of a state's congressional delegation to state politicians. Taken together, these and other mechanisms ensure that Congress will not simply federalize everything, leaving no area of regulatory discretion to the states.

Wechsler's point was mostly descriptive: Congress, he said, would in fact take account of state interests. But we might add a normative dimension: Congress should take its constitutional role seriously in matters of federalism, because judges are going to be highly deferential in such matters if and when federal statutes are constitutionality tested.

Accordingly, it would be perfectly appropriate for one or more members of Congress to vote against the individual mandate or health care reform more broadly on the ground that they think such matters should be left to state regulation or to private decision makers. But it would be equally appropriate for Congress to conclude otherwise and thereby join the ranks of the other industrialized countries—including those, like Canada and Germany, with robust commitments to federalism—that have comprehensive national health care systems. Properly understood, the constitutional case law is no obstacle.

DEBT LIMIT

Mr. BAUCUS. Mr. President, tomorrow morning, the Senate will have to vote on legislation to increase the statutory limit on the United States debt. The measure that will be before us will increase the limit by $290 billion.

The debt limit sets a ceiling on the amount of money the U.S. Treasury can borrow. If we pass this bill, then the Treasury can continue to borrow money until about February 11 of next year. If we do not pass this bill, then at least two very bad things will happen:

First, the United States would default on the interest payments on this debt for the first time in the history of this country. Second, the Federal Government would be unable to borrow the money it will need to pay Social Security benefits that beneficiaries are entitled to receive.

The bottom line is we have no choice. We have to approve it. The law limits how much money the Treasury can borrow. One might ask: How did we reach the current limit? The answer is simple and it is, frankly—I am trying to give a very fair answer, fair to both sides of the aisle and not be political about this but just be fair and explain how we got to where we are.

The financial crisis and the deep recession the new administration inherited has resulted in record borrowing this year. Let me be specific.

First, the Bush administration asked for and then used authority to spend unprecedented sums of money to help banks, auto companies, insurance firms, Fannie Mae, and Freddie Mac to weather the financial crisis. The prior administration enacted and used these authorities before the current administration even took office. That ran up a huge number, a huge addition to our deficits and debt.

Second, the new administration inherited the great recession. The recession has lowered revenues. To compensate for reduced revenues, the Treasury has had to borrow more.

In addition, the recession has increased the need for Federal spending

on things such as unemployment insurance and Medicaid costs for folks who can no longer afford health care. To compensate for these increased outlays, Treasury has had to borrow more as well.

Finally, to keep the recession from becoming a lot worse than it has, the Obama administration had no choice but to enact a vigorous stimulus package, and the Treasury had to borrow the money to make up for this shortfall as well.

Without enactment of this stimulus, the economy could have well descended into a depression. We would have been in far worse economic shape had we not passed the stimulus legislation.

To cover the costs of all these measures—that is those in the Bush administration and those in the Obama administration—the Treasury Department has had to borrow record amounts of money. Unfortunate as it is, we had to do it. Had we not, we would be in much worse shape today.

As a result of this unprecedented borrowing, the Treasury is about to reach the current limit. It is clear that we have no choice but to raise the ceiling on the debt the Treasury can borrow.

We have spent the money. We have to raise the debt limit so bills can be paid. If we do not, the United States will default on its interest payments for the first time in its 220-year history. We cannot let that happen. We will not be able to pay all the monthly Social Security benefits to which people are entitled. That would be unthinkable.

It is true we have to work harder to reduce these deficits—we have no choice—also, therefore, to reduce our national debt, certainly as a percent of gross domestic product. We have no choice. The point is we are beginning to reach a crisis in the accumulation of deficits and therefore debt. That is clear. We must as a country, as a Congress, working with the President, reduce those deficits in national debt. However, we have to pay our bills. If we do not pay our bills, we default. That would cause catastrophic consequences.

To prevent those catastrophic consequences—that is, other countries having less confidence in the government, less confidence in the ability of the United States to pay its debt, less confidence in the U.S. dollar—we must increase the Treasury's borrowing limit and, for a short period of time, I think it is appropriate and prudent.

I urge my colleagues to vote for this legislation. There is no way around it. It is a necessity. We simply have no choice. We have to pay our debts, but in the future, let's work harder to get our deficits under control.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I am not a member of the Finance Committee and do not have the responsibility Senator BAUCUS does in dealing with these debt ceiling issues. But let me corroborate what he has been saying. Someone once drew the analogy that this is like going out to dinner, ordering a good meal, and then refusing to pay the bill at the end of it. We have a meal in front of us—tragically a meal that got too large because, frankly, the previous administration accumulated a debt without ever asking the American people to pay for it, including the war in Iraq and other items that left us in a hole larger than created by all administrations combined over 225 years of our history—a remarkable achievement. It is not just the deficit of one administration but all 43 Presidents combined had never accumulated what one administration did in 8 years.

I commend my colleague from Montana. This is no easy task. It is a painful vote for anyone to cast, but it is obviously critical. This is more than just a vote in this Chamber. It goes to the very stability of the global economy.

We have to meet our obligations. I, for one, am certainly glad to cast a vote. I do not think it is a difficult vote. It is a hard vote considering what is at stake. But the implications of refusing to support this would be catastrophic to our country.

I thank my colleague.

Mr. President, 10 minutes short of 12 hours from now, we are going to cast our final vote on the national health care proposal. I have some closing remarks on this historic debate.

Before I do so, I wish to thank once again our staffs who have been involved in all of this. I know my dear friend and colleague from Iowa will talk about this more specifically. I have already announced the names of the majority staff who have made a contribution to this effort.

I think it is fairly clear that tomorrow morning at 7 a.m., when we cast our votes on this proposal, this is going to be a very divided Chamber. Sadly, we are going to end up on a very partisan vote. I suspect something along the lines of 60–40, although obviously we need less than 60 votes to pass the bill at this point. But I suspect the vote will be something like that. I regret that deeply. It saddens me we have come to that moment. But it is what it is.

While last evening I mentioned the members of the staff who are part of the majority staff who made such a contribution—and I thank them once again for their efforts—I want to also mention the minority staff who served their Members well and admirably in this effort, certainly during the markup of our bill in the Health, Education, Labor, and Pensions Committee that Senator Kennedy chaired for so many years, that I had the honor of taking over for him during his period of illness, and is now chaired by my friend from Iowa, Senator HARKIN.

The Senator from Wyoming, MIKE ENZI, is the ranking minority member of that committee. We ultimately had a divided, partisan vote in that committee. But as my colleagues have heard me say over and over again during these days and weeks of debate, a good part of our bill, even though it ended up with a partisan vote, included 161 amendments offered by the minority in that markup session. More than half of all the amendments considered were offered by the Republicans on that committee, on my committee at the time that were adopted almost unanimously in most cases.

I wish to mention the minority staff tonight who made that possible. They strengthened our bill and made it a stronger one. Beginning with Frank Macchiarola, Chuck Clapton, Katy Barr, Todd Spangler, Hayden Rhudy, Keith Flanagan, Amy Muhlberg. They work for Senator ENZI.

Liz Wroe and Jeff Gonzales work for JUDD GREGG of New Hampshire.

Jay Khosla, Patty DeLoatsche—I may have mispronounced that last name; I apologize if I did—along with Paul Williams of Senator HATCH's staff made a significant contribution to the bill.

While, again, there was division on a partisan basis, I thank them for their efforts. They put in long hours as well.

On that note, let me say before getting to the substance of my remarks, I chair the Senate Banking, Housing, and Urban Affairs Committee. We have been working diligently. In fact, today my good friend and colleague from Alabama, RICHARD SHELBY, and I spent about an hour or so together and then about five or six members, Republicans and Democrats on that committee, spent another hour together, as we have every day almost over the last several weeks trying to fashion a bill on financial services reform that we hope to present to our colleagues on our return in January and February that will deal with the catastrophe that has occurred economically in our Nation.

My hope is as a Chamber—I know my colleagues have heard me say this—I arrived in this Chamber as an employee of the Senate about 50 years ago. I sat on these steps right over here. Lyndon Johnson sat in the Presiding Officer chair. John Kennedy was the President of the United States. I was a Senate page and listened to the all-night debates in the early 1960s on civil rights and got to witness history. I got to watch the Members of this Chamber, some of the historic figures—Hubert Humphrey, Lyndon Johnson, Everett Dirksen—remarkable people who served here. Barry Goldwater, of course. We served together in this Chamber for a period of time when I arrived in the Senate.

Thirty-five years ago on January 3 of next month, I arrived as a 30-year-old Member of the House of Representatives, and 6 years later I arrived here as a freshman Senator 30 years ago. Going back to the sixties, I had a lot to do with this Chamber and watched it over the years.

The best moments occur when we work together. This has been a bitter and difficult battle over the last number of months. But as someone who

takes great pride in having been part of this Chamber, as my father was before me, for more than a quarter of the life of our country, I want to see us once again return to the days when we have our partisan debates, which we should because it has built the country.

Partisanship—there is nothing wrong with that. It is our ability to act civilly with each other. I have been deeply disturbed by some of the debate I have heard, usually from newer Members, usually those who have been here 1, 2, 3 years, who do not have an appreciation of what this Chamber means and how we work together.

While we have our differences, the ability to walk away from differences and forge those relationships over the next day is critically important. It is always the newest Members who fail to understand how the Senate has worked for more than two centuries. We need to get back to that sense of civility once again.

I hope when we return in January to deal with new issues that we will get back to that comity that is important. Not the disagreements. The disagreements are important, but the ability to deal with each other and forge the kind of proposals that serve all of our constituents and serve all of our country is going to be critically important.

I wanted to share that thought with my colleagues this evening as someone who now at the ripe old age of 65 has spent well more than half of my life deeply involved in this institution. It saddens me when we end up being divided and engaged in the ad hominem arguments that I think ridicule the institution, belittle and demean the contributions that each and every Member wants to make.

Even though we have had very strong disagreements, I never once in my life in this Chamber ever questioned the patriotic intentions of any Member. We may have strong disagreements on how to best achieve that more perfect Union, but the idea you challenge another's patriotism, honesty, their integrity, does a great disservice to this institution, in my view.

Again, I regret sometimes the newer Members who fail to understand the importance of maintaining that which our Founders envisioned when they created this institution.

This evening I rise to express once and for all and lastly in this debate my strong support for this bill, our Patient Protection and Affordable Care Act of 2009. In a little over a week, this decade, the first decade of the 21st century will come to a close, and it has been a turbulent one for our country. We have been tested by the acts of God and the acts of evil men in this decade. We have entered two wars and have been through a profound recession, almost a depression. Our financial markets have failed. Middle-class families have lost their footing. The American dream is fading for far too many of our families in this Nation.

We wear these 10 years heavily. We have seen deep division in our country, bitter debates within the walls of this Chamber in which all of us are so proud to serve.

We do not have the luxury of tackling only those challenges that can be solved easily. But as Thomas Paine wrote:

> The harder the conflict, the more glorious the triumph.

Those words come from a pamphlet called ''The American Crisis.'' It was published 233 years ago this very week at another very uncertain moment in American history. That pamphlet begins with these words:

> These are times that try men's souls; the summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands it now, deserves the love and thanks of man and woman.

GEN George Washington, outmanned, outgunned, and sensing that morale was flagging in light of recent setbacks, ordered that this pamphlet and these words be read to his deeply troubled and impoverished troops. And on Christmas Eve, 1776, he gathered his officers at McKonkey's Ferry to plan the crossing of the Delaware.

This body has been in session on Christmas Eve only once since 1963—and we will tomorrow—when in the wake of President Kennedy's assassination, the Senate met to consider a bill to fund our operations in Vietnam. We will be in session tomorrow morning, embroiled again in times that certainly try men's souls. Like GEN George Washington, we have an opportunity to meet history's gaze, to steel ourselves to the difficult work of making our Union more perfect.

The journey we complete tomorrow has been a long and difficult one. But I, for one, would not trade it for anything. We who will have the privilege to cast our votes at 7 a.m. tomorrow morning for health care reform will never cast a more important vote in our Senate careers. History will judge harshly those who have chosen to shrink from this moment, but those of us who stand up to make this country more secure, to make our Union more perfect, we will never forget this Christmas Eve. For this Christmas Eve, we have given an incredible gift. We have been granted a rare opportunity to deliver an enormous victory for the American people for generations to come. We have a chance to alleviate tremendous burdens of anxiety and fear and suffering, to make our country stronger and healthier, to deliver the leadership our constituents have demanded—and rightfully so—and the real and meaningful change they voted for 13 months ago. So in the last week of a decade in which so much has been asked of the American people, that is what history now asks of us in this Chamber.

Over the past weeks and months, I have come to this floor to talk about what this bill will do for the citizens of my State and my country. I have talked about how reform will guarantee every American will have access to quality, affordable care when they need it, from the doctor they choose. I have talked about how reform will reduce our national deficit by finally getting health care costs under control. I have talked, as others have, about what reform will do for small businesses—giving them access to health insurance exchanges where they can find the best deals for their workers and a tax credit to help them pay for it. And I have talked, as others have, about how reform will help our older citizens, our seniors, by strengthening Medicare and closing the so-called doughnut hole for prescription drugs and creating a new, voluntary program to pay for long-term care. I, along with others, have talked about how reform will help doctors and health care providers spend more time caring for their patients, which they want to do, and less time fighting with insurance company bureaucrats. I and so many others have talked about how reform will finally make insurance accessible and affordable for the 350,000 residents of my State and the 31 million people across our Nation who today don't have it, whether it is because they can't afford it or because they have been denied coverage due to a preexisting condition. I have also talked, along with my colleagues, about how reform will finally make insurance a buyer's market, ending a wide variety of abusive insurance industry practices and empowering consumers to make smart decisions.

As has been said so many times, this bill is far from perfect, and we all know that. It represents not the end but, as my friend and colleague from Iowa has said so many times, the beginning of our work. Long after all of us have left this Chamber, however we depart, those who come after us will work on our product. They will make it better, they will make it stronger, they will find our shortcomings in this bill, they will add to it, and they will subtract from it. But they can never engage in those efforts if we do not do the job I am confident we will do tomorrow morning at 7 a.m. on Christmas Eve, and that is to renew the American dream, revive our middle class, and rebuild the foundation upon which future generations will stand.

I am very proud of this legislation, with all its shortcomings. I am proud to have had a role in bringing it to a vote—an accidental role, as all of us know. I wouldn't be standing here talking about it in this context, other than as a Member of this Chamber, were it not for the tragic death of my great friend and colleague from Massachusetts.

President Teddy Roosevelt famously said:

> It is not the critic who counts; not the man [or woman] who points out how the strong man stumbles, or whether the doer of deeds could have done them better. The credit belongs to the man who [or woman] is actually in the arena, whose face is marred by dust

and sweat and blood; who strives valiantly; who errs; who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself [or herself] in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he [or she] fails, at least fails while daring greatly, so that his [or her] place shall never be with those cold and timid souls who neither know victory nor defeat.

So we happy few, the 60 of us who stand in the arena today, who have fought and argued and compromised and organized so that we might cast this historic vote at 7 a.m. on Christmas Eve, we would not trade this opportunity for anything.

This last year has proven that progress is not easy. Tomorrow, we will prove that it is not impossible. May the next decade in our country's history be shaped by that spirit—by the promise of a brighter tomorrow, by the unshakable desire to rise to the challenges that fate places in our path, by the quest to make our great Nation a more perfect one.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Iowa is recognized.

Mr. HARKIN. Madam President, I ask unanimous consent that the remainder of the time used on the bill today be for debate only.

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

Mr. HARKIN. Madam President, first of all, before he leaves the floor, I want to thank my dear friend, my colleague, my classmate from 1975, for all his great leadership on this bill. We were all saddened by the fact that our leader, Senator Kennedy, could not be with us over the last year to guide and direct and to see the fulfillment of his lifetime dream of health care reform. It fell upon CHRIS DODD's shoulders to take it through. Madam President, he did it superbly. He kept our committee together.

Again, I just want to say that Senator DODD bent over backward, extended every consideration to the other side to amend and to be involved in the shaping of this bill. As my friend said, we adopted 161 of their amendments out of 220 or so they offered. Not all of them were accepted. Not all of the Democratic amendments were accepted, by the way, in the committee. So I thought Senator DODD went the extra mile to accommodate the other side. He did. I am just sorry that not one Republican saw fit to support the bill when it came out of the committee, but so be it. Because of Senator DODD's dedication and his leadership, we have a great bill here today.

I have been watching the debate, and most of the things people are talking about are items that were in the bill Senator DODD crafted, things that are going to make a big difference in people's lives. I will talk about a few of those in my formal remarks—things such as doing away with preexisting conditions; stopping rescissions, where they cut off your policy when you get sick; keeping kids on their parents' policies longer, and all of the things we fought so hard for regarding prevention and wellness. All of that is in our bill. It is in the bill Senator DODD brought forward out of our committee. So I am proud to have him not only as a friend but as our great leader on this health care bill. Tomorrow morning, when we finally pass it, it will be in no small part because of the great leadership of Senator DODD. So I wanted to thank him on the floor before he leaves to go home to be with his two great kids and his wonderful wife.

Appreciate it very much, CHRIS.

Mr. DODD. I thank my colleague from Iowa, and we couldn't have done it without him as well. I appreciate it.

Mr. HARKIN. I thank the Senator very much.

Madam President, I also want to thank my good friend from Illinois, Senator BURRIS, for allowing me to go first here, in front of him.

You know, I was kind of feeling bad for myself because I didn't know if I was going to make Christmas Eve with my wife and family for the first time in 41 years. But I think, because of moving up the vote to 7 a.m., I might be able to do that.

But I just found out that today is Senator BURRIS's 48th wedding anniversary. Congratulations, Senator BURRIS. So he is here today and his lovely wife is out in Illinois, but he sent her flowers today. I am sure she appreciated that, but she would much rather be with Roland on this day. My goodness, 48 years—in this day and age, it is hard to find people married that long. So I congratulate Senator BURRIS, who is a great friend of mine personally and a valuable Member of the Senate. I think it shows what people are giving up here to make sure they are here to get health reform passed. Senator BURRIS gave up being with his spouse of 48 years. That is quite a sacrifice.

Thank you very much, Senator BURRIS.

Madam President, as we approach the final vote, again I wish to thank both Senator DODD and Senator BAUCUS for a masterful job of shepherding this legislation through the Finance and HELP Committees.

There is no way we would be here today without the great work of our majority leader. To put it in Biblical terms, Leader REID has the patience of Job, the wisdom of Solomon, and the stamina of Sampson. Senator REID is on the verge of achieving what majority leaders going back nearly a century have failed to accomplish. Make no mistake about it, when this final vote is cast tomorrow morning, Majority Leader REID will have earned his place in the Senate's history.

As we approach the final vote, we have reached a momentous crossroad, just as Senators did in 1935 when they passed the Social Security Act and in 1965 when they created Medicare. Each of those bills marked a giant step forward for the American people. Each was stridently opposed by defenders of the status quo. But in the end, a critical mass of Senators rose to the historic occasion. They voted their hopes, not their fears. As we know now, in retrospect, they passed laws that transformed America in profoundly positive ways.

The Senate has now arrived at another one of those rare historic crossroads. This time, we are going to pass comprehensive health reform—a great goal that has eluded Congresses and Presidents going back to Theodore Roosevelt.

I make no bones about my enthusiasm for the reforms in this great bill. Is it perfect? Is it what I would write if I could dictate everything? No. There have been genuine compromises made, and that is the art of legislating.

There are a lot of things not in this bill for which I fought very hard, such as a public option or getting a Medicare buy-in at age 55. But I understand the art of compromise. Beyond that, this bill will be the biggest expansion of health coverage since the creation of Medicare.

It cracks down on abusive practices by health insurance companies, abuses that currently leave most Americans one serious illness away from bankruptcy. It includes an array of provisions, including wellness and prevention and public health. Our aim in this bill is to change our current sick care system to a true health care system that keeps people out of the hospital in the first place.

Madam President, I was struck by something that the distinguished minority leader, Senator MCCONNELL, said early Monday morning prior to the first critical cloture vote. Addressing Democratic Senators, the minority leader turned and faced us and said: It's not too late, it's not too late. All it takes is one, just one. Gesturing to this side of the aisle, he said: One can stop this bill; one can stop it, for every single one will own it.

He was talking about Democrats. I say to the minority leader, we Democrats are proud to own this bill. Just as we are proud of our ownership of Social Security and Medicare and the Elementary and Secondary Education Act and so many other reforms, progressive reforms, that have made America the great Nation we are today.

For the record, let me point out exactly what it is that Democrats will ''own'' by passing this bill. We will own the fact that this bill is fully paid for. Indeed, this bill will reduce the Federal debt by $132 billion in the first decade and by at least $650 billion in the second decade. We will own the fact that some 30 million additional Americans will in coming years have access to quality, affordable health care.

Let me mention just a few of the things in the bill that Democrats will own next year as soon as President

Obama signs this into law. We will own the fact that next year insurance companies will be required to cover the preexisting conditions of children. We will own that. Think about that. There will be a program to extend coverage to uninsured Americans with preexisting conditions later.

We will own the fact that this bill provides immediate support to health coverage for early retirees. We will own the fact that this bill will immediately shrink the size of the doughnut hole by raising the ceiling on the initial coverage period by $500 next year.

We will own the immediate guarantee of this bill of 50 percent price discounts on brand-name drugs and biologics purchased by low- and middle-income Medicare beneficiaries who are in the doughnut hole. We will own the fact that this bill will provide tax credits to small businesses to make employees' coverage more affordable. Tax credits of up to 35 percent of the cost of premiums will be available to small businesses next year.

In addition, we will own the fact that this bill requires health insurance companies to allow children to stay on their family's policies until age 26. Democrats will own the fact that this bill prohibits health insurers from imposing lifetime limits on the benefits consumers believe they are paying for and will tightly restrict the use of any annual limits.

Let me mention one other extremely important thing that, in the minority leader's word, Democrats will own. Our bill, immediately, will stop insurers from the devastating practice of rescinding or cancelling health insurance coverage when a policyholder is seriously ill.

All of those things I mention will happen right away, Madam President, as soon as the bill is signed into law. Taken together, this is a breathtaking catalog of reforms that will benefit the American people immediately. So, we Democrats are very proud, I say to the minority leader, to own these reforms.

We had hoped that our Republican colleagues would also be proud to own them. But let's remember William F. Buckley's conservative model. He is sort of the father of the conservative movement in America. He said the role of conservatives is ''to stand athwart history yelling 'stop'.'' That is exactly what our Republican colleagues have been doing by filibustering and trying to kill health care. They are ''athwart history, yelling 'stop'.'' My friends on the Republican side will be on the wrong side of history, the wrong side of reform, and the wrong side of progress.

I have been saying this bill, the Patient Protection and Affordable Care Act, is like a starter home. It is not the mansion of our dreams. It doesn't have every bell and whistle we would all like, but it has a solid foundation giving every American access to quality, affordable coverage. It has an excellent protective roof which will shelter Americans from the worst abuses of the health insurance companies, and this starter home has plenty of room for additions and improvements.

We Democratic Senators are proud to own this starter home. We are proud of the fact that this starter home is fully paid for. It is a starter home without a mortgage.

Indeed, as I said earlier, this bill will reduce the Federal deficit by $132 billion in the first decade and by at least $650 billion in the second decade. So, Madam President, even at this late date before the vote tomorrow morning, I say to our Republican colleagues, Democrats are proud to own this legislation and this starter home. We are proud to own the many reforms and benefits in this bill and we would be very pleased to share ownership with as many of our Republican colleagues who care to join us.

With all due respect to William F. Buckley, it is not written in stone that conservatives have to say no to history. I urge every Senator to say yes.

This bill has many authors. But in a very real sense this is Senator Ted Kennedy's bill. Our late beloved colleague would be so proud to see the Senate on the cusp of passing landmark health care reform. For decades, from his first days in the Senate, this was his highest priority and fondest win. As his friends on both sides of the aisle know, his great dream was of an America where quality affordable care is a right not a privilege for every citizen.

Today, we are on the verge of making that dream a reality. So often Senator Kennedy talked about the moral imperative of health reform. Too often in the debates of recent weeks we have lost sense of this moral imperative. We have heard speeches. We have had charts, back and forth and back and forth on some of the small stuff; who wins, who loses, because of this or that minor provision in the bill.

Today, on the eve of this historic vote, we should refocus on the big stuff, the moral imperative that drove Senator Kennedy. With this bill we will get rid of the shameful dividing line that has excluded millions of Americans for too long. For too long, tens of millions of Americans have been on the wrong side of that divide, without health insurance, without regular medical care for their children, just one serious illness away from bankruptcy. With this landmark legislation we erase that shameful divide within our American family. With this bill we say for every American, for every member of our American family, access to quality affordable care will be a right, not a privilege. It is a monumental achievement.

I urge all of our colleagues to vote yes on this bill.

Now, Madam President, a lot has been said about those of us who have been the leadership on this bill: Senator REID, Senator BAUCUS, Senator DODD, myself, and so many others. It is important to etch in history in our CONGRESSIONAL RECORD the names of those individuals on our staffs, who have done so much to get us to this point. I said earlier there is an old saying that Senators are a constitutional impediment to the smooth functioning of staff. We kind of laugh at that, but we know there is great truth to that. Were it not for the staff who spent so many hours and so much time away from their families that we would not be here.

I was talking with Senator REID's office. Kate Leone did a magnificent job. Carolyn Gluck, Jacqueline Lampert, Bruce King, David Krone, Rodell Molineaux, and Randy DeValk.

Senator DODD's staff: Jim Fenton, Tamar Magarik Haro, Monica Feit, Brian DeAngelis.

Senator BAUCUS's staff: Liz Fowler, Bill Dauster, Russ Sullivan, John Sullivan, Scott Mulhauser, Kelly Whitener, Cathy Koch, Yvette Fontenot, David Schwartz, Neleen Eisinger, Chris Dawe.

On our HELP committee: Michael Myers, our great staff director, who for more than a decade has led this staff and for almost 20 years has worked for Senator Kennedy. We are all sorry that Senator Kennedy could not be here for this. I can say honestly that Mike Myers carries on the torch as his staff director. He did a magnificent job of getting us through this. And David Bowen—David Bowen, if there is one person who knows more about what is in this bill than anyone else, it is David Bowen. I have never asked him about anything in this bill that he didn't know where it was and what it does. He has been at every meeting, I don't care how early in the morning, how late at night. I know he has been apart from his family and his children. I wish David the best in terms of being with his family tomorrow and over Christmas. David Bowen has done such a magnificent job of guiding and directing this bill and making sure it was all put together.

Connie Garner, who worked so hard, so hard; Portia Wu, John McDonough, Topher Spiro, Stacey Sachs, Tom Kraus, Terri Roney, Craig Martinez, Taryn Morrissey, Andrea Harris, Sara Selgrade, Dan Stevens, Caroline Fichtenberg, Lory Yudin, Evan Griffis.

Now I want to mention one other person who has been on my staff but now is on the HELP Committee staff, Jenelle Krishnamoorthy. I have for many years been advocating that we have to change our focus in America from a sick care society to a health care society. I mentioned that earlier. This bill contains more for wellness and prevention and public health than any bill ever passed by Congress—ever passed—and it is not talked about much, you don't hear too much debate about it. But it is significant that we are going to change this paradigm. We are going to start putting more up front, keeping people healthy in the first place.

One person who has done more than anyone else to make this happen is

Jenelle Krishnamoorthy. I want to thank her for just focusing laser-like the last couple of years or so on this and making sure it became a big part of our health care reform bill.

On my personal staff, Jim Whitmire, Beth Stein, Jenny Wing, Rosemary Gutierrez, and Lee Perselay. Let me mention Lee. Lee does all my work on disability issues. As many people know, it is my name on the Americans With Disabilities Act. Nineteen years ago we passed that. Lee Perselay does all my work on the disability issue.

There is another part of the bill not too many talk about, but it is so profoundly important to people with disabilities. In this bill there is a provision that will have the Federal Government give a 6 percent increase in the amount of money that the Federal Government gives to a State for Medicaid, 6 percent increase for a State that will enact legislation to put in place the provisions of the Olmstead decision by the Supreme Court over 10 years ago; that is, that every person with a disability has a right to a least restrictive environment. That means living in their own communities and their own homes with personal assistant services, support so they can live at home rather than going to a nursing home.

This has been a dream of the disability community since we passed the Americans With Disability Act in 1990. We have never been able to get it done. Now we have it in this bill. It is not talked about much, didn't hear much about it. But this will have more of a profound effect on people with disabilities than any other single thing in this bill or anything that we have done, literally, since 1990. Now people with disabilities can live at home and live in their own communities and the State will get money from the Federal Government to enable them to do that. Lee Perselay.

Lee Perselay; thank you very much, Lee.

Kate Cyrul of my staff, Dan Goldberg, and the Senate legislative counsel. A special thanks to Bill Baird, along with Stacy Kern-Scheerer and Ruth Ernst, who was present throughout the entire HELP Committee, and they have gone above and beyond.

To all the floor staff here, too, we forget about all they have done—Mike Spahn and Anne Wall and Stacy Rich and Tim Mitchell and Tricia Engle and Lula Davis, wonderful floor staff working with us to get us to this point, where we have a final vote on this tomorrow morning.

I wished to particularly mention these individuals. In many ways, they are the unsung heroes and heroines of what we have done. They can be content in knowing, as they go through life, they did a big thing here. They did something so important to help transform our society. I, personally, thank each and every one of them and wish them the best of the holiday season, Christmas, New Year. We will come back next year, and we will start implementing this bill. As the chairman of the HELP Committee, we will start looking at building those additions and those expansions.

I yield the floor and thank my friend from Illinois for letting me go.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Illinois is recognized.

Mr. BURRIS. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 6 minutes.

Mr. BURRIS. Mr. President, the Senate has long been a forum for great debate.

This institution is equipped to handle the most difficult questions our Nation faces.

Since we took up the issue of health care reform, the debate has been fierce, and our differences of opinion have played out in dramatic fashion on the national stage.

Over the last several months, I have said time and again that this health reform bill must accomplish the three distinct goals of a public option in order to win my support:

It must create real competition in the health care system.

It must provide significant cost savings to the American people.

And it must restore accountability to the insurance industry.

For months I have told my colleagues that I would not be able to support a final bill that fails to meet these three goals.

I believe they are the keys to comprehensive health reform in America, and without them, our legislation would be ineffective and incomplete.

I expressed my concerns about the compromise bill, and I asked tough questions.

I have reviewed the CBO score and the final legislative language as soon as it became available.

I believe the way forward is clear.

This bill is not perfect. It does not include everything I had hoped for.

But I am convinced that it can meet the three goals of a public option.

I believe it represents a monumental step forward—a strong foundation we can improve upon in the months and years to come.

This is not the end of health care reform in America—it is the beginning.

That is why we need to take the next step in this process. Although this is not the bill I had hoped I might be voting on, I am confident enough to pass this legislation on to the next step.

Let us send the Patient Protection and Affordable Care Act to a conference committee, where it will be merged with the House bill.

There, I have every hope that the conferees will have the opportunity to strengthen some of these provisions and make this legislation better.

We must not let the perfect stand in the way of the good. While it is not everything I had hoped it would be, it is far more than we have now.

And while this bill will not satisfy many of us, it would be a mistake to overlook all the good it will do for tens of millions of Americans.

So let me explain exactly why I am convinced that this bill will satisfy the three goals of a public option:

According to the nonpartisan Congressional Budget Office, the exchanges that will be created under this legislation will dramatically enhance competition in the insurance market.

This will drive premiums down, allowing consumers to shop around for the plan that is best for them, their family, or their small business.

CBO projections show that this would force providers to compete for the first time in many years, reducing costs and bringing everyone's premiums under control.

As a result, many more people would be able to get better coverage for less money.

This bill will enhance the choices that are available for individuals and small businesses.

Everyone will have the choice to keep their current insurance coverage if they are happy with it, but if they are not, they will have real options for the first time in many years.

This bill will give consumers the tools they need to hold insurance companies accountable.

It includes strong consumer protections—many of which take effect immediately—and it contains significant insurance reforms designed to put ordinary folks back in the driver's seat.

This bill will eliminate annual and lifetime caps on coverage, prohibit companies from dropping patients who get sick, and prevent discrimination against people who have preexisting conditions.

It will also require insurance providers to cover essential health benefits and recommended preventive care, so more people can get the treatment they need.

Based on these provisions, it is quite clear that this measure will provide immediate and lasting improvements in the health care system for everyone in this country.

It will extend quality coverage to 31 million Americans who are currently uninsured, and increase access to preventive care.

This will reduce emergency room visits, allow more people to treat preventable and chronic diseases, and help to bring health care costs under control.

In fact, the Congressional Budget Office projects that this legislation will cut the deficit by more than $130 billion in just the first decade, and will save nearly $1 trillion over the next several decades.

That is why I am confident that this bill will meet the three goals of a public option: competition, cost savings, and accountability.

It may not be the legislation I would have written at the beginning of this process, but after nearly a century of debate about health care reform, under

the leadership of 11 Presidents and countless Members of Congress, this legislation represents a strong consensus.

So it is time to take the next step in this process—to send this bill to conference and keep building upon this foundation.

This is not a perfect bill, but it contains a number of fundamentally good components.

Most importantly, it will ensure that 94 percent of Americans can get the health coverage they need.

After decades of inaction, the Patient Protection and Affordable Care Act is a monumental step in the right direction.

There were many competing ideas that gave rise to this bill.

There were many voices, inside this Chamber and outside of it, shouting to be heard on these issues.

There were concessions and compromises.

But, out of a century of dissent—out of decades of discussion and debate—we have arrived at a basis for comprehensive reform.

It is time to put aside our differences and move forward as one Congress, and one Nation.

There is much work left to do on this and a host of other issues. But in the messy process of debate and compromise, along the path that has led us to this point, this body has reaffirmed the enduring truth of the motto inscribed in this Chamber, just above the Vice President's chair: ''E pluribus unum.'' It is there, Madam President, right over your head. It means ''Out of many, one.''

For our entire history, it has been the creed that binds us to one another and to our common identity as Americans. It is the principle that drives us to assemble in this august Chamber to debate the toughest issues we will ever face.

Although we come from every section of this country, from many States, we are one country, and together, we can create a health care system that will be worthy of the people we represent.

It is time to make good on the promise of the last century and move forward with the Patient Protection and Affordable Care Act.

Let's take the next step, and send this bill to conference.

I yield the floor.

MEDICARE GEOGRAPHIC INEQUITIES IN REIMBURSEMENT

Mr. HARKIN. Mr. President, I am pleased to support the legislation pending before the Senate today, which will ensure that 31 million Americans will finally have access to affordable, quality health coverage, which will crack down on outrageous abuses by the insurance industry, and which will, at long last, put prevention and wellness at the heart of our health care system. I rise today, however, to signal that there is an area of this legislation that remains of concern and that I will be working to fix as we head to conference; namely, provisions to rectify the geographic inequities in the low Medicare reimbursement rates.

Across the country, Americans pay equal premiums to support Medicare. Yet there is a substantial geographic disparity in physician reimbursement levels in the Medicare Part B Program. The degree of this disparity is unjustified and inherently unfair—and it is having an increasingly negative impact on the number of providers that are accepting Medicare and magnifying the workforce shortage problem—especially in rural areas. The unfairness in this disparity in reimbursement rates is compounded by the fact that the States with the lowest reimbursement rates are often those that deliver the highest quality of care. The system must change and reward the quality of service delivered instead of the volume of care served.

I see that my colleague from Oregon, Senator MERKLEY, is here on the floor. He and I have often discussed this issue, as his State is also one that provides outstanding care and yet suffers from unduly low reimbursement rates. I wonder if my distinguished colleague shares my view that this is something we must continue to work on before this bill is finalized?

Mr. MERKLEY. I thank my distinguished colleague for raising this issue, which has also been a concern of mine. I agree with him that my State consistently lags behind other States on Medicare reimbursement and per capita spending. I strongly believe that a fundamental way to achieve the goal of more efficiency in Medicare is to realign the Medicare payment system to reward health care providers for the quality of care they deliver, not simply the quantity of services they provide. Medicare is spending over one-third more for each Medicare beneficiary in some States compared to Oregon, to Iowa, or to the home State of my good friends from Minnesota, Senators KLOBUCHAR and FRANKEN, who are also here on the floor with us today.

The simple fact is, this antiquated payment formula penalizes rural providers and penalizes medical efficiency, and I know in Oregon it has forced many physicians to stop accepting Medicare patients or limit the number of Medicare patients they serve, and that is why I feel so strongly that we must fix it once and for all in the final health reform bill. I wonder if the Senators from Minnesota have had a similar experience in their state.

Ms. KLOBUCHAR. I want to thank you, Senator MERKLEY and Senator HARKIN, for your work on is issue. I have observed the same problems with Medicare reimbursement in my home State. We represent States and regions that have demonstrated true leadership in lowering costs to Medicare while increasing the quality of care patients receive. The high-efficiency areas we represent are known for utilizing integrated health delivery systems and innovative quality measures to provide Medicare beneficiaries with better value. Research shows that these efficient delivery practices can save the Medicare Program upwards of $100 billion a year while also providing beneficiaries better access to the care they need. Unfortunately, the current Medicare payment structure penalizes those who provide efficient care while rewarding those who order unnecessary tests and services. It is critical that this is addressed in conference, and it will be-a-priority as we move forward through this process.

Mr. FRANKEN. Thank you, Senator HARKIN, for your leadership, and also thanks to my other colleagues for working on this issue. I agree with all that has been said, and I would like to reiterate that our States have some of the best health care in the country. And it just doesn't make sense that under the current Medicare reimbursement system, the good care in our States gets punished and the less effective, more expensive care gets rewarded. The result is that we are not providing health care in this country; we are providing sick care. We need incentives for providers for high-value care, and the best way to do this is through Medicare payment reform.

These geographic disparities in Medicare payments are unfair, and they are not good for patient care. We are forcing excellent providers out of business because reimbursement rates are low and they just can't make ends meet. This is counterproductive to the goal that I know we all share—to increase access to high-quality health care for all Americans. It is a top priority for me that in conference we make some changes so high quality care that is provided at a reasonable cost will no longer be punished. Instead, we need to make sure that the bill rewards providers for being effective partners in their patients' care. I appreciate the opportunity to share these concerns and discuss these issues with my colleagues.

Mr. HARKIN. I couldn't agree with my colleagues more. It is long past time to take action to fix this system. I appreciate the commitment of the Senator from Oregon and the Senators from Minnesota to fixing this problem once and for all.

DEFINITION OF FULL TIME WORK

Mrs. MURRAY. Mr. President, I would like to engage my friends, the Senator from Iowa and Chairman of the Health, Education, Labor and Pensions Committee, and the Senator from Montana and Chairman of the Finance Committee, in a conversation about how ''full time'' is defined in the Patient Protection and Affordable Care Act and clarify any misunderstandings about how the legislation resolves the potential for exclusion of certain work group such as flight crews and rail workers due to the definition of ''full time'' work and the unique way their work hours are calculated.

Is it the Senators' understanding that the Patient Protection and Affordable Care Act resolves a potential

problem of excluding from employer incentives to provide coverage for employees who work in professions that use unique calculations for hours worked, such as flight crews and rail workers? And that it does this by indicating that the Secretary of HHS, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for employees who are not compensated on an hourly basis?

Mr. HARKIN. Yes, the Senator is correct. The Patient Protection and Affordable Care Act is designed to expand access to high quality and affordable health coverage for all workers. Because of the nature of work, some industries uniquely calculate total daily and monthly working time to determine full-time schedules. That is why this legislation gives the Secretaries of Health and Human Services and Labor discretion to establish rules and regulations for the hours of service for workers outside of standard hours. This provision is meant to be construed broadly.

Mr. BAUCUS. I would concur with my friend, the Senator of Iowa, in his understanding of the act. This provision is meant to be construed broadly, and to expand access to high quality and affordable health coverage for all workers.

Mrs. MURRAY. Of particular concern to me are groups such as pilots and flight attendants, cabin crews who, under ''full time'' contracts, ''work'' on average only 70 hours per month due to the unique way their hours are calculated. For obvious safety reasons, a pilot is limited, through Federal regulations, to flying 100 hours per month, or 1,200 hours annually, even though he or she contributes many more hours of service outside of the time spent flying planes. This unusual work schedule, however, raises the potential that a pilot might not be considered a full-time employee for purposes of this legislation under a rule that defined full time status as simply ''working'' upwards of 30 or 40 hours per week. The same is true of other flight-crew employees.

Additionally, railroad hours-of-service employees, who work by the mile or by the day, could also find it difficult to meet the definition of full-time employee under a strict ''hours worked'' standard. Many train and engine service railroad employees are paid by the mile and or by the day or paid for time available to work, and are not paid by the hour. Although these workers are undoubtedly full-time employees within their profession, the annual or weekly hours they are calculated to work might not satisfy a narrow minimum hour component that did not take into account a more flexible hours of service concept for certain types of jobs.

Currently all flight and cabin crew members employed by Part 121 commercial air carriers and train and engine service railroad employees paid by the mile or by the day are full-time employees and receive the same benefits afforded other full-time workers. Is it the Senators' understanding that this bill is intended to allow these working groups to be encompassed in the definition of ''full-time employee'' for purposes of the employer incentives to provide quality health care coverage?

Mr. HARKIN. Yes, that is my understanding, that the Secretaries of Health and Human Services and Labor will establish standards to govern workers in these industries so they are fully entitled to the protections under this bill. It is not the intent of Congress to exclude or prevent workers with unique work schedules from the benefits under the Patient Protection and Affordable Care Act or from incentives for employers to provide these workers with quality healthcare coverage.

Mr. BAUCUS. Again, I am pleased to concur with the Senator from Iowa in his understanding. The Secretaries of Health and Human Services and Labor will establish standards to govern workers in these industries so they are fully entitled to the protections under this bill.

Mrs. MURRAY. Mr. President, I would like to thank the Senators from Iowa and Montana for their time and clarification on this issue.

Mr. DURBIN. The Patient Protection and Affordable Care Act offers community health workers some overdue recognition, and more importantly, authorizes grants to help support and expand their work.

Community health workers are from the communities they serve. From rural small towns to the urban inner city, community health workers reach out to underserved communities in ways that the current health care system cannot, providing culturally and linguistically appropriate health information in a more familiar and welcoming manner. Their work helps to bridge the healthcare gap and diminish disparities.

Nowhere is this more evident than in the community-based doula program. Community-based doulas support pregnant women during the months of pregnancy, birth, and the immediate postpartum period. They provide parent education, logistical and emotional support. They help new mothers make better lifestyle choices and deliver healthier babies. What makes these programs work is the culturally sensitive mentoring within the community.

In Chicago, the community-doula model has made a big difference in the lives of these young moms and their babies. The Chicago Health Connection came up with this model. They trained mentors from the community to work with at-risk moms, many of whom didn't know where else to turn. These mentors spend time in the neighborhood, finding and befriending pregnant women who need help.

With the guidance of the doula, the Chicago Health Connection found that more young mothers were going to their prenatal care appointments, making better lifestyle choices, and—not surprisingly—delivering healthier babies. The doulas stay with the moms through the early months, encouraging breastfeeding, cuddling, and interactive play.

Bina Holland is a community-based doula at the Easter Seals Children's Development Center in Rockford, IL. Bina has had a powerful impact on one of her clients—a 14 year old girl who was 5 months pregnant and severely underweight. Bina taught her about healthy nutrition habits to strengthen her body to carry a baby. Bina also encouraged the young woman to visit her doctor regularly and to openly talk with the doctor about the health status of the baby.

The girl delivered her baby early at 2.5 lbs, and Bina was there to explain the health benefits of breastfeeding. The young mom agreed to nurse her child, and each week the mother monitored the baby's growth. The child was nursed to health, and the mother successfully graduated from the doula program. Thanks to Bina.

Community-based doulas are a powerful resource for maternal and child health, and the model is effective. In communities that have employed it, outcomes include better prenatal care, higher birth weight, higher breastfeeding rates, better parenting skills, fewer preterm births and c-section deliveries, and delays in subsequent pregnancy for teenages.

With Chicago Health Connection's success, they took on the challenge of working with other communities to build their own community-based doula program. Today, they have transformed into Health Connect One, a training organization for communities nationwide interested in starting their own community based doula programs. The need is everywhere, and these women are working hard to make these important services available everywhere for all moms.

I am encouraged by the language in Section 5313 of the Patient Protection and Affordable Care Act, Grants to Promote the Community Health Workforce and want to ensure that the definition of community health worker includes community-based doulas. The Federal Government currently funds community-based doula programs through the Maternal and Child Health Bureau's Special Projects of Regional and National Significance. Expanding the definition of community health workers in the reform bill will give these evidence-based programs greater support to meet the needs of families in underserved communities.

Community-based doula programs are a proven example of the health outcomes that education, prevention and health literacy can bring. With grants to promote the community health

workforce, doulas will continue to promote positive health behaviors in pregnant women and improve the lives of families nationwide.

Mr. FEINGOLD. Mr. President, I will vote for the comprehensive health reform bill being considered in the U.S. Senate, but I will also work to improve its flaws. There is much that is good about this legislation. It will, over the course of 10 years, help ensure that nearly every American has access to good and affordable health insurance. It will put Medicaid and Medicare spending on a more sustainable and stable path. It will increase access to home and community-based long term care services, increase our medical workforce, and end some of the worst abuses by the private insurance. But there are serious deficiencies—like the failure to establish a public health insurance option—that we know of, and there will be undoubtedly be some gaps in the bill that we will discover during implementation. The commitment that is made with this legislation is ongoing, and will require diligent oversight and improvements in the years to come.

I am pleased that many of the priorities I laid out at the start of this process have been addressed in this bill. The bill includes provisions I fought for that help make sure Wisconsin is treated fairly. Those provisions include fixes to a flawed Medicare formula that denies our state fair reimbursement, financial incentives for the kind of low-cost, high-value care practiced in Wisconsin, and hundreds of millions of dollars in additional Medicaid assistance for Wisconsin to account for the State's leadership in expanding coverage to its citizens. But I also recognize that this bill does not do as much as I would like to reform our current health care system, and I will work to try to make sure the final version fixes these flaws.

I receive countless letters and emails and phone calls from my constituents on health care reform. Some of the most heartbreaking letters I receive are from people who are sick or caring for a sick loved one and do not have health insurance. Some of these people are recently laid off due to the recession, and have lost their health insurance. Some people had health insurance, but were dropped from their coverage because they became sick and actually needed health care. And some people were denied health insurance altogether, either because it was priced out of their reach, or because they had a preexisting condition. In far too many cases, these people have been forced to declare bankruptcy because of their medical bills. Two thirds of all personal bankruptcy cases in the United States are due to medical debt, and over 80 percent of those individuals had health insurance. And in the most egregious cases, sick children in Wisconsin and around the country have reached lifetime limits on care that are set by an insurance bureaucrat, and are denied coverage for further medical treatment.

Because of this bill, lifetime and annual limits on coverage will be prohibited. Premiums cannot increase due to medical needs or illness. Insurers cannot charge women more than men for the same insurance policy. Restricting or denying coverage based on preexisting conditions is prohibited for all Americans, beginning with children effective 6 months after final passage of this bill. A recent study found that 36 percent of currently uninsured adults were unable to get health insurance because of a preexisting condition. Preexisting conditions can be anything from serious, chronic diseases like diabetes or cancer to medical episodes like acne or even pregnancy. In nine States, being a victim of domestic violence can be a preexisting condition. This bill will end these consumer abuses.

People will be guaranteed the ability to renew their health insurance year after year. If a claim is denied, policy holders have a guaranteed right to appeal. And group insurers are required to spend at least 85 percent of every premium dollar on actual health care; if they are found to be spending less, they are required to refund the difference to the customer. This policy, along with others, will require an unprecedented level of transparency in the sale of health insurance policies.

One of the strongest points of this bill for me, and perhaps one of the most underappreciated, is the commitment made to realign Medicare spending to reward our doctors and hospitals for the quality of care they provide to their patients, rather than the quantity of care. Moving to a value-based system is one of the single most effective ways to reduce health care spending and improve the quality of care. Wisconsin is a national leader in value-based delivery of health care. If every health care provider operated like those in Wisconsin, over $100 billion a year in taxpayer dollars could be saved. Just last year, the Congressional Budget Office estimated that nearly 30 percent of Medicare spending could be avoided by integrating and coordinating care, in the manner of high-value providers.

As a result of this bill, Medicare reimbursement for certain health care providers will be based, in part, on the quality of care they deliver to their patients. Health providers will now have the opportunity to voluntarily join together as Accountable Care Organizations to coordinate the care they deliver to their patients, and to share in the savings they generate for Medicare. They will be given numerous opportunities and incentives to change the way they deliver health care, and will, for the first time, be penalized for delivering low-quality care. For example, if a hospital demonstrates high rates of readmissions or hospital acquired infections, they will receive less reimbursement from Medicare. Not only will patients receive smarter care from their physicians, these policies will help ensure that taxpayer dollars are going to pay for the value of care Medicare patients receive, as opposed to the volume of care.

In addition to these positive changes to the way Medicare pays for health care, there is language to finally address the historic inequity in Medicare reimbursement that Wisconsin and other rural States have faced. Thanks to the leadership of Senator CHUCK GRASSLEY in the Senate Finance Committee, this bill includes language that will increase Medicare reimbursement for Wisconsin physicians and directs the Secretary of Health and Human Services to analyze and adjust the current formula to ensure more accurate payments for rural providers in the future. Fixing the flawed Medicare formula so that Wisconsin receives its fair share of Medicare reimbursements has long been a priority of mine.

I am pleased that this bill more fairly reimburses Wisconsin for the leadership my state has demonstrated in extending coverage to low-income residents through BadgerCare, our State Medicaid program. I was concerned that the Senate Finance Committee bill would have denied Wisconsin much-deserved Medicaid dollars, and I worked hard to try to ensure the bill before the Senate fixed this problem. As a result, relative to the bill that the Senate Finance Committee reported, this bill will bring hundreds of millions more in Medicaid assistance back to Wisconsin. I appreciate the willingness of my fellow Wisconsin Senator, HERB KOHL, the Chairman of the Finance Committee, Senator MAX BAUCUS, and Senator REID in working with me to ensure that Wisconsin's investment is acknowledged in this legislation.

I am also pleased by the attention to long-term care reform in this bill. Modern medicine has turned fatal diseases into chronic diseases, and enabled individuals to live much longer. These are tremendous accomplishments. But the reality is that these individuals need even more assistance because of medical advancements—from their families, communities, and government.

Long-term care reform is inextricably linked to overall health reform, and one cannot truly succeed without the other. While this bill does not include a comprehensive strategy to reform our long-term care system as I had hoped, it does include a number of critical building blocks to assist reform efforts in the future. One of these critical pieces is the Community Living Assistance Services and Supports Act, or CLASS Act. The CLASS Act would create an optional insurance program to help pay for home care and other assistance for adults who become disabled. Those choosing to participate would pay monthly premiums into an insurance trust, and after 5 years, could access a cash benefit if they become disabled and need assistance.

Another critical component of this bill is the attention paid to expanding

home and community-based care options. Again, Wisconsin has been a national leader in increasing access to home and community-based care, beginning with the Community Options Program almost 30 years ago. As a State Senator, I worked to help expand Wisconsin's Community Options Program, known as COP, which provided flexible, consumer-oriented and consumer-directed long-term care services in community-based settings, enabling thousands of people needing long-term care to remain in their own homes rather than going to a nursing home. Over time, the COP program turned into Wisconsin's FamilyCare program, which is our newest State entitlement program for low-income and disabled adults to receive necessary care, supports, and services in their homes and communities.

The progressive vision that is the driving force behind Family Care is also the driving force behind the long-term care provisions in this bill. This bill will establish the Community First Choice Option, which gives States the option to create a new Medicaid benefit through which States could offer community-based attendant services and supports to Medicaid beneficiaries with disabilities who would otherwise require the level of care offered in a hospital, nursing facility, or intermediate care facility.

This bill also removes barriers to expanding home and community-based services; protects recipients of home and community-based services from spousal impoverishment; and increases appropriations by $40 million to help fund Aging and Disability Resource Centers.

And finally, as a result of Senator REID's amendment, the bill provides new financial incentives for States to shift Medicaid beneficiaries out of nursing homes and into home and community-based services.

Over 10 million Americans are currently in need of long-term care, and that number is expected to rise to 15 million in the next 10 years. These individuals struggle to remain independent with limited assistance. Policies like those included in this bill, which increase options for home and community-based care so that nursing homes are not the only choice, are smart changes that will benefit consumers of long-term care and save taxpayers money.

One of my most important priorities for the bill was that it be fiscally responsible. Based on the most current projections, the Congressional Budget Office expects this legislation to reduce the deficit by $132 billion by 2019 and roughly $1 trillion by 2029. While the bill does not go as far as I would like to rein in health care spending, the $871 billion price tag on the bill is fully offset and will not add a penny to the deficit.

Deficit reduction is achieved through a number of policies, three of which are included in legislation I introduced to bring down the deficit, the Control Spending Now Act. These policies, which make prescription drugs more affordable and require wealthy individuals to pay their fair share of Medicare premiums, generate $24.6 billion in savings.

For all the positive aspects of this bill, I am deeply disappointed by the lack of a public option. I have been fighting all year for a strong public option to compete with the insurance industry and bring health care costs down. I continued that fight during recent negotiations, and I refused to sign onto a deal to drop the public option from the Senate bill.

Removing the public option from the Senate bill is the wrong move. I am concerned that without a public option, there will be no true competition for the insurance industry. We have included mechanisms to protect against egregious year-to-year increases in private insurance premiums from this point on, but we have no mechanism to force insurance companies to decrease premiums as they are set today. A strong public health insurance option would provide a powerful incentive for less responsible insurers to re-evaluate their own cost-sharing and benefit plans to ensure they are an attractive option for consumers.

The public option would give consumers a strong voice in the marketplace. If the private market was not meeting their needs, they would have an alternative. Competition is how we can reduce our health care costs, but there is no real competition in the private market. Private insurers compete to generate the most profit, and the best return on investment for their shareholders. There is at most a secondary motivation to compete to give the best value to consumers. A public option serves as an outside factor to force private insurers to consider more than just shareholder interests.

The Congressional Budget Office estimated that the public option in the bill that was brought to the floor could save up to $25 billion. The CBO's analysis of Senator REID's amendment, which strikes the public option and replaces it with multi-state plans, says the following about the new policy:

> Whether insurers would be interested in offering such plans is unclear, and establishing a nationwide plan comprising only of nonprofit insurers might be particularly difficult. Even if such plans were arranged, the insurers offering them would probably have participated in the insurance exchanges anyway, so the inclusion of this provision did not have a significant effect on the estimates of federal costs or enrollment in the exchanges.

Removing the public option gives up a huge opportunity to reduce costs for American families and the government, and I will work to try to ensure the final bill fixes this serious mistake.

I also am concerned about the excise tax on high cost health plans. Under this bill, health insurers will be taxed on the value of any health care plan sold that is valued above $8,500 for an individual and $23,000 for a family. Improvements have been made to this policy during Senate consideration, and the thresholds for the tax, along with exemptions for high-risk professions, have been expanded. But I have heard from so many in my State who have traded wage increases for solid health insurance benefits in the past years. I have heard from teachers and laborers and union members who are worried they may lose the health benefits they have fought for, and can't reclaim the wages they have already lost. While this policy is often referred to as the ''Cadillac'' health care tax, they will be the first to tell you that they hardly live the Cadillac lifestyle. I urge my colleagues in the Senate and the House to consider the real-life impact that this policy could have on working Americans and their families.

I am concerned about the cuts to home health and hospice providers under this bill. Home health and hospice providers offer a truly valuable service to our communities. But under this bill, their reimbursements will be drastically cut and I am concerned that access will decrease as a result. Improvements have been made under Senator REID's amendment, but we must do better for home health and hospice providers.

I am disappointed that the bill does not permit the safe importation of prescription drugs, which would reduce health care spending for consumers and the Federal Government. I will keep fighting to enact this common-sense reform.

Lastly, I oppose the sweetheart deals that some Senators and interest groups apparently cut. These deals weaken the bill by subsidizing States or interest groups at taxpayer expense. They are unjustified, and they should be eliminated.

Mr. WYDEN. Mr. President, the Patient Protection and Affordable Care Act is a fundamental first step toward providing all Americans with affordable, quality health care. The health care system is complex, and that is why this Senate and two of its committees, including the Senate Finance Committee of which I am a member, have taken the better part of this past year crafting this legislation. I believe several provisions of this bill are transformational for American health care and will begin to move America toward more competition, choice, and quality.

The first provision is in the managers' amendment, and it is called free choice vouchers. This section creates something that has never existed before in the American health care system: a concrete way for middle-income Americans who cannot afford their health care to actually push back against the insurance lobby and force insurance companies to compete for their business in the insurance exchanges. Unlike today, where if a hard-working, middle-class American can't afford just the one health insurance policy available to him at his job, with

this new provision, there will be a different health care marketplace, with free enterprise choices that can actually drive down costs for the middle class while ensuring those choices are of good quality. And in that new marketplace, a worker who cannot afford his employer's health plan can get a tax-free voucher for the same amount the employer contributes under the health plan and use that voucher to buy a more affordable plan in the insurance exchange.

I have been an advocate for consumer empowerment and choice my entire career in public service. Exchanges are a new pathway to creating a competitive marketplace for the first time for health care in this country. Massachusetts led the way, opening the door to showing Federal legislators the potential for insurance exchanges when Massachusetts enacted its own health reform law. Many other States lead the way with innovation in health care, including States like Oregon and Vermont. That is why I have authored and championed in the Senate Finance Committee section 1332, the waiver for State innovation. If States think they can do health reform better than under this bill, and they cover the same number of people with the same comprehensive coverage, they can get a waiver exempting them from the legislation and still get the Federal money that would have been provided under the bill. To me, this provision is a safety valve, if certain provisions in this bill will not work as intended in a given State. This provision will give States a way to tailor health reform to best meet the needs of their citizens. I intend to work with Senator SANDERS and other colleagues to make sure that State waivers will be available even sooner than they are under the current bill.

The waiver for State innovation and free choice vouchers will improve the number of choices in the bill, for states, for employers and for employees. The Patient Protection and Affordable Care Act will also increase quality of care, particularly in the Medicare Program. I worked in the Finance Committee to increase bonus payments to high quality plans in the Medicare Advantage Program. In Oregon, Medicare Advantage is a lifeline given the low traditional Medicare reimbursement rates in the State. This amendment will reward the high quality plans that exist in Oregon, but will also encourage other plans across the country to increase the quality of the care they provide. By boosting payments to the highest quality plans—the four and five star plans—the Federal Government will be incentivizing plans that provide preventive care, manage chronic diseases well, and have high levels of consumer satisfaction.

Another provision that will add quality to the Medicare Program is Independence at Home, IAH, section 3024 of the bill, that I won approval for in the Finance Committee. This provision stems from legislation that I introduced with 11 other Members on both sides of the aisle. As the name indicates, the Independence at Home program will provide a way for seniors with chronic medical conditions to get medical treatment at home. The IAH program is based on a house call team approach that has proven successful in reducing costs and improving the quality of care for high cost patients with multiple chronic illnesses, patients who account for 66 percent—85 percent of Medicare spending. The Independence at Home program requires providers to achieve minimum savings on health care provided to the highest cost Medicare beneficiaries as a condition of participating in the program.

Providing care at home makes sense, and is the right direction for the future of health care delivery. But there is another aspect of the future of health care that I think holds much promise: personalized medicine. I won approval in the Finance Committee, along with Senator CARPER, for including section 3113 in the bill. This provision will increase access to innovative molecular diagnostic tests that provide the foundation for the application of personalized medicine for individuals suffering from life threatening diseases such as cancer and heart disease. These tests hold the promise of getting patients the right type of chemotherapy for their specific case of cancer. Personalized medicine is the future, and I am thrilled that the Patient Protection and Affordable Care Act takes steps to move toward 21st century medicine.

I have spent the better part of my career trying to make the health care marketplace more competitive and trying to improve the quality of care for all Americans. I take many lessons from my home State of Oregon, and have tried to apply the innovation that Oregon is known for as an example for how other States can provide higher quality care at a lower cost. Through free choice vouchers, State waivers, Medicare Advantage bonus payments, Independence at Home, and personalized medicine, I believe this bill improves competition, choice and quality across the entire country.

Mr. INOUYE. Mr. President, I am pleased that this bill will extend basic health care to more than 30 million Americans who were previously unable to afford the costs associated with seeing a medical professional. Not since former President Harry S. Truman enrolled as Medicare's first participant in July of 1965 has our health care system undergone such a complete overhaul. The reform brought about by this bill is needed and long overdue. For too long millions of Americans have struggled to see health professionals while health insurance providers have raised premiums and executives have reaped multimillion-dollar bonuses. That is no longer the case. This bill also ensures that Hawaii, a State long ahead of the curve in terms of providing health insurance and affordable access to medical professionals, maintains its high level of health care while expanding the reach of existing Federal programs. The State Prepaid Health Care Act of 1975 ensures that every employee in Hawaii working at least 20 hours a week receive health insurance from their employer. Hawaii received an exemption to ensure Hawaii's employer mandated health care law would not be rolled back. The health care reform bill also includes tremendous cost savings and subsidy incentives for the State. Hawaii is one of two States in the country who are not permanently enrolled in the Federal disproportionate share hospital, DSH, program which reimburses hospitals that care for the uninsured. Currently Hawaii's temporary enrollment expires in 2012 but the new bill will make DSH permanent resulting in more than $100 million for Hawaii's health care industry over the next 10 years. I am also pleased that we were able to include the reauthorization of the Wakefield Pediatric-Emergency Medical Services for Children program, at the suggestion of my two colleagues from North Dakota, Senator KENT CONRAD and Senator BYRON DORGAN. This program works to ensure that emergency rooms across the country are equipped with the resources necessary to treat young children. A civilized, democratic society like ours should help maintain the health and welfare of all our citizens. No one should be denied medical care or lose coverage because they can't afford to pay to see a medical professional. Like that July afternoon in 1965 when President Lyndon Johnson signed Medicare into law I am especially pleased to see that our great Nation once again has recognized and worked to meet the basic needs of our citizens.

Mr. LEVIN. Mr. President, at a handful of moments, Members of the U.S. Senate have faced choices that could fairly be described as historic. Each of these choices was between progress—sometimes incomplete progress—and an intolerable status quo. In our finest hours, we have overcome fear and doubt and stood for the principle that our Nation, though great, could aspire to do better. When our ambition has weakened, we have taken the timid path. That is an easier journey and less laden with fear or political peril, but it has not served our own time well or passed the test of history.

We have come to another of those times. We can vote, now, to address decades of frustration and anguish over a health care system most Americans know is broken. Or we can destroy the hopes of millions of Americans whose modest ambition is not a perfect system, but an improved one. We cannot vote to end every problem in health care; this bill will not do that. But we can make life safer, more secure, less costly, for most Americans, because we can give them a better health care system.

Briefly, here is some of what this legislation will accomplish:

People with preexisting conditions who are currently left out of the system will be able to get access to health care in the future. Within 6 months of enactment, this legislation will allow those not covered at work and who are unable to find insurance in the individual market because of preexisting conditions to buy a plan that will remain in place if they get sick. And it will offer free preventive services and immunizations.

This bill has provisions to help strengthen Medicare by giving seniors access to important preventive services that they may otherwise not be able to afford. And also for seniors, this bill reduces the Medicare doughnut hole, a gap in prescription drug coverage that I hope we are able to eventually close altogether.

After 2014, new plans will be barred from imposing annual limits on coverage, and sliding tax credits will be available to make insurance more affordable for those earning below $88,000 for a family of four, or earning below $43,000 for an individual. The credits that will be offered to make coverage more affordable will bring millions of Americans under the umbrella of health insurance, an important improvement for those families now without insurance and a step toward reducing burdens and inefficiencies that make health care more expensive for all of us. State-based exchanges will offer those seeking individual coverage both the purchasing power of belonging to a larger group, and a transparent marketplace in which benefits are standardized and costs are clear.

The bill also helps small businesses that are struggling to get a handle on ever-increasing health care insurance costs. Beginning in 2010, small businesses will receive a tax credit of up to 35 percent of their costs for insuring their employees and their employees' families. In 2014 and beyond, the tax credit can be as much as 50 percent of an employer's costs for covering employees. These credits will encourage these employers, which are the backbone of our economy, to provide health care insurance coverage.

The bill also includes some major insurance company reforms. Beginning in 2011, plans that do not spend a high percentage of their revenue for patient care—85 percent of revenue for large-group programs, and 80 percent in the individual and small-group market—will have to provide rebates to their enrollees.

One of the benefits of this new requirement on insurance companies is reversing the troublesome trend that has seen more and more of our health care dollars spent on administration. Since 1970, the number of administrative positions in our health care system has increased by nearly 3,000 percent, far outstripping the growth in the number of physicians over the same period. It is long past time to ensure that we are spending precious health care dollars on care and not on paperwork and bureaucracy. Hospitals will become more transparent as well—every hospital in the Nation will publish a list of standard charges for the items and services it provides.

The bill includes incentives to boost the availability of primary care, including financial incentives under Medicare to increase the number of primary care physicians. And it also promotes standardizing health information technology in an effort to reduce costly administrative overhead.

This is not everything I hoped for. But it is what we can get done. It is what we should do.

The minority has offered no alternatives, just apocalyptic rhetoric. Some of them stood before rallies, leading chants about socialism. They claimed it is a big government takeover. ''Kill the bill'' was their slogan. Before television cameras our efforts to produce reform were compared to the activities of financial fraudsters like Bernie Madoff.

For those familiar with the facts, these notions are rightly seen as falsehoods. One of these falsehoods—the notion that health care reform would mean ''death panels'' voting to end the lives of senior citizens—has just been named by an independent fact-checking organization its ''Lie of the Year.'' That's quite a distinction. When discussing the scare tactics being used by opponents of health reform, the policy director of AARP said, ''The opponents of health reform have targeted (seniors) and have . . . misrepresented the facts, and have consciously tried to scare seniors who depend on health care. So no surprise that they feel anxious, because they're hearing messages every day designed to scare the bejesus out of them.''

The extreme rhetoric of the minority is a repeat of similar rhetoric which was used when Social Security and Medicare were being considered by the Congress.

In 1935, as Social Security was being debated, one Republican warned the program would ''enslave workers,'' and another declared ''the lash of the dictator will be felt'' if it passed. Three decades later, as the Congress debated the Medicare Program, one Republican Member of Congress said, ''Let me tell you here and now, it is socialized medicine.'' A future Republican President of the United States warned that if Medicare passed, ''you and I are going to spend our sunset years telling our children and our children's children what it was like in America when men were free.''

Incredibly, the same Republican Party that once equated Medicare with socialism would now have the public believe they are defending Medicare from the threat of socialism. The mental gymnastics this requires is breathtaking. If this bill is such a threat to seniors, why does AARP support its passage? If it will destroy our health care system, why do so many of the groups that know health care firsthand, from the American Medical Association to the American Heart Association to the American Cancer Society, and dozens of others support passage of this bill? If this bill will explode the deficit, why does the nonpartisan Congressional Budget Office tell us it will reduce the deficit by $132 billion over the first decade after enactment, and up to $1.3 trillion in the second?

Are all these organizations, the nonpartisan CBO, independent fact-checkers, scores of economists and health care experts—are they all engaged in a conspiracy to engineer a socialist government takeover of medicine? I am afraid that some of our Republican colleagues have latched onto any argument at hand to justify their opposition to health care reform.

Let me ask one final question: What do opponents say to our constituents who speak to us every day of their belief that the time for health reform has come? That today is not the time? The man from Kalamazoo, MI, who went bankrupt because his health insurance would not cover $40,000 in costs for a life-saving heart operation—will they tell him this is not the time? The woman from Jackson, Michigan, who spent months fighting to get coverage because insurance companies considered her pregnancy a preexisting condition—will they tell her this is not the time? The worried mother who wrote my office to say, ''We will lose too many bright young people—if something is not done''—will they tell her this is not the time?

No, this is the time. Now is the time to embrace the same call of history that led our predecessors to ignore the apocalyptic rhetoric and establish Social Security and Medicare. We must pass this bill, so that generations after us do not look back on a broken health care system and say, ''Here was another lost moment when it could all have changed.'' We must pass this bill. Now is the time. Just as we are ploughing the roads of record snow to get to work, our work now is to plough through the endless filibusters to get our job done.

Mr. REID. On behalf of Senator BAUCUS, Senator DODD, and myself, I submit this statement under the spirit of rule XLIV of the Standing Rules of the Senate. We hereby certify that, to the best of our knowledge and belief, the managers' amendment to the substitute amendment to H.R. 3590 does not contain any congressionally directed spending item as defined in rule XLIV.

Rule XLIV defines a congressionally directed spending item as ''a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory

or administrative formula-driven or competitive award process.'' To the best of our belief, no item meets this definition. There are numerous items that affect one or more States or localities differently than others, but none of these meet the definition because of one or more of the following reasons—(A) no specific amount is associated with the provision, (B) the provision involves distribution through ''a statutory . . . formula-driven . . . or competitive award process'' or (C) the criteria are such that more than one State or locality will or may benefit. It is quite common in legislation for formulas and programs to make adjustments to affect State- or locality-specific needs.

The rule defines a ''limited tax benefit'' as ''any revenue provision that (A) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision.''

Section 10905 provides exceptions to the annual fee on health insurance providers for certain insurers. One of these exceptions is provided to any entity that meets the following criteria—a mutual insurance company with market share in a State for 2008 between 40 percent and 60 percent and whose medical loss ratio for all markets—individual, small group and large group—in 2008 was 90 percent or higher. The performance-based exception is available if the entity has an average medical loss ratio for years after 2011 for the previous 3 years for all markets of 89 percent or higher—prior year for 2012 fee and prior two years for 2013 fee. It may be argued that this provision could be considered a ''limited tax benefit'' as defined in rule XLIV; at the same time, the Joint Committee of Taxation has indicated that the universe of potential beneficiaries depends in part on how ''medical loss ratio'' is ultimately determined under the statute. In the interest of transparency, the provision was included at the request of Senator BEN NELSON so that nonprofit Blue Cross Blue Shield of Nebraska would not be excluded from the exemption of nonprofit insurers from the fee. In keeping with the spirit of rule XLIV, Senator NELSON has provided Senator BAUCUS with a certification that neither he nor his family has a financial interest in the provision.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from Senator NELSON of Nebraska dated December 21, 2009.

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

U.S. SENATE,
Washington, DC, December 21, 2009.

Chairman MAX BAUCUS,
Ranking Member CHARLES GRASSLEY,
U.S. Senate Committee on Finance, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN BAUCUS AND RANKING MEMBER GRASSLEY: Consistent with the provisions of Rule XLIV of the Standing Rules of the Senate, I am submitting this letter with regard to Section 10905 of Senate Amendment 3276.

Section 10905 of the amendment creates a limited exemption from the annual fee on health insurance providers established by Section 9010 of Amendment No. 2786 to H.R. 3590, the Patient Protection and Affordable Care Act of 2009. The exemption from the fee is created for certain non-profit insurers with a high medical loss ratio. Among other exemptions provided for under this section, an exemption from the fee is available to any entity which is a non-profit mutual insurance company with market share in a State for 2008 between 40% and 60% and whose medical loss ratio for all markets (individual, small group, and large group) in 2008 was 90% or higher. The exception is available only if the entity has an average medical loss ratio for years after 2011 for the previous three years for all markets of 89% or higher (prior year for 2012 fee and prior two years for 2013 fee).

This provision could be considered a ''limited tax benefit'' as defined in Rule XLIV, and I anticipate that Blue Cross Blue Shield of Nebraska may benefit from this provision, provided that that they maintain the high medical loss ratio called for under the provision. My purpose for requesting this provision was so that Nebraska's sole non-profit insurer would not be excluded from the exceptions to the insurance fee as set forth in Section 10905.

Consistent with the requirements of paragraph 9 of Rule XLIV, neither I nor my immediate family have any pecuniary interest in this item.

Sincerely,

E. BENJAMIN NELSON.

Mr. REID. Mr. President, as we finish this session, there are many people who have worked to get us to this point. From the staff in the Senate to the Capitol Police, many employees have given their time to make sure that the Senate could complete its work on health care.

In particular, I would like to recognize the work of the employees of the Government Printing Office, GPO. Each day, the GPO works with the Secretary of the Senate to meet the needs of the Senate and we appreciate their efforts. Nearly all of the documents we have used for the health care debate have been printed and delivered by the employees of the GPO.

This past weekend, when the heavy snow blanketed the city and shut down most government agencies and operations, the men and women of the GPO came to work and remained at their posts. Some GPO employees spent the night to ensure that the Senate was able to get the documents we needed. Their performance throughout the health care debate was commendable and I would like to ask my colleagues to join me in thanking the GPO for a job well done.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAPO. Mr. President, as we approach the vote tomorrow morning, I know a lot of people are calling it a historic vote. In some contexts, I guess it is. However, many of us are concerned it is a historic mistake rather than a history-making opportunity.

We have had a lot of debate about whether this legislation is the right or wrong way to improve health care for all Americans. We have had hours and hours, in fact, days and weeks of committee hearings and meetings with good bipartisan discussion on options and ways to accomplish this. But now, apparently, we have a mandate by the majority demanding we have a final vote in the Senate before Christmas.

While we debate this, let me say I believe we need to hear more from the people who are going to be most affected, the American people, because the final details of this bill were not crafted in front of the American public. I think most people in America know the President pledged that this legislation would be crafted around a table that is public, where, in fact, he said C–SPAN cameras could be present—in his words: So people could see the deals people were making and who was working for the American people and who was cutting deals.

The C–SPAN camera was not present, the table was not open, the room was closed, and the bill was negotiated in secret. But we are starting to find out what the deals were, and the deals are outraging the American people as they see specific exemptions from certain burdens in the bill being given to certain States in order to get the votes from the Senators for those States.

We heard about different proposals dealing with the State of Louisiana, the State of Florida, the State of Connecticut, the State of Nebraska, and the list is growing as we have an opportunity to deeply delve into the bill and determine exactly what is in it.

But we will not have time to know all the details of these deals. We will not have time to even know all the details of how the bill works because this 2,700-page bill, 400 pages of which were only disclosed last Saturday, will be voted on at 7 o'clock in the morning.

Three days ago, I asked Idahoans who, similar to most Americans—in fact, all Americans—want health care reform, to sign a petition on the Internet asking the Senate to:

> . . . defeat H.R. 3590 . . . because we need reform that will lower costs while increasing quality . . . and keeping health care decisions between a patient and their doctor.

The response to this request has been remarkable. In fact, I suspect that, as I am speaking, we have already gotten over 20,000 signatures on the petition on the Internet. I asked people to go to my Internet site, mikecrapo.com, and simply sign the petition. Here is a partial stack. We are still printing out the rest of the names of the people who signed the petition, but somewhere between 19,000 and 20,000—and growing—people signed the petition.

Here is the remarkable thing about it. When I asked the people of Idaho to sign this petition, I asked them to do two things. I asked them, first, to go to the Web site and sign the petition. Then, second, I asked them to contact everyone within their circle of influence—people on their Christmas card list, people on their e-mail contacts

list, people on their Facebook, their Facebook friends, everyone who is within their circle of influence—and ask them to also sign the petition and, if they didn't live in Idaho, to contact their Senator and encourage their Senator to oppose this legislation, if they agreed with me that it is not the path our Nation should follow.

Remarkably, more than half the people who have so far signed the petition did not get that information from me. They got the request or encouragement to sign the petition from the friend or relative. A huge proportion of them do not live in Idaho. In fact, we have had people from all over America, in every one of the 50 States, sign this petition.

Why is this happening? By the way, the number is growing. It is happening because the more Americans know about this bill, the more they know it is not the path they want us to take for health care reform. Health care is personal, private, and a sensitive matter among individuals and their doctors and their family. This bill makes health care a public policy decision controlled by a government bureaucracy. Americans don't want that kind of government control over our health care economy. Yet instead Americans see an administration and a congressional majority forcing this bill down their throats in a rush to pass it before public opposition legitimately overwhelms this wrongheaded monstrosity. Thousands are signing this petition because they desperately want Congress to listen, but they know that their collective voice has been ignored. The petition is one way they can make themselves heard in hopes that this Congress will pass needed and sensible reform but not this bill.

In fact, another point about this petition is in addition to getting on the Web site and signing the petition, I have individuals calling my offices and saying: Thank you for giving us an avenue to try to reach out to the Senate and tell the Senate to stop. I think thousands of Idahoans and people from all over America are eager to have an avenue to speak out, and we need to stop and listen. I thank the thousands of Idahoans and Americans across the country for being willing to get involved as citizens and petition their government to respect our rights and to honor our values and to reform health care sensibly. The national polls indicate people oppose this bill. They want commonsense, lower cost action that will reduce the cost of premiums and doctor visits.

This legislation instead raises taxes on the middle class, increases premium costs for many people now carrying insurance, cuts senior programs, and fails to lower health care costs. Simply put, there has not been a piece of legislation this decade that has come forward to meet more opposition than this health care reform bill. The more Idahoans and Americans know about the bill, the more they dislike it. Health care is a personal, private, and sensitive matter, and this bill goes the opposite direction. But the majority is moving full steam ahead in hope that they can pass it before the public can understand what it is and register their opposition. If we will take the time, we can improve the health care system—without the tax increases, without the massive increase in the growth of government, without the porkbarrel spending and the sweetheart deals, without the Medicare cuts and the unconstitutional burdens on State governments this bill presents.

Among the steps many of us are trying to see enacted are things such as allowing insurance companies to compete across State lines, allowing small businesses to band together to negotiate group rates for insurance, requiring pricing disclosures from health care providers to promote a competitive, consumer-driven health care market, and offering incentives for patients and the private sector to create wellness programs and other efficiencies in health care delivery. In fact, when a bill similar to this was presented as the Republican alternative in the House, with the provisions the House Republicans proposed, it was scored, contrary to the bill we will be voting on, by CBO that it would actually reduce the cost of health care in America by significant percentages. Yet we are now continuing to plow full steam ahead with a vote at 7 o'clock in the morning on a bill that will increase the cost of health care.

The petition I brought forward asks Congress to listen. It registers the fears of many Americans that they are being ignored by the administration and by the majority in Congress. I am going to continue to aggressively push for their wishes on the floor of the Senate.

I wish to take an opportunity now to go ahead and get into a little bit more of the detail we do know about this bill. Why do I say it is the wrong direction for America? To start, let's ask what Americans want in health care reform. If you asked most Americans—and there have actually been a number of polls that have shown this—do they want health care reform, they say yes. When they are asked what they mean by that and what they want, the overwhelming answer is that they want to stop the skyrocketing increases in the cost of their health care insurance, they want to control the skyrocketing increases in the cost of medical care. They also say they want to see increased access for those who don't now have access to quality insurance, both because they are compassionate and want to see that kind of health care for everyone and because they know they are paying for it in their insurance premiums, for those who have insurance, and in their taxes, those who pay taxes. They want to assure that we continue to have the highest quality of health care possible. That is what we are supposed to be doing. That is what this bill should be working on. That is the objective we should be achieving.

Yet what are we achieving? In an earlier discussion of the House bill, I believe the Wall Street Journal said it was the worst bill ever. We now have a different bill in the Senate, but it is still falls into the same category. Why? Because it drives up the cost of health care. It raises taxes by hundreds of billions of dollars. It cuts Medicare by hundreds of billions of dollars. It grows the government by $2.5 trillion. It forces the needy uninsured not into a program where most of them can get insurance but into a failing and less robust medical system, Medicaid. It imposes damaging unfunded mandates on our State governments that are already sharing the burden of Medicaid and facing difficult troubled economic times. It means increased taxes not just at the Federal level but at the State level with unfunded mandates. It leaves millions of Americans uninsured, and it establishes massive government controls over our health care economy.

Let me go through a few of those to give more specifics. First, I don't think most Americans, when they talk about health care reform, think that means we need to grow the size of our government by $2.5 trillion. Although there is some smoke and mirrors in the way this bill is put together, because the first 4 years of its costs are not started until 4 years into the bill, so when you try to count the first 10 years, you only see a smaller number, when you take the first true 10 years of spending in this bill, it increases the cost of this government's health care expenditures by $2.5 trillion. As we can see on this chart, look at the first 4 years. The spending is basically deferred. Why would that happen? I will explain that when I talk about deficit issues. But what it does is hide the true cost of the bill. If you measure the true cost of the bill in the first full 10 years of spending, it is $2.5 trillion rather than the $1.2 trillion it would be if you counted it otherwise.

What we see is a massive growth of the Federal Government. That is not what people were asking for and, frankly, it makes them kind of do a doubletake when you explain to them that we are increasing the size of our government by such massive amounts with health care reform. Those proposing that we adopt this bill often say: Our objective and what the American people want is to drive the cost curve down. I often ask, what cost curve are they talking about? If they are talking about the cost of health care or the cost of health care premiums, they are going up. If they are talking about the size of the Federal Government and the level of Federal Government spending, that is going up.

There is one that they talk about. It is called the deficit. That is whether we are spending more than we are taxing and cutting. They argue that the deficit is going down. There is only one way you can argue that this bill does not increase the deficit, and that is if

you assume that we don't have nearly $½ trillion of Medicare cuts, that we don't have $½ trillion worth of taxes in the first year and $1.28 trillion of taxes in the first full 10 years of implementation and that we don't have several budget gimmicks.

What are the gimmicks? The first and biggest is the one I showed on the previous chart. They don't count the first 4 years of spending. They stop the spending and don't let it start happening for 4 years so that we have 10 years of taxes, 10 years of Medicare cuts, and 6 years of spending. When you balance that out, you can claim it doesn't increase the deficit because you don't have a full 10 years of spending.

There are other budget gimmicks. We have something called the SGR fix, the adjustments in compensation rates for physicians that we all know on both sides we must do. We must keep the physician compensation comparable and moving up with inflation. That is going to cost $245 billion, approximately, over the next 10 years. That $245 billion cost to reform and adjust the Medicare compensation system is absent from the bill. Why? Because they are going to do it in a separate bill and probably not pay for it; in other words, not have offsets. We will see whether they have offsets, but it is not in this bill. If it were, it would drive the deficit numbers by $245 billion in the wrong direction.

There are other types of gimmicks. For example, there is double counting of the Medicare cuts. The CBO came out with a report today that said that if you cut Medicare by $465 billion, claiming that you are going to use that $465 billion to help make the financial situation for Medicare more stable, you can't then take that same $465 billion and use it to establish a massive new government program, yet a third major government health care entitlement system. You can't spend it on a new one and claim you are saving one that is already facing fiscal collapse. It is these kinds of budget gimmicks that make many of us object to the bill. If you didn't have those budget gimmicks, if you didn't have those tax increases, if you didn't have those Medicare cuts, there is no way you could say this bill is deficit neutral.

One of the things CBO does report—I want to move to the question of the cost of insurance—is that the premiums in the individual market will go up, not down. What does that mean? CBO breaks the insurance market into three categories: the individual market, the small group market, and the large group market. The individual market is the one that is primarily there for small businesses that don't have a large or a small group opportunity or individuals who don't get their insurance through their employer. It represents about 17 percent or almost 1 in 5 of all insured people in the country. Their insurance rates under this bill—17 percent of all Americans—are going to go up. The amount by which they will go up is about 10 to 13 percent, according to CBO.

The next group is the small group market. They represent about another 13 percent. Again, CBO says under this bill their rates are going to go up, not quite as badly, between 1 and 3 percent, but up, not down.

That brings us to the large group market. The large group market actually fares a little better. This is the remaining 70 percent of those insured in the United States. Basically, the CBO report says that for them there is a chance theirs may go down by a percent or two, but basically, it could be stable, a zero-percent change as well. Because individuals in the large group market, those who get their insurance from larger employers, have less liability of a harmful impact because they have that large group that can continue to negotiate to control their health care costs.

So what do we see? Even under the best scenario—and there have been nine or ten studies of this and the CBO report is the one that is the most favorable toward the bill; most of the other reports have said that the rates are going to go up for everybody—but even if we take CBO's numbers, 30 percent of the people will see their insurance rates go up, not down. The other 70 percent can expect basically the status quo; in other words, not any change at all, maybe a slight decrease.

Is that what Americans were asking for robust health care reform system? No. Americans are asking for true, solid, significant control of the cost of their premiums and their health care costs.

I wish to move next to the question of taxes. This bill increases taxes by about $½ trillion. The President has pledged he wouldn't sign a bill that involved tax increases on the middle class. He defined the middle class to be people who as individuals make less than $200,000 a year or as a family or a couple making less than $250,000 a year. Here is the President's pledge:

> I can make a firm pledge. No family making less than $250,000 will see their taxes increase.

He was pushed on this pledge and he clarified it. He said not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes. You will not see any of your taxes increase one single dime.

That is the President's pledge. But what do we have? In the first 10 years, $493 billion in new taxes. The question is: Do those taxes all fall on the so-called wealthy, those making more than $250,000? Well, CBO and the Joint Tax Committee have analyzed it, and the answer is clearly no.

But before I get to that, let's see what the taxes do in the first full 10 years of implementation. Remember, the first 4 years are kind of a slow start with the spending, but if you compare the taxes and the spending, count the total amount of taxes starting on the day when the spending kicks into gear, it is not $493 billion, or whatever the number was, it is $1.28 trillion in new taxes. That is not what the American people are asking for.

The next question you might ask yourself is: OK, how much of those taxes are going to be paid by people who the President pledged would not be hit? Well, the Joint Tax Committee has analyzed the bill, and by 2019—and the reason they use the year 2019 is that is the end of the first full 10 years of implementation—by the year 2019, at least 73 million American households earning below $200,000 will face a tax increase. That is not just people making $200,000, that is everybody who pays taxes who makes any kind of income less than $200,000 in America. Seventy-three million—not individuals—households will pay taxes under this bill.

One of the things that is interesting, in response to this argument, some of my colleagues on the other side have said: Wait a minute. That is not true. This bill is actually a tax cut. Wait a minute, you have me saying this bill increases taxes and someone on the other side saying this bill cuts taxes. How could that be?

Well, there is a subsidy in this bill for those who are at lower income categories and are provided government dollars or subsidies in order to purchase insurance—the ones who are fortunate enough not to have been pushed into the Medicaid system. That subsidy is about $400 billion or $500 billion in the bill, and it is administered by the IRS, so it is claimed to be a tax cut. If you offset that subsidy against tax increases in other parts of the bill, then you can say: Well, there is a tax cut in this bill.

First of all, that is not what the President said. The President did not say: I will not increase your taxes more than I will cut somebody else's taxes. That is not what he said. What he said was: Your taxes will not go up if you are making under $250,000 as a couple or $200,000 as an individual.

But even if you accept that argument, 73 percent or $288 billion of this tax subsidy goes to taxpayers who do not pay any taxes. Their income levels are so low they do not hit the thresholds for incurring a tax liability. They get a pure, straightforward subsidy. The Congressional Budget Office acknowledges this and scores it as Federal spending, not as tax relief.

But either way you want to look at it, let's say you agree it is tax cuts and agree to offset it—which I think is wrong—you still come up with 42 million American households earning less than $200,000 a year who will face a net tax increase, and the tax increases are not small for these families.

The bill grows the Federal Government. It pushes up every cost curve you could think of. It increases taxes. It increases the cost of health insurance. It increases the cost of health care.

What does it do to Medicare? It cuts Medicare by $465 billion in the first

year and, again, if you want to look at the first full 10 years, by $953 billion in Medicare cuts. Basically, what we have here in this part of the bill is an absolute transfer—an absolute transfer—from America's senior citizens right over to the new government entitlement program and a redistribution of that wealth to other people.

Senior citizens who have throughout their life paid the Medicare tax, the Medicare payroll tax, will now see the Medicare they thought they were going to get cut. What kinds of cuts are we talking about that we may be dealing with here? The biggest one is Medicare Advantage—$120 billion of cuts.

About one in four American seniors has Medicare Advantage insurance. This is insurance that was provided in a contract relationship with the private sector. In other words, it was an experiment to see if we could let the private sector deliver Medicare and how they would do at it. They found they can actually, through the Medicare Advantage Program, increase the benefits seniors get.

This is probably the most popular part of the Medicare Program. It is growing rapidly. The reason it is growing rapidly is because it provides better coverage. Those in the Medicare Advantage Program are going to see their benefits cut.

Another pledge the President made was: If you like what you have, you can keep it. Well, not if you have Medicare Advantage. It is also not true about a lot of people who have their insurance through their employers these days because that is going to be lost to millions of Americans too.

But in addition to the Medicare Advantage cuts, you are going to see hospital reimbursements, skilled nursing facilities, home health agencies, hospice, and others cuts to the tune of $465 billion in the first 10 years. The experts have all told us, what that is going to do is to make impossible for many health care providers in these categories to keep their doors open, or it will cause them to reduce the amount and quality of services they provide.

So senior citizens are going to see their Medicare, particularly their Medicare Advantage, benefits cut and their access to care restricted and reduced under this bill.

In summary, there has been a lot of talk again about how Americans want health care reform. But we need to do it in a smart and sensible way. Many have argued there are no alternatives being put forward by our side. As I indicated earlier in my remarks, that is simply not true. In fact, the alternative that was put forward in the House and the alternative many of us have been talking about here have been scored to actually achieve the results Americans are asking for.

We do not need to rush this bill through in a claim that we are making history but in a way that will be a huge historical mistake. The American people, in huge numbers, are asking us to slow down and stop it and start working together in ways that do not create a government takeover of health care, that do not drive up the size and reach of the Federal Government, that do not drive up taxes but instead provide the right kind of approaches to medical savings, that do not slash Medicare benefits to our seniors, that do not put massive burdens on our States, and that do not force the neediest of our uninsured into a failing health care system, Medicaid.

We are simply going to have to be back at this in the future if we do not get it right now. Only then we will be facing much worse fiscal circumstances and very difficult problems with sustaining the fiscal stability of the two programs we are now dealing with trying to sustain: Medicare and Medicaid.

I urge my colleagues to listen to the people who signed this petition—people all across this Nation in every one of the 50 States—who are saying: Wait. Do not do this now. Do some sensible reform, but do not make this mistake.

I encourage all my colleagues, as we are literally on the eve of the vote that will determine whether this bill makes it through the Senate, to step back and take a deep breath and evaluate whether it will not be better for all of America for us to move a little slower and start trying to build a bipartisan solution that can have true benefits for the American people.

With that, Mr. President, I yield the remainder of my time.

Mr. HATCH. Mr. President, there is a lot of talk from the majority about why passing this bill is the right thing to do for the American people. It is a decision of conscience for them. Well, let us a take a closer look at these decisions of conscience.

After weeks of closed-door clandestine negotiations, Senator REID finally emerged with a 383-page Christmas list. This bill is a dark example of everything that is wrong with Washington today. Despite all the promises of accountability and transparency, this bill is a grab bag of Chicago-style, backroom buy-offs. It is nothing more than the Democratic leadership's own private game of ''Let's Make A Deal'' with special interest groups financed by American taxpayers.

So who won and who lost in this game? Well let us take a closer look.

AARP issued a strong statement of support for this bill. The Reid bill slashes Medicare by almost $½ trillion to finance additional government spending. So, why would the Nation's largest lobbying organization, avowed to protect the interests of seniors, support this legislation? To find the answer, like anything else in Washington, just follow the money.

AARP takes in more than half of its $1.1 billion budget in royalty fees from health insurers and other vendors. The sale of supplementary Medicare policies, called Medigap plans, make up a major share of this royalty revenue. AARP has a direct interest in selling more Medigap plans. However, there is a strong competitor to Medigap policies—Medicare Advantage plans.

These private plans provide comprehensive coverage, including vision and dental care, at lower premiums for nearly 11 million seniors across the country. Seniors enrolled in Medicare Advantage do not need Medigap policies. So what happens when the Reid bill slashes this program by almost $120 billion? Just look at the Washington Post front-page story from October 27 questioning whether AARP has a conflict of interest:

> Democratic proposals to slash reimbursements for . . . Medicare Advantage are widely expected to drive up demand for private Medigap policies like the ones offered by AARP, according to health-care experts, legislative aides and documents.

One of the most disturbing developments in the Reid bill has been the perpetuation and even doubling of the unconstitutional individual mandate tax from $8 billion to $15 billion. You heard me right—this unconstitutional mandate tax actually doubled behind closed doors. I have long argued that forcing Americans to either buy a Washington-defined level of coverage or face a tax penalty collected through the Internal Revenue Service is highly unconstitutional.

We hear a lot of rhetoric from the other side about Republicans defending the big, evil insurance companies while Democrats are the defenders of American families. The insurance mandate is a clear example of this partisan hypocrisy. Let me ask one simple question: Who would benefit the most from this unprecedented mandate to purchase insurance or face a stiff penalty enforced by our friends at the Internal Revenue Service?

The answer is simple. There are two clear winners under this Draconian policy—and neither is the American family. The first winner is the Federal Government, which could easily use this authority to increase the penalty, or impose similar ones, to create new streams of revenue to fund more out-of-control spending. Second, the insurance companies are the most direct winners under this individual insurance mandate because it would force millions of Americans who would not otherwise do so to become their customers. I cannot think of a bigger giveaway for insurance companies than the Federal Government ordering Americans to buy their products. If you do not believe me then just look at the stock prices of the insurance companies that have recently shot to their 52-week highs.

Jane Hamsher, the publisher of the very liberal blog Firedoglake, said the following in a recent posting: ''Having to pay 2 percent of their income in annual fines for refusing to comply—with the IRS acting as the collection agency—just might wind up being the most widely hated legislation of the decade. Barack Obama just might achieve the

bipartisan unity on health care he always wanted—Democrats and Republicans are coming together to say kill this bill.' ''

Now that we clearly understand the huge windfalls the Reid bill provides AARP and insurance companies, let me take a moment to talk about the winners and losers in the so-called abortion compromise. The language to prevent taxpayer dollars from being used to fund elective abortions is completely unacceptable. The new abortion provisions are significantly weaker than the amendment I introduced with Senator BEN NELSON to ensure that the Hyde amendment, which prohibits use of federal dollars for elective abortions, applies to any new federal health programs created in this bill. The Hyde amendment has been public law since 1976.

The so-called abortion compromise does not stop there. The Reid bill creates a State opt-out charade. However, this provision does nothing about one state's tax dollars from paying for abortions in other states. Tax dollars from Nebraska can pay for abortions in California or New York. This bill also creates a new public option run by the Office of Personnel Management, OPM, that will, for the first time, create a federally funded and managed plan that will cover elective abortions.

When you have Senator BOXER and Speaker PELOSI, two of the largest prochoice advocates in the Congress, supporting this sham so-called compromise and everyone from the U.S. Conference of Catholic Bishops to the National Right to Life Committee and the Family Research Council opposing it, there is only one clear loser—the majority of Americans who believe in the sanctity of life and oppose the use of federal dollars for elective abortions.

Last but not least, I would like to spend a couple of minutes to talk about the numerous special deals conferred on States in this $2.5 trillion spending bill. How hefty are the pricetags for decisions of conscience? Here are some highlights: $300 million for Louisiana; $600 million for Vermont; $500 million for Massachusetts; $100 million for Nebraska.

At a recent news conference, when the authors of this legislation were asked about the Nebraska earmark for Medicaid funding, the majority leader simply replied, ''A number of states are treated differently than other states. That's what legislation is all about. That's compromise.''

The next logical question is pretty straightforward—Who will pay for these special deals? The answer is simple. Every other State in the Union, including Utah, who are collectively facing $200 billion in deficits and are cutting jobs and educational services to survive, will now pay to support these special deals.

According to the Congressional Budget Office, the Medicaid expansion in the Reid bill creates a $26 billion unfunded mandate on our cash-strapped States. Coincidentally, only one state avoids this unfunded mandate—Nebraska.

Of course, let us not forget about the biggest loser in this bill—the hardworking American taxpayer. This bill imposes over a $½ trillion worth of new taxes, fees, and penalties on individuals, families, and businesses. The new fees begin in 2010, while the major coverage provisions do not start until 2014. Almost $57 billion in new taxes are collected before any American sees the major benefits of this bill, which are largely delayed until 2014. It is also no coincidence that through the use of these budget gimmicks the majority can claim this bill reduces our national deficit when we all know these reductions will never be realized.

Based on data from the Joint Committee on Taxation—the nonpartisan congressional scorekeeper—this bill would break another one of President Obama's campaign promises by increasing taxes on 42 million individuals and families making less than $250,000 a year.

At a time, when we are struggling to fight a double-digit unemployment rate, the Reid bill not only increases payroll taxes by nearly $87 billion but also imposes $28 billion in new taxes on employers that do not provide government-approved health plans. These new taxes will ultimately be paid by American workers in the form of reduced wages and lost jobs.

However, it is hard to say we didn't see these new taxes coming. For years now, many of us have warned that the out-of-control spending in Washington will eventually have to be repaid on the backs of American families. In this bill, the repayment comes in the form of stifled economic growth, lost jobs, and new and increasing taxes—and they are just the first installment of what will be a long and painful extortion of taxpayers if Congress doesn't stand up and stop these terrible bills.

According to a recent study of similar proposals by the Heritage Foundation, these new job-killing taxes will place approximately 5.2 million low income workers at risk of losing their jobs or having their hours reduced and an additional 10.2 million workers could see lower wages and reduced benefits.

Poll after poll tells us about the growing opposition against this tax-and-spend health care bill. The latest Rasmussen poll shows that 55 percent of Americans are now opposed to this bill. The CNN poll has it even higher at 61 percent. Among senior citizens, the group most likely to use the health care system, only 33 percent are in favor while 60 percent are opposed. Independent voters are also opposed almost 2 to 1. Opposition in certain state polls, like Nebraska, is even higher at 67 percent.

So what is the majority doing to address these concerns? Nothing. In fact, despite the efforts by many of us here on this side of the aisle to express our substantive policy disagreements for months, one Senator recently said the following: ''They are desperate to break this president. They have ardent supporters who are nearly hysterical at the very election of President Barack Obama. The birthers, the fanatics, the people running around in right-wing militia and Aryan support groups, it is unbearable to them that President Barack Obama should exist.''

This statement is outrageous. Instead of listening to the policy concerns of a majority of Americans, the other side is simply dismissing them as rants from the far right. If the majority refuses to listen to what Americans are telling them now—I am sure they will have a rude wake-up call waiting for them later. It should come as no surprise to anyone that this kind of arrogance of power has led to congressional approval ratings rivaling the most hated institutions on the planet at a dismal 22 percent and falling.

One of the biggest tragedies of letting this bill move forward is that it will do nothing to address the fundamental issue of rising health care costs in this country. According to the Congressional Budget Office, this bill will actually raise our national health care costs by $200 billion. The administration's own actuary at the Centers for Medicare and Medicaid Services, CMS, agrees with this assessment. When this bill fails to work, Americans will no longer have any faith in Congress to effectively address the issue of health care reform. The opportunity to save Medicare and Medicaid from their impending financial collapse will be lost for another generation.

The historic blizzard in Washington earlier this month was a perfect symbol of the anger and frustration brewing in the hearts of the American people against this bill. I urge the majority once again to listen to the voices of the American people. Every vote for this bill is the 60th vote. Let me repeat that again—every vote for this bill is the 60th vote. My Republican colleagues and I are united with the American people in our fight against this $2.5 trillion tax-and-spend bill. I implore my colleagues not to do this to the American people. Don't foreclose on their futures. Don't stick them with even more government spending and government intrusion.

We can fix health care. Many of us have been working to do just that for many years. A truly bipartisan bill that would garner 75 to 80 votes in the Senate, would be fiscally sound and provide the American people with the fixes they are asking for in the health care marketplace is easily achievable. Many of us are standing at the ready, and have been for months, to step forward and pass meaningful health care reform that truly would help American families and please American taxpayers. To date, we have been rebuffed by an unfailing determination by a few to pursue a nearly Socialist agenda. I would ask my colleagues on the other

side of the aisle who do not believe in the Europeanization of America, who believe in doing truly bipartisan work here in the Senate, to step forward, vote against advancing this bill and work with those of us on this side of the aisle who are committed to making a difference to craft a health care reform bill they can be proud to support.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, it is truly my honor to be here on this historic evening and speak in support of the bill which we will vote on early tomorrow morning, Christmas Eve morning. It is an honor because anyone who looks at this country knows the problems we have, and that two problems caused by the health care system are at the top of the list. One represents a more conservative point of view and one represents a more liberal point of view. But I am proud to say the bill we will pass tomorrow morning, God willing, deals with both.

The more conservative issue is controlling costs. The health care system costs this country a whole lot of money. By and large, we get good health care—not everybody but most people. But it is so expensive, and that has been documented.

What does that mean? It means small businesses cannot grow and actually have less money to pay for wages. It means our large businesses are less competitive globally. We have seen that in the auto industry. It means individuals often have to pay a fortune for health care. It means our government runs deficits that are perilous to the economy. Health care costs are more the cause of our deficits than anything else.

On the other hand, we run a real problem because many people are not covered or covered adequately. The heartwrenching stories told by our fine leader—and I cannot give him enough kudos for the job he has done here; and I will talk about that in a minute—but the people who are not covered or covered poorly suffer in many ways. They become not only less happy citizens—that is most important—but less productive citizens. The heartwrenching stories of people who do not have coverage for them or their children we all know about. It also, by the way, increases costs because when people delay coverage, when they are ill, it inevitably costs more.

This bill addresses both. I wish to, in my brief amount of time here—and I do not know how much time I have—address both. I wish to talk on the cost side first.

Why do health care costs go up so much more than any other product? Two main reasons. First, we do not have perfect knowledge, as the economists would say. We basically do not know what we are buying. When we go to the doctor, and the doctor says: You need this test, we do not know if we need it. Is the doctor genuinely prescribing a test we need or is there some element that he makes enough money on this test that why not? can't hurt because we do not need it?

In my family, my relatives have all had prostate cancer, and I watch very carefully. But when I go to the doctor and he says I need this kind of a test or this kind of a scan, I say: Of course. If it were a car or a house, I might investigate to see if I needed it.

The second reason costs are so expensive is because fundamentally health care deals with God's most precious gift to us, which is life. Who would not beg, borrow, or steal to find $100,000—who would not give their right arm if we were told our husband, our wife, our mother, our farther, our son, or our daughter was ill and $100,000 would give them a 25-percent greater chance of living better, of healing? We would do it. But because most of us do not have that $100,000, we buy insurance. That is the reason there is health care insurance. It is not because it is health care; it is because it is so vital and so expensive. So we are willing to pay $5,000 a year, so that, God forbid, if that time comes when we need that $100,000 to cover a loved one, it is there because we have insurance.

So when I go to the doctor and he says I need this special test, special scan, special procedure, not only do I not know whether I need it—because the training is difficult; and you can go online, but you cannot really figure these things out—but, second, I am not paying for it. You put those things together, and the costs go through the roof. We have tried in this bill to finally get a handle on the costs. Most other countries have. In America, we haven't. We must. I believe very deeply in covering everybody, but unless we get a handle on the costs, we will not be able to afford to cover everybody. Even if we cover them today, we will run out of money in 5 years. We do it in four ways, and I am going to be very brief about them because my time is somewhat limited.

First, we deal with efficiencies. There is one form. If there is IT, as we put in the stimulus bill—information technology—we can save hundreds of billions of dollars. Just one form. You go to a doctor's office, there is a nurse, a doctor, and there are four people filling out forms. If you had one form, you wouldn't need that.

Second, prevention. Early intervention and prevention saves billions, and in this bill that is what we encourage, early intervention and prevention. Right now, amazingly enough, if you get diabetes in the later stages, Medicare or private insurance will pay for dialysis. God forbid someone needs a leg amputation, one of those serious retina operations, they pay. They don't pay for the early stages. They don't pay for the nutrition therapy, the exercise therapy that could arrest diabetes in the early stages. We do that.

The third thing we try to do in this bill is provide competition in the insurance industry, and we do provide competition in the exchanges. We do put some limits on the insurance companies with the medical loss ratio provisions that Senator ROCKEFELLER, Senator FRANKEN, and Senator NELSON helped craft. If we could have had a public option, it would have created more competition. That is one of my great regrets, that we don't. I worked hard for it, but we don't. Nonetheless, we still get some limitation on insurance companies and create more competition.

The fourth is the hardest: fee for service. The fee-for-service system is what drives up the costs. This bill, more than any other provision ever passed in America, begins to grapple with that most difficult issue.

You do those four things, and you will bring costs down.

It is no wonder that CBO has said that in the first 10 years, we save $127 billion, even though we are covering 31 million more people, and in the second decade, we are going to save over $1 trillion. I forget the number. I think it is $1.3 trillion. We are doing whoever becomes President in 2020 a huge favor because with the cost-control provisions in this bill, should they become law, we will get a great handle on costs. It will take a while, but it will do the job. On the other side, we don't cover everybody, but 94 percent of all people will be covered, so it is an amazing feat to both cover many more people and reduce costs, and that is what this bill does.

I wish to say, for my home State of New York, there are lots of good things in this bill. We have 800,000 seniors who would be cut from Medicare who will not be because of provisions we were able to get in the Finance Committee.

Graduate medical education, intermediate medical education—a lifeblood for jobs in New York because training doctors is probably our second biggest industry in New York City—is not cut even though it was proposed to be cut. Money for neighborhood national health services and community health centers will provide physicians in inner cities and in rural areas where they don't have health care. They will get really good health care.

This bill is far from perfect. Had I written it, I would have written it a different way. Had Senator CANTWELL or Senator CASEY or Senator KLOBUCHAR written it, they would have written it differently from me. But if every one of us in this Senate insisted that the bill had to be written exactly our way, we would have 100 bills, each with 1 vote, and no progress. So great progress has been made, and this is a proud moment.

There are many people I wish to thank.

My staff—I do want to mention Meghan Taira, Katie Beirne, and all of the others who worked so hard; Jeff Hamond, who worked so hard and so diligently on this bill.

I thank MAX BAUCUS. He soldiered on and on when things looked bleak and

pursued his dream of a bipartisan bill, which would have been a better product. It wasn't to be but not because of lack of his efforts.

Thanks go to Senator DODD and Senator HARKIN on the HELP Committee and my colleagues on the Finance Committee, but at the top of the list is just one person, and I was proud to be one of his lieutenants on this, and that is HARRY REID. I was up close. What an amazing job that man did, modestly, without complaining, without looking to what was good for him. He had a mission, a job: get us 60 votes on this very difficult, complicated proposal. And he did it. He will never get the credit he deserves because he is such a modest man, but I wanted to share that with my colleagues and with the country as I am sure others have done before.

So this bill is a very good bill on both sides of the ledger. It will reduce costs rather significantly and in a smart way, without hurting patient care. It gets rid of the fraud and the waste and the abuse and duplication. At the same time, it will cover many more people.

This is a very fine day for this country, this Senate, and Leader REID. Tomorrow morning, I will be very proud to vote for this piece of legislation, certainly one of the most important I have ever voted on in my 35 years as a legislator.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I am proud to be out on the floor tonight with my colleagues.

I thank the Senator from New York for his comments and his work in the Finance Committee. He literally did work night and day in that committee and then worked with Leader REID on trying to get consensus within our caucus on this legislation. So I appreciate his strong, active support in making reform.

I, too, wish to add my congratulations tonight because we are here to talk about controlling health care costs and what we are going to do to help the American people. I too wish to thank my colleagues, Senator BAUCUS and Senator REID, for their active leadership, as well as Senator DODD and Senator HARKIN.

I add my thanks to the whole Finance Committee staff. I don't think people realize they have worked from January until December, many weekends as well as during the week, many late nights as well as early mornings, and they deserve a lot of credit for the details behind this legislation and making sure the i's are dotted and the t's are crossed.

I wish to thank my staff, all of my staff but in particular Mark Iozzi, who worked on this legislation, as did the rest of the Finance Committee members of the staff, for about the last 11½ months. I was glad to send him off on a plane today to reach his family, and hopefully he will be watching the vote tomorrow morning by television. It should be a proud moment for him.

I also wish to add a particular thanks to President Obama. I wish to say to the President that he started this year with the dedication that this was going to be a year where we got health care reform. He stated that at the beginning of his Presidency and held steady to that during the very raucous debate that happened in the early months regarding the budget and whether we would have the money to do health care reform. He remained committed as we went home over the summer and many things happened at town meetings. He came back and was determined that we would forge ahead. He, as we got legislation out of the Finance Committee and had to combine bills, remained active and intent about this legislation.

It reminds me of a saying my father used to make to me because he was a Navy man and always came up with nautical terms to kind of describe the direction in which he would want his children to go. The President's actions on health care policy for this year remind me of the saying ''steady as she goes'' because that is what the President has done for the last many months—steady as she goes so that we can get health care reform.

So I wish to add my thanks and congratulations to him and to his administration and to the many members of that administration who were down here on the Hill, including Mr. Messina, who made many frequent visits, I think, to Members to talk about some of the details.

I am glad I am following my colleague from Idaho, from the Northwest, who spoke earlier, because I think it shows you can be from the same region of the country and have the very same interests but look at this legislation differently—not that I don't share some of his concerns, and I am going to fight to make changes and add to the legislation as it continues to move into conference and in the years after its implementation. I think the Senator has brought up some good points that we need to follow up on.

Controlling health care costs in general is what is driving us to take action tomorrow morning on Christmas Eve. We know we have already seen a 120-percent increase in insurance premiums for the last 10 years; that is, from 1999 to 2009, we have seen a 120-percent increase for Americans and their premium costs. That is something the American people can't afford. And when my colleague from Idaho talks about the increase we are going to see in the next 10 years, he is right. Insurance premiums are going to go up again. This debate is about what we are going to do to try to control those costs, whether this legislation we are discussing today will have an impact in reducing those costs so that maybe premiums aren't going to go up another 120 percent in the next 10 years and make insurance even more unaffordable for the American people.

We know there are organizations that have done multiple studies. We know there is at least $700 billion in waste each year in our health care system. That is according to the Robert Wood Johnson Foundation. We know that is the kind of money that, if we are smarter about our health care choices, we can reduce the costs of health care and improve the system.

Part of this is reforming Medicare and the cost of Medicare because Medicare dollars are one in every five health care dollars today. The more expensive Medicare is, the end result is the more expensive insurance is in general. So it is very important for us to reform the Medicare system, to have provider reform, which this legislation has, and to change the system.

But we also have to deal with the cost of the uninsured because we know that Americans right now who don't have insurance and who go to the emergency room are adding something like $43 billion a year in higher premium costs. That is $1,000 for each family in their premium increases.

I know we can do nothing and have these same costs on the backs of the American people or we can try to change the system, as we are with this legislation, to improve the quality of care and access and to lower the costs for Americans. That is why one of the main reforms I fought for in this legislation was about paying for value, not for volume; that is, to change the fee-for-service system that rewards physicians for how many procedures they do or how many patients they have seen a day but not for the value of the system. So I know that because of the change we have in this legislation, we are going to reward physicians, starting several years from now—something that has worked in my State and many States in the Pacific Northwest that are more efficient at lowering the costs—by increasing efficiency and thereby rewarding those States with better Medicare payments.

What it actually means for individuals is that they are going to get shorter waiting times, they are going to get better access to doctors, they are going to get more coordinated care, and they are going to get better outcomes. Why? Because that is what we are going to incent in these reforms. That is the kind of system that is working in many parts of the country that are cost-effective, that yield better results for individual patients at lower cost.

I wish to thank my colleague from Minnesota, Senator KLOBUCHAR, because it was her legislation that she introduced early this year that really catalyzed this effort to focus on many of the things done at the Mayo Clinic and things that had been done in Minnesota and things we had done in Washington State that said: Let's change this process and save dollars for everybody in America by getting off the fee-for-service systems and going to a system that will be more cost-effective. So I wish to thank her and her

State for that leadership and to thank those in my State who have performed the same way on efficiency to deliver this kind of health care reform.

A second cost control of this legislation that I supported that I think will do well for many people in this country is in the area of long-term care reform.

Some people may know that my colleague, Senator HARKIN, was on the floor and was talking about long-term care in the insurance sector, but part of what we are doing in this bill is also to incent States to move off of nursing home care and on to community-based care.

Home care juxtaposed to nursing home care is 70 percent cheaper and better meets the needs of individuals. I say that because my State implemented this policy to focus on long-term, community-based care decades ago. The end result is that kind of care has been more cost-effective, less expensive, personalized care, and individuals get to stay in their communities.

I do not know any senior in America who would choose to go to a nursing home over staying in their home or in their community. But they have had very little choice up until now on this legislation to be able to do that because we continue to incentivize nursing home care.

There are some who need nursing home care because they need a higher level of delivery of care, and those people will still go to those facilities. But we will save a lot in our Federal budget, as we look at our Medicare and Medicaid budgets, for the future if we simply take this one action. This bill alone would be worth passing just for this one provision because of how much money it is going to save the Federal Government.

The Basic Health Plan. Many of my colleagues may have heard me talk about the Basic Health Plan as a basis of this legislation that we added in this country. Many people across the country may not understand the Basic Health Plan because they do not have something similar to the Basic Health Plan in their States.

Nearly 20 years ago, the Washington State Legislature passed the Basic Health Plan because it allowed States to negotiate for lower rates. Essentially, it is a public-private partnership. Some people call it a public option. Some people call it a public plan. I call it cost-effective health care delivery. It is cost-effective because we have proven for 20 years that we get 35 to 40 percent lower rates for individuals by grouping into this kind of plan and having the State negotiate the rates. We have been able to have that plan now for 20 years.

This provision of allowing States to do something similar to the Basic Health Plan is a provision we added in the Finance Committee that now will allow every State in America to take money they would get instead for tax credits and use that money in the delivery of negotiated rates for their States. This will allow 70 percent of the uninsured to have full coverage.

What does that mean from a cost-effective perspective? Let's take an example. If this legislation is not passed and we have the current system in America, an individual in 2016 trying to get access to the individual market would have to pay over $5,850, and the individual would pay everything. The government would be paying nothing; that is, if this bill does not pass. That is what would happen.

Let's look at what will happen if, in fact, this bill does pass. You will have the option of going into the exchange. The estimates are by CBO that you will be able to reduce from where we normally would be, about 11 percent, the cost of health care. In that exchange, an individual who would be covered at 200 percent of poverty would end up paying $1,200, and the Federal Government would end up paying $4,000. Already somebody is coming out ahead. They say that sounds good. That sounds like a better deal than me being able to afford this current rate. That would be $5,850. It means I would be uninsured.

The Basic Health Plan has been in operation for 20 years, driving down costs through negotiated rates, as I said, by 35 and 40 percent, and it is a far different picture for the individual.

In our State, the individual only pays $400—$400—versus $1,200. Look at the government. The government rate adds to that, $3,700, but it is cheaper. Why? Because the State has negotiated with insurers and driven down the cost. That is what is missing in the exchange.

While some of my colleagues, I know, think the exchange is going to deliver great clout through the Office of Personnel Management, I hope they are right. I am anxious to see the results of that. But I am unapologetic about the fact that I know the State of Washington has delivered these kinds of savings through negotiated rates and that many States in our country have been the most cost-effective tools for delivering new and efficient health care models, while we at the Federal level still struggle to try to drive those policies.

I know this legislation has cost controls. I know my colleague from Idaho is very concerned about this, and he is right to be concerned. We will be judged by how much we are going to drive down the costs. But the American people should understand that rates are going to go up another 120 percent in the next 10 years if we do nothing. So this legislation is about bending the cost curve. It is about looking at the projected growth, looking at general inflation, and trying to drive health care costs somewhere below what they would be on an annual basis. That is our objective.

We are going to have a challenge in monitoring this legislation, but that is why I am going to fight and cheerlead for the Basic Health Plan and hope that every State in the country takes the option of delivering health care through that kind of negotiated public plan that will allow them to drive down insurance costs.

I hope we can expand the Basic Health Plan in conference to an even more robust plan that would cover more people. It does not make sense to me to continue to subsidize expensive insurance by giving Federal tax credits when I know the bill to the Federal Government and to the individual taxpayer can be cheaper by implementing negotiated rates.

While we have not been able to fully implement that at the Federal level, let's not hold States back. Let States do what they have done best for the last several decades; that is, innovate—innovate more quickly, more effectively, not without a Federal partnership but in a partnership with the Federal Government and in a partnership with a public-private mechanism that I think has been cost-effective for the last 20 years.

Tomorrow, I will be voting in support of this legislation because I believe in the innovation this legislation enables. I know when we passed the Basic Health Plan in the mid eighties people said the same thing. There were concerns about whether we were going to be able to implement the cost-effectiveness. In fact, at that time, it was said that some stakeholders believed it would be an entitlement. Others saw it as essentially a cost-containment measure that would reduce uncompensated care. Some others thought it would demonstrate the viability of government-subsidized health care. Advocates wanted to implement something quickly so they could develop constituencies.

All these things are similar arguments to what we are hearing today and what this debate has been about. But I know that what happened after 20 years of us putting a plan in place is that hundreds of thousands of Washingtonians got more affordable health care. It has been a plan that has worked effectively. No one has tried to dismantle the program from a political perspective. I think working together with the Federal Government we can show more cost containment for the American public.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I ask to speak for 12 minutes.

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

Ms. KLOBUCHAR. Mr. President, I come to the floor in support of the Patient Protection and Affordable Care Act. It is an honor to follow my friend from Washington, Senator CANTWELL, who has been such a leader on the Finance Committee in focusing on the very issue that is key in my State; that is, cost reform, delivery system reform, because for too long the people in cost-efficient States, such as Minnesota,

Washington, and Wisconsin, have been seeing other States not quite offering that kind of quality care we would like to see all over the country.

I think it always shocks people. If you go to a hotel and you say you want to get a room, usually if you spend more money you have a bigger room and you have a better view. That is not true with health care.

Time and again, we see studies across this country—academic, bipartisan studies—showing, in fact, some of the highest quality health care comes with some of the lowest costs.

As the Senator from Washington talked about how we can save that $700 billion year that is wasted in our system, a lot of it comes not at the cost of care but actually at getting better care, because if you reduce unnecessary waste, if you stop having people running around to 20 different specialists who are giving them conflicting advice and not conferring and not knowing about the medications they are taking, when you have those disorganized systems, they not only cost too much money for everyone, they also give worse care. That is why the Mayo model, an integrated care model with one primary care doctor working with a team of specialists is a model we would like to see all across this country.

We cannot simply keep pushing our problems to another day. Rising health care costs are unsustainable, busting the budget of families and businesses alike. If we do not act, these costs are going to break the backs of the American people.

This country spends $2.4 trillion on health care alone. That is $1 out of every $6 in the American economy. It is projected to be 20 percent of our whole economy in 2020 if we do not act. Despite spending 1½ times more per person on health care than any other country, we all know there are many problems in our health care system.

Wages simply do not keep pace with premiums. Peoples' wages have been stagnant or maybe gone up a little, gone down some or they lost their jobs, but health care costs continue to skyrocket.

I always tell the people in my State there are three numbers we need to remember—6, 12, and 24. Ten years ago, the average American family was spending $6,000 a year on their health care. Now they are spending $12,000, with many people spending a lot more. What will they be spending in 10 years if we do not act? Mr. President, $24,000, up to $36,000 a year on their health care premiums.

When I go around my State, I hear these stories all the time. Granite Gear, a little backpack company up in Two Harbors, MN, makes backpacks for our soldiers. They have done well. They built their business. The guy in charge of it said he would not have started that business if he knew then what he knows now; that is, for his family of four, a small little business in Two Harbors, MN, he is spending $24,000 a year on his health care.

I have heard from doctors at Gunderson Lutheran in La Crescent, MN. They told me the story of how at one of their hospitals in their region they had three patients in a 1-month period come into the emergency room with severe stomach problems. They had ruptured appendixes. Do you know what they said as to why it got to that point? For two of them, they worked at small businesses and they were afraid it was going to blow up the premiums for health care coverage for that little company. The third one could not afford the copays. They waited and waited and waited. They got a doctor and that doctor was the emergency room, some of the most expensive care in this country.

I heard from a mom in Bemidji, MN, who has a daughter named Micki. The mom's name is Sheryl. She wrote me a letter. She said:

> I just got off the phone with my daughter Micki. At first, I couldn't understand her because she was sobbing so hard. Her husband had just been told by his boss that they wouldn't be carrying health insurance on their employees any longer. They are a small company and it was costing them $13,000 a month. For her, this is a matter of life and death. She has cystic fibrosis. Her medications can run anywhere from $7,000 to $13,000 a month. Because it is a preexisting condition, the insurance companies won't touch her unless it is under a group plan like the one her husband just lost.

She went on to say in her letter:

> You need to stand and be my voice, be Micki's voice. Micki is a fighter but she can't keep fighting a system that is so against her. Micki has already lived longer than any of her doctors expected. We need you to be her voice.

That is why this bill is so important. The status quo is simply not sustainable, not for families, not for small businesses, not for big businesses that are trying to compete internationally against other companies and countries that have more efficient health care systems.

Despite claims from my friends on the other side of the aisle, we have spent months debating this issue. The C–SPAN viewers know what I am talking about. If you look at the input the Republicans have had on this bill, you can see that over 160 amendments were accepted in the HELP Committee. Dozens of bipartisan meetings and roundtable discussions were held in the Senate Finance Committee.

They have engaged across this country—so many people, sadly—in a campaign of misinformation. I know a lot of people in Minnesota and across the country are left trying to wade through all the ads, misinformation, and scare tactics to find out what this bill is about. Well, this bill is not perfect, as so many of my colleagues have said. We will work to make changes and work forward. I would like to see more cost reform in this bill. But what we do with this bill is a beginning not an end. We work to reduce cost, we work to expand coverage and increase choice and competition for American consumers.

First, and very important to me and to my mother—who is 82 years old—this bill protects Medicare and our seniors. Medicare is one of the most valued social programs our country has produced in the last half century. Yet it is also a program in dire need of reform if it is to survive on sound financial footing and continue to provide the fine medical care our seniors have come to expect.

By 2011, the first baby boomers will enter the Medicare system. Without action, if we sit and put our heads in the sand, it will go in the red by 2017. So think of people such as my mom—82 years old. She wants to live well into her 90s and beyond. Think of people who are 55 and who want to be on Medicare when they are 65. It is going to go in the red by 2017 if we don't do something to make sure it is on strong financial footing.

With this bill, we start to do that. We extend Medicare solvency by 10 years. I am encouraged that my legislation can create a value index, which the Senator from Washington discussed, as part of the formula that is used to determine Medicare's fee schedule. That was included in the Senate's bill. This indexing will help reduce unnecessary procedures because those who produce more volume will also need to improve care or the increased volume will negatively impact fees. Doctors will have a financial incentive to maximize the quality and the value of their services instead of just the quantity.

My favorite story along these lines is not from Minnesota but from Geisinger, PA. They were trying to figure out: How do we best treat diabetes. We are not happy with the results. They realized with the routine cases, those were the people they wanted someone to see more often, to check in on them. So they had them assigned to nurses and the more difficult cases to the endocrinologists. The endocrinologists would review the nurses' work and make sure there was proper followup if there had to be adjustments. At the end of year, they had much happier patients. The quality of care went way up, and they saved $200 per month per patient.

What does our system in America do now? What does the Medicare system do? It punishes them for that good work. So that is what we are talking about, actually getting that higher quality. You can save money if you have the right incentives in place.

With this legislation, we also stop paying for care that doesn't result in quality patient outcomes. Who wants to go into the hospital to be treated and get sick from something else during that hospitalization? When you have to go back again, that is called a hospital readmission. In 1 year, hospital readmissions cost Medicare $17.4 billion. A 2007 report by the Medicare Payment Advisory Commission found

Medicare paid an average of $7,200 per readmission that was likely preventable. This practice must stop. This isn't good care for patients, and it is not a good investment for taxpayers.

The bill also establishes an independent, 15-member Medicare Commission tasked with presenting Congress with comprehensive proposals to reduce health care costs and improve quality of care for Medicare benefits. The current Medicare payment policies are not working well for patients, doctors, and hospitals. We have to control costs and we have to get that high-quality care we see in Minnesota throughout the country.

In this bill, we also work to stop fraud and abuse. Law enforcement authorities estimate that Medicare fraud costs taxpayers more than $60 billion every year—$60 billion going to con men, $60 billion going to storefronts that say they are a doctor's office, when all that is behind it is a bunch of fraudsters and rip-off artists who are getting checks meant to go to providers of care to our seniors—$60 billion a year. Finally, we have a bill that puts the tools in place—enhanced criminal penalties—that allows for direct deposit of those payments from the government to those providers, so we don't have people ripping us off with an antiquated system of bad and false checks. With this change, we put a stop to criminals running phony businesses to steal Medicare checks from our seniors.

We are also working to help our seniors with the cost of their prescription drugs. Millions of Americans depend on prescription drugs to help them manage chronic disease or other illnesses. But drug prices continue to skyrocket. That is why I voted for reimportation, to allow these safe drugs to come in from places such as Canada. We are not afraid of getting our medications from Canada. Canadians come to shop and to vacation and to fish in Minnesota, and we go to Canada to shop and to work and to fish. We don't have a problem with their drugs. Sadly, that proposal did not pass the Senate, but I will continue to advocate for that.

What does this bill do so far? What it does is to help fill that doughnut hole, that point where seniors who had been getting help with paying for their prescription drugs stop getting that help. That doughnut hole is now filled.

This legislation provides relief for our small businesses. Right now, small businesses pay 20 percent more than large businesses for the cost of care. In a recent national survey, nearly three-quarters of small businesses that did not offer benefits cited high premiums as a reason. Beginning in 2011, with this legislation, small businesses will be eligible for tax credits worth up to 35 percent of their contribution to their employees' health insurance plans. In 2014, these tax credits will even increase more.

This legislation, as we all know, also creates insurance exchanges known as small business health option programs—or SHOP programs—where small businesses can finally pool their numbers and do what big businesses do—negotiate for better rates for their insurance.

Beginning with the passage of this bill—and this is one of my favorite parts—kids can't be denied coverage due to preexisting conditions. So if your son or daughter gets sick, an insurance company can't look at you and say: I am sorry your kid got sick, you don't have any insurance.

Look at the story I just read with Micki, the woman whose husband lost her insurance. She has cystic fibrosis, and she is not sure if she is going to be able to get insurance. This puts an end to that and for kids it does it the minute the bill gets signed into law.

Insurance companies will be barred from limiting the total benefits Americans can use over the course of a year or over their lifetime. Affordable insurance coverage options will also be made immediately available through a high-risk pool for Americans who have been uninsured and have been denied coverage because they have a preexisting condition.

With this bill, insurance companies immediately must fully cover regular checkups and tests that help prevent illness, such as mammograms or eye and foot exams for diabetics.

In addition, children would continue to be eligible for family coverage through the age of 26.

I see my friend, the Senator from Pennsylvania, is here. Maybe he has four children who will soon be 26. I know many people are glad this bill has contained in it a provision that says you can keep your kids on your insurance until they are 26.

We know this bill isn't perfect, no big piece of legislation ever is. There is still work that needs to be done in conference committee. There are still negotiations that will take place. There are still things that need to be fixed. We know this is only the beginning of reform, not the end, but we must keep looking to the future. For too long, health care costs have been spiraling out of control. That is why we can't afford to hold off any longer on reforming health care.

I am going to close by reading something Vicki Kennedy—Ted Kennedy's widow—wrote for the Washington Post. This is what she wrote this weekend:

> The bill before Congress will finally deliver on the urgent need of all Americans. It would make their lives better and do so much good for this country. That, in the end, must be the test of reform. That was always the test for Ted Kennedy. He's not here to urge us not to let this chance slip through our fingers. So I humbly ask his colleagues to finish the work of his life, the work of generations, to allow the vote to go forward and to pass health-care reform now. As Ted always said, ''When it's finally done, the people will wonder what took so long.''

After all the work and debate that has gone into this bill over the past year, we are finally having the votes the American people deserve. Tomorrow morning, Christmas Eve, will be the vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. CASEY. Mr. President, I ask unanimous consent to speak for up to 10 minutes.

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

Mr. CASEY. Mr. President, I wish to commend my colleague from Minnesota, Senator KLOBUCHAR, for the outline of the bill and the important priorities we are here to debate. This is the last night, the last couple of hours, before we vote on the bill tomorrow morning, and I wish to do two things. One is to highlight, in very brief fashion, some of the main benefits of this bill to the American people—and especially to our families—and then to speak of one particular family from Pennsylvania who I will talk about in a moment.

By way of overview, what we tried to do in this bill, and I believe we have accomplished it, is not only to meet the goals President Obama set forth in the early part of this year as he assumed the Presidency and began to make health care reform a priority, but I also believe we are trying to meet the goals and the objectives of the American people. I think we have reached that point.

This legislation to reform health care will, first, not only be deficit neutral, but over the first 10 years of the bill it will save $132 billion—reduce the deficit $132 billion.

Something we haven't talked enough about, although we have had a lot of important debates, but in terms of covering those who don't have any coverage today, this bill will cover 31 million Americans. We know, for example, the Medicaid Program, which is more than 40 years old, covers 61 million Americans, and Medicare covers 45 million. So in this one piece of legislation, not after 10 or 20 or 30 years but once it is fully implemented over the next couple years, it will cover 31 million Americans. That will not only be beneficial to those individuals and their families, but I would argue it is good for our economy. They will be more productive workers and our economy will be stronger because we covered them.

The bill extends Medicare solvency. That is something we hear a lot about. We have heard a lot of discussion about Medicare but what about making sure it is solvent. Our bill does that.

Prescription drugs. A lot of families have benefited from our prescription drug program, but then they fall into a time period where they are paying the whole freight. It has been referred to as the ''doughnut hole,'' but that doesn't capture the gravity of the problem for a family and for an individual, older citizen. When they fall into that so-called doughnut hole, they are in big trouble because they have to carry the

whole burden. They have to pay for those prescription drugs all by themselves. This bill addresses that, something that has gone unaddressed for a number of years.

The number of children in our country who are covered by the children's health insurance and other initiatives has grown, thankfully. We will be growing from 7 million kids covered under the prior legislation to 14 million under the children's health insurance. But a lot of those children who don't have the benefit of the Children's Health Insurance Program might be caught in the preexisting condition problem. Their ability to have coverage will be limited because they have a preexisting condition. What our bill does is to say that upon passage of this bill, within months of the passage of this bill, in 2010, children will be fully protected in this sense: Any kind of act by an insurance company to deny them coverage because of a preexisting condition will be illegal in 2010.

We also, over a number of years, will make it illegal for an insurance company to deny someone coverage due to a preexisting condition for adults. For those who are discriminated against, even before the bill is implemented, we provide a high-risk pool for them.

We protect consumers in other ways. I was holding a copy of the first half of the bill here. Sometimes bills get real complicated, and I know our colleagues on the other side have complained about the size of the bill. But to get it right, you have to put in a lot of detail. On page 78 of the bill, it is very clear. On page 78, the bill deals directly with the preexisting condition problem. Millions of Americans have been denied coverage over the last couple of years because of this one problem—millions of Americans. Here is what it says, very simply, on page 78:

> A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such a plan or coverage.

It is not long or complicated. It is one sentence—one sentence that, at long last, provides the kind of protection insurance companies have refused to provide to adults and children, and the protection for children goes into effect within a matter of months after enactment.

Let me make two more points, and then I wish to talk about an individual and her family. The Children's Health Insurance Program, as I said, has been extended. But what happened in the earlier versions of the bill was the full funding of it would cut off in 2013. In the bill, we now have added to that. So now the children's health insurance funding will be extended 2 more years. So at least through the end of September 2015, the Children's Health Insurance Program is fully funded.

We need to do more than that. We will have to get to that as we move forward, but we have extended it 2 more years.

We also have done some things in this bill that didn't get a lot of attention.

When we were in the early stages of this bill way back in the summer, in the Health, Education, Labor, and Pensions Committee, Senator DODD and I and others included provisions in the bill long before it was amended in the original bill we put before our committee this summer.

For example, mandating prevention and screenings for children. No. 2, ensuring pediatric benefits as well as pediatric input into the formation of benefits; vision and oral health care for children, and, finally, in this section, strengthening the pediatric workforce. If we are going to give children the kind of expert help they have a right to expect and we have a right to expect for their care, we have got to make sure we have the workforce, the high-skilled work force, the doctors, who are, in fact, pediatricians; so all kinds of benefits for our children and for our families.

But this isn't just a debate about policy and the provisions of the bill. That is, obviously, part of what we are here to do. What we are here to do is meet the needs of real families in America. I have met a number of them in Pennsylvania, and every Member here, whether they are for or against the bill, whether they are trying to kill the bill on the other side or whether they are trying to support and pass the bill on this side, could tell a story. Each of those Senators could tell a story about many families in their State.

One story is to remain an inspiration for me from day one, going way back in February when I received a letter. This woman in Pennsylvania who wrote to me remains an inspiration. Her name is Trisha Urban, from Berks County, PA, right near Reading and the eastern side of our State. She wrote this letter. I will quote major portions of the letter. She talked about herself and her husband. She said her husband had to leave his job for 1 year to complete an internship requirement to complete his doctorate in psychology. ''The internship was unpaid and we could not afford COBRA.'' She goes on to say that because of preexisting conditions neither her husband's health issues nor her pregnancy—Trisha talked about her pregnancy in the letter—''nor my pregnancy would be covered under private insurance. I worked four part-time jobs and was not eligible for any health benefits. We ended up with a second-rate insurance plan through my husband's university.

''When medical bills started to add up, the health insurance company decided to drop our coverage,'' stating that the internship didn't qualify us for benefits. It didn't stop there for a second. So within the space of two sentences, she has highlighted at least two, if not three, of the major problems we have heard so much about: the preexisting condition problem that I pointed to in the bill and we have heard about from so many others, and also dropping of coverage, arbitrary actions by an insurance company to drop coverage when they believe it is in their best interests and not in the interests of the family.

Let me pick up with the letter. I am quoting here again from the letter from Trisha Urban:

> We are left with close to $100,000 worth of medical bills. Concerned with the upcoming financial responsibility of the birth of our daughter and the burden of current medical expenses, my husband missed his last doctor's appointment less than one month ago.

Less than 1 month from February of 2009.

Here is her story, the tragic part of her story, in addition to all of the problems she had with her health insurance company and all of the challenges she and her husband faced getting coverage for her family, her husband's heart condition and in her coverage, as well as her pregnancy, she talks about that night in early 2009 when she was ready to deliver her daughter. She said:

> My water broke the night before. We were anxiously awaiting the birth of our first child. A half hour later, two ambulances were in my driveway. As the paramedics were assessing the health of my baby and me the paramedic from the other ambulance told me that my husband could not be revived.

Here's Trisha Urban, having lived through all of those difficulties with her own insurance and her problems with insurance and worrying about her pregnancy and worrying about her husband. She walks up to her driveway the exact day that her baby was born and she finds her husband dead in the driveway.

The chart depicts the headline from the Reading Eagle dated February of this year: ''Tilden Township Woman Tends to Baby Born Hours After Her Husband's Death.''

I will cite a few facts from the story:

> Just after noon, Thursday, Trisha A. Urban's husband, Andrew D. Urban, died. Less than nine hours later, she gave birth to their first child, Cora Catherine.

Because of that tragedy and maybe only because of that tragedy I met Trisha Urban months after she wrote a letter to me, and I met her daughter. They came down to hear the President's speech to a joint session of Congress. I held her daughter Cora. I probably never would have met that beautiful child were it not for this tragedy, were it not for this story.

I am not sure what I would do if I were in her case. I am not sure if I would have remained so saddened by it and so frustrated by what the insurance companies did to her or didn't do for her. Anyone would understand that, if she or I or anyone else who suffers that tragedy would look within themselves and suffer alone with their family. Patricia Urban didn't do that. She didn't just tell us about the problems she had with her insurance company; she didn't just tell us about the tragic death of her husband; she did more than that. She wrote to me.

For those who say, well, we don't need to do anything about this health insurance problem, I would ask them to listen to Trisha Urban. She said at the end of her letter:

I am a working class American and do not have the money or the insight to legally fight the health insurance company. We had no life insurance. I will probably lose my home, my car, and everything we worked so hard to accumulate in our life will be gone in an instant.

But then she says this:

If my story is heard, if legislation can be changed to help other uninsured Americans in a similar situation, I am willing to pay the price of losing everything. I'm asking you to share my story with others in Congress and I'm willing to speak on behalf of my husband so that his death will not be in vain.

So says Trisha Urban in this letter. She challenged me with that letter, or at least I took it as a kind of challenge I wanted to accept. I think she challenges all of us. If Trisha Urban, who lived through all of those problems with the health insurance company, denied coverage because of preexisting condition, dropped coverage, medical bills going through the roof, and then the ultimate tragedy, the death of her husband, if she can endure all that and still stand up and say, I am willing to pay the price of losing everything I need, I am going to do that to try to help pass a health care bill—if she can do that, the least we can do is to do what a lot of us have tried to do over many months, which is to work on this, to debate it, and to fight hard to pass it. So tomorrow morning in the early hours of the morning, when it might still be dark out, it is my hope and prayer there will be a little light in that darkness in the early morning tomorrow when we pass this bill, and we can say that we did our best.

I know we are not done yet to get this bill out of the Senate. I know we are not done yet. We can at least say we did our best, that we tried as best we could to be responsive to, to answer the plea for help and the invocation of hope that Trisha Urban has in her letter.

I have remained ever inspired by her courage, by her willingness to speak up, and by her willingness to be a witness not just to what has been going wrong with our system and not just giving testimony about her husband's death but the way Trisha Urban has been a witness to the hope and the promise of change that will come with this bill. I know tomorrow morning isn't the end of the road. But tomorrow morning is at least the beginning of the end of a lot of these tragedies and a lot of these stories.

So on Trisha's behalf as we say on behalf of so many others, we need to get this legislation passed tomorrow morning and to move forward in a positive new direction in terms of what happens to our health care system.

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

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

NATIVE AMERICAN APOLOGY

Mr. INOUYE. Mr. President, I wish today to discuss the Native American apology resolution that was recently passed as part of the fiscal year 2010 Defense appropriations bill.

I believe that it is well known to most Members of this body that the original inhabitants of the lands that now constitute the United States, the aboriginal, indigenous, native people of America, occupied and exercised sovereignty over more than 550 million acres of land prior to the first European contact.

In the early days of our history, well before our Nation was formed, the native people fought alongside our soldiers in the Revolutionary War. The Indian tribes enabled the survival of General George Washington and his troops during the harsh winter at Valley Forge by providing food to the troops.

A few years later, as our Founding Fathers were engaged in the challenge of forming a new nation, they drew upon the democratic model of government that they learned from the Six Nations of the Iroquois Confederacy. There they found the well-institutionalized practice of the fundamental principles of freedom of speech and a system of governmental checks and balances provided through the separation of governmental powers.

In our early days as a nation, we entered into treaties with Native Americans pursuant to the provisions of the U.S. Constitution that recognize them as sovereigns. But later, we abandoned the path of an honorable course of dealings, and turned to war. Thousands lost their lives through these battles and horrific massacres. The native population everywhere was decimated.

Forced marches to relocate the native people from their traditional homelands to areas west of the Mississippi in the dead of winter cost thousands of more lives. Few Americans know that there was not one Trail of Tears—but many.

The treaties could have signaled a return to a course of honorable dealings with the native people had the United States not proceeded to break provisions in every single one of the treaties that were ratified by the United States Senate.

Amazingly, notwithstanding these appalling deeds, the native people of the United States have always been and continue to be staunchly patriotic and loyal to this country. They have volunteered to serve in the defense of our Nation in every military action and war in which we have been engaged and on a per capita basis, more Native Americans have put themselves in harm's way and given their lives to protect the United States than any other ethnic group of Americans. They have made the greatest sacrifice, but their contributions do not end there.

We know that the native people of the United States have made significant contributions to our society in every walk of life, in every profession, in medicine and agriculture and as stewards of the lands and resources we all hold dear. There have been great men and women who have led their native nations out of war, poverty, and despair. Throughout the generations, they have shown us the true meaning of courage in the face of the greatest odds, and the quiet strength to persevere.

This provision signifies a new day, brings a message of hope, and provides a foundation for the future.

Mr. President, I would like to thank Senator BROWNBACK for his leadership on this measure.

LEGISLATIVE WORK OF COMMITTEE ON THE JUDICIARY

Mr. LEAHY. Mr. President, this has been an extraordinary year in the history of the Senate Committee on the Judiciary. Thanks to the members and their work through 87 hearings and 33 business meetings this year we have been productive. Here are some of the legislative highlights:

We have considered and reported to the Senate several important legislative initiatives: We successfully considered and reported to the Senate the Fraud Enforcement and Recovery Act that President Obama signed into law in May. We reported the important Patent Reform Act, which can help our economic recovery and lead to additional American jobs. We reported significant cyber security legislation, including the Personal Data Privacy and Security Act.

We also reported the Improving Assistance to Domestic Violence Victims Act; Public Corruption Prosecution Improvements Act; the Crime Victims Fund Preservation Act; and the Performance Rights Act. We reported the Railroad Antitrust Enforcement Act; the PACT Act on cigarette smuggling; and the Preserve Access to Affordable Generics Act, to end anticompetitive pay-for-delay schemes in the drug industry.

Mindful of the end of the year deadlines, we worked hard to report with bipartisan support the USA PATRIOT Act Sunset Extension Act and the Satellite Television Modernization Act.

We reported the Juvenile Justice and Delinquency Prevention Reauthorization Act just last week. And after many working sessions, we were finally able to report the historic Free Flow of Information Act to establish a qualified privilege in Federal law for journalists to protect their confidential sources and the public's right to know.

Through the course of the year Senators on this Committee contributed to enactment of the Lilly Ledbetter Fair Pay Act, Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, the Fraud Enforcement and Recovery Act, the OPEN FOIA Act, the Human Rights Enforcement Act, the Webcasters Settlement Act, an extension of the EB–5 program for three years, an end to the ''widow penalty'' in immigration law, the Judicial Survivors Protection Act, the Reserve Officers Modernization Act, the charter for the Military Officers Association of America, as well as legislation to keep the Patent Office on a financial footing, and legislation to clarify statutory time periods for litigation. We worked to include in the American Recovery and Reinvestment Act provisions to provide needed funding to state and local law enforcement and to protect privacy as we improve healthcare information technology.

Many of us worked for Senate passage of the District of Columbia House Voting Rights Act.

Within the health insurance reform legislation being passed by the Senate this week are provisions we worked on to improve our anti-fraud efforts and to provide recourse for those harmed by health services.

I thank the members of the Senate Judiciary Committee for their contributions and cooperation.

JUDICIAL AND EXECUTIVE NOMINATIONS

Mr. LEAHY. Mr. President, I have been calling on the Republican leadership to end the delays and obstruction of judicial nominations and join with us to make progress in filling some of the many vacancies on Federal circuit and district courts. I have done so repeatedly for most of the year, and several times over this last month. Regrettably, as we head into the winter recess and the end of the first session of the 111th Congress, Republican obstruction is setting a new low for the Senate in our consideration of judicial nominations.

The Senate has been allowed to confirm only one judicial nominee all month. It is now December 23. By this date in President Bush's first year in office, the Senate with a Democratic majority confirmed 10 nominations just in December to reach a total of 28 confirmed Federal circuit and district court nominees in the first session of the 107th Congress. That is 10 times as many nominations as the Senate has considered and confirmed this month. During the first year of President Bush's tumultuous administration, with the Senate majority changing in the middle of the year and Democrats then in the majority, we worked from July through December to confirm 28 judicial nominees. That was, of course, the year of the September 11 attacks and the anthrax attacks in the Senate, but we continued our work. The Senate proceeded to confirm 6 judicial nominees by voice vote in December 2001, a total of 10 judicial nominees that month, a total of 28 in the last 6 months of that year, and 100 in the 17 months I served as chairman of the Senate Judiciary Committee during President Bush's first term.

By contrast, thus far this month, with 12 judicial nominees now available to the Senate for final consideration, Senate Republicans have only allowed a vote on Judge Jacqueline Nguyen to the Central District of California. She was confirmed unanimously after been delayed 6 weeks. They have even refused to consider the nomination of Beverly Martin of Georgia to the Eleventh Circuit, despite strong support from her home state Senators, both Republicans. Instead of acting of her nomination, which has been awaiting final action since September 10, and that of Judge Greenaway of New Jersey, who has been nominated to the Third Circuit and was reported on October 1, they insist on delaying debate on that nomination for at least a month. I hope we will be able to turn to that nomination when the Senate returns in late January.

The refusal by the Republican minority to enter into customary time agreements to consider non-controversial nominees has led us to fall well short of the confirmations achieved in the first years of other Presidents. On the eve of the end of the session, the Senate has confirmed little more than one-third as many of President Obama's circuit and district court nominees as it confirmed of President George W. Bush's—28—or of President Clinton's—27—in their first years. In fact, President Obama is on pace to have the fewest judicial nominees confirmed by a President in his first year since President Eisenhower, who only made nine nominations in 1953. Of course, all nine were confirmed. The total this year stands to be the fewest confirmed in any President's first year in more than 50 years, and the fewest in any year since the Republican majority confirmed only 17 in the 1996 session, a Presidential election year.

The unprecedented obstruction we have seen by Senate Republicans on issue after issue—over 100 filibusters this year alone, by some calculations, which have affected 70 percent of all Senate action—have ground Senate consideration of judicial nominations to a crawl. Instead of time agreements and the will of the majority, the Senate is faced with filibusters, and anonymous and Republican leadership holds. Those who just a short time ago said that a majority vote is all that should be needed to confirm a nomination, and that filibusters of nominations are unconstitutional, have hypocritically reversed themselves and now employ any delaying tactic they can.

Judicial nominees have been and are available for consideration. This lack of Senate action is attributable to Senate Republicans and no one else. The President has reached across the aisle to consult and has made quality nominations. We have held the hearings, and the Senate Judiciary Committee has favorably reported 12 judicial nominees to the Senate on which action has not been permitted. There are now more judicial nominations stalled on the Senate Executive Calendar—12—than the number that have been confirmed all year. One has been ready for Senate consideration for more than 13 weeks, another more than 10 weeks, and the list goes on. Nor are these controversial nominees. Eight of the 12 were reported from the Judiciary Committee without a single dissenting vote. The majority leader and all Democratic Senators have been ready to proceed. The Republican Senate leadership is not. It has stalled and delayed and obstructed.

Unlike his predecessor, President Obama has reached out and across the aisle to work with Republican Senators in making his judicial nominations. The nomination of Judge Hamilton, which the Republican leadership filibustered, was supported by the most senior Republican in the U.S. Senate, my respected friend from Indiana, Senator LUGAR. Other examples are the nominees to vacancies in Alabama supported by Senators SESSIONS and SHELBY, in South Dakota supported by Senator THUNE, and in Florida, supported by Senators MARTINEZ and LAMIEUX. Still others are the President's nomination to the Eleventh Circuit from Georgia, supported by Senators ISAKSON and CHAMBLISS, which the Senate will not consider until the end of January because of Republican objection, and his nomination to the Sixth Circuit from Tennessee, supported by Senator ALEXANDER.

Last week we held a confirmation hearing for two more well-respected and well-qualified nominees that were the result of President Obama's effort to reach out and consult with home state Senators from both sides of the aisle, Judge James Wynn and Judge Albert Diaz. Judge Wynn and Judge Diaz have been nominated to fill two long-standing vacancies on the U.S. Court of Appeals for the Fourth Circuit. Both are from North Carolina. Senator BURR and Senator HAGAN worked with each other and with the White House on these nominations. I thank them both for their testimony before the committee last week in strong support of these nominees.

These nominations are just the most recent examples of this President reaching out to home State Senators from both parties to consult before making nominations. Just as I worked

last year to end a decade-long impasse on the Sixth Circuit with the confirmations of Judge Helene White and Ray Kethledge of Michigan, I will work to see that these nominations from North Carolina are considered fairly and confirmed expeditiously. With the support of the senior Senator from North Carolina, a Republican, and the determined efforts of Senator HAGAN, a Democrat, North Carolina will finally have the representation on the Fourth Circuit that it deserves.

Instead of praising the President for consulting with Republican Senators, the Republican leadership has doubled back on what they demanded when a Republican was in the White House. No more do they talk about each nominee being entitled to an up-or-down vote. That position is abandoned and forgotten. Instead, they now seek to filibuster and delay judicial nominations. They have also walked back from their position at the start of this Congress, when they threatened to filibuster nominees on which home state Senators were not consulted. We saw with Judge Hamilton that they filibustered a nominee supported by Senator LUGAR.

When President Bush worked with Senators across the aisle, I praised him and expedited consideration of his nominees. When President Obama reaches across the aisle, the Senate Republican leadership delays and obstructs his qualified nominees. It is clear that the Republican leadership has returned to their practices in the 1990s, which resulted in more than doubling circuit court vacancies, and led to the pocket filibuster of more than 60 of President Clinton's nominees. The crisis they created eventually led even to public criticism of their actions by Chief Justice Rehnquist during those years.

The Republican obstruction and delay in considering well-qualified noncontroversial nominees comes at a tremendous cost to the ability of our Federal courts to provide justice for all Americans. We have seen a tremendous spike in judicial vacancies. Although there have been nearly 110 judicial vacancies this year on our Federal circuit and district courts around the country, only 10 vacancies have been filled. That is wrong. The American people deserve better.

In only 5 months of President Bush's first year in office when I served as Senate Judiciary Committee chairman and with a Democratic Senate majority, we confirmed 28 judicial nominees. During 17 months of President Bush's first 2 years in office, we confirmed 100 of his judicial nominees. Although two Republicans chaired the Senate Judiciary Committee and Senate Republicans held the Senate majority for more than half of President Bush's time in office, more judges nominated by President Bush were confirmed by the Senate Democratic majority and when I served as Senate Judiciary Committee chairman. During President Bush's last year in office, we had reduced judicial vacancies to as low as 34, even though it was a Presidential election year. When President Bush left office, we had reduced vacancies in 9 of the 13 circuits since President Clinton left office.

As matters stand today, judicial vacancies have spiked and are being left unfilled. We will start 2010 with the highest number of vacancies on article III courts since 1994, when the vacancies created by the last comprehensive judgeship bill were still being filled. While it has been nearly 20 years since we enacted a Federal judgeship bill, judicial vacancies are nearing record levels, with 97 current vacancies and another 23 already announced. If we had proceeded on the judgeship bill recommended by the Judicial Conference to address the growing burden on our Federal judiciary, as we did in 1984 and 1990, in order to provide the resources the courts need, current vacancies would stand at 160 today. That is the true measure of how far behind we have fallen. I know we can do better. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges.

I, again, urge the Republican minority to allow Senate action on the 12 judicial nominees on the Senate Executive Calendar before the end of the session. We have now wasted weeks having to seek time agreements in order to consider even nominations that were reported by the Judiciary Committee unanimously and confirmed unanimously by the Senate when finally allowed to be considered. The 12 judicial nominees are Beverly Martin of Georgia, nominated to the Eleventh Circuit; Joseph Greenaway of New Jersey, nominated to the Third Circuit; Edward Chen, nominated to the District Court for the Northern District of California; Dolly Gee, nominated to the District Court for the Central District of California; Richard Seeborg, nominated to the District Court for the Northern District of California, Barbara Keenan of Virginia, nominated to the Fourth Circuit; Jane Stranch of Tennessee, nominated to the Sixth Circuit; Thomas Vanaskie of Pennsylvania, nominated to the Third Circuit; Louis Butler, nominated to the District Court for the Western District of Wisconsin; Denny Chin of New York, nominated to the Second Circuit; Rosanna Malouf Peterson, nominated to the District Court for the Eastern District of Washington; and William Conley, nominated to the District Court for the Western District of Wisconsin.

At the end of the Senate's 2001 session, only four judicial nominations were left on the Senate Executive Calendar, all of which were confirmed soon after the Senate returned in 2002. At the end of the first session of Congress during President Clinton's first term, just one judicial nominee was left on the Senate Executive Calendar. At the end of the President George H.W. Bush's first year in office, a Democratic Senate majority left just two judicial nominations pending on the Senate Executive Calendar. At the end of the first year of President Reagan's first term—a year in which the Senate confirmed 41 of his Federal circuit and district court nominees—not a single judicial nomination was left on the Senate Executive Calendar.

In stark contrast, there are now 12 judicial nominees on the Senate Executive Calendar, and unless there is a burst of cooperation from Republicans, they will remain on the calendar awaiting Senate consideration beyond the end of this session and into next year. That is a significant change from our history and tradition of confirming judicial nominations that have been reported favorably by the Senate Judiciary Committee by the end of a session.

The record of obstruction of the Senate Republicans is just as disappointing when we consider the executive nominations that have been reported by the Judiciary Committee. There are currently an incredible 20 executive nominations that have been reported favorably by the Senate Judiciary Committee pending on the Senate Executive Calendar, including nominations for Assistant Attorneys General to run three of the 11 divisions at the Department of Justice. Each of these nominations has been pending 4 months or longer. An editorial in today's Washington Post entitled ''Nominees in Limbo'' and subtitled ''The Senate should do its job before taking a vacation'' describes the Republican obstruction of the nomination of Dawn Johnson to head the Office of Legal Counsel, which has been stalled on the Senate Executive Calendar since March, as ''[p]erhaps the greatest nominations travesty.'' The editorial concludes: ''[T]he president should be given deference in choosing executive-branch officials who share his views. Ms. Johnsen is highly qualified and should be confirmed. At the very least, senators should have the decency to give her an up-or-down vote.''

Senate Democrats treated President Bush's first nominations for these same posts quite differently than Senate Republicans are now treating President Obama's nominees. We promptly reported the President's nominees to head the Office of Legal Counsel, the Office of Legal Policy, and the Tax Division, and they each received Senate consideration in a matter of days or weeks after they were reported by the committee. We still have heard no explanation for the five months of Republican obstruction of the nomination of Chris Schroeder to head the Office of Legal Policy after his nomination was reported by the committee in July by voice vote without dissent. The Washington Post editorial rightfully calls for Mr. Schroeder's confirmation as well as for the confirmation of the long-pending nomination of Mary Smith to run the Tax Division.

As with the judicial nominations, the Republicans have employed new standards of demanding a supermajority and

floor time and delays to consider even nominations that could be confirmed easily, grinding our progress to a halt. I hope that the Republican Senators and leadership will relent and end the year by making progress on these important nominations to put us on a better path for the next session.

THE TORTURE VICTIMS PROTECTION ACT

Mr. LEAHY. Mr. President, the U.S. Supreme Court recently granted certiorari in a case involving the Torture Victim Protection Act of 1991, TVPA, a law I supported from the earliest days following its introduction by Senator SPECTER in the summer of 1986. Senator SPECTER and I worked for years to see this historic human rights bill become law in 1991. Yet today I am concerned that the TVPA's crucial role in protecting human rights may be weakened or even rendered meaningless. The Supreme Court case, Samantar v. Yousuf, may decide the fate of this landmark law.

The TVPA provides a Federal cause of action against any individual who subjects any person to torture or extrajudicial killing. This cause of action is available where the individual acts under actual or apparent authority, or under color of law of any foreign nation. Congress passed the TVPA in response to widespread use of official torture and summary executions that took place around the world, despite the universal consensus condemning such practices. Congress recognized that neither Federal nor international law was strong enough to curb such egregious human rights abuses. We enacted the TVPA to ensure accountability for those who commit atrocious violations of human rights.

The case currently before the Supreme Court, Samantar v. Yousuf, raises the question of whether the Foreign Sovereign Immunities Act, FSIA, allows an action filed under the TVPA to be brought against a former government official of a foreign country who is now living in the United States. The answer is clear in the TVPA and its legislative history. The answer is yes. Congress expressly intended the TVPA to apply against former government officials. In enacting the TVPA, Congress made it explicit that the FSIA would almost never provide a defense to such persons. They can be sued under the TVPA to recoup damages caused by their torturous actions.

The Senate clearly stated its intention to ensure that the TVPA operated in concert with existing law, specifically taking into account the FSIA, the Alien Tort Claims Act, and the United Nations Convention Against Torture, which the United States signed in 1988. This point was discussed extensively as we drafted and refined the legislation. The operation of the TVPA was considered in a hearing held by the Judiciary Committee's Subcommittee on Immigration and Refugee Affairs in June 1990. The committee was not oblivious to the concerns raised at the time by the executive branch regarding sovereign immunity. We were cognizant of the role of the executive to manage foreign policy. We addressed each of these concerns in turn, but we were not persuaded that they outweighed the importance of creating a private cause of action under the TVPA. The full Congress agreed when it enacted the TVPA in March 1992.

The TVPA was drafted, in part, in response to gaps in two existing laws: the Alien Tort Claims Act and the Convention Against Torture. In deciding whether the Alien Tort Claims Act could be used by victims of torture committed abroad, one Federal judge expressed concern that separation of powers principles required an explicit grant by Congress of a private right of action for lawsuits that affect foreign relations. The Alien Tort Claims Act did not have such an explicit grant. Congress responded by enacting the TVPA with an unambiguous basis for a cause of action.

Similarly, the United States signature on the Convention Against Torture was an important and symbolic step in the prevention of torture, but the Convention fell short of the TVPA in at least two important respects. First, the Convention required that signatories open their courts to suits for damages caused by torture in their own countries. That policy was welcome but insufficient. The TVPA allows torture victims to sue their abuser without returning to the country of abuse. Congress took this step because it believed that governments that had allowed torture to occur within their jurisdiction would not necessarily provide meaningful redress to victims. Furthermore, torture victims who escaped from the country of abuse would not eagerly return to that country to file suit. Congress designed the TVPA specifically to respond to that situation by opening U.S. courts to these cases and providing a civil cause of action here in the United States for torture committed abroad.

Second, by creating a Federal cause of action in our own courts, Congress ensured that torturers would no longer have a safe haven in the United States. The legislation served notice to individuals engaged in human rights violations that their actions were anathema to American values and they would not find shelter from accountability here.

Congress explicitly drafted the TVPA to strengthen and expand the scope of action that victims of torture could take in our courts, but Congress was nonetheless conscious of the bill's limits. The TVPA was not meant to override traditional diplomatic immunities or the FSIA's grant of immunity to foreign governments. The act struck a balance. It protected well established notions of sovereign and diplomatic immunities for current political actors without creating a safe haven for the perpetrators of horrible acts after they left their official positions and settled in, or fled to, the United States.

For example, Congress carefully created the cause of action against an ''individual'' to ensure that foreign states or their entities could not be sued under the act under any circumstances. Similarly, we discussed at length the fact that the legislation would not permit a suit against a former leader of a country merely because an isolated act of torture occurred somewhere in that country. But Congress neither intended nor imagined that the FSIA would provide former officials with a defense to a lawsuit brought under the TVPA. Such an interpretation would undermine the purpose of the law. The TVPA was not intended to cover the torturous acts of private individuals. To the contrary, in order for a defendant to be liable under the TVPA, the torture must have been taken ''under actual or apparent authority or under the color of law of a foreign nation.'' The Judiciary Committee explicitly stated in its report on the bill that, ''the FSIA should normally provide no defense to an action taken under the TVPA against a former official.''

I hope that the Supreme Court studies this definitive and comprehensive history as it considers the case of Samantar v. Yousuf. Congress clearly intended the TVPA to extend to former officials of foreign countries if they choose to come to the United States after leaving their positions of authority. Congress also stated that the FSIA does not extend immunity to such individuals. Claims that a suit brought against a former official would undermine the FSIA and endanger foreign relations are simply inaccurate. Congress properly weighed the foreign policy concerns when it passed the TVPA. The Supreme Court should not overrule the well-considered judgment of Congress.

DETERIORATING SITUATION IN NEPAL

Mr. LEAHY. Mr. President, over the years, both during and since the end of the monarchy in Nepal, I have urged the Nepal Army to respect human rights and cooperate with civilian judicial authorities in investigations of its members who abuse human rights. I spoke on this subject a few days ago in relation to the horrific case of Maina Sunuwar, a 15-year-old Nepali girl who was tortured to death by Nepal Army officers who then sought to cover up the crime.

I have also, similarly, urged the Maoists to stop committing acts of violence and extortion against civilians, respect human rights, and work to improve the lives of the Nepali people through the political process. The fact that the Maoists laid down their arms and entered into a peace agreement gave the Nepali people the first chance in Nepal's history to build a democratic government that is responsive to their needs.

It is therefore disheartening that the Maoists continue to engage in tactics that serve little purpose but to make the lives of the Nepali people, already difficult, even harder. They have just staged their latest general strike, which for the past 3 days crippled Nepal's economy.

For 3 days, Nepal, already a poor country, neither imported nor exported goods through its land entry points, causing a significant loss of revenue. Tourism, one of Nepal's most important sources of income for hotels, shops, transport, restaurants, and guide services, has been damaged. The garment industry, also among Nepal's largest, was brought to a halt. And there is the risk that foreign companies will decide that Nepal is still too unstable, and look elsewhere to invest.

What possible good does this kind of protest do? It angers and hurts the very people whose interests the Maoists claim to serve. In fact, it hurts poor people the most, because they and their children do not have savings, and go hungry. And it can hardly make other political parties more likely to accede to the Maoists' demands.

The latest news is that the Maoist leaders have threatened an indefinite national strike unless the government puts in place within a month a unity government headed by the Maoists. This kind of ultimatum, which has no place in a democracy, would be disturbing enough if it were not for the fact that the Maoists headed a coalition government last year after winning national elections, only to leave the government in May when it failed to replace the then army chief of staff.

I also felt that Nepal needed a new army chief who was not tainted by past abuses, but for the Maoists to quit the government and then accuse the President of forcing them to do so when their demands were not met, was irresponsible. Today, in fact, Nepal has a new army chief. Time will tell if he is the right person for the job.

As an observer of developments in Nepal, I have been encouraged by the positive steps the country has taken since the events that led to the end of the monarchy. But the desires that led to that courageous demonstration of popular will remain unfulfilled. The institutions of democracy are barely functioning and the political situation continues to deteriorate. Only 5 months remain until the deadline for drafting a new constitution, and growing distrust between the political parties threatens to derail the peace process. Indeed, the political parties have often seemed more concerned with promoting their own interests than with addressing the needs of the Nepali people. The army has yet to reform. Thousands of Maoist ex-combatants need to be demobilized and trained for jobs in the civilian workplace. Unless the political parties take decisive steps to work together to address these issues, the situation will go from bad to worse, and at some point the Nepali people may again take matters into their own hands.

In the meantime, the periodic economic shutdowns and acts of violence and intimidation perpetrated by the Young Communist League, cause one to question whether the Maoist leaders understand or accept the responsibilities that are inherent in a democracy. Rather than orchestrating acts of collective punishment to try to force a result, the Maoists need to earn the public's trust and respect. There is also the responsibility to exercise power in a manner that strengthens, not erodes, popular support. So far, the Maoists have failed to demonstrate a capacity for either.

The Communist Party of Nepal—Maoist—today remains a designated foreign terrorist organization under U.S. law. I am among those who would like to see that designation lifted, as I believe the U.S. could, through technical assistance and exchange programs, help the Maoist leaders to better understand the benefits of working constructively within the democratic process on behalf of the Nepali people. But the fact remains that having engaged in acts that got them onto the list in the first place, they need to demonstrate that they have abandoned those tactics and are accountable to the people. Organizing harmful strikes that serve no logical or legitimate purpose, encouraging acts of violence, refusing to punish its own members who committed atrocities, and making threats, are not consistent with a responsible political organization.

Mr. President, poverty and injustice have been a fact of life in Nepal for centuries. Three and a half years ago the Nepali people rose up against a corrupt, abusive monarchy and demanded something better. They are still waiting, but they will not wait forever. Like Nepal's other political parties, the Maoists will be judged by what they deliver.

FATE OF HMONG REFUGEES

Mr. LEAHY. Mr. President, I want to speak briefly about a worrisome humanitarian situation that is developing in Thailand, which could cause problems for our relations with the Thai military.

Thailand and the United States are longtime friends and allies, and our Armed Forces have developed a cooperative relationship. Many Thai military officers have been trained in the United States, and Thai soldiers have participated in joint U.S.-Thai training exercises such as Operation Cobra Gold. I expect this relationship to continue. But I am very concerned, as I know are other Senators, that the Thai Government may be on the verge of deporting roughly 4,000 ethnic Hmong back to Laos where many fear persecution.

Thailand has a long history of generosity towards refugees from Burma, Laos, Cambodia and Vietnam. It is a history to be proud of. But the Thai Government, which insists that the Hmong are economic migrants who should be repatriated, has reportedly deployed additional troops to Phetchabun province where most of the Hmong are in camps. There is a growing concern that the Thai military may expel the Hmong before the end of the year. There is also concern that a group of 158 Hmong in Nongkhai province, who have been screened and granted United Nations refugee status, could be sent back to Laos. I understand that the United States and several countries have told the U.N. High Commissioner for Refugees and the Thai Government they are prepared to consider this group of refugees for resettlement. Potential resettlement countries should be given an opportunity to interview these individuals in Thailand.

It may be that some of the 4,000 Hmong are economic migrants. It is also likely that some are refugees who have a credible fear of persecution if they were returned to Laos. I am aware that many Hmong fought alongside the U.S. military during the Vietnam war. The U.N. High Commissioner for Refugees, working with Thai authorities, needs to determine who has a legitimate claim for asylum and who does not, in accordance with long-standing principles of refugee law and practice. No one with a valid claim should be returned to Laos except on a voluntary basis. The United States, and other countries, can help resettle those who do have valid claims but need access and the opportunity to consider relevant cases.

I mention this because I cannot overstate the consternation it would cause here if the Thai Government were to forcibly return the Hmong to Laos in violation of international practice and requirements. The image of Laotian refugees including many who the United Nations and the Thai Government itself have stated are in need of protection being rounded up by Thai soldiers and sent back against their will during the Christmas season, and the possible violence that could result, is very worrisome. On December 17 I joined other Senators in a letter to the Thai Prime Minister about this, and I will ask that a copy be printed in the RECORD at the end of my remarks.

As chairman of the Department of State, Foreign Operations, and Related Programs Subcommittee of the Appropriations Committee which funds international assistance programs, I have supported U.S. military training programs and other assistance to the Thai military. We share common interests and want to continue to work together. But after the deplorable forced repatriation to China of Uighur refugees by Cambodian authorities last week, we expect better of the Thai Government. Should the Hmong be treated similarly it could badly damage the Thai military's reputation, and put our military collaboration at risk.

Mr. President, I ask unanimous consent to have printed in the RECORD the

December 17, 2009 letter to which I referred.

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

U.S. SENATE,
Washington, DC, December 17, 2009.

Mr. ABHISIT VEJJAJIVA,
Prime Minister, Kingdom of Thailand, Wisconsin Ave, N.W., Washington, DC.

DEAR MR. PRIME MINISTER, We are writing to express our concern regarding reports of a possible repatriation to Laos of Lao Ilmong from the Huay Nam Khao camp and Nong Khai detention center in Thailand. While we recognize that the Kingdom of Thailand is burdened by the large number of refugees it hosts on its territory, we encourage you to not take steps to repatriate any individuals to Laos at this time. Thailand is a strong ally of the U.S., and the cooperation between our governments, including a history of working together on Laotian and Burmese refugee issues, is greatly valued.

We understand that your government has conducted screenings in the Phetchabun camp in fluay Nam Khao to identify and separate refugees meriting protection from those migrating for primarily economic reasons. We remain concerned, however, regarding the lack of transparency in this screening process, and the absence of a civilian entity to lead it. In July of this year, a group of Senators sent a letter to General Songkitti Jaggabatara requesting more information about the criteria and methods used in screening Laotian Hmong in the Phetchabun camp, but a response to this inquiry has not yet been received.

We acknowledge the difficulty that this issue has posed for both your country as well as the inhabitants of the camps. However, we believe that the lack of transparency in the screening and repatriation process only exacerbates these difficulties and heightens international concern regarding these populations. A process that adheres to the core tenets of the refugee convention, and is conducted by an independent third party organization, could resolve much of this concern by helping to ensure that the Lao Hmong are able to provide a full and accurate account that can serve as the basis for an appropriate status determination.

Before repatriating any individuals to Laos, we strongly urge your government to work with an independent third-party organization to conduct a transparent screening process consistent with international standards. Once such a process is in place. we hope that any Hmong determined to have refugee status will be provided opportunities for third country resettlement. This includes the individuals at the Nong Khai center, who have already been screened by the United Nations High Commissioner for Refugees. For those who are not judged to require protection, we encourage you to work with international organizations and the governments of the U.S. and Laos to establish a repatriation process that includes effective third party monitoring.

We also understand that Assistant Secretary of State Eric Schwartz will be visiting Thailand in the very near future. We hope that the U.S. and Thailand can work closely to find a solution that alleviates the burden of this situation on Thailand, as well as the concerns about the repatriation of those in need of protection, and we would be happy to consult with you on this process.

We appreciate your efforts to ensure a transparent process and just resolution to this issue. The Kingdom of Thailand remains a close ally of the United States and we look forward to working with your government to strengthen this important relationship.

Sincerely,

Russell D. Feingold, United States Senator; Barbara Boxer, United States Senator; Sheldon Whitehouse, United States Senator; Richard G. Lugar, United States Senator; Patrick J. Leahy, United States Senator; Lisa Murkowski, United States Senator; Amy Klobuchar, United States Senator; Mark Begich, United States Senator; Al Franken, United States Senator.

TRIBUTE TO LEWIS K. BILLINGS

Mr. HATCH. Mr. President, today I express my deep appreciation to a great Utahn and friend, Provo City Mayor Lewis K. Billings, whose tenure as mayor will soon come to an end. It has been my distinct pleasure to work with Mayor Billings over the past 12 years.

Nestled at the base of the Rocky Mountains, Provo was founded by rugged pioneers in 1849 and is one of the oldest cities in the West. Today, Provo is one of largest cities in the State of Utah. Mayor Billings and his beautiful wife Patti are longtime residents of Provo and raised eight wonderful children there.

Mayor Billings was elected Provo City Mayor in November 1997, after completing 3 years as chief administrative officer and director of community and government relations for the city of Provo. He and I share many of the same conservative values and principles and his service as mayor is a strong reflection of his dedication to those ideals. Mayor Billings will long be remembered for focusing on effective public safety and law enforcement, fiscal responsibility, economic development and job creation, neighborhood and downtown revitalization, the arts, emergency readiness, and a host of other local, regional, and national public policy issues. During his tenure, Provo City has consistently received national recognition for low crime rates, high quality of life, and positive business development.

Mayor Billings has accomplished a great deal during his tenure as Mayor of Provo. His dedicated public service and determination to shape Provo into the wonderful city it is today will be remembered for years to come. I ask my colleagues to join me and the citizens of the great State of Utah in thanking Mayor Billings for his many years of dedicated service. We all appreciate his efforts and service, but none so more than me.

GUN OWNERS SUPPORT GUN SAFETY LAWS

Mr. LEVIN. Mr. President, the debate surrounding gun legislation is often an acrimonious one, creating the perception that Americans are hopelessly divided on this policy issue. After listening to the positions of the National Rifle Association, NRA, a person could conclude that progress toward a national consensus on sensible gun legislation is a long way off. This perception, however, is just that: merely a perception. In reality, Americans of all political stripes share much common ground when it comes to issues of gun safety, and I am hopeful that this consensus will produce tangible legislative results.

In a recent poll conducted by well-known pollster Frank Luntz, NRA members and non-NRA gun owners expressed strong support for a number of proposed gun safety laws. These gun-owning Americans did not see a contradiction between supporting legislative efforts to reduce gun violence and their right to bear arms. Specifically, 85 percent of non-NRA gun owners and 69 percent of NRA gun owners supported closing the ''gun show loophole'' by requiring all gun sellers at gun shows to conduct a Brady criminal background check on prospective purchasers. In addition, 86 percent of non-NRA gun owners and 82 percent of NRA members favored a proposal to prevent individuals listed on a terrorist watch list from purchasing firearms. Seventy-four percent of non-NRA gun owners and 69 percent of NRA members also agreed with this statement: ''the federal government should not restrict the police's ability to access, use, and share data that helps them enforce federal, state, and local gun laws.''

At first glance, these polling numbers may not seem very surprising. After all, these gun safety proposals are founded on common sense and are crafted to keep firearms out of the hands of criminals and terrorists. Unfortunately though, the NRA leadership continues to oppose three Federal gun safety bills that, according to the recent poll, their own members support: the Gun Show Background Check Act, S. 843, which would close the ''gun show loophole;'' the Denying Firearms and Explosives to Dangerous Terrorists Act, S. 1317, which would prevent individuals listed on terrorist watch lists from purchasing a gun; and the Preserving Records of Terrorist and Criminal Transactions Act, S. 2820, which would improve the ability of law enforcement agencies to prevent gun violence by increasing the amount of time gun background check records are kept.

I support these sensible gun safety measures, and as the polling indicates, so do a majority of American gun owners, including NRA members. The NRA is not only out of touch with mainstream America, they also are out of touch with their own members. It is time to set aside the false claims that too often cloud the debate surrounding gun safety. There is an overwhelming consensus in America: the time to pass commonsense gun safety legislation is now.

SMALL BUSINESS LENDING ENHANCEMENT ACT OF 2009

Mr. UDALL of Colorado. Mr. President, as our Nation begins its economic recovery, our unemployment numbers still remain far too high. Too many Americans are unable to find work, which only slows the pace of our emergence from recession. As part of my continuing effort to support tailored, fiscally responsible methods to getting our economy back on track, I am proud to discuss a bipartisan bill that I introduced this week with several of my Senate colleagues from both sides of the aisle.

The bill is the Small Business Lending Enhancement Act of 2009, which is cosponsored by Senator SCHUMER, Senator LIEBERMAN, Senator SNOWE, Senator BOXER, Senator COLLINS, and Senator GILLIBRAND. If enacted, this legislation would immediately allow increased lending for small businesses to the tune of billions of dollars. It would do so in a safe and fiscally responsible way, without calling on the Federal Government to spend a dime. And best of all, it could lead to large-scale job creation in my home State of Colorado and around the country. For these reasons, I hope that our Senate colleagues join us in urging swift passage of this common-sense legislation.

Small businesses are the engine of our Nation's economy. In the last 15 years, small businesses have generated nearly two-thirds of all new jobs created in the United States, and they currently employ more than half of the American workforce.

However, small businesses continue to struggle accessing credit, as large banks have significantly cut back on Main Street lending. According to a recent Treasury Department report, the 22 banks that have received the most funding through the Troubled Asset Relief Program, TARP, cut their collective small business loan balances by $11.6 billion from April through October of this year.

America's community banks, which by-and-large did not receive Federal bailout funds, are doing all they can to fill the Main Street credit vacuum created by these large financial institutions. While this legislation I have authored is aimed at helping credit unions ramp up their small business lending, I have also joined with many of my colleagues this year in support of a number of initiatives that will help community banks increase lending to small businesses.

The Small Business Lending Enhancement Act will further these efforts to free up credit for small business. Under current statute, credit unions are required to limit member business lending to 12.25 percent of the credit union's total assets. This bill would raise that cap to 25 percent of total assets, and increase the minimum business loans subject to the cap from $50,000 to $250,000. These provisions would increase the amount that credit unions already offering business loans could provide to small businesses, while also encouraging more credit unions to enter the business loan market. Under current law, many credit unions find it difficult to start member business lending programs because the cost of meeting high regulatory and staffing requirements is too expensive relative to the cap. Raising the member business lending cap would make it easier for credit unions to recover costs, and therefore would increase the number of credit unions able to start small business loan programs.

The Credit Union National Association estimates that these sensible reforms would increase small business lending by $10 billion within the first year of their enactment, including an increase of nearly $200 million in my home State of Colorado. This new access to credit would likely produce more than 100,000 new jobs nationwide within the first year of the bill's enactment. That is the sort of pro-business, pro-jobs policy that we need.

Mr. President, these simple statutory changes would not increase Federal outlays one cent, but they would dramatically increase the amount of private capital available to small businesses to help make payroll, buy inventory, and expand and innovate. Moreover, these proposed statutory changes are safe and fully supported by the National Credit Union Administration, the independent Federal regulator with oversight of our Nation's credit unions. To further ensure the safety and soundness of credit unions, this bill requires the NCUA to submit a semiannual report to Congress on the status of credit union member business lending, including any recommendations for legislative changes. In sum, this is a responsibly drafted bill that could help spur much-needed economic growth and job production.

Mr. President, we have to do all we can to responsibly unlock credit markets for small businesses in Colorado and throughout the country. I believe this legislation is an important piece of that effort. I look forward to working with my colleagues on both sides of the aisle to quickly pass the Small Business Lending Enhancement Act, and allow our nation's small businesses to again set our country on a path toward job growth and further prosperity.

TAX EXTENDERS

Ms. LANDRIEU. Mr. President, as the Senate moves forward toward ending the debate on health care reform and recessing until the New Year, we leave some important legislation unfinished, including legislation that would extend a number of tax provisions that are set to expire on December 31 of this year. The House has already acted to extend a number of these expiring tax provisions, and I urge my colleagues on the Senate Finance Committee to work with Senator BAUCUS and Senator GRASSLEY to take up this legislation immediately when we come back from recess.

As part of this effort, I urge my colleagues to extend tax provisions, some of which are set to expire this year, that were enacted by Congress to aid the recovery of the gulf coast after the 2005 hurricane season. Hurricane Katrina devastated the gulf coast and recovery efforts to date have been delayed because of a continuing shortage of skilled construction workers, limited financing, and sustained increases in construction and insurance costs. These challenges have been compounded by the current economic crisis.

By extending a number of the tax provisions that were enacted as part of the Gulf Opportunity Zone legislation that Congress passed in 2005, a number of important projects, including low-income housing projects, will have adequate time to overcome development challenges, and create more opportunities for displaced residents looking to return after the 2005 storms. This will result in more jobs and a faster recovery for the gulf coast. If Congress fails to act to extend the tax provisions of the GO Zone legislation, including the placed-in-service provision of the GO Zone low-income housing tax credit, at least 77 low-income housing projects in the Gulf Coast are at risk of not being completed.

Mr. President, I ask unanimous consent that a letter I wrote requesting an extension of the placed-in-service provision of the GO Zone low-income housing tax credit be included in any tax extenders legislation be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, December 9, 2009.

Hon. MAX BAUCUS,
Chair, Senate Committee on Finance, Washington, DC.

Hon. CHARLES GRASSLEY,
Ranking Member, Senate Committee on Finance, Washington, DC.

DEAR CHAIRMAN BAUCUS AND RANKING MEMBER GRASSLEY: We write to request your support for extending the placed-in-service date for affordable housing developments in the Gulf Opportunity Zone.

As you know, GO Zone low income housing tax credits have been vital in our effort to restoring the number of affordable housing units along the Gulf Coast. Tough economic conditions, however, have prevented many of these projects from moving forward at the pace necessary to meet the placed-in-service deadline of January 1, 2011.

Together this bipartisan group of Gulf Coast senators has been working to extend this deadline for two years, to allow 77 low income housing projects in Louisiana, Mississippi, and Alabama to move forward and creating more than 13,000 construction-related jobs. This legislation would not allocate any new credits—it would merely provide additional time to take full advantage of the credits that were issued in the aftermath of the 2005 hurricanes.

Extending the place-in-service deadline is critical to improving the availability of affordable housing along the Gulf Coast. FEMA estimates that the 2005 storms destroyed or heavily damaged 82,000 rental

units, of which 54,000 served low-income populations. During his August 27 visit to New Orleans, HUD Secretary Shaun Donovan emphasized the need to revitalize this housing and highlighted the importance of a placed-in-service extension.

With an extension, developers will be able to attract investors to their proposed developments, have adequate time to overcome financial barriers triggered by the current economic crisis, and create more opportunities for residents displaced by the 2005 hurricanes to return home. Without an extension, more than 6,000 units are unlikely to be completed. The loss of more than $1 billion in economic activity—to the construction industry, suppliers, professionals, developers and others—would be a major blow to our states and the region.

Your initiative in helping the Gulf Coast to recover has been invaluable. It is our hope that the Senate Finance Committee will continue this leadership by including a placed-in-service extension in a tax extenders bill or other legislation this year. We appreciate your consideration of this request.

Sincerely,

MARY L. LANDRIEU,
United States Senator.
DAVID B. VITTER,
United States Senator.
ROGER F. WICKER,
United States Senator.
THAD COCHRAN,
United States Senator.

CHRISTMAS OVERSEAS

Mr. JOHANNS. Mr. President, I rise today to speak about those Nebraskans who will be overseas, in harm's way, this Christmas.

The job our young men and women in uniform do to protect our safety every day is magnificent. I have met with many of these young service men and women throughout my years of public service, and I know they represent the very best of America. During my time as Governor, it was truly an honor to command Nebraska's National Guard forces. They serve our country with immense valor, at the risk of their own lives. To them, we are all deeply grateful.

Christmas in wartime has always been a difficult time for troops and their families. The contrast is very great between Americans at home celebrating holiday cheer, and those on the front lines going about their regular day of danger. It is a contrast that we should be mindful of this season. I, and many of my fellow Nebraskans, will pause tomorrow to give thanks for the sacrifice of our troops, and pray that they get home safely. Their mission is just, and they are the most capable military in the world. Their presence is missed at this time more than any other but our pride, in them and their friends, is even greater than our sorrow at their absence.

So to those Nebraskans who are in harm's way this Christmas, and to all American forces, those who serve abroad to protect us here at home, I truly thank you. I hope it will be, in some small measure, a comfort on Christmas, to know that so many of your friends, family, and fellow Americans are safe and secure due to your service, and praying for you.

So today, as always, I wish you all a safe return, and a very Merry Christmas.

AMERICAN HIKERS DETAINED BY IRAN

Mrs. BOXER. Mr. President, I rise today to renew my appeal to the Government of Iran to immediately release the three American hikers—Shane Bauer, Sarah Shourd, and Josh Fattal—who were detained by Iranian authorities in July.

According to available information, the three young adults, who are all graduates of the University of California, Berkeley, inadvertently crossed an unmarked border into Iran while hiking in the Kurdistan region of northern Iraq.

Shane, Sarah and Josh have now been held in semi-isolation for over 140 days without charge, access to legal representation, or information on the current status of their case and future proceedings. This is deeply troubling and incredibly difficult for their families.

I recently spoke to the Iranian Ambassador to the United Nations on behalf of the hikers to reiterate my call for their release. I also asked that they be able to call their families and continue to be visited by Swiss consular officials.

During this holiday season, Americans from all walks of life are celebrating and renewing ties of family, friendship, and good will.

The extended absence of these young Americans from their families is particularly painful during such a festive time. As such, I call upon the Iranian authorities to immediately release Shane, Sarah and Josh so that their families can welcome them home.

20TH ANNIVERSARY OF THE U.S. ARMY SPECIAL OPERATIONS COMMAND

Mrs. HAGAN. Mr. Presdient, this month, the U.S. Army Special Operations Command, USASOC, celebrates 20 years of service to the Army and Nation. Having been at war for over one-third of that time, the men and women of USASOC continue to make great contributions worldwide with an operations tempo that has never been greater. USASOC remains committed to maintaining the world's finest ground special operations force. Its personnel take quiet professional pride in executing each mission with excellence, honor and valor.

I am proud that USASOC's headquarters are in North Carolina. USASOC Commander LTG John Mulholland has done a tremendous job in training, organizing, and equipping Army Special Forces units, capable of conducting global Special Operations missions. Army Special Forces units perform a variety of missions, including special reconnaissance, psychological, civil affairs, unconventional warfare, foreign internal defense, direct action, counterterrorism, and counterinsurgency.

The principle units that make up today's USASOC include the John F. Kennedy Special Warfare Center and School, U.S. Army Special Forces Command, 75th Ranger Regiment, 160th Special Operations Aviation Regiment, 3rd and 7th Special Forces Group, 4th Psychological Operations Group, 95th Civil Affairs Brigade and the 528th Sustainment Brigade.

Since its inception on December 1, 1989, the pace of USASOC's operations has been extraordinary; operating around the world, often behind-the-lines, in some of the most remote and hostile regions on the planet.

At more than 27,000 personnel, USASOC is only 5 percent of the U.S. Army. However, USASOC is the largest of the service components that make up U.S. Special Operations Command, USSOCOM, and provides approximately 70 percent of the special operations personnel in Central Command's theater and approximately 63 percent of America's total overseas military commitments. USASOC provides trained and ready Army special operations forces to support the Geographic Combatant Commanders, GCC, the Theater Special Operations Commands, TSOC, and Ambassadors throughout the world.

Today the operations tempo for Army Special Operations has never been greater, and is unlikely to decrease in the near future. USASOC currently has soldiers deployed on 103 Missions in 56 countries around the world, and is operating across the spectrum of operations.

Currently 222 of the Army's 228 Continental United States-based Special Forces operational detachments ''A''—ODA—are committed to supporting operations worldwide, either deployed or preparing for deployment. USASOC's ability to manage the high operations tempo is directly attributable to the caliber of its personnel. The range of skills within USASOC is embraced by a spectrum of Army unconventional units.

I would like to take this opportunity to highlight the great contributions of USASOC units currently in theater, particularly the 3rd and 7th Special Forces Groups in Afghanistan, the 95th Civil Affairs Brigade and the 4th Psychological Operations Group in Iraq and Afghanistan.

President Obama has stated in his agenda for defense, ''We must build up our special operations forces, civil affairs, information operations and other units and capabilities.'' The demand for special operations personnel, skills and training remain high. Faced with often desperate, unconventional enemies, our approaches for defeating them involve unwavering commitment combined with unique unconventional skills.

USASOC's expertise ensures the Army's special operations forces can execute the most lethal, highly complex and sensitive special operations,

wage unconventional warfare, conduct high risk helicopter operations, or prosecute civil military and influence operations.

For those in today's USASOC, the pace is fast, the challenges great, but morale and job satisfaction have seldom been greater. The command's motto, ''Without Equal'', captures the spirit of its personnel and their commitment to maintaining the world's finest ground special operations force.

The command's missions, however, have not come without a sizable cost in lives lost. In the 8 years since the start of Operation Enduring Freedom and Operation Iraqi Freedom, 244 of USASOC's personnel have made the ultimate sacrifice. Their names are cast in bronze on a wall in USASOC's Memorial Plaza at Fort Bragg, NC.

In closing, the performance and contributions of Army Special Operations Forces in the Central Command theater of operations and around the world have been nothing short of magnificent. Whether in Iraq and Afghanistan, the Philippines, Trans-Sahara Africa or wherever friends and partners find themselves challenged by the forces of disintegration, oppression and extremism, Army Special Operators from across the Command's formations are unquestionably among America's most relevant answer to the threats our Nation faces.

TRIBUTE TO JIM PITCOCK

Mr. PRYOR. Mr. President, today I rise to honor the career of Jim Pitcock, a valuable staff member and more importantly a valuable part of the Arkansas community. Jim has been faithful and selfless in his service to the State of Arkansas, and his contributions will be sorely missed by me, my staff, and the many Arkansans who have had the great fortune of working with this wonderful public servant.

Jim has served on my staff from the very first day of my tenure as a Member of the U.S. Senate. His knowledge of the State of Arkansas and government has guided some of my most important decisions and for that I will be forever grateful. His wise, steady council is always held in high esteem. Jim has served several roles on my staff. His most recent role as senior caseworker has benefitted the people of Arkansas by assisting individuals, businesses and organizations that are experiencing difficulties with Federal agencies. Jim's leadership has set an expectation of excellence in constituent services.

Prior his work in the U.S. Senate, Jim was already a legend in Arkansas. He served as news director at Channel 7 in Little Rock for more than 30 years. During this time, Jim established an unprecedented system of archiving news coverage for historical purposes. Jim has witnessed and archived news from Governors Faubus to Huckabee and Presidents Johnson to Clinton. He also provided critical coverage of major events in our State, such as the Damascus missile explosion, the Cuban refugee crisis and the great Arkansas Texas shootout football game of 1969. Following his departure from television, I was privileged to have Jim join my staff in the Arkansas attorney general's office in 2001 serving as the public information officer.

After so many years of faithful service to the people of Arkansas, Jim Pitcock has made a decision to retire from the Senate and his presence will be missed. He will continue to be a friend and adviser to me and I wish him all the best of luck as he begins this new chapter in his life.

Mr. President, I ask my colleagues to join me in celebrating the outstanding career and service of Jim Pitcock to the U.S. Senate and the State of Arkansas.

THREE SISTERS SCENIC BIKEWAY

Mr. WYDEN. Mr. President, too many of our communities are hemorrhaging jobs. That is especially true in rural areas, where industries have suffered and companies have had to let lots of people go. In Oregon, for example, changes in forest policy have hit rural communities particularly hard in recent years. I am constantly working to find solutions that will help those communities not just survive but thrive.

It is indisputable that many rural communities and small towns in Oregon contain some of the most beautiful scenery in America. When I look at their future, I see that the scenic beauty and solitude of beautiful places like Sisters, OR, which sits in the shadow of the Cascade Mountains, can be a big engine to drive the economy. Investments in amenities like parks and scenic bikeways can be valuable for communities because they aren't fleeting. They build infrastructure that lasts for generations. The beauty of nature, especially out in the countryside, attracts tourists—particularly bicyclists.

The League of American Bicyclists estimates that biking contributes $133 billion per year to our national economy, provides 1.1 million jobs, and generates $17.7 billion in Federal, State, and local taxes. They estimate that another $46.9 billion is spent on meals, transportation, lodging, gifts, and entertainment during bike trips and tours.

Savvy entrepreneurs in Oregon have come together to capitalize on the benefits that being a destination for bicyclists can bring to a community. Cycle Oregon—called ''the best bike ride in America''—attracted 2,200 people from 44 States and 11 foreign countries to its 2008 ride, which took hardy bicyclists through some of Oregon's most beautiful sites. But it is not just Oregon entrepreneurs who have figured this out. It is a nationwide phenomenon. Bloomington, Indiana's ''Hilly 100 ride,'' for example, draws 5,000 riders and over $1 million in lodging and food sales. And in Iowa, the week-long Register's Annual Great Bicycle Ride Across Iowa has become so popular that last year, they had to turn people away after more than 9,000 applied to cycle across the State.

It is often through outdoor events like bike races that you will find a CEO or company leader visiting Central Oregon on a vacation and having the brainstorm that it would make a great place to locate a new enterprise. Many high-tech companies, for example, are locating in places with unique, scenic beauty to set them apart from their competition in the big cities and to give them an added bonus to attract the talent they need to succeed.

I thought there must be a way to tap the full recreation potential of central Oregon and create a model that could be replicated in other parts of the country. So, 2 years ago I asked recreation leaders in Deschutes County to look at how recreation could add value to its recreation assets, creating the strongest possible engine for economic development.

Since then, the Sisters area has decided that much of its economy is tied to broadening the set of recreation experiences they can offer to visitors. They have developed many miles of new, spectacular mountain bike trails in the cascade foothills of Peterson Ridge as part of that effort. They see the development of a better cycling route to Bend as a vital addition to the menu of recreation opportunities in the area.

Community and business leaders from across Deschutes County have worked for the past two years on ideas like those developed in Sisters. They came together recently to formally launch an effort to create the Three Sisters Scenic Bikeway—a scenic bike route connecting each of the cities in that county, via cycling-friendly routes that take you past spectacular scenery.

Government officials are pitching in too. The Oregon Department of Transportation and the U.S. Forest Service are working together to implement the committee's vision of a paved bike path connecting Bend to Sunriver. The Forest Service is about halfway through their decision making process on a paved path from Sunriver out to Lava Lands Visitors Center, and ODOT is pursuing a variety of funding options to get the work done while crews are still working on the major reconstruction of Highway 97 nearby.

As we rebuild our country's infrastructure and seek new ways to create jobs, we would do well to follow the lesson of Deschutes County and The Three Sisters Scenic Bikeway. It was an idea that was first proposed by concerned members of the community. It answers local needs and they have a lot of confidence it will work. And as representatives of those communities, my colleagues and I have the ability to help water the seeds of those ideas when government can help out.

This kind of collaborative effort by local groups can be the kind of national model other struggling rural communities should consider as they work to rebuild their infrastructure and economies. Cities across America are realizing that investing in outdoor recreation options like bikeways is an affordable way to significantly improve their quality of life and, in the process, improve their competitiveness to attract new businesses and jobs.

It is time to remember that our infrastructure can't just be focused on ways to bring more cars onto our already stressed roads. Fixing highways and bridges is critically important, but for better health, relaxation, and the economic benefits they can bring, bikeways can also be part of the solution to fix our infrastructure and help revive struggling communities back home.

RESPONSE TO SLATE ARTICLE BY JACOB WEISBERG

Mr. GRASSLEY. Mr. President, I would like to address an article written by Jacob Weisberg for Slate magazine on December 12, 2009. This article is entitled, ''Are Republicans Serious About Fixing Health Care? No, and here's the proof.'' In this article, Mr. Weisberg unfairly and misleadingly takes aim at my position in the current health reform debate.

The author reports that I have criticized the Reid bill for creating an ''indefensible new entitlement'' and that it ''expands the deficit, threatens Medicare, and does too little to restrain health care inflation.''

I don't dispute Mr. Weisberg attributing these criticisms of the Reid bill to me. But, Mr. Weisberg can't dispute these serious shortcomings of the Reid bill that I and other Members on this side of the aisle have been discussing on the Senate floor for the past weeks. In fact, both the nonpartisan Congressional Budget Office, CBO, and the independent Department of Health and Human Services, HHS, Chief Actuary have confirmed that the Reid bill would not only establish this indefensible new entitlement, but also represent the largest expansion of government-run health care in history. But let me go through each criticism of the Reid bill that Mr. Weisberg has correctly reported.

The Reid bill will expand the deficit. Mr. Weisberg identifies the 10-year CBO score of the bill to be $848 billion, but that is comprised of 10 years of Medicare cuts and tax increases and only 6 years of outlays. So if he were intellectually honest, Mr. Weisberg would have used the cost of 10 years of outlays, which budget analysts assume to be closer to $2.5 trillion. But the use of budget gimmickry does not end there when supporters of the Reid bill claim that it is deficit neutral.

One of the biggest problems in Medicare that we have to address in Congress every year is the Medicare physician payment formula or the sustainable growth rate, SGR. Comprehensively fixing the SGR costs well over $200 billion. Only providing a two-month temporary patch for the problem will result in a more than 20-percent drop in Medicare physician payments beginning in March of next year. To me and many other Members of Congress, health care reform includes fixing the SGR so that physicians can be assured of not facing drastic Medicare payment cuts year after year and so that beneficiaries can be assured of having access to physicians. But there is no SGR fix in the Reid bill. Do the math and you will see why. A comprehensive SGR fix of over $200 billion would wipe away the $132 billion in budgetary savings that the Reid bill is currently reported to have.

In fact, the Congressional Budget Office noted that the estimated cost of repealing the SGR and replacing it with a permanent freeze would be about $207 billion once physician-administered drugs were removed from the calculation of the SGR formula. That was done in the physician rule that CMS finalized on October 30, 2009. However, according to CBO, the removal of those drugs from the SGR formula will increase Medicare's spending for physician services, as well as federal spending under TRICARE by $78 billion over the 2010–2019 period. The net impact on the budget would be close to $300 billion over 10 years, none of which is reflected in the Reid bill.

And let's take a look at what is in the bill. I certainly hope Mr. Weisberg did when he wrote his article. A good portion of the budgetary savings in the Reid bill is from the CLASS Act. This program apparently produces budgetary savings during the first 10 years, but only because no benefits pay out for the first 5 years. This makes the revenues outpace the program's outlays. But CBO has stated that outlays will outpace revenues after the first 10 years. This means that the CLASS act will result in deficit spending over the long run. In fact, the chairman of the Budget Committee, a Democrat, called the CLASS Act a massive government ponzi scheme. So this casts serious doubt on those who tout that the Reid bill is deficit neutral or saves money.

The Reid bill also threatens Medicare. I don't think Mr. Weisberg can argue that close to $½ trillion in Medicare cuts won't jeopardize beneficiary access to care. Even the White House's own Chief Actuary confirmed that the Reid bill jeopardizes beneficiary access to care. He raised concerns in particular about two categories of these Medicare cuts. First, the Chief Actuary warned about the permanent productivity adjustments to annual payment updates. Under the Reid bill, these productivity adjustments automatically cut annual Medicare payment updates based on productivity measures of the entire economy. Referring to these cuts, he wrote that ''the estimated savings . . . may be unrealistic.'' In his analysis of these provisions, Medicare's own Chief Actuary stated, ''it is doubtful that many could improve their own productivity to the degree achieved by the economy at large,'' and that they ''are not aware of any empirical evidence demonstrating the medical community's ability to achieve productivity improvements equal to those of the overall economy.'' In fact, the Chief Actuary's conclusion is that it would be difficult for providers to even remain profitable over time as Medicare payments fail to keep up with the costs of caring for beneficiaries. Ultimately, the Chief Actuary's conclusion is that providers who rely on Medicare might end their participation in Medicare, ''possibly jeopardizing access to care for beneficiaries.''

The Chief Actuary even has numbers to back up these statements. His office ran simulations of the effects of these drastic and permanent cuts. And based on these simulations, the Chief Actuary found that during the first 10 years, '' 20 percent of Medicare Part A providers would become unprofitable as a result of the productivity adjustments.'' That's one out of five hospitals, nursing homes and hospices. It is for this reason that the Chief Actuary found, ''reductions in payment updates based on economy-wide productivity gains, are unlikely to be sustainable on a permanent annual basis.''

The second category of Medicare cuts that the Chief Actuary raised concerns about would be imposed by the new Independent Payment Advisory Board created in the Reid bill. This is the new body of unelected officials that would have broad authority to make even further cuts in Medicare. These additional cuts in Medicare would be driven by arbitrary cost growth targets. This board would have the authority to impose further automatic Medicare cuts even absent any Congressional action. The Chief Actuary gave a reality check to this proposal. He showed how tall an order the Reid bill's target for health care cost growth actually is. According to the HHS Chief Actuary, limiting cost growth to a level below medical price inflation ''would represent an exceedingly difficult challenge.'' He pointed out in this analysis that Medicare cost growth was below this target in only 4 of the last 25 years.

The HHS Chief Actuary also pointed out that the backroom deals that carved out certain types of providers would complicate this board's efforts to cut Medicare cost growth. According to the analysis, ''[t]he necessary savings would have to be achieved primarily through changes affecting physician services, Medicare Advantage payments and Part D.'' So providers like hospitals will escape from this board's cuts at the expenses of doctors, seniors enrolled in Medicare Advantage plans and seniors who will pay higher premiums for their Medicare drug coverage. If we surveyed the nation's seniors, I doubt very much they would say that raising their premiums for Medicare drug coverage or limiting preventive benefits in Medicare Advantage is

what they would call health care reform.

And this board is guaranteed to have to impose these additional Medicare cuts. According to the Chief Actuary's analysis of the Medicare cuts in the Reid bill, even though the Medicare cuts already in the Reid bill are ''quite substantial'' they ''would not be sufficient to meet the growth rate targets.'' So this means the board will be required by law to impose even more Medicare cuts in addition to the massive Medicare cuts already in the Reid bill. And this will make it even harder for our seniors to find providers who will treat them.

Not only does the Reid bill ''[do] too little to restrain health care inflation,'' it actually increases health care inflation. According to the HHS Chief Actuary, the Reid bill would bend the health care cost curve the wrong way. Over the next 10 years, the Administration's own Actuary stated that ''total national health expenditures under this bill would increase by an estimated total of $234 billion.'' As a result of that increase, health care would then be projected to grow from 17 percent to 20.9 percent of the gross domestic product in 2019. So using the Reid bill to curb health care cost growth would be like putting out a fire with gasoline.

The Chief Actuary also found that a good portion of the increase in national health expenditures would be caused by the so-called fees in this bill on medical devices, on prescription drugs and on health insurance premiums. He stated, that these ''fees would be passed through to health consumers in the form of higher drug and device prices and higher insurance premiums.'' This would result in, ''an associated increase of approximately 11 billion dollars per year in overall national health expenditures.''

Higher premiums from the Reid bill are no trifling matter. In fact, one estimate concluded that the Senate bill would increase premiums by about 50 percent on average for individuals without employer-based coverage, and more than 20 percent for small businesses. And even the Congressional Budget Office's more conservative analysis predicts that premiums will increase 10 to 13 percent for 14 million Americans as a result of the Reid bill.

But that is where my agreement with Mr. Weisberg ends. He then proceeds to lob several troubling and incorrect claims at me in his attempt to portray me as ''incoherent.''

Mr. Weisberg distorts what I said in response to a constituent's question at a town hall meeting in Iowa last August when he accuses me of playing the ''age card.'' This is what Mr. Weisberg claims that I said: ''There is some fear, because in the House bill, there is counseling at the end of life. And from that standpoint, you have every right to fear ''

But this is what was actually said at that meeting:

Question from Iowan: ''Thank you, Senator GRASSLEY, for coming. The Democrats tell us all the time that it's a right of every American to have health care. Yet it seems this Obama plan will systematically deny those rights to certain groups like the elderly. And I, as a person in my 60's I'm getting very concerned about the health care that I might be able to have if this bill passes. . . .

Iowan Restating the Question: ''Ok . . . [the question] involves limited coverage because of a person's background and age, race, physical condition such as that. Basically it was on the lady's age.''

Senator GRASSLEY: ''''[V]ery recently in things that we've been talking about in our negotiations has been just exactly what you brought up. I won't name people in Congress or people in Washington, but there's some people that think that it's a terrible problem that Grandma's laying in the hospital bed with tubes in her, and think that there ought to be some government policy that enters into that. I'm just on the opposite. I think that's a family and a religious and or ethical thing that needs to be dealt with and there's some fear because in the House bill there's counseling for end of life. And from that standpoint, you have every right to fear. You shouldn't have counseling at the end of life. You ought to have counseling 20 years before you're going to die. You ought to plan these things out. And, you know, I don't have any problem with things like living wills, but they ought to be done within the family. We should not have a government program that determines you're going to pull the plug on Grandma. Thank you all very much for coming.''

Mr. Weisberg is not the first who has taken what I said during this exchange and twisted it to attempt to portray me as a fearmongerer. And unfortunately he probably won't be the last. What's even more unfortunate is that Mr. Weisberg and those like him fail to see the legitimate cause for concern when you have a combination of the expanded role of government in health care generally plus funding for advance care planning consultations alongside cost containment proposals. Some commentators took my comments and twisted them and even quoted me as saying the House health care reform bill would establish death panels, and this was blatantly incorrect. As you can see from what was said at the town meeting, I said no such thing. As I said then, putting end-of-life consultations alongside cost containment and government-run health care causes legitimate concern.

And to address another point that Mr. Weisberg makes, a provision that provided for the option of advance care planning was in a bill I supported. In 2003, Congress enacted a narrow provision to offer coverage for hospice consultation services for Medicare beneficiaries who have been diagnosed as terminally ill. Under this provision, this consultation would be covered only when provided by a health care provider with expertise in end-of-life issues such as a hospice physician. The covered services include a pain and care management evaluation, counseling about hospice care and other optional services such as advice on advance care planning. This provision was designed to assure that advice on advance care planning in this context is only offered by qualified professionals and done in an appropriate manner.

In his article, Mr. Weisberg misses the point. The core of this issue is when it comes to advance care planning, what role, if any, the government should play. When the government attempts to influence these sensitive decisions, it raises the possibility that the government's interests may be different and potentially incompatible with the patient's interests.

When provisions to increase the government role in advance care planning are included alongside cost containment provisions, it raises the concern that the purpose for the proposal is to save money rather than to ensure appropriate care at the end of life. And that is in fact what has already happened. This idea of encouraging living wills was originally proposed by the Carter administration in 1977 as an option to produce both federal and system-wide savings in health expenditures. More recently, the Urban Institute published a paper in July 2009 that identified proposals like advance care planning consultations as a way to help cut costs to offset spending for health care reform. Compassion and Choices, formerly known as the Hemlock Society, has also advocated for the inclusion of advance care planning consultations in health care reform legislation. Minimizing such an important issue or trying to turn it into an amusing story as Mr. Weisberg has done debases the important discussion that needs to occur on this sensitive and personal issue.

Mr. Weisberg then criticizes Medicare Part D, which I championed, in his attempt to question my opposition to the Reid bill. In 2003, Medicare was 37 years old and functioning a lot like it had on day one. It emphasized treatment, not prevention, not disease management. It was a horse-and-buggy version of health care compared with the kind of coverage that other Americans received through their employers. Then, as now, employer-based health plans often covered prescription drugs. Employers realized it was cost-effective to pay for a relatively cheap cholesterol-lowering drug if it meant avoiding a triple bypass down the road. But Medicare beneficiaries were stuck in 1965 when prescription drugs were less vital than they are today. And because Medicare didn't cover prescription drugs, they often were forced to forgo medications, pay out of pocket, try to find an affordable supplemental policy, or take a bus to Canada to get their medicines.

Republicans and Democrats alike agreed Medicare beneficiaries deserved 21st century health care coverage, including prescription drug coverage. However, there were still differences on how much the government could afford to spend on providing this new benefit. In May of 2002, Republicans put forth a $350 billion proposal to provide comprehensive drug coverage to America's

seniors. The Democrats thought this was insufficient and put forth their own proposal totaling close to $600 billion. At the end of the day, the fiscal year 2004 budget resolution included a $400 billion reserve fund for the creation of the drug benefit.

While there was bipartisan support for the drug benefit, Democrats nevertheless continued to argue that Congress should be spending more. For example, former Senator Bob Graham of Florida said, ''Some would argue that this budget includes $400 billion for a Medicare prescription drug benefit. They know full well that $400 billion is inadequate to provide an affordable, comprehensive, universal prescription drug benefit for America's seniors.'' The late Senator Edward Kennedy stated, ''This budget has far less funding than is necessary to provide a meaningful prescription drug benefit for all seniors.'' And Senator TOM HARKIN stated, ''We need a budget that is balanced, that takes the approach that we need to reduce the debt to take care of the baby boomers and provide for a decent drug benefit for the elderly. Clearly, the $400 billion proposed for prescription drugs and other medical reforms is far too low for that purpose.'' Congress eventually passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Medicare Modernization Act, Public Law 108–173, on a bipartisan basis and created the drug benefit that year. In contrast to the process we are witnessing this year on health care reform, the final conference report from the MMA passed the Senate with the support of 11 Democrats and one Independent. And yet I can't help but think that if the Democrats had their way on the total amount of spending almost twice as much on the drug benefit, then far more than this responsible bipartisan amount would have been spent. And certainly despite the criticism that the new drug benefit is often subjected to from the left, not even the most staunch opponents of Part D have proposed repealing the drug benefit for our Nation's seniors.

Now in addition to the bipartisan support for the creation of the benefit, the vast majority of Medicare beneficiaries also like their prescription drug coverage. Survey after survey consistently shows that the benefit enjoys broad support from beneficiaries. According to Medicare Today, 88 percent of Part D enrollees are satisfied with the program. And the program has come in $239 billion under budget. When was the last time you could say that about a government program? Furthermore, the fact that Medicare beneficiaries are able to obtain their prescription drugs and afford them means fewer hospitalization and emergency room visits when diseases like diabetes, heart disease, and pulmonary disease are properly managed with modern prescription drug therapy.

How is adding prescription drug coverage to Medicare different from the current health care debate?

Medicare was already 37 years old when Congress added prescription drug coverage. The Medicare structure was well-established. Congress worked in a bipartisan way to set aside the funding to improve the program and do so without disrupting the parts that already worked for tens of millions of people. Don't forget that 76 senators voted in favor of the Senate bill for the drug benefit including 35 Democrats and one Independent. We certainly can't say the same for the current health care reform effort in the Senate.

One key difference is the fact that the prescription drug benefit is purely voluntary, unlike the mandatory system of insurance coverage for everyone proposed in the current health reform bills that is backed up with the imposition of stiff fines on those who don't comply. Under the Medicare benefit, seniors who don't need prescription coverage or who don't see it is a good value for the premium don't have to get it. The drug benefit is provided and administered by private entities, which compete for beneficiaries' business. And this competition between plans has kept the overall cost of the program down.

And let's not forget what we were trying to do back in 2003 compared to what is happening in Congress now. Back in 2003, we were operating on a budget surplus, and there was bipartisan support to address a need by creating the Medicare drug benefit. The Medicare Modernization Act met this need.

The situation is totally different in 2009. We are now operating on record budget deficits. So the goal of any health reform legislation should be to bend the cost curve. But as the HHS Chief Actuary has established, the Reid bill fails to do so.

In response to those who say the drug benefit only added to Medicare's expenses, the Medicare Modernization Act also expanded coverage of preventive services to emphasize less expensive prevention over more costly treatment. The law created a specific process for overall program review if general revenue spending exceeded a specified threshold. And it took the politically bold step of introducing the concept of income testing into Medicare, with higher income people paying larger Part B premiums beginning in 2007.

Also, Mr. Weisberg makes several additional points about Medicare Part D that are simply wrong. For example, he states that the government prohibition from negotiating drug prices with manufacturers only raises the Medicare Part D pricetag. CBO, the Chief Actuary, and noted economists have all found the exact opposite to be true. The Chief Actuary stated that ''direct price negotiation by the Secretary would be unlikely to achieve prescription drug discounts of greater magnitude that those negotiated by Medicare prescription drug plans responding to competitive forces.'' And CBO has concluded that ''the Secretary would be unable to negotiate prices across the broad range of covered Part D drugs that are more favorable than those obtained by PDPs under current law.'' Even the Washington Post editorial page has stated that ''governments are notoriously bad at setting prices, and the U.S. government is notoriously bad at setting prices in the medical realm.'' What's more, the idea of private negotiation on drug costs originated with none other than President Bill Clinton. Under President Clinton's plan, he proposed that ''[p]rices would be determined through negotiations between the private benefit administrators and drug manufacturers.'' President Clinton's plan was introduced on April 4, 2000 as S. 2342 by the late Senator Moynihan by request.

Mr. Weisberg also uses incorrect data to compare the 10-year cost of Medicare Part D and the Reid bill. Medicare Part D costs do not ''dwarf'' the Reid bill costs as Mr. Weisberg claims because the true 10-year cost of the Reid bill, as acknowledged by supporters of the bill on the Senate floor, is $2.5 trillion and not the $848 billion figure that he uses.

So attempting to portray me as being ''incoherent'' for opposing the Reid bill even though I championed the Medicare Modernization Act is absolute nonsense.

The Medicare Modernization Act did not impose a $2½ trillion tab on Americans. It did not kill jobs with taxes and fees that go into effect 4 years before the reforms kick in. It did not kill jobs and lower wages with an employer mandate. It did not impose a half a trillion in higher taxes on premiums, on medical devices, on prescription drugs, and more. It did not jeopardize access to care with massive Medicare cuts. It did not impose higher health care costs. And it did not raise health premiums for millions of Americans like the Reid bill will do.

Mr. President, I ask unanimous consent to have printed in the RECORD the December 12, 2009, Slate article by Jacob Weisberg.

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

[From the Slate, Dec. 12, 2009]

ARE REPUBLICANS SERIOUS ABOUT FIXING HEALTH CARE?

(By Jacob Weisberg)

Iowa Sen. Charles Grassley, the top Republican on the Senate finance committee, has emerged as one of the harshest critics of what the right likes to call ''Obamacare.'' After spending the first half of the year working with Democrats to find a bipartisan compromise, Grassley has spent the second half trying to prevent one. He attacks the bill now being debated on the Senate floor as an indefensible new entitlement. He complains that it expands the deficit, threatens Medicare, and does too little to restrain health care inflation. At a town hall meeting in August, the 76-year-old Iowan played the age card. ''There is some fear, because in the House bill, there is counseling for end of life. And from that standpoint, you have every right to fear,'' he told an audience in John Wayne's hometown of Winterset.

One might credit the sincerity, if not the validity, of such concerns were it not for an inconvenient bit of history. Not so long ago, when Republicans controlled the Senate, Grassley was the chief architect of a bill that actually did most of the bad things he now accuses the Democrats of wanting. As chairman of the finance committee, Grassley championed the legislation that created a prescription-drug benefit under Medicare. The contrast between what he and his colleagues said during that debate in 2003 and what they're saying in 2009 exposes the disingenuousness of their current complaints.

Today the Medicare prescription-drug debate is remembered mainly for the political shenanigans Republicans used to get their bill through. Bush officials lied about the numbers and threatened to fire Medicare's chief actuary if he shared honest cost estimates with Congress. House Republicans cut off C–SPAN and kept the roll call open for three hours—as opposed to the requisite 15 minutes—while cajoling the last few votes they needed for passage. Former Majority Leader Tom DeLay was admonished by the House ethics committee for winning the eleventh-hour support of Nick Smith, a Michigan Republican, by threatening to vaporize Smith's son in an upcoming election. It's worth remembering these moments when Republicans criticize Democratic Majority Leader Harry Reid for his hardball tactics.

The real significance of that episode, however, is not their bad manners, but what Republicans ordered the last time health care was on the menu. Their bill, which stands as the biggest expansion of government's role in health care since the creation of Medicare and Medicaid in 1965, created an entitlement for seniors to purchase low-cost drug coverage. Grassleycare, also known as Medicare Part D, employs a complicated structure of deductibles, co-pays, and coverage limits. Thanks to something called the ''doughnut hole,'' drug coverage disappears when out-of-pocket costs reach $2,400, returning only when they hit $3,850. Simply stated, the bill cost a fortune, wasn't paid for, is complicated as hell, and doesn't do all that much—though it does include coverage for end-of life-counseling, or what Grassley now calls ''pulling the plug on grandma.''

In their 2009 report to Congress, the Medicare trustees estimate the 10-year cost of Medicare D as high as $1.2 trillion. That figure—just for prescription-drug coverage that people over 65 still have to pay a lot of money for—dwarfs the $848 billion cost of the Senate bill. The Medicare D price tag continues to escalate because the bill explicitly bars the government from using its market power to negotiate drug prices with manufacturers or establishing a formulary with approved medications.

And unlike the Democratic bills, which won't add to the deficit, the bill George W. Bush signed was financed entirely through deficit spending. While Grassley and his colleagues accuse Democrats of harming Medicare through cost cuts, it is their bill that has done the most to hasten Medicare's coming insolvency. Between now and 2083, Medicare D's unfunded obligations amount to $7.2 trillion according to the trustees. Numbers like these prompted former Comptroller General David M. Walker to call it ''. . . probably the most fiscally irresponsible piece of legislation since the 1960s.''

Grassley is not alone in his incoherence. Of 28 current Republican senators who were in the Senate back in 2003, 24 voted for the Medicare prescription-drug benefit. Of 122 Republicans still in the House, 108 voted for it. There is not space here to fully review this hall of shame, which includes Lamar Alexander of Tennessee, Mike Enzi of Wyoming, Kay Bailey Hutchison of Texas, and Orrin Hatch of Utah, among many others. Here is Kansas Republican Sam Brownback in 2003: ''The passage of the Medicare bill fulfills a promise that we made to my parents'' generation and keeps a promise to my kids' generation.'' Here is Brownback in 2009: ''This hugely expensive bill will not lower costs and will not cover all uninsured.''Here is Jon Kyl of Arizona: ''As a member of the bipartisan team that crafted the Part D legislation, I am committed to ensuring its successful implementation. I will fight attempts to erode Part D coverage.'' Kyl now calls Harry Reid's legislation: ''a trillion-dollar bill that raises premiums, increases taxes, and raids Medicare.''

The explanation for this vast collective flip-flop is—have you guessed?—politics. Medicare recipients are much more likely to vote Republican than the uninsured who would benefit most from the Democratic bills. In 2003, Karl Rove was pushing the traditional liberal tactic of solidifying senior support with a big new federal benefit, don't worry about how to pay for it. Today, GOP incumbents are more worried about fending off primary challenges from the right, like the one Grassley may face in 2010, or being called traitors by Rush Limbaugh. But what happened the last time they were in charge gives the lie to their claim that they object to expanding government. They only object to expanding government in a way that doesn't help them get re-elected.

JUDICIAL NOMINATIONS

Mr. SESSIONS. Mr. President, as the first session of the 111th Congress comes to a close, I believe it is important to correct the record regarding the Senate's processing of judicial nominations. Despite the statements of some of my Democrat colleagues to the contrary, the fact is we have been moving nominees at a fair and reasonable pace. The Judiciary Committee has held hearings for every one of President Obama's circuit court nominees and all of his district court nominees that are ripe for a hearing. At this point in President Bush's administration, 30 nominees had yet to even receive a hearing. As the numbers bear out, President Obama's nominees have fared far better.

Allegations that Republicans are delaying confirmation votes ring hollow. Democrats control 60 votes in the Senate and set the agenda for the floor. If my Democrat colleagues are dissatisfied with the pace of nominations, I suggest that they look to their leader. On Tuesday, the majority and minority leaders announced that we will vote on Judge Beverly Martin's nomination to the Eleventh Circuit Court of Appeals on January 20. As I have said many times before, Republicans have been ready and willing to proceed to a roll call vote on this nomination for months. I do not know the majority leader's reasons for not calling up the nomination sooner. Indeed, I do not claim to know the majority leader's reasons for not calling up a number of nominations. Perhaps in some cases it is because my Democrat colleagues do not want to have a debate on the merits and expose to the American people just what types of individuals the President has nominated to serve on the Federal bench and in crucial positions at the Justice Department. Or perhaps, and I sincerely hope that this is not the case, Democrats have been purposefully delaying nominees in order to create the illusion that Republicans are obstructing.

It bears mention that the average time from nomination to confirmation for nominees to the Circuit Courts of Appeal under President Bush was 350 days. And that was just the average. The majority of President Bush's first nominees to the circuit courts waited years for confirmation votes and some of them never even received a hearing, despite being highly qualified, outstanding nominees.

It has been suggested by some that roll call votes should not be required for judicial nominees, as if this is something that has never been done before. In fact, rollcall votes and time agreements for noncontroversial judicial nominees became routine in 2001, at the insistence of Chairman LEAHY and former Majority Leader Daschle. During the Bush administration, of the 327 article III judges confirmed by the Senate, 59 percent were by rollcall vote. The vast majority of those—86 percent—were consensus, noncontroversial nominees who were unanimously approved. In short, in 2001 the Democrats adopted a new standard: a presumption that all lifetime appointments receive a formal recorded vote. There is no reason that presumption should change now simply because a Democrat is in the White House. Notwithstanding that new standard, I would be remiss if I did not point out that four of the last five judicial nominees that we have confirmed have been confirmed without rollcall votes.

Over the past month, the Senate has been consumed in a debate on a healthcare bill that would create an enormous entitlement program, the likes of which we have never before seen in this country. Tomorrow morning, the Senate will proceed to a vote on this monumental piece of legislation. It can hardly be said that it has been ''business as usual'' in the Senate. While Senators have been focused on health care, as they should be, Democrats have seen fit to slip through lifetime appointments to the Federal judiciary. Just last week, Chairman LEAHY scheduled a hearing for two Fourth Circuit nominees in the middle of this historic debate. Both Judge Diaz and Judge Wynn were nominated by the President on November 4, 2009. This is a quick turnaround for any circuit court nominee, and it is especially quick for a nominee to the Fourth Circuit. During the 110th Congress, despite the 33 percent vacancy rate and overwhelming need for judges, four nominees to that court were needlessly delayed: Mr. Steve Matthews, Judge Robert Conrad, Judge Glen Conrad, and Mr. Rod Rosenstein.

President Bush nominated Steve Matthews on September 6, 2007, to the same seat on the Fourth Circuit for

which Judge Diaz has been nominated. Mr. Matthews had the support of his home state senators and received an ABA rating of Substantial Majority Qualified. He was a graduate of Yale Law School and had a distinguished career in private practice in South Carolina. Despite his exemplary qualifications, Mr. Matthews waited 485 days for a hearing that never came. His nomination was returned on January 2, 2009.

Another of President Bush's nominees, Chief Judge Robert Conrad, was nominated to the seat for which Judge Wynn is now nominated. He had the support of his home state senators and received an ABA rating of Unanimous Well-Qualified. Further, Judge Conrad met Chairman LEAHY's standard for a noncontroversial, consensus nominee because he previously received bipartisan approval by the Judiciary Committee and the Senate when he was confirmed by voice vote to be a U.S. Attorney in North Carolina and later to the District Court for the Western District of North Carolina. On October 2, 2007, Senators BURR and Dole sent a letter to Senator LEAHY requesting a hearing for Judge Conrad, and they spoke on his behalf at a press conference on June 19 that featured a number of Judge Conrad's friends and colleagues who had traveled all the way from North Carolina to show their support for his nomination. That request was ignored. On April 15, 2008, Senators BURR, Dole, GRAHAM, and DEMINT sent a letter to Senator LEAHY asking for a hearing for Judge Conrad and Mr. Matthews. Despite overwhelming support and exceptional qualifications, Judge Conrad, who was nominated on July 17, 2007, waited 585 days for a hearing that never came. His nomination was returned on January 2, 2009.

Judge Glen Conrad also had the support of his home State Senators—including Democrat Senator JIM WEBB—and received an ABA rating of Majority Well-Qualified. He too met Chairman LEAHY's standard because he was confirmed to the District Court for the Western District of Virginia by a unanimous, bipartisan vote of 89–0 in September 2003. Despite his extensive qualifications, Judge Conrad, who was nominated on May 8, 2008, waited 240 days for a hearing that never came. His nomination was returned on January 2, 2009.

Earlier this year, we confirmed Judge Andre Davis to the ''Maryland'' seat on the Fourth Circuit. A brief history of that seat bears mention. President Bush nominated Rod Rosenstein to fill this vacancy on November 15, 2007. The ABA rated Mr. Rosenstein Unanimous Well Qualified, and in 2005, he was confirmed by a noncontroversial voice vote to be the United States attorney for the District of Maryland. Prior to his service as U.S. attorney, he held several positions in the Department of Justice under both Republican and Democrat administrations. Despite his stellar qualifications, Mr. Rosenstein waited 414 days for a hearing that never came. His nomination was returned on January 2, 2009. The reason given by his home state senators for why his nomination was blocked was that he was ''doing a good job as the U.S. attorney in Maryland and that's where we need him.'' I think that a 2008 Washington Post editorial painted a more accurate picture: ''blocking Mr. Rosenstein's confirmation hearing . . . would elevate ideology and ego above substance and merit, and it would unfairly penalize a man who people on both sides of this question agree is well qualified for a judgeship.''

It was only when President Obama nominated Judge Davis to this seat that we heard Democrats' outrage over the fact that the seat had been vacant for 9 years. Ironically, however, Judge Davis fared far better than President Bush's nominees to the Fourth Circuit. He received a hearing a mere 27 days after his nomination, a committee vote just 36 days later, and, finally, confirmation earlier this year. There are other examples of Democrats' unreasonable delay and obstruction but I will not detail them here. Suffice it to say that Democrats are now capitalizing on their eight years of obstruction by seeking to pack the Fourth Circuit Court of Appeals.

It has been said that the overall federal judiciary vacancy rate is higher than it was when President Bush was in office and therefore we need to confirm more judicial nominees. But, as the story of the Fourth Circuit obstructionism illustrates, that is a specious argument. During the Bush administration, Democrats held up qualified judicial nominees—for years in some cases—denying them an up-or-down vote even though the majority of Senators were ready and willing to confirm them. And, in any event, the need to fill vacancies should not undercut the responsibility of the Senate to properly vet these lifetime appointments. As the minority party, we have a duty and a right to ask the important questions that may not be asked by those who agree with the President's point of view.

In that regard, we can only process nominees that we have before us. President Obama has nominated only 12 circuit court nominees, all of whom have had hearings; there are currently 20 circuit court vacancies. Similarly, President Obama has nominated only 19 district court nominees, all but 6 of whom have had hearings; there are currently 78 district court vacancies. These numbers stand in stark contrast to the 65 nominees President Bush put forth during his first year in office.

I have said many times that I do not wish to engage in a back and forth on this issue but I will not stand by while some in this body attempt to rewrite history in their favor. Facts are stubborn things and despite the statements by some to the contrary, they cannot alter the state of the facts and the evidence.

NOMINATION HOLDS

Mr. GRASSLEY. Mr. President, I, Senator CHUCK GRASSLEY, intend to object to proceeding to the nominations of Lael Brainard to be Under Secretary of the Treasury, Michael Mundaca to be an Assistant Secretary of the Treasury, Mary Miller to be an Assistant Secretary of the Treasury, and Charles Collyns to be an Assistant Secretary of the Treasury.

My support for the final confirmation of these nominees will rest on the response to concerns I have with respect to Internal Revenue Code section 6707A. A letter outlining these concerns was sent to both Secretary Geithner and Commissioner Shulman on December 22, 2009, and I ask unanimous consent that my letter be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, December 22, 2009.

Hon. TIMOTHY F. GEITHNER, Secretary,
U.S. Department of Treasury, Pennsylvania Avenue, NW, Washington, DC.

Hon. DOUGLAS SHULMAN, Commissioner,
Internal Revenue Service, Constitution Avenue, NW, Washington, DC.

DEAR SECRETARY GEITHNER AND COMMISSIONER SHULMAN: I am writing to express my disappointment with actions taken by both the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) with respect to Internal Revenue Code (IRC) sections 382 and 6707A.

On November 18, 2008, I wrote to then Secretary Paulson regarding Notice 2008–83, which changed the rules governing the deductibility of losses under IRC section 382(h). The facts and circumstances surrounding the issuance of that Notice raised concerns about the independence and merits of the decision.

Treasury's most recent guidance on this same issue, Notice 2010–2, raises the same concerns. Accordingly, I request that you provide the Finance Committee with all records relating to communications pertaining to the issuance of Notice 2010–2 between Treasury officials, Citigroup, Inc., or other Troubled Asset Relief Program (TARP) participants and/or their representatives. Please also provide a timeline for, and documentation of, Treasury and IRS discussions and approvals for Notice 2010–2 as well as any discussions about the impact this notice would have on the tax gap. In cooperating with the Committee's review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committee.

I understand that Treasury believes that Notice 2010–2 was justified, in part, because it would help protect the government's interest in Citigroup, Inc. Yet, it appears that Notice 2010–2 may generate billions of dollars of tax savings for Citigroup, Inc. Please provide documentation of any discussions of impact on the tax gap resulting from Notice 2010–2.

The quick and immediate relief provided to Citigroup, Inc. stands in stark contrast to Treasury and IRS's position on providing relief to small business owners who have been assessed penalties under IRC section 6707A. As you know, Chairman Baucus and I have been working throughout this year with our counterparts in the House of Representatives

to provide relief that can only be accomplished through legislation and we expect that legislation to be enacted very soon. As a supporter of closing the tax gap, I very much appreciate the IRS's difficult position with respect to protecting the government's interest in collecting taxes and penalties due and appreciate the IRS's moratorium on collection enforcement activity.

However, according to Commissioner Shulman's letter to Chairman Baucus dated July 17, 2009, 72% of section 6707A penalty assessments were imposed on small businesses and small business owners. The penalty is clearly being assessed disproportionately on small businesses compared to larger taxpayers. In addition, the placement of liens on these taxpayers, even though they are not yet being enforced, is a significant threat to their operations. Many small businesses use business assets or mortgage personal residences to secure lines of credit for the businesses. Imposing liens has significant negative implications for a small business that has limited access to capital.

I discussed this issue with Commissioner Shulman last month. I understand my staff has also discussed this again with IRS staff since then but that the IRS insists that placement of liens is necessary to protect the government's interest. I am troubled and frustrated by this position. It is inconsistent with the administration's publicly expressed concern about the difficulties facing small businesses in accessing capital.

I am also concerned that there is a disconnect between what Treasury and IRS staff in Washington, DC think is happening and what is actually happening in the field. For example, when my staff discussed with your staff the issue of IRC section 6723 being used to justify the placement of liens, your staff denied this was happening. Yet, after providing the name of a specific taxpayer who was subject to such a lien, my staff was informed that there may be a systemic issue in either the Automated Lien System or the Integrated Collection System.

My staff has also informed me that some of the assessments and liens are the result of Treasury and IRS regulations and procedures, such as the decision to disallow disclosures on amended returns and the decision to pursue 6707A assessments while other examination issues remain unresolved. Until Treasury regulations and IRS procedures can be revised to clear up the confusion, I request that IRS remove all liens on small businesses resulting from 6707A assessments unless there is a known risk that the taxpayer will evade payment of the penalties. Since the pending legislation will significantly reduce the 6707A assessment amount, liens may no longer be necessary.

As a supporter of closing the tax gap, I very much appreciate the IRS's difficult position with respect to protecting the government's interest in collecting taxes and penalties. If the IRS believes that removal of a lien would result in the IRS being unable to collect the penalty amount as revised by the pending legislation, please provide a description of these situations. However, I ask you to consider using your discretion as was done for big financial corporate TARP participants who will benefit from Notice 2010–2.

I appreciate your prompt attention to this matter. Please contact my staff with any questions or concerns.

Sincerely,

CHUCK GRASSLEY,
Ranking Member.

Mr. GRASSLEY. Mr. President, I want to explain my position on the nomination of Lael Brainard to be Under Secretary of the Treasury for International Affairs. I voted against Dr. Brainard in the Finance Committee, and I want the record to show that I am opposed to her nomination in the full Senate.

Dr. Brainard was nominated on March 23 of this year, and the Finance Committee's routine vetting began shortly after that. For the past 9 months Dr. Brainard has given evasive, incomplete, and inconsistent answers to questions asked by the Committee minority and majority. I have said this before, but every nominee who passes through the Finance Committee has been treated the same for the nearly 9 years I have been either chairman or ranking member. Dr. Brainard was treated in a manner consistent with how past nominees have been treated, but she did not respond in a consistent manner. On November 18, the Finance Committee released a memo covering three basic issues that arose during the vetting of Dr. Brainard. The nominee had a chance to review and make comments on this memo before it was released.

The first issue covered in the memo involves responses to questions on the Finance Committee questionnaire pertaining to previous late payments of taxes and whether or not the nominee is current on taxes owed. The nominee had to submit four separate responses to one question as the committee came to gradually discover that Rappahannock County, VA, property taxes had been paid late in 2005, 2006, 2007, and 2008. The issue is not that someone forgot to pay their property taxes on time; the issue here is the difficulty the Finance Committee had in getting complete, accurate, and correct answers out of Dr. Brainard. Committee staff spent most of 2009 attempting to get straight answers from Dr. Brainard, and the whole time this was going on the nominee had not paid her 2008 property taxes. The nominee finally disclosed the late payment of the 2008 property taxes on October 12, 2009, though the taxes had actually been paid in September. Answers on this specific issue from the nominee reflect a troubling aspect that is characteristic of many of Dr. Brainard's answers. Though Dr. Brainard owns the Rappahannock County property with her husband, she has consistently avoided taking any responsibility for the payment of taxes owed.

As I said before, the issue is not that someone forgot to pay county property taxes on time. Though a chronic inability to pay taxes timely is a serious concern, the real problem here is the inability of the nominee to be straight with myself, our staff, and the committee as a whole.

The second issue discussed in the November 18 memo involves the completion of several forms I–9, employment eligibility verification, which is required to document that a new employee is authorized to work in the United States. The nominee will tell you that all of her employees are eligible to work in the United States, and I do not dispute that. As before the issue here is the inability of the nominee to respond in a straightforward manner to questions. Additionally, the number of forms I–9 produced by the nominee with significant irregularities was very unusual. The committee released six different forms I–9 with irregularities. The committee memo discusses each of these, but possibly the most problematic is one form where it appears that dates have been written over to change the year. When questioned by committee staff about these forms I–9 in a meeting with the nominee and her accountant, the accountant asked to speak to the nominee alone, without committee staff in the room. The nominee sent a letter to myself and Chairman BAUCUS apologizing for the irregularities but offering no substantive explanation for many of them.

The third issue discussed in the Finance Committee memo involves the nominee's deduction of one-sixth of her household expenses from partnership income as an office-in-home deduction. Committee staff simply asked the nominee to show how she determined that one-sixth was the appropriate percentage, and the nominee has provided many different answers to this question. The Finance Committee memo summarizes Dr. Brainard's attempts to explain her office-in-home deduction with a variety of formulas adding up to a variety of answers. As before, the real issue here is not what percentage the nominee should have used to calculate her office-in-home deduction; the issue is the inability of the nominee to respond to what should be simple questions in a straightforward way.

As the committee memo notes, on her 2008 partnership return, the nominee reduced the size of her office-in-home deduction by half from one-sixth to one-twelth. Dr. Brainard said that this change was made because committee staff had been asking questions regarding her earlier use of the office-in-home deduction. The nominee did not amend her partnership returns for 2005, 2006, and 2007 where an office-in-home deduction of one-sixth was taken. I am not able to say that either number is correct or incorrect because the nominee provided several contradictory answers to this question.

As I have been saying, the larger issue here is not that someone was late in paying county property taxes, or the appropriate size of an office-in-home deduction. The larger issue is the apparent unwillingness or inability of a person, nominated by the President, to answer questions asked by a standing committee of the Senate in a straightforward manner. The reason Dr. Brainard's nomination took a full 9 months to the day to be discharged by the Finance Committee is that she spent 9 months giving evasive, incomplete, and inconsistent answers to committee staff in response to what are generally routine questions.

The only thing that is perhaps even more troubling than a nominee who

doesn't seem to take the vetting done by a Senate Committee seriously is the reaction we have seen by others, including some who serve in this body. Some apparently see the due diligence and vetting done on nominees as an assembly line that produces a guaranteed outcome.

We have seen what I believe to be political operatives from outside the Senate selectively leak information in a effort to target the Finance Committee's process of vetting nominees and even the specific staffers who carry out this work. These political operatives have had a lot of work to do, as Dr. Brainard is the fifth nominee from the current administration to run into significant problems during the Finance Committee vetting process. The Finance Committee vetting process has not changed in the nearly 9 years I have been chairman or ranking member. What has changed are the specific nominees and the apparent willingness of some to tolerate and excuse issues that would have disqualified nominees from the previous administration.

Nominees in the previous administration would have had trouble garnering support if they had these sorts of problems, and I made it clear my job was not to defend a problematic nominee. Most people do not know about these problematic nominees from the past because in some cases they did not get a hearing and in others they were not nominated in the first place.

There is only one person who could tell us why the vetting process for this nominee took so long, and that person is Lael Brainard.

I have been trying to ask her questions for 9 months now without much success, so now my questions are for the critics of the Finance Committee process and those determined to see this nominee confirmed no matter what.

How long should we allow a nominee to provide incomplete and contradictory answers before we simply decide that person ought to be confirmed anyway?

Who is important enough not to be obligated to follow the same rules and obligations as all other nominees?

What high government official is so important that they ought to be exempt from the burden of routine Congressional oversight?

Is knowing the right people a substitute for simple honesty and strength of character?

As for myself, I am going to answers these questions by reiterating my opposition to the nomination.

I, Senator CHUCK GRASSLEY, do not object to proceeding to the nominations of Lael Brainard to be Under Secretary of the Treasury, Michael Mundaca to be an Assistant Secretary of the Treasury, Mary Miller to be an Assistant Secretary of the Treasury, and Charles Collyns to be an Assistant Secretary of the Treasury.

ADDITIONAL STATEMENTS

TRIBUTE TO TARAS G. SZMAGALA

• Mr. VOINOVICH. Mr. President, today I wish to recognize Taras G. ''Tary'' Szmagala, on the occasion of his retirement from the Greater Cleveland Regional Transit Authority in Cleveland, OH. Tary has dedicated his life to public service and has worked tirelessly to improve the quality of life for the citizens of our community. His career demonstrates a commitment to excellence and exemplary leadership, and has earned him the respect and admiration of his friends and associates.

For 23 years, Tary has served the Greater Cleveland Regional Transit Authority, during which time he has held a number of positions, including: director of governmental relations, manager of communications, deputy general manager, interim general manager, and executive director of external affairs. He has made significant contributions towards procuring Federal and State capital improvement funds for the RTA's major projects, including, but not limited to, the Euclid Corridor Project and the extension of the Waterfront Line, and the Walkway from Tower City to Gateway.

Additionally, Tary's distinguished career in public service includes serving as special assistant to U.S. Senator Robert Taft, teacher and administrator for the Parma Board of Education, and public and personnel coordinator for the Cleveland Regional Sewer District. Moreover, he has served numerous governmental leaders and organizations, and has devoted countless hours to civic organizations, including the Stella Maris Board of Directors, the National Highway Safety Advisory Committee, the Ohio Public Transit Association, St. Ignatius High School and several colleges.

Tary has worked tirelessly to provide many Americans with a tangible connection to their Ukrainian heritage by serving on the Ukrainian Museum Archives Board of Directors, the Ukrainian National Association Board of Directors and as a representative of the Ukrainian-American community in many official capacities, including as Member of Presidential Delegation to Ukraine in 1991.

It is my privilege to recognize Tary for his diligent commitment and dedicated service to the Greater Cleveland Regional Transit Authority, and to the community that he has served for over three decades.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

NOTIFICATION OF THE PRESIDENT'S INTENTION TO DESIGNATE THE REPUBLIC OF MALDIVES AS A BENEFICIARY DEVELOPING COUNTRY AND TO TERMINATE THE DESIGNATIONS OF CROATIA AND EQUATORIAL NEW GUINEA AS BENEFICIARY DEVELOPING PROGRAMS UNDER THE GENERALIZED SYSTEM OF PREFERENCES PROGRAM—PM 39

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report and papers; which was referred to the Committee on Finance:

To the Congress of the United States:

The Generalized System of Preferences (GSP) offers duty-free treatment to specified products that are imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974, as amended (the ''Act'').

In accordance with sections 502(f)(1)(A) and 502(f)(2) of the Act, I am providing notification of my intent to add the Republic of Maldives to the list of beneficiary developing countries under the GSP program and my intent to terminate the designations of Croatia and Equatorial Guinea as beneficiary developing countries under the GSP program.

In Proclamation 6813 of July 28, 1995, the designation of Maldives as a beneficiary developing country for purposes of the GSP program was suspended. After considering the criteria set forth in sections 501 and 502 of the Act, I have determined that the suspension of the designation of Maldives as a GSP beneficiary developing country should be ended.

In addition, I have determined that Croatia and Equatorial Guinea have each become a ''high income'' country, as defined by the official statistics of the International Bank for Reconstruction and Development. In accordance with section 502(e) of the Act, I have determined that the designations of Croatia and Equatorial Guinea as beneficiary developing countries under the GSP program should be terminated, effective January 1, 2011.

BARACK OBAMA.

THE WHITE HOUSE, *December 23, 2009*.

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 1:42 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker pro tempore (Mr. VAN HOLLEN) has signed the following enrolled bill:

H.R. 4284. An act to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. BYRD).

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1242. An act to amend the Emergency Economic Stabilization Act of 2008 to provide for additional monitoring and accountability of the Troubled Asset Relief Program; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 3639. An act to amend the Credit Card Accountability Responsibility and Disclosure Act of 2009 to establish an earlier effective date for various consumer protections, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

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–4151. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of a violation of the Antideficiency Act that occurred within the National Geospatial-Intelligence Agency in fiscal year 2003, and has been assigned National Geospatial-Intelligence Agency case number 08–03; to the Committee on Appropriations.

EC–4152. A communication from the Deputy Secretary, Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Proxy Disclosure Enhancements'' (RIN3235–AK28) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–4153. A communication from the Director of Environmental Policy and Compliance, Office of the Secretary, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the National Environmental Policy Act (NEPA) of 1969'' received in the Office of the President of the Senate on December 17, 2009; to the Committee on Environment and Public Works.

EC–4154. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tier II Issue: Cost Sharing Stock Based Compensation Directive No. 2'' (LMSB–4–1109–040) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Finance.

EC–4155. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers from Oak Ridge Hospital in Oak Ridge, Tennessee, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–4156. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers from Piqua Organic Moderated Reactor in Piqua, Ohio, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–4157. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers from the Hanford site in Richland, Washington, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–4158. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers from the Metals and Controls Corporation in Attleboro, Massachusetts, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–4159. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers from the Brookhaven National Laboratory in Upton, New York, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–4160. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to the Community Services Block Act Discretionary Activities: Community Economic Development and Rural Facilities Programs; to the Committee on Health, Education, Labor, and Pensions.

EC–4161. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Adverse Actions'' (RIN3206–AL39) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–4162. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Training; Supervisory, Management, and Executive Development'' (RIN3206–AK75) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–4163. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Examining System'' (RIN3206–AL51) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–4164. A communication from the Chief of the Border Security Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Importer Security Filing and Additional Carrier Requirements; Correction'' (RIN1651–AA70) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–4165. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, the Uniform Resource Locator (URL) for a report relative to the FY2009 Agency Financial Report; to the Committee on Homeland Security and Governmental Affairs.

EC–4166. A communication from the Secretary of the Department of Energy, transmitting, pursuant to law, a report entitled ''Fiscal Year 2009 Agency Financial Report''; to the Committee on Homeland Security and Governmental Affairs.

EC–4167. A communication from the US–VISIT Program Director, National Protection and Programs Directorate, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT''); Enrollment of Additional Aliens in US–VISIT; Authority to Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry'' (RIN1601–AA35; RIN1600–AA00) received in the Office of the President of the Senate on December 17, 2009; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 69. A bill to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes (Rept. No. 111–112).

By Mr. DORGAN, from the Committee on Indian Affairs, with amendments:

S. 1178. A bill to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe (Rept. No. 111–113).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. BAUCUS for the Committee on Finance.

*Lael Brainard, of the District of Columbia, to be an Under Secretary of the Treasury.

*Ellen Gloninger Murray, of Virginia, to be an Assistant Secretary of Health and Human Services.

*Bryan Hayes Samuels, of Illinois, to be Commissioner on Children, Youth, and Families, Department of Health and Human Services.

*Jim R. Esquea, of New York, to be an Assistant Secretary of Health and Human Services.

*Michael W. Punke, of Montana, to be a Deputy United States Trade Representative, with the rank of Ambassador.

*Islam A. Siddiqui, of Virginia, to be Chief Agricultural Negotiator, Office of the United States Trade Representative, with the rank of Ambassador.

*Charles Collyns, of Maryland, to be a Deputy Under Secretary of the Treasury.

*Mary John Miller, of Maryland, to be an Assistant Secretary of the Treasury.

*Michael F. Mundaca, of New York, to be an Assistant Secretary of the Treasury.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. LINCOLN (for herself and Mr. SANDERS):

S. 2926. A bill to amend the XVIII of the Social Security Act to provide for the application of a consistent Medicare part B premium for all Medicare beneficiaries in a budget neutral manner for 2010, to provide an additional round of economic recovery payments to certain beneficiaries, and to assess the need for a consumer price index for elderly consumers to compute cost-of-living increases for certain governmental benefits; to the Committee on Finance.

By Mr. HARKIN (for himself, Mr. SANDERS, Mr. WHITEHOUSE, and Mr. BROWN):

S. 2927. A bill to amend the Internal Revenue Code of 1986 to impose a tax on certain securities transactions to fund job creation and deficit reduction, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY:

S. 2928. A bill to amend the Internal Revenue Code of 1986 to extend certain disaster tax relief provisions, and for other purposes; to the Committee on Finance.

By Mr. FEINGOLD (for himself and Mr. WHITEHOUSE):

S. 2929. A bill to prohibit secret modifications and revocations of the law, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. SPECTER (for himself, Mr. SCHUMER, and Mr. GRAHAM):

S. 2930. A bill to deter terrorism, provide justice for victims, and for other purposes; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 624

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 624, a bill to provide 100,000,000 people with first-time access to safe drinking water and sanitation on a sustainable basis by 2015 by improving the capacity of the United States Government to fully implement the Senator Paul Simon Water for the Poor Act of 2005.

S. 891

At the request of Mr. BROWNBACK, the name of the Senator from Ohio (Mr. BROWN) 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. 1402

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 1402, a bill to amend the Internal Revenue Code of 1986 to increase the amount allowed as a deduction for start-up expenditures.

S. 2824

At the request of Mr. KOHL, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 2824, a bill to establish a small dollar loan-loss guarantee fund, and for other purposes.

S. 2854

At the request of Mr. KOHL, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 2854, a bill to amend the Internal Revenue Code of 1986 to extend and modify the credit for new qualified hybrid motor vehicles, and for other purposes.

S. 2925

At the request of Mr. WYDEN, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 2925, a bill to establish a grant program to benefit victims of sex trafficking, and for other purposes.

AMENDMENT NO. 2995

At the request of Mr. SCHUMER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of amendment No. 2995 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. 3264

At the request of Mr. WYDEN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of amendment No. 3264 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 Mr. GRASSLEY:

S. 2928. A bill to amend the Internal Revenue Code of 1986 to extend certain disaster tax relief provisions, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today I have introduced a bill to extend deadlines for a number of provisions in the Heartland Disaster Tax Relief Act of 2008, as well as a number of national disaster tax relief provisions, through 2010.

The Heartland Disaster Tax Relief Act has been critical in rebuilding the lives and communities of those affected by the terrible floods and tornadoes from last year.

Because of delays in Federal funding and tighter credit conditions, many individuals, families, and businesses affected by the 2008 floods and storms will be unable to meet the deadline for the tax relief intended to help with recovery.

Louisiana is still rebuilding from Hurricane Katrina in 2005. Congress extended tax incentives for that disaster twice, and might even extend them a third time. I am just proposing a second year of the same kind of tax incentives that have been in effect for Hurricane Katrina victims for over 4 years.

This is especially important when small businesses are struggling to recover, and small businesses create 70 percent of all net new jobs.

It is only fair to extend the deadlines and give these individuals, families, and businesses the chance to recover and rebuild.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2928

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 ''Heartland Disaster Tax Relief Extension Act of 2009''.

TITLE I—HEARTLAND DISASTER AREAS

SEC. 101. CREDIT TO HOLDERS OF TAX CREDIT BONDS.

Section 702(d)(7)(C) of the Heartland Disaster Tax Relief Act of 2008 (Public Law 110–343; 122 Stat. 3918) is amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

SEC. 102. EDUCATION TAX BENEFITS.

Section 702(d)(8) of the Heartland Disaster Tax Relief Act of 2008 (Public Law 110–343; 122 Stat. 3918) is amended by striking ''or 2009'' and inserting ''2009, or 2010''.

SEC. 103. SPECIAL RULES FOR USE OF RETIREMENT FUNDS.

Section 702(d)(10) of the Heartland Disaster Tax Relief Act of 2008 (Public Law 110–343; 122 Stat. 3918) is amended—

(1) by striking ''January 1, 2010'' both places it appears and inserting ''January 1, 2011'', and

(2) by striking ''December 31, 2009'' both places it appears and inserting ''December 31, 2010''.

SEC. 104. ADJUSTMENTS REGARDING TAXPAYER AND DEPENDENCY STATUS.

Section 702(d)(15) of the Heartland Disaster Tax Relief Act of 2008 (Public Law 110–343; 122 Stat. 3918) is amended by striking ''or 2009'' and inserting ''2009, or 2010''.

SEC. 105. EFFECTIVE DATE.

The amendments made by this title shall take effect as if included in the enactment of section 702 of the Heartland Disaster Tax Relief Act of 2008.

TITLE II—NATIONAL DISASTER AREAS

SEC. 201. LOSSES ATTRIBUTABLE TO FEDERALLY DECLARED DISASTERS.

(a) NO LIMIT FOR 2010.—Paragraph (1) of section 165(h) of the Internal Revenue Code of 1986 is amended by striking ''$500 ($100 for taxable years beginning after December 31, 2009)'' and inserting ''$100 ($0 for taxable years beginning after December 31, 2009, and before January 1, 2011)''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 202. EXPENSING OF QUALIFIED DISASTER EXPENSES.

(a) IN GENERAL.—Subparagraph (A) of section 198A(b)(2) of the Internal Revenue Code of 1986 is amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters occurring after December 31, 2009.

SEC. 203. NET OPERATING LOSSES ATTRIBUTABLE TO FEDERALLY DECLARED DISASTERS.

(a) IN GENERAL.—Subclause (I) of section 172(j)(1)(A)(i) of the Internal Revenue Code of 1986 is amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters occurring after December 31, 2009.

SEC. 204. WAIVER OF CERTAIN MORTGAGE REVENUE BOND REQUIREMENTS.

(a) IN GENERAL.—Paragraph (11) of section 143(k) of the Internal Revenue Code of 1986 is

amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after December 31, 2009.

SEC. 205. SPECIAL DEPRECIATION ALLOWANCE FOR QUALIFIED DISASTER PROPERTY.

(a) IN GENERAL.—Subclause (I) of section 168(n)(2)(A)(ii) of the Internal Revenue Code of 1986 is amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters occurring after December 31, 2009.

By Mr. FEINGOLD (for himself and Mr. WHITEHOUSE):

S. 2929. A bill to prohibit secret modifications and revocations of the law, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. FEINGOLD. Mr. President, today Senator WHITEHOUSE and I will introduce the Executive Order Integrity Act of 2009. The bill prevents secret changes to published Executive Orders by requiring the President to place a notice in the Federal Register when he has modified or revoked a published Order. Through this simple measure, the bill takes an important step toward reversing the growth of secret law in the executive branch.

The principle behind this bill is straightforward. It is a basic tenet of democracy that the people have a right to know the law. Indeed, the notion of ''secret law'' has been described in court opinions and law treatises as ''repugnant'' and ''an abomination.'' That's why the laws passed by Congress have historically been matters of public record.

But the law that applies in this country includes more than just statutes. It includes regulations, the controlling legal interpretations of courts and the executive branch, and certain Presidential directives. As we learned at a hearing of the Judiciary Committee's Constitution Subcommittee that I chaired last year, some of this body of executive and judicial law was increasingly kept secret from the public, and too often from Congress as well, under the Bush administration. The administration concealed Department of Justice legal opinions and interpretations of the Foreign Intelligence Surveillance Court.

The shroud of secrecy extended to Executive Orders and other Presidential directives that carry the force of law. The Federal Register Act requires the President to publish any Executive Orders that have general applicability and legal effect. But through the diligent efforts of my colleague Senator WHITEHOUSE, we learned in late 2007 that the Department of Justice took the position that a President can ''waive'' or ''modify'' any Executive Order without any notice to the public or Congress—simply by not following it. In other words, even in cases where the President is required to make the public, the President can change the law in secret.

The Office of Legal Counsel memorandum that contains this position is still classified, but Senator WHITEHOUSE convinced the Department of Justice to declassify certain propositions in the memorandum. Among them is the proposition that ''[w]henever [the President] wishes to depart from the terms of a previous executive order,'' he may do so, because ''an executive order cannot limit a President.'' And he doesn't have to change the executive order, or give notice that he is violating it, because by ''depart[ing] from the executive order,'' the President ''has instead modified or waived it.''

Now, no one disputes that a President can withdraw or revise an Executive Order at any time; that is every President's prerogative. But abrogating a published Executive Order without any public notice works a secret change in the law. Worse, because the published Order stays on the books, it actively misleads Congress and the public as to what the law is.

This is not just a hypothetical problem dreamed up by the Office of Legal Counsel. It has happened, and it could happen again. To list just one example, the Bush administration's warrantless wiretapping program not only violated the Foreign Intelligence Surveillance Act; it was inconsistent with several provisions of Executive Order 12333, the longstanding executive order governing electronic surveillance and other intelligence activities. Apparently, the administration believed its actions constituted a tacit amendment of that Executive Order. Who knows how many other Executive Orders were secretly revoked or amended by the conduct of the administration over the past 8 years.

The bill that Senator WHITEHOUSE and I are introducing provides a simple solution to this problem. If the President revokes, modifies, waives, or suspends a published Executive Order or similar directive, notice of this change in the law must be placed in the Federal Register within 30 days. The notice must specify the Order or the provision that has been affected; whether the change is a revocation, a modification, a waiver, or a suspension; and the nature and circumstances of the change. If information about the nature and circumstances of the change is classified, it is exempt from the publication requirement, but the information still must be provided to Congress so that we, as legislators, know how the law has been changed.

That is what our bill does; now let me talk briefly about what our bill does not do. First, it does not expand the existing legal requirements, under the Federal Register Act, that determine which Executive Orders must be published. To the extent the Federal Register Act permits a certain amount of ''secret law'' in the form of unpublished Executive Orders, our bill leaves that framework in place.

Second, our bill does not require public notice when the President revokes or modifies an unpublished Executive Order—even if the substance of the unpublished order is well-known to Congress and even the American people. This bill is narrowly aimed at the situation in which the American people have been given official notice of one version of the law, but a different version is being implemented.

Third, the bill does not require the President to adhere to the terms of an Executive Order. Many scholars have argued that a President must adhere to a formally promulgated Executive Order unless or until the Order is formally withdrawn or amended, just as the head of an agency must adhere to the agency's regulations. I happen to agree. But this bill does not take issue with the Bush administration's assertion that any deviation from the Executive Order by the President is a permissible amendment of that Order. It simply requires public notice that the amendment has occurred.

Fourth, the bill does not require the publication of classified information about intelligence sources and methods or similar information. The basic fact that the published law is no longer in effect, however, cannot be classified. On rare occasions, national security can justify elected officials keeping some information secret, but it can never justify lying to the American people about what the law is. Maintaining two different sets of laws, one public and one secret, is just that—deceiving the American people about what law applies to the Government's conduct.

It is my hope and my expectation that the Obama administration will not continue the previous administration's practice of purporting to amend the law in secret. But even if the administration agrees to end this practice, that will not end the need for this legislation. At last year's Secret Law hearing, the Deputy Assistant Attorney General for OLC testified that during the Iran-Contra scandal in the 1980s, the Reagan Department of Justice took the same position: that the President could secretly modify executive orders simply by not complying with them. We can safely assume that the ability to modify the law in secret will hold as much appeal for a future administration as it did for at least two administrations in the past. We can't wait for this to happen in order to act, because we won't know that it has happened—the entire point of the practice, after all, is to keep Congress and the public in the dark. The time to prevent this eventuality is now.

I commend Senator WHITEHOUSE for his tireless work to bring this issue to light, and I urge all of my colleagues in the Senate to support this modest effort to ensure the integrity of our published laws.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2929

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 ''Executive Order Integrity Act of 2009''.

SEC. 2. REVOCATIONS, MODIFICATIONS, WAIVERS, AND SUSPENSIONS OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS.

Section 1505 of title 44, United States Code, is amended by adding at the end the following:

''(d) REVOCATIONS, MODIFICATIONS, WAIVERS, AND SUSPENSIONS OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS.—

''(1) NOTICE REQUIRED.—If the President, whether formally or informally, and whether through express order, conduct, or other means—

''(A) revokes, modifies, waives, or suspends any portion of a Presidential proclamation, Executive Order, or other Presidential directive that was published in the Federal Register; or

''(B) authorizes the revocation, modification, waiver, or suspension of any portion of such Presidential proclamation, Executive Order, or other Presidential directive;

notice of such revocation, modification, waiver, or suspension shall be published in the Federal Register within 30 days after the revocation, modification, waiver, or suspension, in accordance with the terms under paragraph (2).

''(2) CONTENT OF NOTICE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the notice required under paragraph (1) shall specify—

''(i) the Presidential proclamation, Executive Order, or other Presidential directive, and any particular portion thereof that is affected;

''(ii) for each affected directive or portion thereof, whether that directive or portion thereof was revoked, modified, waived, or suspended; and

''(iii) except where such information is classified, the specific nature and circumstances of the revocation, modification, waiver, or suspension.

''(B) REVISED EXECUTIVE ORDER.—Where the revocation, modification, waiver, or suspension of a Presidential proclamation, Executive Order, or other Presidential directive is accomplished through the publication in the Federal Register of a revised Presidential proclamation, Executive Order, or other Presidential directive that replaces or amends the one that was revoked, modified, waived, or suspended, that revised Presidential proclamation, Executive Order, or other Presidential directive shall constitute notice for purposes of paragraph (1).

''(3) CLASSIFIED INFORMATION.—If the information specified under paragraph (2)(A)(iii) is classified, such information shall be provided to Congress, using the security procedures established under section 501(d) of the National Security Act of 1947 (50 U.S.C. 413(d)), in the form of a classified annex delivered to—

''(A) the majority and minority leader of the Senate;

''(B) the Speaker, majority leader, and minority leader of the House of Representatives;

''(C) the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

''(D) if the information pertains to national security matters, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as either authorizing or prohibiting the revocation, modification, waiver, or suspension of any Presidential proclamation, Executive Order, or other Presidential directive that was published in the Federal Register through means other than a formal directive issued by the President and published in the Federal Register.''.

By Mr. SPECTER (for himself, Mr. SCHUMER, and Mr. GRAHAM):

S. 2930. A bill to deter terrorism, provide justice for victims, and for other purposes; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to urge support for the legislation I have just introduced, the Justice Against Sponsors of Terrorism Act. The legislation would amend the Foreign Sovereign Immunities Act, FSIA, and the Anti-Terrorism Act, ATA, to ensure that foreign sponsors of terrorism are held accountable to their American victims in our courts. These amendments are necessary because some lower-court decisions have deprived victims of terrorism, including most recently 9/11's victims, of the legal remedies Congress intended to confer on them when it enacted the FSIA and ATA, and thereby removed a critical deterrent to the financing and sponsorship of terrorism. Congressional inaction would leave the victims of 9/11 without recourse against the sponsors of al-Qaeda and, more importantly perhaps, render the FSIA and the ATA ineffective deterrents to future terrorist attacks.

Recent news reports serve as a reminder that al-Qaeda and other foreign terrorist organizations remain dedicated to their declared goal of carrying out large-scale terrorist attacks within the U.S. In our continuous efforts to prevent such attacks, we have appropriately focused our attention on stemming the flow of money to terrorists through deterrence. As the Treasury Department's Undersecretary for Terrorism and Financial Intelligence has observed, ''the terrorist operative who is willing to strap on a suicide belt is not susceptible to deterrence, but the individual donor who wants to support violent jihad may well be,'' Testimony of Stuart Levey, Under Secretary for Terrorism and Financial Intelligence, before the Senate Committee on Finance, April 1, 2008. Holding them liable for civil damages in courts may be the most effective—and, given the absence of effective criminal sanctions, often only—way to deter them from sponsoring terrorist attacks. ''Suits against financiers of terrorism can,'' as renowned federal judge Richard Posner recently emphasized, ''cut the terrorist's lifeline.'' *Boim* v. *Holy Land Foundation for Relief and Development*, 549 F. 3d 685 (7th Cir. 2008).

As carefully written by Congress, the FSIA abrogates the sovereign immunity of foreign countries and permits suit against them in Federal court when, among other things, a foreign country commits terrorists acts or other tortious conduct that results in injury on our soil. The ATA authorizes suit in Federal court by any U.S. national injured ''by reason of an act of international terrorism'' and permits the recovery of ''threefold the damages he or she sustains'', that is, treble damages, as well the costs of suit and attorneys' fees. ''18 U.S.C. § 2333(a).

But a number of lower Federal courts have frustrated Congress's intent by erecting unfounded jurisdictional barriers to suit. No such decision is more significant in its effect than the Court of Appeals for the Second Circuit's In re Terrorist Attacks on September 11, 2001, 538 F. 3d 71 (2d Cir. 2009). That decision arose from litigation brought by the victims of the 9/11 attacks, including family members of the nearly 3,000 innocent people killed and commercial entities that suffered in excess of $10 billion in damage to their property. The plaintiffs sought damages against, among other defendants, the Kingdom of Saudi Arabia, several Saudi officials, and a purported charity under the control of the Kingdom known as the Saudi High Commission for Relief of Bosnia and Herzegovina. Substantial evidence establishes that these defendants had provided funding and sponsorship to al-Qaeda without which it could not have carried out the 9/11 attacks. Even the Second Circuit acknowledged that plaintiffs had offered a ''wealth of detail, conscientiously cited to published and unpublished sources,'' as to the defendants' sponsorship of al-Qaeda.

None of the plaintiffs had their day in court, however, for the Second Circuit ruled that the Federal courts have no jurisdiction over the principal defendants. As for Saudi Arabia and its official state agencies, the Second Circuit held that they were not subject to suit under the FSIA's tort exception because, having not been designated by the United States as a state sponsor of terrorism, Saudi Arabia was not covered by a separate FSIA exception for suits against designated state sponsors of terrorism. Suits arising from terrorist activities, the court concluded, can only be brought under the FSIA's exception governing designated state sponsors of terrorism. As for the Saudi princes, the Second Circuit held that the courts lacked personal jurisdiction over them because, though they ''could and did foresee [that] the recipients of their donations would attack targets in the United States,'' they did not themselves ''direct'' any terrorist attacks or ''command'' any ''agent'' to ''commit them.''

Both conclusions are wrong. The former is especially troubling because it establishes an immunity from suit under the FSIA that Congress did not intend. A foreign state is subject to suit for its terrorist activities under the FSIA's tort exception without regard to whether it is subject to suit under the separate exception for designated state sponsors of terrorism—that is, without regard to whether the

United States has designated it as a state sponsor of terrorism. The Second Circuit effectively read into the tort exception an exception for terrorist-related torts. Even the Solicitor General, who has adopted an unduly restrictive interpretation of the FSIA's exceptions, concluded that the Second Circuit misread the statute on this critical point.

The Second Circuit's and other lower courts' decisions on these seemingly technical jurisdictional points not only deprive the victims of terrorism the compensation to which they are entitled but also remove a powerful weapon in our arsenal against foreign terrorism. We can no longer wait for the Supreme Court to correct these errant decisions. The Court's refusal earlier this year to hear the plaintiffs' appeal of the Second Circuit's decision in In re Terrorist Attacks, despite the importance of the case and the conflicts among the lower courts on the key issues it presents, suggests that the Court may well never do so.

That is why I have introduced the Justice Against Sponsors of Terrorism Act. The act is main provisions would amend FSIA to make clear that, as Congress originally intended, a foreign state may be sued under the torts exception if it sponsors terrorists who commit terrorist attacks on our soil, without regard to whether it is a state-designated sponsor of terrorism, and amend the ATA to ensure that its anti-terrorism provisions, like FSIA's, are given the meaning Congress intended. I urge my colleagues to support these modest, but critical, amendments.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on December 23, 2009, at 2 p.m.

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

PRIVILEGES OF THE FLOOR

Mr. CRAPO. Mr. President, I ask unanimous consent that Marques Chavez be granted the privilege of the floor for the remainder of today's session.

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

NUCLEAR FORENSICS AND ATTRIBUTION ACT

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 244, H.R. 730.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 730) to strengthen efforts in the Department of Homeland Security to develop nuclear forensics capabilities to permit attribution of the source of nuclear material, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Nuclear Forensics and Attribution Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The threat of a nuclear terrorist attack on American interests, both domestic and abroad, is one of the most serious threats to the national security of the United States. In the wake of an attack, attribution of responsibility would be of utmost importance. Because of the destructive power of a nuclear weapon, there could be little forensic evidence except the radioactive material in the weapon itself.

(2) Through advanced nuclear forensics, using both existing techniques and those under development, it may be possible to identify the source and pathway of a weapon or material after it is interdicted or detonated. Though identifying intercepted smuggled material is now possible in some cases, pre-detonation forensics is a relatively undeveloped field. The post-detonation nuclear forensics field is also immature, and the challenges are compounded by the pressures and time constraints of performing forensics after a nuclear or radiological attack.

(3) A robust and well-known capability to identify the source of nuclear or radiological material intended for or used in an act of terror could also deter prospective proliferators. Furthermore, the threat of effective attribution could compel improved security at material storage facilities, preventing the unwitting transfer of nuclear or radiological materials.

(4)(A) In order to identify special nuclear material and other radioactive materials confidently, it is necessary to have a robust capability to acquire samples in a timely manner, analyze and characterize samples, and compare samples against known signatures of nuclear and radiological material.

(B) Many of the radioisotopes produced in the detonation of a nuclear device have short half-lives, so the timely acquisition of samples is of the utmost importance. Over the past several decades, the ability of the United States to gather atmospheric samples—often the preferred method of sample acquisition—has diminished. This ability must be restored and modern techniques that could complement or replace existing techniques should be pursued.

(C) The discipline of pre-detonation forensics is a relatively undeveloped field. The radiation associated with a nuclear or radiological device may affect traditional forensics techniques in unknown ways. In a post-detonation scenario, radiochemistry may provide the most useful tools for analysis and characterization of samples. The number of radiochemistry programs and radiochemists in United States National Laboratories and universities has dramatically declined over the past several decades. The narrowing pipeline of qualified people into this critical field is a serious impediment to maintaining a robust and credible nuclear forensics program.

(5) Once samples have been acquired and characterized, it is necessary to compare the results against samples of known material from reactors, weapons, and enrichment facilities, and from medical, academic, commercial, and other facilities containing such materials, throughout the world. Some of these samples are available to the International Atomic Energy Agency through safeguards agreements, and some countries maintain internal sample databases. Access to samples in many countries is limited by national security concerns.

(6) In order to create a sufficient deterrent, it is necessary to have the capability to positively identify the source of nuclear or radiological material, and potential traffickers in nuclear or radiological material must be aware of that capability. International cooperation may be essential to catalogue all existing sources of nuclear or radiological material.

SEC. 3. SENSE OF CONGRESS ON INTERNATIONAL AGREEMENTS FOR FORENSICS COOPERATION.

It is the sense of the Congress that the President should—

(1) pursue bilateral and multilateral international agreements to establish, or seek to establish under the auspices of existing bilateral or multilateral agreements, an international framework for determining the source of any confiscated nuclear or radiological material or weapon, as well as the source of any detonated weapon and the nuclear or radiological material used in such a weapon;

(2) develop protocols for the data exchange and dissemination of sensitive information relating to nuclear or radiological materials and samples of controlled nuclear or radiological materials, to the extent required by the agreements entered into under paragraph (1); and

(3) develop expedited protocols for the data exchange and dissemination of sensitive information needed to publicly identify the source of a nuclear detonation.

SEC. 4. RESPONSIBILITIES OF DOMESTIC NUCLEAR DETECTION OFFICE.

(a) ADDITIONAL RESPONSIBILITIES.—Section 1902 of the Homeland Security Act of 2002 (as redesignated by Public Law 110–53; 6 U.S.C. 592) is amended—

(1) in subsection (a)—

(A) in paragraph (9), by striking ''and'' after the semicolon;

(B) by redesignating paragraph (10) as paragraph (14); and

(C) by inserting after paragraph (9) the following:

''(10) lead the development and implementation of the national strategic five-year plan for improving the nuclear forensic and attribution capabilities of the United States required under section 1036 of the National Defense Authorization Act for Fiscal Year 2010;

''(11) establish, within the Domestic Nuclear Detection Office, the National Technical Nuclear Forensics Center to provide centralized stewardship, planning, assessment, gap analysis, exercises, improvement, and integration for all Federal nuclear forensics and attribution activities—

''(A) to ensure an enduring national technical nuclear forensics capability to strengthen the collective response of the United States to nuclear terrorism or other nuclear attacks; and

''(B) to coordinate and implement the national strategic five-year plan referred to in paragraph (10);

''(12) establish a National Nuclear Forensics Expertise Development Program, which—

''(A) is devoted to developing and maintaining a vibrant and enduring academic pathway from undergraduate to post-doctorate study in nuclear and geochemical science specialties directly relevant to technical nuclear forensics, including radiochemistry, geochemistry, nuclear physics, nuclear engineering, materials science, and analytical chemistry;

''(B) shall—

''(i) make available for undergraduate study student scholarships, with a duration of up to 4 years per student, which shall include, if possible, at least 1 summer internship at a national laboratory or appropriate Federal agency in the field of technical nuclear forensics during the course of the student's undergraduate career;

''(ii) make available for doctoral study student fellowships, with a duration of up to 5 years per student, which shall—

''(I) include, if possible, at least 2 summer internships at a national laboratory or appropriate Federal agency in the field of technical

nuclear forensics during the course of the student's graduate career; and

''(II) require each recipient to commit to serve for 2 years in a post-doctoral position in a technical nuclear forensics-related specialty at a national laboratory or appropriate Federal agency after graduation;

''(iii) make available to faculty awards, with a duration of 3 to 5 years each, to ensure faculty and their graduate students have a sustained funding stream; and

''(iv) place a particular emphasis on reinvigorating technical nuclear forensics programs while encouraging the participation of undergraduate students, graduate students, and university faculty from historically Black colleges and universities, Hispanic-serving institutions, Tribal Colleges and Universities, Asian American and Native American Pacific Islander-serving institutions, Alaska Native-serving institutions, and Hawaiian Native-serving institutions; and

''(C) shall—

''(i) provide for the selection of individuals to receive scholarships or fellowships under this section through a competitive process primarily on the basis of academic merit and the nuclear forensics and attribution needs of the United States Government;

''(ii) provide for the setting aside of up to 10 percent of the scholarships or fellowships awarded under this section for individuals who are Federal employees to enhance the education of such employees in areas of critical nuclear forensics and attribution needs of the United States Government, for doctoral education under the scholarship on a full-time or part-time basis;

''(iii) provide that the Secretary may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which such scholarship is awarded;

''(iv) require scholarship recipients to maintain satisfactory academic progress; and

''(v) require that—

''(I) a scholarship recipient who fails to maintain a high level of academic standing, as defined by the Secretary, who is dismissed for disciplinary reasons from the educational institution such recipient is attending, or who voluntarily terminates academic training before graduation from the educational program for which the scholarship was awarded shall be liable to the United States for repayment within 1 year after the date of such default of all scholarship funds paid to such recipient and to the institution of higher education on the behalf of such recipient, provided that the repayment period may be extended by the Secretary if the Secretary determines it necessary, as established by regulation; and

''(II) a scholarship recipient who, for any reason except death or disability, fails to begin or complete the post-doctoral service requirements in a technical nuclear forensics-related specialty at a national laboratory or appropriate Federal agency after completion of academic training shall be liable to the United States for an amount equal to—

''(aa) the total amount of the scholarship received by such recipient under this section; and

''(bb) the interest on such amounts which would be payable if at the time the scholarship was received such scholarship was a loan bearing interest at the maximum legally prevailing rate;

''(13) provide an annual report to Congress on the activities carried out under paragraphs (10), (11), and (12); and''; and

(2) by adding at the end the following new subsection:

''(b) DEFINITIONS.—In this section:

''(1) ALASKA NATIVE-SERVING INSTITUTION.—The term 'Alaska Native-serving institution' has the meaning given the term in section 317 of the Higher Education Act of 1965 (20 U.S.C. 1059d).

''(2) ASIAN AMERICAN AND NATIVE AMERICAN PACIFIC ISLANDER-SERVING INSTITUTION.—The term 'Asian American and Native American Pacific Islander-serving institution' has the meaning given the term in section 320 of the Higher Education Act of 1965 (20 U.S.C. 1059g).

''(3) HAWAIIAN NATIVE-SERVING INSTITUTION.—The term 'Hawaiian native-serving institution' has the meaning given the term in section 317 of the Higher Education Act of 1965 (20 U.S.C. 1059d).

''(4) HISPANIC-SERVING INSTITUTION.—The term 'Hispanic-serving institution' has the meaning given that term in section 502 of the Higher Education Act of 1965 (20 U.S.C. 1101a).

''(5) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term 'historically Black college or university' has the meaning given the term 'part B institution' in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)).

''(6) TRIBAL COLLEGE OR UNIVERSITY.—The term 'Tribal College or University' has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).''.

(b) JOINT INTERAGENCY ANNUAL REPORTING REQUIREMENT TO CONGRESS AND THE PRESIDENT.—

(1) IN GENERAL.—Section 1907(a)(1) of the Homeland Security Act of 2002 (6 U.S.C. 596a(a)(1)) is amended—

(A) in subparagraph (A)(ii), by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (B)(iii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(C) the Director of the Domestic Nuclear Detection Office and each of the relevant departments that are partners in the National Technical Forensics Center—

''(i) include, as part of the assessments, evaluations, and reviews required under this paragraph, each office's or department's activities and investments in support of nuclear forensics and attribution activities and specific goals and objectives accomplished during the previous year pursuant to the national strategic five-year plan for improving the nuclear forensic and attribution capabilities of the United States required under section 1036 of the National Defense Authorization Act for Fiscal Year 2010;

''(ii) attaches, as an appendix to the Joint Interagency Annual Review, the most current version of such strategy and plan; and

''(iii) includes a description of new or amended bilateral and multilateral agreements and efforts in support of nuclear forensics and attribution activities accomplished during the previous year.''.

Mr. CASEY. I ask unanimous consent that the committee substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 730), as amended, was read the third time and passed.

EXTENDING THE COMMERCIAL SPACE TRANSPORTATION LIABILITY REGIME

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 249, H.R. 3819, an act to extend the commercial space transportation liability regime.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 3819) to extend the commercial space transportation liability regime.

There being no objection, the Senate proceeded to consider the bill.

Mr. CASEY. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table and any statements be printed in the RECORD.

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

The bill (H.R. 3819) was ordered to be read a third time, was read the third time, and passed.

DISCHARGE AND REFERRAL—EXECUTIVE NOMINATION

Mr. CASEY. Mr. President, as in executive session, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of the following nomination and that the nomination be referred to the Committee on Commerce, Science, and Transportation:

Timothy McGee, of Louisiana, to be an Assistant Secretary of Commerce.

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

ORDERS FOR THURSDAY, DECEMBER 24, 2009

Mr. CASEY. I ask unanimous consent that when the Senate completes its business today, it adjourn until 6:45 a.m., Thursday, December 24; 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, with the time until 7 a.m. equally divided and controlled between the two leaders or their designees, and the Senate proceed to vote on passage of the bill at 7 a.m., as provided for under the previous order.

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

PROGRAM

Mr. CASEY. Mr. President, there will be two rollcall votes beginning at 7 a.m. tomorrow. The first vote will be on passage of H.R. 3590. The second vote will be on passage of H.R. 4314. Senators are encouraged to be in the Chamber at the beginning of the first vote and to vote from their desks.

ADJOURNMENT UNTIL 6:45 A.M. TOMORROW

Mr. CASEY. If there is no further business to come before the Senate, I

ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 8:15 p.m., adjourned until Thursday, December 24, 2009, at 6:45 a.m.

NOMINATIONS

Executive nominations received by the Senate:

STATE JUSTICE INSTITUTE

DANIEL J. BECKER, OF UTAH, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2010, VICE ROBERT NELSON BALDWIN, TERM EXPIRED.

JAMES R. HANNAH, OF ARKANSAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2010, VICE JOSEPH FRANCIS BACA, TERM EXPIRED.

GAYLE A. NACHTIGAL, OF OREGON, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2012, VICE SOPHIA H. HALL, TERM EXPIRED.

JOHN B. NALBANDIAN, OF KENTUCKY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2010, VICE KEITH MCNAMARA, TERM EXPIRED.

DEPARTMENT OF JUSTICE

ANDRE BIROTTE, JR., OF CALIFORNIA, TO BE UNITED STATES ATTORNEY FOR THE CENTRAL DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS, VICE THOMAS P. O'BRIEN.

DAVID A. CAPP, OF INDIANA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF INDIANA FOR THE TERM OF FOUR YEARS, VICE JOSEPH S. VAN BOKKELEN, RESIGNED.

RICHARD S. HARTUNIAN, OF NEW YORK, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS, VICE GLENN T. SUDDABY, RESIGNED.

WILLIAM JOSEPH HOCHUL, JR., OF NEW YORK, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS, VICE TERRANCE P. FLYNN, RESIGNED.

RONALD C. MACHEN, JR., OF THE DISTRICT OF COLUMBIA, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF FOUR YEARS, VICE KENNETH L. WAINSTEIN, RESIGNED.

ANNE M. TOMPKINS, OF NORTH CAROLINA, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NORTH CAROLINA FOR THE TERM OF FOUR YEARS, VICE GRETCHEN C.F. SHAPPERT, RESIGNED.

SALLY QUILLIAN YATES, OF GEORGIA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF GEORGIA FOR THE TERM OF FOUR YEARS, VICE DAVID E. NAHMIAS, RESIGNED.

NOEL CULVER MARCH, OF MAINE, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MAINE FOR THE TERM OF FOUR YEARS, VICE DAVID DONALD VILES.

GEORGE WHITE, OF MISSISSIPPI, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF FOUR YEARS, VICE NEHEMIAH FLOWERS.

BEATRICE A. HANSON, OF NEW YORK, TO BE DIRECTOR OF THE OFFICE FOR VICTIMS OF CRIME, VICE JOHN W. GILLIS.

DISCHARGED NOMINATION

The Senate Committee on Environment and Public Works was discharged from further consideration of the following nomination by unanimous consent to be re-referred to the Committee on Commerce, Science, and Transportation and the nomination was referred to the Committee on Commerce, Science, and Transportation by unanimous consent under authority of the order of the Senate of 12/23/2009:

TIMOTHY MCGEE, OF LOUISIANA, TO BE AN ASSISTANT SECRETARY OF COMMERCE.

WITHDRAWAL

Executive Message transmitted by the President to the Senate on December 23, 2009 withdrawing from further Senate consideration the following nomination:

SUEDEEN G. KELLY, OF NEW MEXICO, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE TERM EXPIRING JUNE 30, 2014, (REAPPOINTMENT), WHICH WAS SENT TO THE SENATE ON JULY 28, 2009.

EXTENSIONS OF REMARKS

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2010

SPEECH OF

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 16, 2009

Ms. McCOLLUM. Madam Speaker, I rise to express my support for H.R. 3326, the Department of Defense Appropriations Act for Fiscal Year 2010. This legislation provides the needed support, resources, and equipment for America's brave men and women in uniform.

With the passage of H.R. 3326, Congress will affirm its commitment to America's Armed Forces, both overseas in a theater of war and here at home when they return from duty. I am pleased that this bill recognizes the incredible sacrifice made by our troops and their families. It provides an increase in military pay, first-class medical care, and expanded support and counseling for military families enduring the burdens of war.

But the sacrifices made for national security should not be for our troops and their families to bear alone. When the country commits to fighting a war, it must also commit to paying for it. All additional funding necessary for stability in Afghanistan and Pakistan must be paid for today, rather than added to America's mounting debt. That is why I joined my colleagues in cosponsoring H.R. 4130, a bill that would establish a temporary surtax to pay for the war in Afghanistan.

Madam Speaker, I am also pleased that H.R. 3326 increases oversight of the Department of Defense to reign in waste, fraud, and abuse. It ensures that defense personnel—not outside contractors—perform the department's most critical functions, and calls for additional investigators to oversee those contracts that are outsourced.

Finally, in addition to critical spending for our national defense, this package contains key items to help Americans during our economic downturn. H.R. 3326 will extend expanded unemployment benefits, health insurance for unemployed workers, and enhancements for small business loans. It will delay cuts to Medicare physician payment extensions, and help meet the growing demand for nutrition assistance for low- and middle-income Americans.

HONORING THE LIFE OF JIM CLARKE

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 23, 2009

Mr. WOLF. Madam Speaker, I rise to share with our colleagues today the recent passing of Jim Clarke. He died on December 21, 2009 at his home in Annandale, Virginia, at the age of 75.

In 1962 Jim joined WMAL, the predecessor of WJLA (ABC Channel 7), where he served as a dedicated television journalist for more than 40 years. Jim did an outstanding job for Channel 7 and served our region well before retiring just a few years ago. Jim was a man of integrity and will be sorely missed by all who had the pleasure of knowing him. My thoughts and prayers go out to his wife, Lizbe, and the rest of his family during these difficult times.

I would like to share an obituary for Jim that ran in the Washington Post on December 22.

[From the Washington Post, Dec. 22, 2009]

JIM CLARKE, EMMY-WINNING WJLA ANCHOR AND REPORTER, DIES

(By T. Rees Shapiro)

Jim Clarke, 75, an Emmy Award-winning television journalist for more than 40 years at what became WJLA (Channel 7), died Dec. 21 at his home in Annandale. Mr. Clarke had a heart attack in his sleep after shoveling snow for most of the day before.

In 1962, Mr. Clarke joined WMAL, the predecessor to WJLA, as an evening news anchor and reporter. During his career at the ABC News affiliate, his work included covering the race riots after the assassination of the Rev. Martin Luther King, Jr., the trial of the failed presidential assassin John Hinckley, Jr. and the Iran-Contra hearings.

Mr. Clarke focused many of his investigations on consumer advocacy stories and government corruption. He won numerous awards for his work, including nine local Emmy Awards, the Ted Yates award for courageous journalism and the National Headliner Award for an investigative report on abuses at St. Elizabeths Hospital, where several psychiatric patients died from neglect.

Mr. Clarke was in Norway when the news broke in 1998 about the sex scandal surrounding President Bill Clinton and former White House intern Monica Lewinsky, and he caught the first flight back to begin his coverage. To get a head start during the plane ride home, he wrote his script for the next newscast on the back of an airsickness bag.

James Davis Clarke, a native of Auxier, Ky., was a 1956 communication arts graduate of Fordham University in New York. One of his earliest jobs in the news business was as a copyboy for NBC newscaster John Cameron Swayze.

Mr. Clarke's big break came in the early 1960s as a radio reporter for WGH radio in Newport News, Va. He secured a taped interview at the home of Francis Gary Powers, the U–2 spy plane pilot who had been shot down over Russia. The report made news across the country as a rare first-person account of the crash and eventually reached the ears of the WMAL newsman Ed Meyer, who recruited Mr. Clarke to join the ABC affiliate in Washington.

Mr. Clarke retired from WJLA in 2003 as a national affairs reporter.

Survivors include his wife of 48 years, Lizbe Schuster Clarke of Annandale; four children, Christopher Clarke of Washington, Kimberly Allen of Albuquerque, Katie Adamson of Arlington County and Suzanne Sprague of Portland, Ore.; and eight grandchildren.

Among colleagues, Mr. Clarke was known to be intrepid. One evening during the 1970s, Mr. Clarke had been out late in Virginia covering a story that was in danger of not making the 6 o'clock evening news.

According to his co-worker John Corcoran, rather than not make the broadcast, Mr. Clarke hopped a ride on the station's helicopter and ordered an assignment editor and intern to pick up an emergency blanket and meet him on the roof of the station. The problem was, there was no helicopter landing pad.

Leaning outside the hovering helicopter, Mr. Clarke dropped the tape from his report into the outstretched blanket below, and the segment made it into the editing bays for that evening's news.

INTRODUCING DECABROMINE ELIMINATION AND CONTROL ACT

HON. CHELLIE PINGREE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 23, 2009

Ms. PINGREE of Maine. Madam Speaker, I am very proud to introduce the Decabromine Elimination and Control Act today.

Since 2005 there have been 44 state-based initiatives to ban brominated flame retardants (PBDEs), but only four have been signed into law, including one in my home state of Maine. That bill was sponsored by my daughter, Maine Speaker of the House Hannah Pingree, and passed by the Maine legislature.

Today, I am honored to continue the long tradition of bringing good ideas from Maine to Washington.

PBDEs are known endocrine disruptors, interfering with the transmission and regulation of thyroid and reproductive hormones. Exposure of infants to PBDEs is of particular concern because these chemicals have produced developmental neurotoxicity in laboratory animals, impairing memory, learning and behavior. Even more worrisome is the fact that breastfeeding infants are exposed to higher concentrations of PBDEs because of the presence of these chemicals in mother's milk. The time has come to remove this chemical from our children's toys and clothing. We must take immediate steps to ban this toxic and dangerous chemical.

This bill phases out, and ultimately bans, the last hazardous type of PBDE, Decabromine, by 2013. It mandates disclosure of products containing Decabromine to the Environmental Protection Agency and requires safer alternatives to be created to replace this toxic chemical. I have worked closely with the International Association of Fire Fighters, the Environmental Working Group, Maine Department of Environmental Protection and Environmental Health Strategy Center to develop this important piece of legislation, and I greatly appreciate the contributions of each of these groups in getting us to this critical point.

I look forward to working with my colleagues in the 111th Congress to pass this vital legislation and finally enact a long overdue ban on Decabromine.

RECOGNIZING THE MIRAMAR HIGH SCHOOL PATRIOTS

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 23, 2009

Mr. HASTINGS of Florida. Madam Speaker, I rise today to honor the Miramar High School Patriots' football team of my hometown, Miramar, Florida. On Friday, December 18, 2009, Miramar beat the DeLand Bulldogs 42–20 to become the first team from Broward County to win a 6A championship. Their 14–1 record and their convincing win in the title game are two things of which all Broward County citizens and all true football fans can be proud.

I congratulate Coach Damon Cogdell and the entire team for a job well done. I especially want to praise quarterback Ryan Williams, who passed for five touchdowns in the game, and receiver Ivan McCartney, who caught three of them. I am delighted to laud a team that has achieved great success.

The Miramar High School Patriots are fine examples of young men who have excelled at athletics and academics. By working hard and focusing on the tasks at hand, they have reached the pinnacle of their sport. They are people of whom their peers and everyone can be justifiably proud. I look forward to more championships from them in future years.

CELEBRATING THE NEVADA COUNTY ASSOCIATION OF REALTORS' 75TH ANNIVERSARY

HON. TOM McCLINTOCK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 23, 2009

Mr. McCLINTOCK. Madam Speaker, I rise to honor the Nevada County Association of Realtors' 75th anniversary. For 75 years the Nevada County Association of Realtors has been dedicated to helping protect the investment Americans place in their homes.

In 1935, a group of local real estate agents established the Nevada County Association of Realtors with the goal of offering clients and their families the highest level of professional real estate service.

The Nevada County Association of Realtors seeks to maintain and enhance programs, products and volunteer participation as well as develop new services and relationships to meet the demands of its members, clients and the community. The Association promotes the preservation of real property rights and is a tremendous asset to its community.

Madam Speaker, I would like to thank the Nevada County Association of Realtors and also ask my colleagues to join me in recognizing its 75 years of continued service to its community as well as the State of California.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, December 24, 2009 may be found in the Daily Digest of today's RECORD.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S13795–S13888

Measures Introduced: Five bills were introduced, as follows: S. 2926–2930. **Pages S13882–83**

Measures Reported:

S. 69, to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies. (S. Rept. No. 111–112)

S. 1178, to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, with amendments. (S. Rept. No. 111–113) **Page S13882**

Measures Passed:

Nuclear Forensics and Attribution Act: Senate passed H.R. 730, to strengthen efforts in the Department of Homeland Security to develop nuclear forensics capabilities to permit attribution of the source of nuclear material, after agreeing to the committee amendment in the nature of a substitute. **Pages S13886–87**

Commercial Space Transportation Liability Regime: Senate passed H.R. 3819, to extend the commercial space transportation liability regime, clearing the measure for the President. **Page S13887**

Measures Considered:

Service Members Home Ownership Tax Act—Agreement: Senate continued consideration of 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, taking action on the following amendments proposed thereto: **Pages S13796–S13866**

Adopted:

By 60 yes to 39 nays (Vote No. 394), Reid Amendment No. 2786, in the nature of a substitute. **Pages S13796–S13834**

Withdrawn:

Reid (for Cardin) Amendment No. 2878 (to Amendment No. 2786), to provide for the establishment of Offices of Minority Health. **Pages S13796, S13833**

Reid Amendment No. 3292 (to Amendment No. 2878), to change the effective date. **Page S13796**

During consideration of this measure today, the Senate also took the following action:

By 39 yeas to 60 nays (Vote No. 389), Senate determined that the point of order against Reid Amendment No. 2786 (listed above), as being in violation of Congress's enumerated powers in article 1, section 8, and in being in violation of the 5th Amendment of the United States Constitution, was not well-taken. **Pages S13830–31**

By 55 yeas to 44 nays (Vote No. 390), Senate agreed to the motion to waive section 425(a)(2) of the Congressional Budget Act of 1974 with respect to Reid Amendment No. 2786 (listed above). Thus, the point of order raised was rendered moot. **Pages S13804, S13831**

Appeal of the Ruling of the Chair with respect to Senate Rule 44, paragraph 4 (disclosure of congressionally directed spending) on Reid Amendment No. 2786 (listed above). (By 57 yeas to 42 nays (Vote No. 391), Senate tabled the Appeal.) **Pages S13810, S13831–32**

By 39 yeas to 60 nays (Vote No. 392), Senate determined that the point of order against Reid Amendment No. 2786 (listed above), as being in violation of the 10th Amendment of the United States Constitution, was not well-taken. **Pages S13822, S13832**

Motion to suspend Rule 22 of the Standing Rules of the Senate for the purpose of proposing and considering DeMint Amendment No. 3297 (create point of order). (By 53 yeas to 46 nays (Vote No. 393), Senate tabled the Motion.) **Pages S13832–33**

By 60 yeas to 39 nays (Vote No. 395), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the bill. **Page S13834**

A unanimous-consent agreement was reached providing for further consideration of the bill at 6:45

a.m., on Thursday, December 24, 2009, with the time until 7 a.m. equally divided and controlled between the two Leaders, or their designees; and Senate vote on passage of the bill at 7 a.m., as provided for under the previous order. **Page S13887**

Message from the President: Senate received the following message from the President of the United States:

Transmitting, pursuant to law, the notification of the President's intention to designate the Republic of Maldives as a beneficiary developing country and to terminate the designations of Croatia and Equatorial New Guinea as beneficiary developing programs under the Generalized System of Preferences program; which was referred to the Committee on Finance. (PM–39) **Page S13881**

McGee Nomination—Referral Agreement: A unanimous-consent agreement was reached providing that Committee on Environment and Public Works be discharged from further consideration of the nomination of Timothy McGee, of Louisiana, to be an Assistant Secretary of Commerce, and be referred to the Committee on Commerce, Science and Transportation. **Page S13887**

Nominations Received: Senate received the following nominations:

Daniel J. Becker, of Utah, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 2010.

James R. Hannah, of Arkansas, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 2010.

Gayle A. Nachtigal, of Oregon, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 2012.

John B. Nalbandian, of Kentucky, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 2010.

André Birotte, Jr., of California, to be United States Attorney for the Central District of California for the term of four years.

David A. Capp, of Indiana, to be United States Attorney for the Northern District of Indiana for the term of four years.

Richard S. Hartunian, of New York, to be United States Attorney for the Northern District of New York for the term of four years.

William Joseph Hochul, Jr., of New York, to be United States Attorney for the Western District of New York for the term of four years.

Ronald C. Machen, Jr., of the District of Columbia, to be United States Attorney for the District of Columbia for the term of four years.

Anne M. Tompkins, of North Carolina, to be United States Attorney for the Western District of North Carolina for the term of four years.

Sally Quillian Yates, of Georgia, to be United States Attorney for the Northern District of Georgia for the term of four years.

Noel Culver March, of Maine, to be United States Marshal for the District of Maine for the term of four years.

George White, of Mississippi, to be United States Marshal for the Southern District of Mississippi for the term of four years.

Beatrice A. Hanson, of New York, to be Director of the Office for Victims of Crime. **Page S13888**

Nomination Withdrawn: Senate received notification of withdrawal of the following nomination:

Suedeen G. Kelly, of New Mexico, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2014, which was sent to the Senate on July 28, 2009. **Page S13888**

Messages from the House: **Pages S13881–82**

Measures Referred: **Page S13882**

Executive Communications: **Page S13882**

Executive Reports of Committees: **Page S13882**

Additional Cosponsors: **Page S13883**

Statements on Introduced Bills/Resolutions: **Pages S13883–86**

Additional Statements: **Page S13881**

Authorities for Committees to Meet: **Page S13886**

Privileges of the Floor: **Page S13886**

Record Votes: Seven record votes were taken today. (Total—395) **Pages S13830–34**

Adjournment: Senate convened at 9:45 a.m. and adjourned at 8:15 p.m., until 6:45 a.m. on Thursday, December 24, 2009. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S13887.)

Committee Meetings

(Committees not listed did not meet)

BUSINESS MEETING

Committee on Finance: Committee ordered favorably reported the nominations of Lael Brainard, of the District of Columbia, to be Under Secretary, Michael F. Mundaca, of New York, and Mary John Miller, of Maryland, both to be Assistant Secretary, and Charles Collyns, of Maryland, to be a Deputy Under Secretary, all of the Department of the Treasury, Michael W. Punke, of Montana, to be a Deputy United

States Trade Representative, with the rank of Ambassador, Islam A. Siddiqui, of Virginia, to be Chief Agricultural Negotiator, Office of the United States Trade Representative, with the rank of Ambassador, and Jim R. Esquea, of New York, and Ellen Gloninger Murray, of Virginia, both to be Assistant Secretary, and Bryan Hayes Samuels, of Illinois, to be Commissioner on Children, Youth, and Families, all of the Department of Health and Human Services.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: There were no public bills or resolutions introduced today.

Reports Filed: There were no reports filed today.

Speaker: Read a letter from the Speaker wherein she appointed Representative Moran (VA) to act as Speaker Pro Tempore for today. **Page H15511**

Chaplain: The prayer was offered by the Guest Chaplain, Reverend Gene Hemrick, Washington Theological Union, Washington, DC. **Page H15511**

Membership of Standing Committees: Read a letter from Representative Larson (CT), Chairman, Democratic Caucus wherein he informed the Speaker that Representative Parker Griffith is no longer a member of the Democratic Caucus. Subsequently, read letters from the Speaker wherein she advised Chairman Oberstar, Committee on Transportation and Infrastructure, Chairwoman Veláquez, Committee on Small Business, and Chairman Gordon, Committee on Science and Technology that Representative Parker Griffith's election to the Committees on Transportation and Infrastructure, Small Business, and Science and Technology have been automatically vacated pursuant to clause 5(b) of rule X, effective today. **Page H15512**

Quorum Calls—Votes: There were no Yea and Nay votes, and there were no Recorded votes. There were no quorum calls.

Adjournment: The House met at 12 noon and at 12:04 p.m., the House stands adjourned until 10 a.m. on Saturday, December 26, 2009 unless it sooner has received a message from the Senate transmitting its concurrence in H. Con. Res. 223, in which case the House shall stand adjourned pursuant to that concurrent resolution.

Committee Meetings

No committee meetings were held.

Joint Meetings

No joint committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D1511)*

S. 1422, to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews. Signed on December 21, 2009. (Public Law 111–119)

COMMITTEE MEETINGS FOR THURSDAY, DECEMBER 24, 2009

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No committee meetings are scheduled.

Next Meeting of the SENATE

6:45 a.m., Thursday, December 24

Senate Chamber

Program for Thursday: Senate will continue consideration of H.R. 3590, Service Members Home Ownership Tax Act, and vote on passage of the bill, and passage of H.R. 4314, an act to permit continued financing of government operations at 7 a.m.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Saturday, December 26

House Chamber

Program for Saturday: To be announced.

Extensions of Remarks, as inserted in this issue

HOUSE

Hastings, Alcee L., Fla., E3068
McClintock, Tom, Calif., E3068
McCollum, Betty, Minn., E3067
Pingree, Chellie, Me., E3067
Wolf, Frank R., Va., E3067

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