the time consumed by the Senator from Tennessee deducted from the Republican time.

Mr. KYL. Mr. President, would the Chair acknowledge that the 51 minutes now is the time of 1 hour, equally divided, minus the time of Senator ALEXANDER; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

## HEALTH CARE

Mr. KYL. Mr. President, as three of my colleagues have already noted this morning, President Obama's health care law turns 1 next week, and in my view it hasn't been aging very well.

On the eve of its 1-year anniversary, I too would like to review a few key developments related to the law and its implementation and note that, at least to me, it is very clear this bill has not become more popular with Americans but decreasingly popular.

Let us go back to March 23, 2010, just about 1 year ago. That is when the President signed this health care bill into law. Later, that very day, 13 States filed a lawsuit against it in a Florida Federal court. Another 13 States have joined the suit since. In addition, Virginia filed its own separate lawsuit on the day of enactment.

May 11, 2010. The nonpartisan Congressional Budget Office revised upward its cost estimate of ObamaCare. According to the CBO, ObamaCare will cost $115 million more than originally estimated, pushing the cost of the program to over $1 trillion.

June 2010. With public opinion still decidedly against the law, a poll at that time found that 58 percent of Americans supported repeal. The Department of Health and Human Services launched a public relations campaign to try to change people's minds. Many seniors received a pamphlet from HHS Secretary Kathleen Sebelius that made claims such as:

> Your guaranteed Medicare benefits won't change—whether you get them through original Medicare or a Medicare Advantage plan.

But, of course, the pamphlet failed to mention the fact that the law cuts Medicare Advantage plans by $202 billion over 10 years, meaning higher premiums, less benefits, and fewer plan choices for seniors. The CBO estimates that the extra benefits currently provided by Medicare Advantage plans will be cut in half.

July 11, 2010. President Obama used a recess appointment to name Donald Berwick as Administrator of the Centers for Medicare and Medicaid Services, an agency that will play a critical role in the implementation of ObamaCare. The President used this procedure in an attempt to bypass the regular confirmation process before the Senate had held a hearing or voted on the nominee. The recess appointment allows Dr. Berwick to run the Centers for Medicare and Medicaid Services through the end of this year.

A hearing would have given Senators the opportunity to question Dr. Berwick about his very controversial views, including his espousal of health care rationing. He has, for example, praised the British national health care system, which routinely denies and rations care, as ''extremely effective'' and ''conscientious.''

On September 24, 2010, the Department of Health and Human Services issued its first waiver of ObamaCare provisions dealing with the limited benefit or mini-med plans. Since then, a total of 1,040 waivers have been granted, many to the administration's favored political constituencies. It seems as though they like the law as long as it doesn't apply to them.

December 13, 2010. A Federal district court judge in Virginia ruled that the law's mandate that individuals purchase government-approved health insurance is unconstitutional.

January 19 of this year. The House of Representatives voted 245 to 189 to repeal ObamaCare.

January 25, 2011. My Governor, Jan Brewer of Arizona, asked Secretary Sebelius to waive the maintenance-of-effort provision in the health care law. That is the provision that forces an unfunded Medicaid mandate on States by denying them the flexibility, the full ability to manage their own Medicaid Programs to fit their own budgets and their own unique Medicaid populations. This is a huge problem because Arizona, along with most other States, is experiencing a dire budget crisis.

January 26, 2011. Medicare Chief Actuary Richard Foster testified before the House Budget Committee. He acknowledged to the committee that President Obama's promise that Americans will get to keep their coverage if they like it is ''not true in all cases.''

January 31, 2011. Judge Roger Vinson, a Federal district court judge in Florida, ruled that the individual mandate in the law is unconstitutional and he invalidated the entire law. He concluded the law's requirement to buy insurance or pay a fee:

> . . . is outside Congress' Commerce Clause power, and it cannot be otherwise authorized by an assertion of power under the Necessary and Proper Clause. It is not constitutional.

He also writes:

> It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America, would have set out to create a government with the power to force people to buy the tea in the first place. Surely this is not what the Founding Fathers could have intended.

On February 2 of this year, on the Senate vote to repeal the law, it failed on a party-line vote, 47 to 51. So the Senate did not follow the path of the House of Representatives to repeal ObamaCare.

On February 14, Valentines Day, the IRS submitted to Congress its fiscal year 2012 budget request. The health care bill is mentioned by the IRS more than 250 times. The IRS will have to hire thousands of new workers to implement the many new tax provisions. As the request noted, the health care law:

> . . . presents a major challenge for the IRS. It represents the largest set of tax law changes in 20 years, with more than 40 provisions to amend the tax laws.

Just to remind my colleagues and our constituents throughout this country, the health care law has more than 40 provisions, the largest set of tax law changes in 20 years.

February 22 of this year. A Clinton-appointed Federal judge ruled that ObamaCare is constitutional because the Constitution somehow permits the Federal Government to regulate what the court called ''mental activity.''

So much for keeping your thoughts to yourself.

On March 3, 2011, at the request of the Obama administration, a Federal judge in Florida, the Federal judge who had previously ruled that ObamaCare is unconstitutional, clarified his ruling and noted his continuing concern with the fact that if the law is upheld, he says, ''Congress could, indeed, mandate that everyone buy broccoli.''

I think the first President Bush would have a real problem with that mandate.

March 14, 2011, just 3 days ago. The latest Rasmussen poll shows that support for repeal of the health care law has reached its highest level since May of 2010, with 62 percent of likely voters now favoring repeal.

That is what we should do. These developments highlight just some of the reasons why the bill is so unpopular and so deeply flawed that the American people agree it should be repealed and it should be replaced with more sensible ideas.

The debate on the health care law will no doubt continue throughout this year, especially now that two Federal courts have already ruled it is unconstitutional. It would be best if we could stay the law until the Supreme Court rules on its constitutionality. States and businesses could save a great deal of money, and insurance companies wouldn't have to raise their rates. We will have a chance, I hope, to vote on such a proposal.

Some things age well with time—not ObamaCare.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise also to speak to the issue of the health care reform bill, which my colleague from Arizona has pointed out is now seeing its 1-year anniversary. I think it is good to put in perspective the issues most Americans care about.

As I travel my State of South Dakota and elsewhere in this country, I hear repeatedly what most Americans think we ought to be focused on right now in Washington, DC; that is, the economy, job creation, spending, and debt. They believe those are the issues that are most important. I think the public

opinion polls reflect that. If we look at any public opinion poll today, generally, they are in that order: It will be jobs, the economy, spending, and debt.

As I look at what this health care bill has done—and use the metric of jobs and the economy and spending and debt and look at it on the 1-year anniversary—I think we would have to say this has been a major failure in terms of speaking to or addressing the issues the American people care the most about.

On the issue of jobs and the economy, there were lots of statements made about this when it was passed; that it was going to create lots of jobs. The former Speaker of the House, NANCY PELOSI, said, in its life, the health care bill will create 4 million jobs; 400,000 jobs almost immediately. Yet we have the CBO Director recently testifying that the new law will reduce employment over the next decade by 800,000 jobs.

So we have a piece of legislation that is going to, according to the CBO, cost us jobs in the economy. Couple that with the fact that it will raise taxes, and raise taxes dramatically on the economy, by $½ trillion in the first 10 years, $1 trillion dollars when it is fully implemented, and we see that businesses will pass those costs on to the people in this country who buy things—consumers—and, obviously, it leads to higher costs for a lot of these items.

It leads to higher health care costs because most of those taxes were imposed upon health insurance companies, on pharmaceutical companies and on medical device manufacturers and many of those costs are being passed on. One would have to argue very hard to suggest that any kind of a tax increase is going to create more jobs. In fact, historically, it is very clear that any time we raise taxes, it actually costs the economy jobs.

So we have the CBO Director talking about the loss of jobs, we have the fact that we have some massive tax increases in this legislation that will cost us jobs, and we also drive up the cost of doing business in this country because we are increasing the cost of health care for a lot of small businesses that are trying to provide coverage to their employees.

What we have seen consistently is an argument from the other side that this was going to drive down the cost of health care. Yet, again, the facts tell an entirely different story.

There was a statement made by the President: Reform will lower the cost of health care for our families, our businesses, and our government. Again, the Chief Actuary at the Centers for Medicare and Medicaid Services estimates the law will increase costs by $311 billion in the first 10 years alone, over and above normal inflation. CBO, the Congressional Budget Office, estimates the new law will increase health care spending by the Federal Government by $464 billion over the next decade. CBO estimates when it is fully implemented, the law will increase insurance premiums on a family policy by an average of $2,100 per year—increased costs of health insurance for employers and employees, which is going to cost the economy jobs. It drives up the cost of doing business in this country. All these factors in this health care legislation contribute to a loss of jobs because they make it more expensive for small businesses in this country.

If you use the metric of job creation and how this legislation impacts the economy, I think you would have to describe it as a major failure. The American people determine what is important. They have decided, and rightly so, when you have as high unemployment as we have in this country today, job creation should be the No. 1 priority of their policymakers in Washington, DC. In fact, we should be looking at policies that will be conducive to job creation, not policies that will inhibit job creation. The massive health care law that was passed last year will have exactly the opposite effect we should be striving for when it comes to jobs. We ought to be looking for policies that will create jobs. This actually will cost the economy jobs. You have the metric of job creation. If you measure the health care bill against that a year later, I think you would have to say it was a complete failure.

The issues I mentioned that also bear on what is important to Americans today, spending and debt—how does health care legislation stack up against those criteria? First, with regard to spending, we all know by now that when it is fully implemented this new health care legislation will cost $2.6 trillion, a $2.6 trillion expansion of government—literally the largest expansion of the Federal Government in the last half century. You would have to go back to the 1960s to find a time that you see the government expand at the rate we have seen in the last 2 years alone, and that is reflected in the debt and deficit figures over the last 2 years.

Since President Obama took office, the debt in this country has grown by over $3 trillion. In fact, if the budget he presented is implemented, that total debt will double by the end of the next decade. If you take a $14 trillion gross debt, almost $14 trillion—which is where it is today—if the President's budget is implemented you would see that debt double over the course of the next decade to over $26 trillion.

You have massive amounts of borrowing, massive amounts of debt, massive amounts of new spending and tax increases, all of which create an environment in which it is going to be very difficult for our economy and for the job creators to create jobs. But you have grown significantly the size of government.

How about the issue, as I said earlier, of debt? We talk a lot about the $14 trillion gross debt we have today. We have a lot of research out there that suggests when you are carrying that kind of debt load, if you sustain it over any amount of time it is going to cost you a significant amount of economic growth. In fact, there is a good body of research out there that suggests when you have a gross debt-to-GDP ratio of 90 percent or higher, which is where we are today, it costs you about 1 percent a year.

The President's former economic advisor, Christina Romer, said anytime you lose a percentage point of economic growth it costs you a million jobs. If we are losing, because of this high level of debt, a percentage point of economic growth every year, we are losing a million jobs every year as a result of that as well.

How does the whole health care debate bear on this issue of debt in the long term? I think it is important, again, to point out that many of the things that were put into this bill, that were designed to be used as offsets to pay for the bill, end up in the outyears adding massively to the deficit. I will use a good example of that, the CLASS Act, a new long-term care entitlement program which was put into this bill. At the time it was being debated it was actually described by the chairman of the Budget Committee, the Democratic chairman, as a Ponzi scheme of the highest order, something Bernie Madoff would be proud of. That is how the CLASS Act was described. That particular act, and its creation, was used as a $70 billion offset to pay for the new massive health care entitlement program.

What is going to happen, and we are finding out now more and more about this, is that particular program, although it generates some revenue in the early years, runs huge deficits when you get into the outyears because of the way the program is structured, because of adverse selection. Because of the way the program was designed in the first place you start adding massively to deficits in the outyears. Secretary Sebelius, at the Department of Health and Human Services, admitted to me in answer to a question at the Senate Finance Committee, that the CLASS Act program is ''totally unsustainable.''

During yesterday's Finance Committee hearing I asked the question about whether there was actuarial modeling done prior to the law's passage so that Democrats and Health and Human Services would have known how bad this program is, and she would not respond to or answer that question.

I asked Chairman CONRAD, the chairman of the Senate Budget Committee, for a hearing to look at these actuarial models that Health and Human Services has developed to analyze the CLASS Act. Why has she come to the conclusion that it is totally unsustainable when many of us knew that in advance? In fact, that is what CBO, the Congressional Budget Office, was saying in advance.

We have created these new entitlement programs that are going to lead

massively to higher deficits and more debt well into the future, the CLASS Act being one example of that. I suggest as well that when you create a $2.6 trillion new entitlement program, if history is any indication, that would dramatically understate what the true costs are. We have seen that historically, that whatever the estimates are about some of these new government programs, they are significantly less than what was estimated when they were created in the first place.

I would argue on the issue of how the new health care bill on its first anniversary impacts the issue of debt, we are not going to know probably for some time but I think we can get a pretty clear idea that this is going to lead to much higher deficits and much higher debt in the outyears because of the statement the Congressional Budget Office and the CMS Actuary and even now the Secretary of Health and Human Services are saying with regard to programs such as the CLASS Act—which was created under this bill.

I think the other reason you are going to see the debt and deficit explode is because of the gimmicks that were used by the Democrats to finance the health care bill. I mentioned the CLASS Act was one of those, but there were a number of other gimmicks that were used as well. There was the Medicare payroll tax increases, the Medicare cuts that are supposed to occur under this to pay for the new health care entitlement program. It was also indicated at that time they were going to extend the lifespan of Medicare. Essentially, what happened is the same revenues were spent twice; they were double counted. In other words, there was new revenue going to come into the Medicare trust fund because of increased payroll taxes and because of the reductions in spending in those Medicare accounts that allegedly would create a credit for the Medicare trust fund. Unfortunately, all those new revenues are going to be used to finance this new health care entitlement program.

Somewhere down the road, when the time comes to pay the bills of Medicare, you are going to have to borrow money to do that because of the way these gimmicks were used and the way the double counting was used, not only to credit the Medicare trust fund but also to use it as an offset for the new health care entitlement program.

If you look at the actual numbers it is somewhere on the order of $400 billion that was double counted in the Medicare trust fund and about $30 billion, I believe, was the number on the Social Security trust fund. For these gimmicks, the chickens are going to come home to roost at some point in the future and it is going to lead to significantly larger deficits and a much higher debt than we are looking at today, than what was contemplated when the legislation was passed in the first place.

Whether it is the gimmicks that were used, whether it is these new entitlement programs such as the CLASS Act, whether it is the actual cost—even estimated cost of $2.6 trillion in new expansion of government, whether it is the loss of jobs associated with the higher taxes, the higher health care premiums in this legislation, if you are going to evaluate it based upon the issues that are most important to the American people—and that is the economy, jobs, spending, and debt—on the first anniversary of this health care reform legislation, this has been already a huge failure by any objective measurement. My guess is before this is all said and done we are going to continue to see more and more of our employers having to drop their coverage, perhaps pay the penalty rather than continue to provide coverage for their employees, and push them into the government program.

I think you are going to see more and more government control, more and more influence and intervention of the Federal Government, more and more cost to taxpayers, and higher and higher health care costs for small businesses and for families and for individuals in this country. On the first year anniversary of this legislation, I think the best thing Congress could do would be to repeal it and start over with commonsense health care reforms that will actually reduce the cost of health care, that will be fiscally responsible, that will not break the bank, and that will help get us on a path where we can create jobs and get the economy growing again rather than inhibiting that.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, we are in morning business?

The ACTING PRESIDENT pro tempore. We are.

Mr. DURBIN. The Democratic side is now recognized?

The ACTING PRESIDENT pro tempore. They are.

Mr. DURBIN. How much time is remaining?

The ACTING PRESIDENT pro tempore. There is 25 minutes 47 seconds.

## INTERCHANGE FEES

Mr. DURBIN. Mr. President, I usually do not get up in the morning and race to read the editorial page of the Wall Street Journal. It is not part of my morning routine. I do not agree with them on most of the positions they have taken and I have found many times the statements they make are sometimes grossly inaccurate. This morning was no exception.

They printed an editorial on the issue of interchange fees on debit cards. They had some critical things to say, which is their right, and my responsibility as an elected official to absorb. I know folks on Wall Street and their friends in the press are not happy with the interchange reform which Congress passed last year. They are certainly entitled to their opinion, but they are not entitled to their own alternative reality. When I read this Wall Street Journal editorial this morning, I felt as though I had entered into some fact-free twilight zone.

Swipe fee reform is an important issue. So the people who are following this debate understand what we are talking about; each time you use a credit card or a debit card to pay for something—a meal at a restaurant, groceries, pharmaceuticals, a donation to a charity, buying gas for your car—each time you do there is a fee that is charged to the merchant. That fee is charged by both the bank issuing the card and the underlying credit card company. It is called an interchange fee.

And it is a fee that is imposed on businesses large and small all across America literally without negotiation. It is a fee that is dictated because there is little or no competition.

The Wall Street Journal probably prides itself on being the protector or defender of the free market system. There is no free market system when it comes to interchange fees. If you want to accept a Visa or MasterCard from a certain bank, you will pay a certain interchange fee every time a card is used at your establishment. What I learned in a hearing on this subject years ago is that there is virtually no negotiation in establishing these fees. And merchants came to me. The first who came to me was not a major retailer but a buddy of mine in Quincy, IL, named Rich Niemann. Rich Niemann is a very conservative man who probably reads the Wall Street Journal every day, but he has done quite well for himself and his family and his company by opening up food stores all over the Midwest.

Rich is a roll-up-your-sleeves, grassroots businessman. He said to me: Senator DURBIN, these credit card companies and their banks are killing us. The interchange fees bear no relationship to the actual cost of the transaction.

He said: You know, if somebody pays for groceries with a check, it clears the bank for pennies regardless of whether the check is for $10 or $100. If they use a debit card, which is a plastic check drawing directly out of their account to pay, it ends up we pay an interchange fee which is substantially higher; and there is nothing we can say about it.

The Wall Street Journal, the defender of the free market system, the defender of competition, has to acknowledge the reality that there is no competition when it comes to these duopolies, Visa and MasterCard, and when you consider that merchants have no voice or little voice in establishing what their fee is going to be when it is charged.

So we came to the floor of the Senate and said we need to have interchange fee reform. The measure passed, the amendment passed, by a margin of 64 votes—17 Republicans, 47 Democrats—and then was accepted in conference