

what this country has a responsibility to do: ratify this treaty, and do it soon.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

FDA FOOD SAFETY MODERNIZATION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 510, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 510) to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

Pending:

Reid (for Harkin) amendment No. 4715, in the nature of a substitute.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. JOHANNIS. Mr. President, I do not see Senator BAUCUS in the Chamber, so I will go ahead and get started. My understanding is we will be going back and forth. So I will finish my opening remarks, and then if he arrives I will yield to him.

In just a few hours Senators are going to have a distinct choice. Two amendments will be offered to repeal what I think we have all come to regard as a very nonsensical tax paperwork mandate that was included in the health care reform bill.

There is broad agreement the 1099 repeal is necessary to remove Federal roadblocks to job creation. But today we have a choice on the two amendments. Today's choice comes down to what I regard as a very straightforward choice, a choice relative to fiscal responsibility, and it is illustrated by the chart I have in the Chamber.

My amendment fully offsets the cost of the 1099 repeal. The alternative Baucus amendment piles \$19 billion of debt onto the backs of future generations. The irony of this is just unmistakable. On one hand, we have a provision in the health care law that we have all come to regard as crazy, foolishness. Even the President has said it does not make any sense—or words to that effect.

On one hand, to repeal it, we are adding to the debt of future generations. On the other hand, my amendment fully offsets that cost.

Americans have sounded an alarm regarding Washington's out-of-control spending. They demand we address what is a huge \$14 trillion debt. They look at their Federal Government in disbelief when they see Washington continuing to spend money we simply do not have.

Yet the alternative amendment proposes to do more of the same. It does

not have a single offset. It simply passes the buck, and in this case it passes the buck to our children and grandchildren.

Now, both amendments, as you can see from the chart, repeal the 1099 requirement. But in the case of the Johannis amendment, it repeals the 1099 requirement without adding a single penny to our deficit or to the cost of the health care bill.

It also has taken care of the issue of the controversial offsets. As my colleagues remember, I listened in September when many came up to me and said: Look, I am with you on repealing this 1099 provision. My small businesses are asking me to get it repealed. But I just cannot go along with your offsets. Well, my new 1099 amendment uses unspent and unobligated funds from Federal accounts to fully pay for the repeal.

At the end of every year, there is money left in the accounts of Federal agencies that is not obligated. As someone who was a Cabinet official in a previous life, I can tell you that occurs. My amendment boils down to using about 5 percent of these funds—5 percent.

Additionally, the amendment I am offering gives the Office of Management and Budget the ability to decide what programs to pull funds from and in what amounts. This approach is far better than an across-the-board cut, and it allows important programs to continue to be funded.

Some are probably going to argue: Whoa, this is historic. This has never been done before. But I want to assure my colleagues, it has been done repeatedly.

If my colleagues choose the alternative amendment in a few hours, then the public demand for fiscal responsibility will have fallen on deaf ears. In September, when the Senate first voted down my 1099 amendment, the concern was about the source of the offsets. It was the health care bill, and many said to me: Look, I am with you, but I cannot go along with these offsets. So we changed them. But back then, no one—no one—argued that we simply did not need to pay for the repeal. No one argued that. Yet today the Baucus alternative amendment proposes no payoffs, adding \$19 billion to the national debt, without a dime of budgetary offsets.

So after all the hoopla about pay as you go, there is not a single budgetary offset to cover the cost of this amendment. So I urge all of my colleagues to vote for the fully offset Johannis amendment. It will be a vote to protect our job creators. It will be a bipartisan vote because we have all come to agree that this 1099 provision does not make any sense. And, most importantly, when we talk to our constituents about how we did this, we will be able to clearly tell them we paid for it, we

took care of the cost of repealing the 1099 amendment with offsets that were a compromise to try to get this done and get this behind us.

Several of my colleagues also want to speak on this issue, so I am going to yield 5 minutes of my time to Senator ENZI, followed by 5 minutes to Senator THUNE, 5 minutes to Senator BROWN, and 5 minutes to Senator HUTCHISON. So I yield to Senator ENZI.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise today to speak about the Johannis amendment that would repeal a provision in the health care reform law that, if not repealed today, will impose significant burdens on small businesses across this country.

Repealing this provision has the support of many of my colleagues on both sides of the aisle. Even the President has commented that this provision is onerous on small businesses and warrants immediate adjustment.

Starting in 2012, the new health care law will require that all businesses purchasing \$600 or more in property or services from another entity, including corporations, must provide the vendor and the Internal Revenue Service with a tax information return. This new government mandate will impose significant burdens on both small and large businesses, and taxpayers' costs will increase as a result of accumulating the information and preparing the tax forms necessary to comply with this expanded mandate.

Imagine if you are a freelance writer and you buy a new laptop. Well, now you have to send form 1099 to Apple and to the IRS or be labeled a tax cheat. Oh, and you will need the Apple taxpayer identification number too, so do not forget to ask the salesman for that.

This new reporting requirement hits small businesses hardest because they typically do not have in-house accounting departments and have to hire outside help. Every penny a small business spends on these services is money they cannot spend on hiring new workers and expanding their business. Every hour a small business owner spends filling out these new tax forms is time he or she is not making a sale, manufacturing a product, or working with a customer.

I understand the challenges this can create for small business. Before I came to the Senate, my wife and I owned shoe stores in Wyoming. When you own a small business, you have to be the CEO, the bookkeeper, the salesman, and the person who cleans the bathroom.

Every hour I spent filling out government-mandated paperwork was an hour I could not spend selling shoes. Government mandates such as the new 1099 requirement have a real cost, and it is small businesses that will end up having to pay them.

This new 1099 reporting requirement is just one of many things in the new health care reform law that need to be reexamined immediately. Our small businesses need to be focused on creating jobs and helping our economy recover, not spending countless hours on new government paperwork burdens.

We all would do well to remember the claims of the sponsors of the health care reform law who said this new law would actually reduce the Federal deficit. Most Americans didn't believe those claims when they were made, and today they are seeing the first evidence of their falsity.

Today, when confronted with the nationwide opposition to this ill-conceived expanded information reporting policy, one of the leading proponents of the new health care law in the Senate is offering an amendment that will eliminate it, but it eliminates the revenues it produces. More importantly, his amendment makes no attempt to pay for the lost revenues. That means his amendment will further increase the Federal deficit.

While this may be the first time we see this, it certainly will not be the last. The funding for the entire health care law was built on a fiction of cost estimates and actuarial assumptions. As each of these provisions confronts the harsh reality of the light of day, we will see more and more of these provisions undone in the coming years. When millions of seniors across the country lose existing Medicare benefits and face escalating out-of-pocket costs, there will be an urgent push to restore these benefits. When hospitals, nursing homes, and home health agencies begin to close their doors because Medicare payment rates cause them to operate at a loss, Congress will move to undo those cuts, at a cost to the deficit. When the new insurance benefits are slashed as a result of formula gimmicks that will force automatic reductions in benefits, I suspect many of the supporters of the new law will argue for the urgent necessity of delaying these cuts.

We can make a statement right now to America's small businesses that we want them creating more jobs, hiring new employees, and growing their businesses—not worrying about what Washington will require of them next. Let's tell our small business men and women that we stand behind them, not on top of their backs, and let's repeal this new tax paperwork burden in a fiscally responsible way.

Mr. President, I yield the floor and reserve the remainder of the time.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, at 6:30 this evening, the Senate will vote on the motion to invoke cloture on the substitute amendment to the food safety bill. Under a previous order, once cloture is invoked, there was to be up

to 60 minutes of debate on competing motions to suspend rule XXII offered by Senator JOHANNIS and myself. I understand that the two leaders intend to propound an agreement that would provide for the Senate to vote on our two motions immediately after the cloture vote this evening. So Senators should be on notice that there may be three back-to-back votes beginning at 6:30.

The Senator from Nebraska and I share a common goal. We both want to repeal some IRS reporting requirements scheduled to take effect in the year 2012. Each of our two motions would allow consideration of an amendment to prevent the expansion of those IRS reporting rules. Thus, each of our two amendments would help small businesses across America. How? By repealing these burdensome paperwork requirements.

But there are two big differences between our two amendments. First, my alternative is especially friendly to small businesses. It takes extra measures to permit the IRS to waive certain duplicative reporting requirements that small businesses now must experience; that is, the small businesses that use credit cards to pay their bills. My alternative goes further and gives more relief to small businesses. Second, our two versions differ as far as paying for the change. The alternative offered by my colleague from Nebraska would give the unelected Director of OMB unprecedented authority to slash spending all on his own. The Johannis alternative would thus abdicate Congress's responsibility over the budget. For these reasons, I urge my colleagues to oppose the Johannis amendment and support my alternative.

First, let me talk about what we have in common. Each of our two amendments is designed to get rid of a set of rules that requires reporting to the IRS. Many have referred to these rules as the "1099 provision." That is because these new rules would require filing more IRS forms numbered 1099. These rules would impose new paperwork burdens and costs on small businesses, and these burdens would fall on small businesses just as they are struggling to emerge from the great recession. The new rules expand existing information reporting to the IRS to include payments that businesses make to corporations and payments they make for goods and property.

As I travel around my home State of Montana, I listen to small business owners such as Darrell Keck. Darrell owns the Dixie Inn in Shelby, MT. Darrell and his wife Jeanne run a tight ship. They are hard working. They pay their taxes. Darrell told me that he and his wife just do not have the manpower or the software to make the new reporting rules work. And Darrell and his wife Jeanne run just one business of the many mom-and-pop businesses in Montana that have told me this. I dare-

say most of the Members of this body hear the same things I hear as they travel. I have listened to small businesses. I have heard them. I am responding to small businesses by offering this amendment. My amendment would fully repeal the new reporting requirements—fully.

My amendment also responds to the concerns of owners of rental property. Some of these owners were concerned about their ability to comply with new rental expense information reporting rules included in the small business bill which Congress enacted just this last September. My amendment would scale back those rules. My amendment would apply the same rules to rental expense reporting as would apply to all businesses.

Now let me turn to the differences between my amendment and the Johannis amendment.

First, my amendment includes another feature that would further reduce the paperwork burdens on small businesses. My amendment would grant the Secretary of the Treasury the authority to issue regulations to avoid duplicative reporting. The Treasury has issued guidance under similar authority to allow small businesses that use credit cards to forgo reporting expenses they pay with their credit cards. Under this new guidance, to the extent small businesses use their credit cards to pay service vendors, they would actually have even less compliance burden than they did under the old law; that is, before the new requirement.

The competing amendment offered by my colleague from Nebraska would repeal the Treasury's authority to make rules to avoid duplicative reporting. It would repeal it. Doing so would thus risk placing undue and unnecessary paperwork burdens on small businesses that use credit cards to pay their bills.

So my alternative is especially friendly to small businesses. It takes extra measures to permit the IRS to waive duplicative reporting, especially those requirements for small businesses that use credit cards.

The second main difference between our two amendments is the offset in the Johannis amendment—and this is a big one. The Joint Tax Committee estimates that the tax law changes in the Johannis amendment would cost about \$22 billion.

The Johannis amendment also includes a cut of \$39 billion in appropriated funds, to be determined by the Office of Management and Budget. The Johannis amendment cuts about twice what it needs to do to pay for the repeal of the reporting requirements. As a matter of dollars and cents, the Johannis amendment is mostly about cutting appropriated spending. That is what it really is. So it is not about repealing the reporting requirement. To make these spending cuts, the Johannis

amendment would give the unelected Director of OMB unprecedented authority to determine the source of this funding, and that would abdicate congressional responsibility over the budget.

The Joint Tax Committee estimates that my amendment would cost about \$19 billion. That is a little less than the tax part of the Johanns amendment. But my amendment does not include an offset. These days, finding a \$19 billion offset that can get 67 votes is pretty close to impossible. We have spent much of this year haggling over one offset or another. My amendment tries to avoid that.

We are talking about a paperwork requirement that has not yet even taken effect and, in fact, will not take effect, if not repealed, until the year 2012. Let's just repeal this reporting requirement. Let's just get it done. Let's just repeal it lock, stock, and barrel. Let's just get it done and not do all of these extra, other things which really are not good policy.

The IRS has used form 1099 for decades to better track income, but the new reporting rules just went too far. The time that it spends for small businesses to comply with the new rules far exceeds any benefit.

Especially in these tough economic times, now is not the time to put additional stress on small businesses to meet complicated government rules. Rather, now is the time to eliminate this paperwork burden. Small businesses are the backbone of the American economy. That is especially true in Montana. In Montana, a greater share of workers work in small businesses than in any other State in the country—a greater proportion than in any other State in the country. Business owners need to focus their efforts on growing their businesses and creating jobs, not filling out paperwork.

Small businesses in Montana and across America want to comply with tax laws, but these new rules stretch their ability to do that. It just went too far. I urge my colleagues to support their full repeal. But let's not hand over a blank check to the OMB Director to slash \$39 billion wherever he wants. That part of the Johanns amendment also goes too far. So I urge my colleagues to help small businesses. I urge my colleagues to avoid sweeping delegations of power to an unelected OMB Director. Thus, I urge my colleagues to oppose the Johanns amendment and support the Baucus amendment when it comes up for a vote this evening.

Mr. President, I have a unanimous consent request which I understand has been cleared on both sides.

I ask unanimous consent that the agreement with respect to S. 510 be modified as follows:

That after the cloture vote at 6:30 p.m. today, and if cloture is invoked,

then all debate time with respect to the Johanns and Baucus motions be considered expired; Senator JOHANNs be recognized to offer his motion to suspend; that once the motion has been made, Senator BAUCUS then be recognized to offer his motion to suspend; that once made, the Senate then proceed to vote with respect to the Johanns amendment to suspend; that upon disposition of that motion, the Senate then proceed to vote with respect to the Baucus motion to suspend; that upon disposition of those two motions, Senator COBURN then be recognized as provided for under the order of November 18 and 19; that all debate time with respect to the Coburn motion be utilized during today's session; that at 9 a.m. Tuesday, November 30, after the prayer and the pledge and any leader time, the Senate then resume consideration of S. 510 with 2 minutes of debate, equally divided and controlled between Senators COBURN and INOUE, prior to the vote in relation to the Coburn motion regarding earmarks, No. 4697; that upon disposition of that motion, there be 2 minutes of debate equally divided and controlled in the usual form; that the Senate then proceed to vote with respect to the Coburn motion regarding the substitute amendment No. 4696; further, that any other provisions of the previous order remain in effect; provided further that prior to passage of the bill, the Budget Committee pay-go statement be read into the record; further, that after the first vote today and tomorrow, the succeeding votes be limited to 10 minutes each; and that prior to the succeeding votes tonight, there be 2 minutes equally divided and controlled in the usual form.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. INHOFE. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, it is my intention that I be heard tonight concerning some of the amendments to be voted on tomorrow. It is my understanding further that Senator ENZI from Wyoming has the time between 5:30 and 6 o'clock. I request that I be recognized for 15 minutes during that timeframe.

Mr. BAUCUS. Reserving the right to object, Mr. President, may I further amend that request to provide that after the swearing in of Senator-elect KIRK, the time be equally divided until 6:30 p.m. this evening, and that the Senator from Oklahoma be recognized to speak for 15 minutes, and the time to be divided between the two leaders or their designees.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. INHOFE. What time will that be approximately, right after the vote or before?

Mr. BAUCUS. Before.

Mr. INHOFE. Before. No objection.

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

The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I ask unanimous consent to be added as a cosponsor of the Johanns amendment No. 4702 to S. 510, the Food Safety Modernization Act.

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

Mr. THUNE. Mr. President, I compliment the Senator from Nebraska for his leadership on this issue. He has done a great job advocating on behalf of small businesses, farmers, ranchers, and all the people to be impacted by this onerous provision in the health care bill.

I fear this is something we are going to be doing and repeating quite frequently in the years ahead as more Americans find out what is in the Democrats' health care bill. This is egregious because it requires various entities to send suppliers 1099 forms if they engage in business-to-business transactions totaling more than \$600 in a single year.

While I believe everyone ought to pay their fair share of taxes, I am concerned that the burden of compliance falls not on the tax delinquents but instead on the countless businesses, churches, local governments, and nonprofits that pay their taxes on time and in full or may not even have a tax liability.

This means these entities will have less time to fulfill their core missions, whether that is building products, administering to the poor, helping students learn or building local infrastructure. Instead, they are going to be filling out form after form to become compliant with this measure.

Because of the heavy compliance costs associated with this measure, its repeal is supported by a wide variety of business organizations and agricultural organizations across the country, including the Chamber of Commerce, National Federation of Independent Business, and the American Farm Bureau, to name a few.

It is not just national organizations that I have heard from. In numerous constituent meetings across South Dakota, I have heard from the citizens of South Dakota, whether they be farmers, ranchers, small businesses, CPAs, and others, about the effect this measure would have on them, their businesses, and their employees.

While this requirement is not set to take effect until next year, I believe it is important we act now to give these types of entities certainty that they will not have to take steps to comply with this measure.

I add that our government now has a debt that is approaching \$14 trillion,

and we need to do everything we can to make sure that debt does not increase. It is a debt that we continue to pile on more and more and hand to the next generation of Americans.

Because of that concern, I am pleased this amendment is fully offset by rescinding unspent Federal funds. The Senator from Nebraska came up with a way, through rescinding unspent Federal funds, to offset this amendment in a commonsense way. Of course, it excepts the Department of Defense and Department of Veterans Affairs, which will protect our national security interests and those who have served our country. I believe the rescissions he calls for in unspent Federal funds are a good way to make sure this doesn't add to our debt. This amendment perfectly captures that belief, and I think it is a belief that is shared by many of my colleagues in the Senate and by citizens across this country.

We need to be focused on bringing down our debt, and we will start doing that by eliminating government spending, not putting new, burdensome requirements on businesses and charities.

Unfortunately, there were numerous other provisions in the health care bill and other bills in the past 2 years which shifted the burden onto small businesses and employers. We will have to revisit each of those to ensure they don't slow economic growth and job creation, which is what the people want us to be focused on now.

I hope we can take this first step and support the Senator from Nebraska on his amendment, which addresses this critical issue, this egregious provision that puts a costly burden on small businesses, and do it in a way that is fiscally responsible and doesn't add to the debt and burden future generations with more debt.

I think the Senator from Nebraska came up with a great solution. I hope colleagues on both sides of the aisle—Republicans and Democrats—who have heard, as I have, from their constituents will take this very commonsense amendment and pass it with a big margin. Let's get this particular provision in the health care bill repealed and the negative impact it would have on economic growth and job creation in this country.

With that, I withhold the remainder of my time.

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

Mr. INOUE. Mr. President, the amendment offered today by Senator JOHANNIS proposes to rescind unobligated balances of appropriated funds that are designated for specific purposes in various appropriations bills previously enacted by Congress. The Senator offers these rescissions in order to offset the loss of revenues resulting from his amendment.

Much like similar amendments offered in the past, this amendment sim-

ply provides for a generic rescission of funds, with the authority and decision-making for which programs are impacted delegated entirely to the executive branch.

Consideration of this amendment is the first of two attempts this evening to shift the power of and responsibility for the Nation's purse strings from the legislative branch to the executive branch.

Rescinding funds in this manner, should this amendment be adopted, may be politically expedient because it simply cites a dollar figure, but it is also reckless and irresponsible, and hides the accountability for future actions when legitimate programs are shut down.

Mr. President, we should make no mistake about it, an across the board cut is the legislative equivalent of performing surgery with a meat cleaver, and Senators would be right to reject the amendment for this reason alone.

I can assure my colleagues that if this amendment passes, the impact will be felt throughout this country, and the arbitrary nature of the cuts will only intensify the pain.

Why do I know this? Because for the past several months Senator COCHRAN and I have instructed our staffs to scrub the books of every single Federal agency in order to fund Pell Grants, while at the same time maintaining the discretionary spending level for fiscal year 2011 proposed by Senators SESSIONS and MCCASKILL.

Even after reviewing in great detail unobligated balances across all the agencies and rescinding those funds that were truly unobligated balances, we still have to cut spending for fiscal year 2011 in order to pay for Pell Grants to the level at which almost everyone in this Chamber desires that it be funded.

Consequently, the only unobligated balances remaining are those in accounts that have slow spend rates such as construction and infrastructure accounts. To rescind \$39 billion from these remaining accounts without congressional guidance, and without any analysis of the ultimate costs and benefits, is simply irresponsible.

Throughout this past year, every time an amendment similar to this one has been offered, I and my colleagues on the Appropriations Committee have come to the Floor and provided real examples of real programs that would be impacted by such an amendment. While I will not go into such detail tonight, I will take a moment and give Members a sense of which agency accounts have unobligated balances:

International narcotics control and law enforcement programs that provide police training and counter-drug programs in Afghanistan, Pakistan, Mexico and Colombia, among others.

Global Health and Child Survival, which impacts global HIV/AIDS, malaria, TB, polio and other programs.

The State Department's worldwide security program, including funding for requirements in Iraq, again impacting our embassy and personnel security costs worldwide.

Coast Guard construction of ships and planes, including the National Security Cutter, the Maritime Patrol Aircraft, and Fast Response Cutters.

Funds to maintain and upgrade the southwest border fence in Arizona and California.

The FEMA Disaster Relief Fund which is still paying for Katrina, Rita, Gustav and Ike.

Cyber security investments to secure Federal information systems.

Funds to procure and install TSA advanced imaging technology and other explosive detection systems.

Funds to build border patrol stations in Texas, Arizona, California and Washington.

Funds to build schools and hospitals under the Bureau of Indian Affairs and Indian Health Services.

The \$500 million in non-emergency unobligated fire suppression funds remaining in the Forest Service and Interior Wildland Fire accounts is the minimum needed to make sure there are enough funds available in case the fire season turns out to be worse than forecast.

Section 8 tenant-based and Section 8 project-based rental assistance. These programs receive advanced appropriations to run through the end of the calendar year. If these funds were rescinded, there would be no funding to continue to provide housing for low-income families living in housing today.

In the case of homeless assistance grants, there is a time-consuming competitive process that communities go through in order to get these funds. Accordingly, these programs have unobligated funds.

If these funds were rescinded, existing homeless programs in communities across the country wouldn't have sufficient funds to continue serving the homeless—literally leaving people on the streets.

And finally, as one would imagine, Corps of Engineers construction projects as well as funding for flood control and coastal emergencies have substantial unobligated balances.

Supporters of the JOHANNIS amendment may claim that I and my colleagues on the Appropriations Committee are simply citing the worst case scenario of where unobligated balances may come from. The fact of the matter is that these accounts are exactly where the unobligated balances will come from.

Let me also point out to my colleagues that if this amendment is enacted, we cannot stop rescissions of unobligated balances from any of the accounts mentioned because the amendment gives sole decision-making power regarding where to cut to the executive branch.

Unlike the situation with deciding how to fund the FY 2011 omnibus, where Ranking Member COCHRAN and I, along with our committee members, decided after much scrutiny of accounts which unobligated balances were truly available for rescission, this amendment places all authority with the executive branch.

Mr. President, this amendment is not the way to do business. This is certainly not the way to fund the Federal Government. We need to stop trying to shift our fiscal responsibilities to the executive branch. We need to stop claiming there is an excess in Federal funds where none exists. And if we want to cut funds and hamper those critical programs, then we need to stop hiding behind generic rescissions.

For all these reasons, I urge my colleagues to vote against the JOHANN amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. JOHANN. Mr. President, may I inquire how much time we have on this side?

The ACTING PRESIDENT pro tempore. Thirteen minutes.

Mr. JOHANN. Mr. President, let me address some of the arguments that have been raised.

First of all, on this issue of the Baucus amendment simply doing more than the JOHANN amendment or that it is especially friendly, here is what I would tell you. We checked into that and we have an e-mail from the Chief of Staff of the Joint Committee on Taxation and he says the two amendments do the same thing—they repeal the 1099 requirement. That seems to be especially friendly. As Senator BAUCUS pointed out, we are both going to accomplish the same thing; that is, we are going to repeal the 1099 requirement.

To get to the issue of this being an unprecedented grant of power to the executive branch versus the legislative branch, we also researched that. The Consolidated Appropriations Act for fiscal year 2004 basically gave the Secretary of Commerce the sole discretion to determine from which accounts and in what amounts funds would be rescinded. In other words, the Secretary had sole discretion to decide how to rescind that.

The Consolidated Appropriations Act for fiscal year 2008, when my friends on the other side of the aisle were in control of both the House and the Senate, rescinded more than \$192 million in unobligated balances available to NASA and gave the Administrator sole discretion.

The Consolidated Appropriations Act of fiscal year 2008, again when my friends on the other side of the aisle were in sole control of the House and the Senate, rescinded \$33 million in unobligated balances for the National

Science Foundation and gave the Director sole discretion.

The Emergency Steel Loan Guarantee and Emergency Oil and Gas Guarantee Loan Act rescinded \$270 million of nondefense administrative and travel funds and again gave sole discretion to the executive branch.

Very simply, the argument that somehow this is new, this is unprecedented, and this has never happened before simply doesn't hold water.

I then heard the argument of my colleague from Hawaii, a very respected Member. But I look at these unobligated balances—the Department of Agriculture, \$9.6 billion. I ran that Department for about 3 years. He talks about fire suppression. We dealt with fire suppression every year. Yes, some years were worse than others when it came to fire suppression. If we had a year where literally we had to go find additional funding because the fires were worse, we worked through that and we solved the problem. We dealt with that issue when it was presented to us.

Here is what I would say. In September, I came to the floor and I said: Look, here is how I want to pay for this. It came out of the health care bill. My colleagues said: Oh, we can't do that, but I am with you on this 1099 repeal. I listened. This repeal is paid for by using money that is literally sitting there in Federal accounts.

The other matter I would point to is that the alternative is the Baucus amendment, and here is what the Baucus amendment does. Yes, it handles the problem, just like Congress has been handling the problem for way too long. It says to our children and grandchildren: Out of this multitrillion-dollar annual budget—\$1 trillion in deficit, with 40 percent of the money being literally borrowed—we can't find \$19 billion. It is too hard. It is too hard, and so our kids and our grandkids are going to have to deal with it. That is exactly what the Baucus amendment does. It says it is too hard.

It is going to be the President's own Budget Director who is going to identify the funds that will pay for this. Are my colleagues on the other side suggesting we can't trust that process? Well, if we can't solve this problem and pay for it, how do we ever solve the multitrillion-dollar deficit this country is facing? Congress has allowed the administration to deal with this kind of issue on other occasions. To somehow claim that on this occasion it can't simply miss the point.

With that, I yield to Senator HUTCHISON from Texas, who wishes to speak on this issue.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. I wish to thank the Senator from Nebraska for offering this amendment. Obviously, it has been offered before, but every time I go

home it renews my energy to try to stop this from taking effect.

Small businesspeople are approaching me and saying: This is crazy. Do we have to report every trip to the Office Depot? Do we have to report every travel voucher for \$600 because I am going to a meeting in California? This defies description, except to say it is one more overbearing government intrusion on free enterprise in our country.

So I hope very much that because of the message of the elections in November more people will see this is not necessary. It is certainly not a part of health care reform. In fact, when I saw this come out—this little provision tucked in the enormous health care reform bill—my thinking was twofold: One, they are paying for this enormous cost of the government takeover of health care on the backs of small businesspeople in our country. That would be one interpretation. The other would be that all the talk coming out of Washington about new taxes and possibly a value-added tax means they are starting to want to get the reports that would be the basis of a new tax system. Neither of those things should be part of health care reform in this country. So I am hopeful we can put a stop to this right now.

I think the people of America well understand the burdens of this health care reform bill, passed on Christmas Eve of last year, over our objections on this side of the aisle. So maybe we can start peeling away some of the most onerous provisions—particularly this one, which takes effect in 2012—and begin to let people know we are going to try to mitigate the damage the health care bill has done, and we are going to do it a little bit at a time until we can repeal the whole thing and start all over.

It is not that our system doesn't need reform. We all have said we need health care reform. But having to report a trip to the Office Depot to buy stationery or a fax machine is not the way to a better health care system. It is a non sequitur. So I hope Senator JOHANN'S amendment to this bill passes. It is a freestanding bill, but it is a great amendment to this bill. If we can stop this now, that would be one thing we could take off the table as we are addressing the major issues that actually do deal with health care reform. Maybe we can bring it down to a level where we would be able to address it in a more responsible way.

I might add that even the National Taxpayer Advocate Division of the IRS has said they would have significant challenges in processing and analyzing the enormous volume if this piece of the Health Care Reform Act goes through. Even the IRS is asking: How could we do it, which then would lead to: What, more employees at the IRS? Well, that should scare the people of

America. The last thing we need is a bigger government created to try to go into the small businesses and see if they are complying with a \$600 requirement for every transaction they would make.

So I commend the Senator from Nebraska for offering this amendment. I am a cosponsor of this amendment, and I hope we will have enough votes to stop this provision in its tracks, take it off the table, and then deal with health care reform on issues that actually affect health care reform, not issues such as this, which just burden small business in our country at a time when we want them to hire people. We want them to open their doors to hiring more workers. But the more restrictions and the more burdensome paperwork we put on them, the less chance there is they are going to hire people. That is what I am hearing from my constituents, and I know it is the same for all of us who have been home listening to what the people are saying.

I thank the Chair, and I yield the floor.

Mr. JOHANNIS. Mr. President, may I inquire how much time remains on our side.

The ACTING PRESIDENT pro tempore. Three minutes.

Mr. JOHANNIS. Mr. President, I will use that 3 minutes just to wrap up with a couple thoughts.

The first point I wish to make in wrapping up this evening is that there has been a 21-percent increase in appropriated funding over the last 2 years—21 percent. So every small business out there is asking the question: Why is the cost, at least in part of this health care bill, falling on my back, when there has been a 21-percent increase in appropriated funding over the last 2 years? Why are you punishing me, when I am trying to do everything I can to stay afloat?

Senator HUTCHISON said it well. You can't go anywhere in this country without a small businessperson saying to you: What is it about this 1099 requirement? They are dreading the fact that they will spend valuable resources on accountants to be in compliance and to deal with this requirement. They are asking the question: Why are you picking on us?

The second point I wish to make is, the money from unappropriated, unobligated accounts—again, excluding the Department of Defense and Veterans Affairs—is 5 percent. It is 5 percent of the total. I look at that massive Federal budget, I look at what we are dealing with, and I get down to the same point—\$19 billion. Why would you add that to the Federal deficit? That is exactly what the Baucus amendment does.

You simply will not find offsets that are better equipped to deal with this problem than the one I am proposing. Again, I just wish to emphasize, in Sep-

tember, when we were arguing this on the floor and my colleagues were coming to me and saying: MIKE, look, I am with you, I want to repeal this, this doesn't make any sense, and my phone is ringing off the hook, but I can't go along with these health care offsets, we changed the offsets. We are paying for the Johanns amendment.

The Baucus approach simply does not pay for it. So what does it do? In the end, it hampers the next generation. It adds to the national debt. If we can't find \$19 billion to solve this problem, how are we ever going to solve the problem of this massive deficit we are passing on to our children and grandchildren?

With that, I ask my colleagues to support the Johanns amendment and to oppose the Baucus amendment. My hope is that we can get the votes necessary, pass this amendment, and move on to the next issues we face.

Mr. President, I yield the floor, and I ask unanimous consent that the time during the quorum call be equally charged to both sides.

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

Mr. JOHANNIS. Mr. President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent the order for the quorum call be rescinded and I ask to speak as in morning business.

The PRESIDING OFFICER (Mr. DODD). Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, as an original cosponsor of S. 510, I am very disappointed that I cannot support tonight's cloture vote or the final passage of this bill.

Since the bill's introduction and throughout the HELP Committee mark-up process, there has been strong bipartisan cooperation to craft legislation that strikes the right balance between industry practices and FDA oversight to ensure the safest food supply possible.

Unfortunately, the Senate will not have the opportunity to vote for S. 510 as it passed the HELP Committee, nor will Senators have the opportunity to offer amendments to improve the bill. Compounding my concerns is the uncertainty about the opportunity to have an open, transparent conference with our colleagues in the House of Representatives at this late hour of the legislative session.

Instead, we are faced with voting for S. 510 with new language that was added at the 11th hour which creates a loophole in the Federal food safety system. The newly added language, referred to as the "Tester amendment," creates an exemption for small farms

and business operations through an arbitrary size and distance threshold—neither of which have any basis in science or risk. For example, this new language would exempt a food facility or farm if it has sales of \$500,000 or less, or sells half of its food to retailers, restaurants, or consumers in the same state or within 275 miles.

It is extremely important to note that S. 510 as originally introduced and passed by the HELP Committee includes many provisions to protect the rights of farmers and in particular the needs of small farmers. These small farm protections were essential in my decision to be an original cosponsor of the bill, and I fully support them.

Specifically, the original S.510 does not subject small entities that produce food for their own consumption or market the majority of their food directly to consumers to new recordkeeping requirements. Also, the original bill makes no change in definition of "facility" under the Bioterrorism Act of 2002 which requires certain facilities to register with FDA, thus farms and restaurants remain exempted in S. 510.

Additionally, small businesses are given regulatory flexibility throughout the original version of S. 510. For example, small processors are given additional time to comply with new food safety practices and guidelines created by the bill, and the FDA may modify or exempt small processors based on risk.

Finally, regarding risk-based traceability, farms and small businesses that are not food facilities are not expected to create new records in the original version of S. 510. Only during an active investigation of a foodborne illness outbreak, in consultation with State and local officials, the FDA may ask a farm to identify potential immediate recipients of food if it is necessary to protect public health or mitigate a foodborne illness outbreak.

Unfortunately, the new language before us tonight goes beyond small farm protections. My concern with the "Tester language" is that it creates a loophole for small processing facilities by exempting them from HACCP and traceability requirements or products entering the food supply in ways other than direct sales to consumers. I am concerned that these arbitrarily exempted products would come along with items that must follow risk-based preventive controls—such as bagged salads. In the case of a foodborne illness outbreak, this exemption will make FDA's job much harder to identify and remove the tainted source from the food chain.

To state it bluntly, this new language goes far beyond protecting small farms and establishes arbitrary factors in determining the safety of food—none of which are based on risk or science.

I am opposing cloture and final passage of this bill because I have been denied the opportunity to offer any

amendments, especially to strike or improve the Tester language.

I would have liked my colleagues to have had the opportunity to consider an amendment which would have limited the exemption only for products sold to qualified end users as defined in the Tester language, such as direct sales to consumers, restaurants, or retail food establishments. Without this limit, there is a significant chance that exempted products will be commingled with regulated products, thus rendering the protections created by S. 510 useless.

The full implications of the Tester amendment are unknown. I think it would be wise for the Senate to take a closer look at the potential impact before we pass this legislation. The Senate should have had the opportunity to vote on S. 510 as it was passed by the HELP Committee without this loophole. All Senators should have the opportunity to offer and consider amendments, but we do not.

Again, I also want to voice my concern regarding the opportunity to have an open, transparent conference with our colleagues in the House of Representatives at this late hour of the legislative session. For these reasons, I am voting no on cloture and no on final passage of S. 510.

I would also add, for the reasons I have expressed, virtually every processor, food processor in the country has now come out and changed their opinion regarding their support of this bill, and they are opposing the bill because of the extended loopholes that are provided by the Tester amendment that are going to take the safest food supply in the world, which we have in the United States of America, and we are now going to offer loopholes and exceptions in the chain from the farm to the restaurant, from the farm to the grocery store, from the farm to the consumer's table, and we are going to render the potential for unsafe products to enter the market, and FDA is going to have no opportunity to regulate those.

That is wrong. That is not what we started out to do with S. 510. Senator DURBIN and I talked about this, now, it is almost years ago, when we initially started the process of reforming the food safety system in this country. Unfortunately, we have gotten way away now from the original intention of this bill, to a point where it is not going to accomplish the results we started seeking to accomplish.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. I want to address the issue that has been talked about by my friend from Georgia; that is, the Food and Drug Administration Food Safety and Modernization Act. I commend my colleagues and those who have been involved, as we have been, for weeks and

weeks on end now to produce this bill, which I am hopeful our colleagues will support.

We have enjoyed a few days off to celebrate the Thanksgiving holiday, the centerpiece of which is, of course, the great meal with family and friends. It is fitting at the wake of that, that we gather to deal with the issue of food safety, a bill that is intended to help ensure the safety of the food we feed our families and loved ones each and every day in this country.

One of the great things about being in this country is that every day we consume products with a sense of security that what we are ingesting or using is not going to cause us any great harm or put our lives in jeopardy. So it is important, particularly when you deal today with the processing of food that occurs, that reassurance, that sense of security that all Americans would like to have is going to be guaranteed to the maximum extent possible. Never perfect, obviously. None of us can engage in casting or creating ideas or legislation that is designed to produce perfection. But we have come close with this bill to providing that sense of security that all Americans deserve.

Before I speak about the substance of the bill, I want to take a moment to highlight the collaborative process that characterizes the construction of this bill. The bill is a bipartisan effort on the part of Senators HARKIN, ENZI, DURBIN, GREGG, BURR, and myself, along with 14 of our colleagues in this Chamber and is designed to strengthen the country's ability to address and hopefully prevent foodborne illnesses.

I realize the bipartisan road is not always easy to follow, but I can confidently say when we approach legislation in this manner we often end up with a better, stronger, and more responsive law in the end. I think this bill is an example of that. It was not always easy. We had our differences, obviously, but we overcame them in an effort to respond to an issue that impacts all Americans regardless of political affiliation and economic circumstance; that is, again, foodborne illnesses.

This collaborative process is not limited to Members and staff. I am including outside advocates and organizations. In fact, an impressive range of constituent groups, including the Consumers Union and the Grocery Manufacturers Association, have provided valuable input in support during this process. Looking at the list of groups which support this bill says a great deal about the product itself. It says we cannot afford to ignore the topic of food safety any longer. It says our industries and consumers want to see good consistent policy in place to help prevent, and when they do occur, address these illnesses.

We have all heard the statistics. On average, 76 million Americans are

sickened each year, and 5,000 die each year because of foodborne illnesses. But these are not just numbers. These are the lives of our fellow citizens in every region and economic group in the Nation. As the recall of a half billion eggs this summer due to Salmonella contamination has shown, foodborne illness is something that can impact a significant portion of our population at any given time.

According to the Centers for Disease Control and Prevention, more than 1,800 people became ill due to these contaminated eggs. Let's not forget that the most vulnerable of our population suffer the most when stricken with foodborne illnesses, especially children.

One such life significantly impacted by a strain of E. coli was a constituent of mine in Wilton, CT. She survived the contaminated lettuce she consumed, but her life has been changed as a result.

There is a lot in this bill we can be proud of. I want to focus on one particular area that I have a concern with and have been involved in for years and years—it is food allergies.

Long before I had a family of my own, I got involved in the issue. But with the arrival of my first child, Grace, in 2001, we discovered shortly thereafter that she had serious food allergies. She had been in anaphylactic shock four or five times by the time she was 4 or 5. This is a great concern to her parents, obviously, as it is for millions of people in this country. Twelve million of our fellow citizens have food allergies, many with life-threatening ones, and we are watching the numbers grow.

According to those who keep these statistics, from 1997 to 2007 the prevalence of food allergies among children increased by 18 percent. Today, approximately 3 million children in the United States are suffering from one kind of food allergy or another. While food allergies were at one time considered relatively infrequent, they now rank third among chronic diseases in children under the age of 18. Peanuts are among the several allergenic foods that can produce life-threatening allergic reactions in children.

With this bill, what we have done here, is to develop a voluntary food allergy management guideline for preventing exposure to food allergens and ensuring a prompt response when a child suffers a potentially fatal anaphylactic reaction. It also provides for school-based food allergy management incentive grants to local educational agencies to assist with the adoption and implementation of food allergy management guidelines in grades K through 12.

My State of Connecticut is one of eight that has already done this on their own. But a lot of other States, obviously, 42 have not. This bill voluntarily provides small amounts of grant

money to States to help them develop these procedures that will minimize the kind of dangers that occur to children when they are exposed to food that can cause them life-threatening diseases and illness.

The Food and Drug Administration is responsible for regulating 80 percent of the Nation's food supply. But for too long, the FDA has lacked the resources and authorities necessary to adequately protect our food. This bill recognizes we cannot underfund this critical agency and gives the FDA the tools necessary to protect our food and our health.

In fact this bill establishes, for the first time, a mandatory inspection schedule, which was a priority for many who worked so tirelessly on food safety. Under the provisions of S. 510 the number of inspections conducted by the FDA will increase from 7,400 in 2009 to nearly 50,000 in 2015. Mr. President, we need these inspections. We need to pass this bill.

I am hopeful that my colleagues will recognize the importance of passing the FDA Food Safety Modernization Act. Because every family sitting down to dinner tonight deserves to know that all reasonable measures have been taken to ensure the safety of the food they are eating. It's time we put politics aside for the sake of America's families and get this bill passed.

I want to comment quickly, before my time expires, on the comments of my good friend from Georgia who just spoke, SAXBY CHAMBLISS. This was a difficult bill to put together. I commend my colleague from Montana, JON TESTER, who represents an awful lot of small farmers, small food processors.

Putting this bill together required compromise. It is what we do in this Chamber every single day, and so had we not included the Tester language in this bill I think we would have had a hard time passing the legislation. The argument would have been: Well, you have included the small truck farmers who, frankly, cannot subject themselves to the kind of rules that large producers of food can, and we would have put the whole bill in jeopardy.

By adopting the modified Tester language, we have made it possible for this bill to become law. So I commend my fellow Senator from Montana for his work. I commend Senator HARKIN, the chairman of the committee, for bringing this all together to the point where, despite all of the allegations that this body cannot come to a common agreement on a matter as important as this one is wrong. We can when we work at it, and we have done so with this bill.

I urge my colleagues to be supportive of this very important and historic piece of legislation.

I yield the floor.

Mr. DURBIN. I suggest 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 VICE PRESIDENT. Without objection, it is so ordered.

CERTIFICATE OF ELECTION

The VICE PRESIDENT. The Chair lays before the Senate the certificate of election to fill the unexpired term for the State of Illinois. The certificate, the Chair is advised, is in the form suggested by the Senate.

If there be no objection, the reading of the certificate will be waived, and it will be printed in full in the RECORD.

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

STATE OF ILLINOIS

Executive Department

CERTIFICATE OF APPOINTMENT

To the President of the Senate of the United States:

This is to Certify that on the Second day of November, Two Thousand and Ten, Mark Steven Kirk was duly chosen by the qualified electors of the State of Illinois a Senator for the unexpired term ending at noon on the third day of January, Two Thousand and Eleven, to fill the vacancy in the representation from said State in the Senate of the United States caused by the Resignation of then-Senator Barack Obama.

Witness: His Excellency Our Governor, Pat Quinn, and our seal hereto affixed at the City of Springfield, Illinois, this Twenty-Third day of November, in the year of our Lord Two Thousand and Ten.

By the Governor:

PAT QUINN,
Governor.

JESEE WHITE,
Secretary of State.

[State Seal Affixed]

ADMINISTRATION OF OATH OF OFFICE

The VICE PRESIDENT. If the Senator-elect will now present himself at the desk, the Chair will administer the oath of office.

The Senator-elect, MARK KIRK, escorted by Mr. DURBIN and Mr. Fitzgerald, advanced to the desk of the Vice President; the oath prescribed by law was administered to him by the Vice President; and he subscribed to the oath in the Official Oath Book.

The VICE PRESIDENT. Congratulations, Senator.

(Applause, Senators rising.)

Mr. REID. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

FDA FOOD SAFETY MODERNIZATION ACT—Continued

Mr. HARKIN. Mr. President, in about 35 minutes we are going to be voting on cloture on the food safety modernization bill, a bill that brings us forward almost 70 years. Seven decades it has been since we have modernized or changed our food inspection and safety system in America. So we are taking that step tonight. Hopefully, we will have a final vote on it by tomorrow.

I just want to take a few minutes now before that vote to again lay out why this bill is so important and why we need to invoke cloture tonight so we can have a final vote on this bill tomorrow.

First of all, the statistics are that Americans are getting sick and they are dying because of foodborne illnesses. You would think in this day with modernization and such we would not have this.

Madam President, 325,000 Americans every year are hospitalized and over 5,000 die. Many of these are kids. I have met them with a group called Safe Tables Our Priority. I have met some of these kids. They will be damaged for life, I say to my friend from Illinois, Senator DURBIN, who has been such a leader on this bill. In fact, I daresay we would not be here were it not for Senator DURBIN's leadership in getting this bill started, how many years ago I do not know.

Mr. DURBIN. Will the Senator yield for a question.

Mr. HARKIN. I would be glad to yield.

Mr. DURBIN. First, I thank the Senator from Iowa for his leadership on this issue. The fact is, it was almost 18 years ago when I received a letter from a woman in Chicago—written to me as a Congressman—named Nancy Donley. Nancy had a personal tragedy. Her 6-year-old son Alex died from E. Coli from food Nancy literally prepared for him in their home. She wrote to me a handwritten letter, to me as a Congressman from Springfield, IL, 200 miles away, saying we have to do something about food safety.

Nancy lost her son, but she never lost her passion for this issue. As the Senator said, she formed the organization Safe Tables Our Priority, which has been an effective voice for so many others to bring us to this moment.

But, for the record, I have worked on this issue for a long time, and we would not be on the Senate floor tonight with this historic vote were it not for the Senator from Iowa who has led the effort. Senator TOM HARKIN has, with the help of Senator MIKE ENZI and a number on the other side of the aisle who have stepped up to make this bipartisan. This is a reasonable approach to