we need a national solution that continues to secure the border, punishes unscrupulous employers that exploit immigrants and undercut American wages, improves our dysfunctional legal immigration system, and requires the 11 million people who are undocumented to register with the government, pay fines and taxes, learn English, work, stay out of trouble, and go to the end of the line to legalize their status.

Democrats are ready for this challenge. We have been willing to craft a commonsense legal solution for a long time, one that is fair, tough, and practical. As I have indicated, we have been ready to do this for years. We have tried on a few occasions. The problem now and has been, Republicans will not vote for immigration reform—simple as that. We have tried.

The first step would be to pass the DREAM Act, which would create a pathway to citizenship for children brought to the country through no fault of their own. If upstanding young people stay out of trouble, work hard in high school, they should have a chance to serve their country in the military, go to college, and work toward citizenship.

Unfortunately, Mitt Romney said he would veto that, the DREAM Act. President Obama, on the other hand, took decisive action in halting deportation of the DREAMers. His directive will protect 800,000 young people and focus law enforcement resources where they belong, on deporting criminals.

As we all know, though, this is not a permanent solution. But President Obama's decision to defer these deportations was necessary precisely because Republicans have so far refused to work with Democrats on a solution. Congress must consider a long-term resolution to protect the DREAMers and tackle comprehensive immigration reform that addresses all 11 million undocumented people living in this country.

But that will take cooperation from my Republican colleagues. That has not been forthcoming. This week, we have a lot to accomplish, and getting it all done before the July 4 holiday will also take cooperation. By Friday, the Senate must pass flood insurance that will allow millions of Americans to close on new homes or new properties. We must send to the President a bill to ease drug shortages. That is the FDA bill. We need to protect 3 millions jobs with an agreement on transportation legislation, and the deadline to stop student loan rates from doubling for 7 million students looms at the end of this week as well.

I am putting my colleagues on notice that the Senate will stay as long as we have to, into the weekend if necessary, to complete this substantial workload. We hope there will be cooperation not only in this body but also in the House of Representatives. I alert everyone, we have a lot to do—extremely important pieces of legislation. We have to complete them before we leave this week.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

FLOOD INSURANCE REFORM AND MODERNIZATION ACT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 1940, which the clerk will report by title.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 250, S. 1940, a bill to amend the National Flood Insurance Act of 1968, to restore the financial solvency of the flood insurance fund, and for other purposes.

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

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

THE ECONOMY

Mr. GRASSLEY. Mr. President, since the victory of the Socialist candidate for the President of France, opponents of fiscal responsibility have found renewed vigor for their pro-spending ideology—more stimulus, as we might call it here in this country. There is interest in this country also in more fiscal stimulus.

The new French President talked about choosing growth over austerity. Many liberal pundits and politicians on this side of the Atlantic have now begun to echo this call. When you put it that way, it barely sounds like a choice at all. The term ''austerity'' sounds so severe, but almost everybody agrees that economic growth is good.

Just what is this austerity all about? In Europe, ''austerity'' is often used to describe an attempt to reduce budget deficits by reining in unsustainable spending. In this country, we more often talk about fiscal responsibility. For Europeans who have grown accustomed to generous social benefits, even modest reforms to government programs are apparently cause to take to the streets and demonstrate. But for the millions of Americans who still believe in limited government and who do not feel entitled to programs or benefits paid for by the earnings of others, there is nothing austere about government spending within its means.

So then what about the other aspect of it—growth? The implication of the supposed choice between growth and austerity is that we must accept irresponsible levels of spending in order to have that economic growth. Obviously this is absurd. The politically convenient economic theory was summed up by Margaret Thatcher as, ''The more you spend, the richer you get.'' That doesn't meet the commonsense test in the Midwest of America. It was the rationale behind President Obama's massive $800 billion stimulus bill. The bill looked suspiciously like a grab bag of pent-up Democratic spending priorities, but we were told that all of this spending was necessary to keep unemployment below 8 percent. Of course, as we all know, unemployment soon soared well above 8 percent and has never dipped below 8 percent now more than 3 years later.

I would say to all of those across the Atlantic in Europe calling for new stimulus spending: We tried it, and it didn't work. Not only didn't it work but it made things worse. All of that government spending crowded out private sector activity that would have helped the recovery and saddled our economy and our children with even more debt. Conversely, reining in government spending will unleash the power of free enterprise to create wealth and grow our economy in ways no government central planner can ever accomplish.

Despite the clear results of the most recent American experience with stimulus spending, liberal pundits are now blaming Europe's current economic troubles on efforts to reduce government spending. They say that savage cuts by pro-austerity governments in countries such as Britain, France, and Spain have actually damaged their economies. So just how deep did these countries of Europe actually cut? Spain increased spending after the recession started, then implemented some modest cuts but is still spending more than it did before the recession. Britain and France have continued to increase spending. So much for savage spending cuts. It defies common sense, but, as you know, in this town smaller increases in spending than previously planned can qualify somehow as a cut in spending. However, to most Americans, cutting spending actually means spending less than you were the year before. The fact that there have been no serious spending cuts in these supposedly pro-austerity countries is enough to dismiss the accusations that spending cuts are the cause of Europe's current troubles.

But there is another part of the story that is too often ignored: Governments that talk about the need to reduce deficits but are too timid to enact necessary spending cuts invariably turn to tax increases. For instance, since the recession started, Britain has raised the top marginal income tax rate as well as increased the capital gains tax, the national insurance tax, and the value-added tax. Spain has enacted hikes in personal income tax and property taxes and seems to be planning even more taxes.

This year the Spanish Government is looking to address its deficit with a $19.2 billion package of spending reductions paired with another $16 billion worth of tax increases. Of course, to us

here in the United States, that sounds a lot like what Democrats have been calling a balanced approach. And so it is—just like giving a patient an equal dose of medicine and poison would be a balanced approach. However, across Europe there has been a lot more emphasis on the poison of tax increases than on the medicine of spending cuts. In fact, while government spending across the entire European Union fell by just 2.6 billion euros between 2010 and 2011, taxes rose by a staggering 235 billion euros.

So while critics of austerity are flatout wrong to blame the largely mythical spending cuts for Europe's economic troubles, they may have stumbled onto something. To the extent that austerity really means big tax increases rather than serious spending cuts, I think it identifies a big part of Europe's fiscal and economic problems.

These facts notwithstanding, if I couldn't point to an example where economic growth resulted from spending restraint, my arguments would ring hollow. I would sound like those radical intellectuals who still refuse to accept that Marxism has been totally discredited both morally and economically by claiming that it has never truly been tried. However, what I am talking about has been tried. There are plenty of examples of where bold leadership to dramatically rein in government spending has resulted in economic growth. There is actually a prime example right in Europe and in the euro area—Estonia.

In response to the 2008 economic crisis, Estonia's free enterprise-oriented government focused on real spending cuts, including major structural reforms. Estonia cut private sector wages, raised the pension age, and reformed health benefits. When it comes to taxes, Estonia already had a low flat tax and didn't raise rates. While there was an increase in the value-added tax, the overwhelming emphasis was on spending cuts. As a result, the Estonian economy grew at 7.6 percent last year. And it happens that Estonia is the only country in the eurozone with an actual budget surplus, and the country has a national debt that is only 6 percent of GDP. Can you imagine that, a debt of only 6 percent of GDP?

Moreover, Estonia had an especially deep hole to climb out of. The Estonian economy was devastated by the global financial crisis. It contracted by 18 percent, which is more than Greece. Nevertheless, Estonia's economy is well on its way back to prerecession levels.

I should add that in response to the spending cuts, Estonians didn't riot in the streets. Instead, they reelected their government.

Also, while Estonia is the most impressive example, a similar story also holds true for the other Baltic countries of Latvia and Lithuania. Perhaps their unhappy experience of Soviet domination has made them extra skeptical of big government solutions to problems. It is possible that the unique history of the Baltic countries makes it easier for them to break the spending addiction, but that doesn't mean it can't be done here. In fact, I will give you an example that is much closer to home—Canada.

In the 1990s Canada was facing the same problem the United States is now. It suffered a recession and had a looming debt crisis. The Canadian Government's response was to dramatically cut spending. Again, I am not talking about slowing the rate of growth but actual spending cuts. In just 2 years, starting in 1995, total noninterest spending fell 10 percent. Canadian federal spending as a share of GDP dropped from 22 percent in 1995 to 15 percent 11 years later. Canada's federal debt was at 68 percent of GDP in 1995 and is down to just 34 percent today. Now a lesson for America: Compare that to our national debt, which is more than 70 percent of GDP. Like Estonia, the overwhelming emphasis in Canada was on spending cuts rather than tax increases.

Moreover, these cuts included structural reforms. Canada's Government fixed its version of Social Security, which is the third rail of American politics, as we say here. Unlike Social Security, the Canadian pension plan is solvent for the foreseeable future. What is really interesting is that these reforms were not implemented by some rightwing ideologues; these reforms were all implemented by the Canadian Liberal Party, which is a center-left party like America's Democrats.

However, when President Bush suggested fixing Social Security upon his reelection, the issue was relentlessly demagogued by Democrats in Congress. More recently, when PAUL RYAN unveiled a plan to save Medicare, rather than present alternative ideas, liberal groups depicted him in political advertisements pushing grandmother off a cliff.

If our Democrats had shown the same leadership the Canadian Liberals did, we would be in a lot better economic shape right now. Instead, what we get from the other side of the aisle are demands for more stimulus spending and head-in-the-sand denial about the impending bankruptcy of Medicare and Social Security.

There are a lot of other examples where low taxes and spending restraint have led an economic recovery after a downturn. In fact, a 2009 paper by two Harvard economists, Alberto Alesina and Silvia Ardagna, reviewed 107 examples of fiscal adjustments in industrialized countries between 1970 and the year 2007. They found that, statistically, tax cuts are more likely to increase growth than spending. They also found that spending cuts without tax increases are more likely to reduce deficits and debt than increased taxes. The historical record is clear. We know what path leads to economic growth and prosperity. However, that is not an easy path to follow.

Unlike the ''have your cake and eat it too'' philosophy that says more government spending will somehow make us all richer, the real road to recovery requires real leadership and less spending.

Earlier in my comments I mentioned a statement by Margaret Thatcher's contempt for stimulus ideology. When she took office, Britain was in deep debt and known as ''the sick man of Europe.'' In fact, Britain had been forced to go to the IMF for a bailout and was regularly rocked by massive strikes. In many ways it was the Greece of the 1970s. When Thatcher began making the difficult decisions necessary to rescue the British economy, many people, including some of her own party, pleaded for her to return to the big spending policies of previous British Governments. Her response is applicable to our country today as it was to Britain back then. I wish to quote Margaret Thatcher:

> If spending money like water was the answer to our country's problems, we would have no problems now. If ever a nation has spent, spent, spent and spent again, ours has. Today that dream is over. All of that money has got us nowhere but it still has to come from somewhere. Those who urge us to relax the squeeze, to spend yet more money indiscriminately in the belief that it will help the unemployed and the small businessman, are not being kind or compassionate or caring. They are not the friends of the unemployed or the small business. They are asking us to do again the very thing that caused the problem in the first place.

I leave with this proposition. Can Congress learn from the experiences of Estonia, Canada, and Britain's Thatcher? If we can, we can turn this U.S. economy around—and the economy and jobs are the issue of this Presidential campaign season.

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.

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

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

Ms. MIKULSKI. What is the pending business?

The ACTING PRESIDENT pro tempore. The motion to proceed to S. 1940.

Ms. MIKULSKI. Mr. President, I rise in support of voting for cloture on the bill and wish to speak for as much time as I may consume.

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

FOOD AND DRUG ADMINISTRATION SAFETY AND INNOVATION ACT

Ms. MIKULSKI. Mr. President, we have just exchanged some parliamentary lingo to essentially say we are going to vote shortly to see if we can pass the Food and Drug Administration Safety and Innovation Act, and do it without a filibuster. I hope we can vote for cloture—not to muzzle, not to have a gag rule, but so we can move expeditiously on this bill.

Every single Member here should be proud of what we have accomplished in this FDA Safety and Innovation Act. We have accomplished three major objectives: No. 1, if the legislation is passed—and it is a conference agreement between the House and the Senate—we will be able to move pharmaceuticals, biotech products, and medical devices into clinical practice faster while maintaining our ethical standards around public safety.

No. 2, we can demonstrate we can work together and we can govern. This is the result of the Senate working on both sides of the aisle. Now, with the House, through the conference report, we show we can work between the Senate and the House.

In this time of prickly politics and political posturing when more gets said than done, we can show we cannot only pass legislation but legislation that makes a difference in people's lives. We will also show we can do it in a way that we will not only have a regulatory framework but something in which the businesses cooperated so we will have regulation without strangulation. We will have regulation that acts in the interest of public safety but does not stifle, shackle, or impede good business practices. Wow. Isn't this what we have been talking about?

I am very proud of having been a member of the Health, Education, Labor, and Pensions Committee that worked on this bill. I am also very proud of the fact that FDA is in my State. In a nutshell, we are passing something called PDUFA and other UFAs. PDUFA stands for the Prescription Drug User Fee Act. There will be others that we will talk about which relate to bio user fees and medical device user fees and generics.

This bill was originally enacted in 1992, and the reason for that was at that time there was an unduly long wait for patients to have access to new medicines and new medical devices. It often took close to 3 years to even review a drug application. So Congress went to work with then-President Bill Clinton to say where the pharmacy could agree that, first of all, they would pay user fees to support FDA's drug review program. It is a true public-private partnership. When we look at the funding for FDA, the people who make pharmaceuticals, biotech, and medical devices pay 60 percent of the FDA budget. That is $712 million. The remainder comes from Federal appropriations—40 percent, which is $473 million. So there is a partnership between those businesses that profit—and we want them to do so, without profiteering—and, at the same time, government pays its share.

Since 1992, this legislation has been an enormous success. More than 1,500 new medicines have been approved, including treatments for cancer, infectious disease, and cardiovascular disease. It has decreased review times from more than 3 years to 1 year and a few months now.

In order to make sure we had the right perspective, we not only held excellent hearings in the Senate, but I went out around my own State. I am so proud of my State. We are the home of life sciences. We have NIH there, which does incredible basic research. We actually have FDA, which reviews food safety and drug safety. At the same time, we are the home to a robust group of biotech companies. I wanted to listen to those biotech companies. When I went out, I said to them: Tell me how your government is helping you and tell me how your government is impeding you. Tell me where you want your government to get out of the way and where do you need a more muscular government. Well, we heard quite a bit from them. The first thing they told me is they need a Food and Drug Administration because when they are approved for public safety and efficacy in the United States of America, they can sell their products anywhere in the world. It often means countries—small countries, countries of modest means with limited GDP that could never afford an FDA—know that if the United States of America says it is OK for their citizens, any other country in the world knows it is OK for theirs. So it is very good to be able to export these products with confidence and reliability. This is fantastic, in their minds.

Second, they said they needed more help from FDA not only to expedite but they wanted better communication.

They also needed to be able to incentivize development for those rare diseases we often hear about, where there are small markets but big investments to achieve in it. They outlined the fact that they needed to be viewed not in an adversarial way but a collaborative way. Well, thanks to business sitting down with FDA, and business sitting down with Members of Congress, we have been able to do exactly that. We have improved efficiency, predictability, the regulatory environment, and, at the same time, insisting on safety and efficacy.

This is going to be great for patients. Millions of Americans rely on drugs and biologics and on medical devices. If we are going to improve health care and rein in the cost of health care, we have to use drugs, biotech products, and medical devices that improve lives and extend lives.

If we fail to authorize this legislation, we are going to be in big trouble. How are we going to be in big trouble? Well, first of all, we will have to give notice to FDA that there are going to be layoffs. That means we would have to send out notices in July telling 4,000 people: Look, we know you are the best and the brightest and we want you to have integrity as well as regulatory sensibility and a great deal of scientific competence, but we couldn't get our act together so you are going to be laid off.

Hello. We want these people out there, helping America be able to provide health care in a way that is safe and efficacious.

Again, as I said, if we don't act, thousands of FDA people will be laid off. It is not about government. If those people are laid off, it means the review process for every single drug that is now in the pipeline will come to a halt. So we are hurting patients, thousands of people who need new drugs; new ways of helping them, whether it is for that dread C word—cancer—or diabetes, which takes so much of our national budget to manage chronic illness.

What about the breakthroughs on this epidemic of Alzheimer's we have or autism? We need all the help we can develop. If America is going to continue to be America the exceptional, we have to do an exceptionally good job of making sure we produce some of the newest and most reliable drugs, biotech, and medical devices.

This is why I think we have good legislation. Is it perfect? No. But is it pretty close to it for what business and government and providers—the doctors themselves—say we need? Absolutely.

I urge my colleagues today, when we vote on this motion to proceed on cloture to have in mind—whether a colleague is a Democrat or a Republican—that we don't make the perfect the enemy of the good; rather, we think of all those people to whom we talk every day. We talk to them at townhall meetings and out there with diners, and they say: You know, my little boy has leukemia; my mother has breast cancer; my dear father who stood up for me is facing the ravages of Alzheimer's. We need breakthroughs. We need help, then, for our private sector, so it can go global and create jobs in this country and well-being in other countries around the world. We have to be able to do it.

I am also pleased this bill combats drug shortages, improves the safety of the drug supply chain, and makes permanent those special considerations that require that children's needs are being met with both medical devices and prescriptions, either in terms of dosage or that a device actually fits them.

I wanted to come to the floor to lay this out. I am very proud of FDA, and I am very proud of the Congress, including Senator HARKIN and Senator ENZI, who pulled us together. We have the right legislative framework. Now let's act and do it in a way we can all be proud of.

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

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

FOOD AND DRUG ADMINISTRATION SAFETY AND INNOVATION ACT

Mr. HARKIN. Mr. President, after many months of bipartisan negotiation, I have high hopes that the Senate will vote very shortly to invoke cloture on the House message to accompany the Food and Drug Administration Safety and Innovation Act of 2012.

I am pleased to report it is the product of excellent bipartisan collaboration on the Health, Education, Labor, and Pensions Committee, which I chair, and productive conversations with our colleagues in the House. The House passed the FDA Safety and Innovation Act unanimously last week. Now it is our turn to do our part. The backbone of this legislation is the user fee agreement that FDA has negotiated with industry.

I might just add this bill passed this Chamber about 3 weeks ago on a vote of 96 to 1. So it has strong bipartisan support. A sizeable part of FDA's budget comes from user fees that industry agrees to pay to allow FDA to more quickly weekly review product applications. We need to authorize FDA to implement those agreements if we want to keep FDA running at full steam, which is critical to preserving jobs at both the agency and in the industry and to ensuring that FDA has the resources to get safe medical products to patients quickly.

I want to be clear. These agreements affect all of us by helping to maintain and create jobs in our home States. For example, in my State of Iowa, these agreements will support our burgeoning bioscience sector which saw employment grow by 4.5 percent between 2007 and 2008. The implementation of these agreements will continue to foster biomedical innovation and job growth in all of our States.

The bill before us reauthorizes the prescription drug user fee agreement and the medical device user fee agreement, both commonly known as PDUFA and MDUFA, which will continue and improve the agency's ability to speed market access to prescription drugs and medical devices while ensuring patient safety.

I just might add that, again, uppermost, foremost, first is patient safety. That does not mean we cannot do things in a better manner, get products more readily available, speed up the process if we have the personnel and the equipment to do so. That is why this bill is so important. It provides that type of support so we can hire more people to make sure we get these products to patients quickly, but to make sure they are safe.

The bill also authorizes a new generic drug user fee agreement which is expected to slash review time to one-third of current levels, from 30 months to 10 months, drastically improving the speed with which generic products are made available to patients. The new generic user fee agreement will generate significant savings for patients and our health care system. In the last decade alone, from 2001 to 2010, the use of generic drugs saved the U.S. health care system more than $931 billion. This agreement will ensure that we continue to see those savings and that patients have access to cheaper drugs when they need them.

This bill also authorizes a new biosimilars user fee agreement which will further spur innovation by the generic biologic industry. This chart shows again some of the savings we will get. The use of generic drugs has saved over $931 billion over the last decade, $158 billion just in 2010 alone. So we can see the better we are able to get generic drugs approved and in the pipeline—again, safely—the better off we are all going to be and more money that not only will we save as individuals but our entire health care system will save. That is almost $1 trillion over the last 10 years.

These agreements again, as I said, are vital to FDA's ability to do its job, vital to the stability of the medical products industry, and most importantly to the patients who are the primary beneficiaries of this longstanding and valuable collaboration between FDA and the industry.

After months of negotiation, FDA and the industry have crafted win-win agreements they stand behind. They are doing their job. Now it is time for us to do ours.

It is absolutely imperative that we authorize these user fee agreements before they expire. If we do not, FDA will lose 60 percent of its drug center budget and 20 percent of its device center budget. They will have to lay off nearly 2,000 employees. That is why it is so critical for us to do this at this time.

To be sure, the expiration does not happen until late this summer. But the FDA has told us if they do not get this reauthorization done, they will have to start sending out pink slips at the beginning of July. That is why it is so imperative for us to pass this legislation this week and send it to the President for his signature, so they will not have to go through that process of sending out pink slips.

But we can see how important this is. If this were to happen, it would have devastating consequences for patients whose health and lives depend on new medical treatments. We cannot let that happen. That is why for more than a year I worked closely with my colleague, the ranking member of the HELP Committee, Senator ENZI, and other members of the HELP Committee. Our aim has been to ensure that in addition to the user fee agreements, the other provisions in this legislation are also the product of consensus bipartisan policymaking.

We have used bipartisan working groups and an open, transparent process to ensure that we had input from our members and the stakeholder community at large throughout negotiations on the other titles of this bill. This is quite remarkable. We do not see much of it in this Congress these days. But we have had great cooperation from all members of our committee on both sides of the aisle.

This legislation has benefited greatly from all of the diverse input: from Senators, as I said, on both sides of the aisle, industry stakeholders, consumer groups, patient groups, and more recently from our colleagues in the House. The FDA Safety and Innovation Act is the result of concerted efforts to define our common interests, and these interests will directly benefit patients and the U.S. biomedical industry.

As you can see from this chart, the bill modernizes FDA's authority in several critical ways: It authorizes key user fee agreements to ensure timely approval of medical products. It streamlines the device approval process. It modernizes FDA's global drug supply chain authority, which is so important. It spurs innovation and incentivizes drug development for life-threatening conditions. It reauthorizes and improves incentives for pediatric trials. It helps prevent and mitigate drug shortages, and it increases FDA's accountability and transparency. So it addresses the broad array of critical issues that we face in today's global economy.

It is imperative that our regulatory system keep pace with and adapt to technological and scientific advances and that patient protection remains strong in this era of dynamic change. Keeping pace with the ever-changing biomedical landscape is precisely the aim of the FDA Safety and Innovation Act. This bill injects greater transparency into the device approval process. It bolsters FDA's ability to help U.S. manufacturers create innovative and safe devices, while also enhancing FDA's ability to determine how the devices perform in the real world and takes appropriate measures to protect patients.

The bill also reauthorizes and improves incentives for pediatric trials. It creates incentives for the development of new antibiotics and authorizes new drug and device provisions to help expedite the approval of important life-saving drugs and devices without sacrificing safety.

In addition, the bill also helps address the national crisis prescription drug shortages. For the past several years, hospitals across the country and in my State of Iowa have experienced an increasing number of shortages of life-sustaining prescription drugs. These shortages directly threaten the public health by denying patients access to medications that are indispensable to their care. This bill requires all manufacturers of certain drugs to notify FDA if they expect a manufacturing disruption that could lead to a shortage because if FDA is aware of a potential shortage early, then the agency can work with manufacturers and providers to find other ways to get patients the drugs they need. This bill also addresses drug shortages by explicitly allowing FDA to expedite drug

establishment inspections and application reviews when needed to help prevent or mitigate a shortage. It establishes an FDA drug shortage task force to develop a strategic plan to address drug shortages and to improve communication and outreach to stakeholders preparing for drug shortages.

Another significant advance in the bill is the much needed modernization of the FDA's authority to ensure the safety of drug products coming into the United States from abroad. This bill, No. 1, allows FDA to prioritize inspections of both domestic and foreign firms based on the risk they present to patient safety. It requires importers to demonstrate that certain high-risk drugs are safe and compliant before they can be imported into the United States. It requires manufacturer accountability and oversight of the quality and compliance of their drug producers and suppliers. It enhances penalties for adulterating and counterfeiting drugs. It allows FDA to detain noncompliant drugs in U.S. commerce to prevent them from reaching patients. It permits FDA to destroy certain illegal drugs at the border instead of releasing them back into commerce. It clarifies FDA's authority to address criminal conduct that occurs abroad and threatens the safety of U.S. consumers.

An important point to remember about the importance of these safety provisions is that weaknesses in our pharmaceutical supply chain not only affect the health of American patients, they also affect the health of American businesses. U.S. companies that source and manufacture drugs in this country should not be placed at a competitive disadvantage by foreign firms that operate with less oversight and sell substandard ingredients into this country at reduced prices. This bill will help ensure that businesses operate on a level playing field by holding foreign actors to the same high standards as those in the United States.

The last policy provision I will highlight is a mix of device and drug authorities that together can fairly be described as the most significant advance for patients of orphan and rare diseases since the Orphan Drug Act was passed nearly 30 years ago.

In addition to the significant resources that will be devoted to rare diseases under the prescription drug user fee agreement itself, this bill, No. 1, expands the accelerated approval pathway to therapies for rare and very rare diseases, and it instructs FDA to weigh the rarity of a disease as a factor in its approval process.

Next, it directs resources to promising therapies for unmet medical needs, which will receive the new ''breakthrough'' designation.

Next, it requires FDA to consult with outside experts on rare diseases.

Next, it focuses on pediatric rare diseases by requiring a strategic plan regarding pediatric rare diseases and creating a pilot program to incentivize new therapies for pediatric rare diseases.

Next, it helps make devices for rare diseases more available by modernizing provisions relating to custom devices and making it easier for companies to make profits on devices for rare disease.

Lastly, it reforms the conflict of interest rules for advisory committees to make it easier for the FDA to fill panels, which will have particular impact regarding rare diseases because those panels are sometimes very hard to fill.

I am very proud of the advances this legislation represents for patients with orphan and rare diseases.

Not only does the bill support the biomedical industry and help patients get the medical products they need, it also reduces the deficit. According to the nonpartisan Congressional Budget Office, this legislation will reduce the budget deficit by more than $311 million in the next decade. So what we have is not only good policy, but it is fiscally responsible by contributing to deficit reduction.

As I have said, well over a year of diligent, bipartisan work has gone into the legislation before us today. Neither Democrats nor Republicans got everything they wanted in this bill. We sought out consensus measures. Where we could not achieve consensus, we did not allow our differences to distract us from the critically important goal of producing a bill everyone could support. As a result, this is a true bipartisan bill, and it is broadly supported by the patient groups and industry. In fact, it has wide support from medical associations and also from consumer groups and manufacturers throughout the entire country—a broad base of support. In fact, it is unique because it has the full support of manufacturers, the pharmaceutical industry, the device manufacturers, the FDA itself, and patients groups—people concerned about patient safety, cost, and availability of drugs and devices. So it has a broad base of support.

The FDA Safety and Innovation Act before us, which we will be voting on in a little while, authorizes the important FDA user fee agreements, and it modernizes our regulatory system to ensure safety and to foster innovation in the medical product industry. Our bipartisan work has produced an excellent bill. We cannot allow unrelated partisan disagreements or Presidential-election-year politics to interfere or keep us from completing our job.

I will say it again. We must pass this vital legislation now. It is critically important to the agency, to the industry and, most importantly, to patients that we get this done. Let's come together, Democrats and Republicans, to pass this legislation. Let's have a resounding vote on cloture. Hopefully we won't have to use the 30 hours and we can get to passage of the bill very rapidly so that we can get it down to the President for his signature.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

INVOKING THE LEAHY-THURMOND RULE

Mr. LEE. Mr. President, I rise today to express my support for the minority leader's decision to invoke the longstanding Senate tradition, known as the Leahy-Thurmond rule. Pursuant to this tradition and precedent, the Senate will cease confirming nominees to the Federal courts of appeals until after the Presidential election in November. Many of my colleagues from the other side of the aisle have previously affirmed the propriety of this rule and enforced its standard. For example, in the last year of the Bush administration, the majority leader noted that ''in a Presidential election year, it is always very tough for judges. That is the way it has been for a long time, and that is why we have the Thurmond rule.''

The chairman of the Judiciary Committee, who has cited the Thurmond rule more frequently than any other Senator, has likewise stated that ''in a Presidential election year, after Spring, no judges go through except by the consent of the Republican and Democratic leaders.''

Statements from several of my Democratic colleagues likewise confirm that it is proper to invoke the Leahy-Thurmond rule at this point in a Presidential election year. In 2008, for example, one of my colleagues on the Judiciary Committee argued that for Federal appeals court nominees, once ''it comes to June . . . generally everything stops in an election year.'' Indeed, on June 12 of that same year, another Judiciary Committee colleague stated that the Senate was already ''way past the time of the Thurmond rule.''

History further confirms the propriety of invoking the Leahy-Thurmond rule at this time. It is extremely rare for the Senate to confirm an appeals court nominee after June of a Presidential election year. In fact, it has happened only once in almost two decades, when in 2000 the Republican-controlled Senate confirmed one of President Clinton's nominees. It is simply not true, as comments from some of my colleagues have implied, that in recent Presidential election years we have confirmed appellate court nominees in July, August, or September.

Moreover, this year we have already confirmed five of President Obama's Federal appeals court nominees. This, incidentally, is the same number of appeals court nominees the Senate confirmed in 2008, the most recent Presidential election year on record. In 2004 the Senate confirmed only four such nominees. Indeed, dating back over 100 years, from President William Howard Taft to President Obama, the Senate has confirmed an average of just four appeals court nominees during Presidential election years. This year we have already exceeded the historical average and confirmed five of President Obama's appeals court nominees.

There is no reason to depart further from the historical norm and confirm additional nominees.

The suggestion by some that application of the Leahy-Thurmond rule somehow affects court vacancies deemed ''judicial emergencies'' is false, and recklessly so. Of the four judicial emergencies on the Federal court of appeals, President Obama has nominated only one individual, and because that nomination was so recent, even absent the Leahy-Thurmond rule, that nominee would not be scheduled for a vote anytime soon.

I also remind my colleagues that Democrats enforced the Leahy-Thurmond rule in June 2008, during a time when there were twice as many judicial emergencies in the circuit courts as there are right now. Likewise, the overall vacancy rate on our circuit courts was much higher in June 2004 when President Bush was in the final year of his term. Yet Democrats did not hesitate to block several qualified appellate court nominees in the months leading up to the 2004 Presidential election.

Enforcement of the Leahy-Thurmond rule does not currently apply to district court nominees. This year the Senate has already confirmed 23 of President Obama's district court nominees—many more than were confirmed during comparable years during the President Bush and Clinton Presidencies. And we will continue to confirm more qualified nominees. Application of the Leahy-Thurmond rule, beginning now, will thus not implicate any district court judicial emergencies.

The urgency for such vacancies lies not in the Senate, which to this day has acted responsibly on nominees, but with President Obama, who to this day has failed to nominate individuals for many of these seats.

There are, I add, other good reasons in addition to tradition and historical precedent to enforce the Leahy-Thurmond rule now rather than waiting longer to do so. Doing so now prevents a particular President from packing the courts at the end of his term by appointing influential, life-tenured appellate court judges whose service will span numerous other Presidential administrations.

The Leahy-Thurmond rule also ensures that Presidential politics during an election season will not overshadow or interfere with the Senate's advice and consent role on such judicial nominees.

The last point bears special emphasis. The Constitution assigns to the Senate the right and the duty to advise and consent to the President's judicial and executive branch nominees. It is essential for the Constitution's separation of powers that the Senate protect its necessary and legitimate role in the nominations process against encroachment by the executive branch of government.

Earlier this year, we witnessed a troubling demonstration of what can happen when the President violates the Constitution's separation of powers and tramples on the Senate's rightful prerogatives in the advise and consent process. On January 4, 2012, at a time when the Senate was conducting brief sessions approximately every 72 hours, President Obama nonetheless bypassed the Senate and unilaterally appointed four significant executive branch nominees. By asserting the power to make recess appointments, even when the Senate—according to its own rules—was not in recess, the President simply ignored the Senate's legitimate constitutional right to advise and consent to nominees made by the President.

President Obama's unconstitutional appointments cut to the very heart of our Constitution's separation of powers and the institutional prerogatives that rightfully belong right here, in this body. Accordingly, since the time of those appointments, I have sought to protect the Senate's interests by opposing President Obama's judicial nominees. I have made clear I would do the same were a Republican President to make similarly unconstitutional appointments under the recess appointments clause.

As the chairman of the Senate Judiciary Committee noted at a recent Judiciary Committee hearing, I have stated my concern with President Obama's unconstitutional recess appointments very clearly, but I have also been, in his words, extremely responsible in my opposition and have not hindered the work of the Senate. In light of President Obama's unconstitutional appointments, it is all the more proper we invoke the Leahy-Thurmond rule now.

I agree with the ranking member of the Senate Judiciary Committee that we should have invoked that rule back in January, at the time of the unconstitutional appointments. By enforcing the Leahy-Thurmond rule now, we will demonstrate for the historical record the Senate did not acquiesce in President Obama's unconstitutional recess appointments and, instead, took action to protect the Senate's institutional prerogatives. When we have done so, I will again be in a position to vote in favor of qualified consensus District Court nominees.

But I will always remain vigilant in seeking to protect the Senate against unconstitutional encroachment by the executive branch. As Members of this body, we have an institutional responsibility to safeguard the Senate's essential advise and consent role and to confirm only those nominees who are properly qualified to serve in the positions for which they have been rightfully nominated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

ARIZONA IMMIGRATION DECISION

Mr. DURBIN. Mr. President, today, the U.S. Supreme Court announced its decision on S.B. 1070—the controversial Arizona immigration law. The Court—including conservative Justices Anthony Kennedy and John Roberts—agreed with the Obama administration that a State cannot set up its own immigration enforcement system.

As a result, the Supreme Court struck down several parts of the Arizona law, including the provision that would have made it a crime in Arizona to be an undocumented immigrant and the provision that would have required legal immigrants to carry documents proving their legal status at all times.

The Supreme Court is right. States do not have the right, under the Constitution, to enact immigration laws that contradict Federal law. Many of my colleagues on the other side of the aisle strongly criticized the Obama administration for even challenging the Arizona immigration law. There was even an amendment offered to try to block the Justice Department from pursuing the litigation brought to the Supreme Court. Fortunately, the vast majority of Democrats, joined by two Republicans—Senators Johanns and Voinovich—blocked that amendment.

Now the Supreme Court—including Chief Justice Roberts and Justice Kennedy—has sided with the Obama administration in holding the vast majority of the Arizona law unconstitutional.

I am troubled the Supreme Court upheld one of the provisions in that law in Arizona—section 2(B)—which requires Arizona police officers to check the immigration status of suspected undocumented immigrants. But it is important to understand the Court's decision on that section is a narrow one. The only question for the Court was whether that section—2(B)—was preempted by Federal immigration law. The Court said it is open to future challenges once the law goes into effect, and this provision may still be held unconstitutional, as the other provisions in the Arizona law.

According to law enforcement experts, section 2(B) is likely to encourage profiling, which would violate the Equal Protection Clause of the 14th amendment to the Constitution. Specifically, section 2(B) requires police officers to check the immigration status of any individual with whom they have lawful contact if they have ''reasonable suspicion'' the person is an undocumented immigrant.

What is the basis for a reasonable suspicion the person they pull over is, in fact, an undocumented immigrant? The guidance on the law issued in the State of Arizona says police officers should consider things such as how a person is dressed or their ability to communicate in English.

Earlier this year, I held a hearing on racial profiling in the Judiciary's Subcommittee on the Constitution, Civil Rights and Human Rights. It was the first hearing on racial profiling since before 9/11. One of the witnesses at my hearing was Ron Davis. He is the chief of police in East Palo Alto, CA, and

Chief Davis, along with 16 other law enforcement officials and the Major Cities Chiefs of Police Association, filed a brief in the Arizona case. In their brief, the police chiefs say:

The statutory standard of ''reasonable suspicion'' of unlawful presence in the United States will as a practical matter produce a focus on minorities, and specifically Latinos.

Two former Arizona attorneys general, joined by 42 other former State attorneys general, filed an amicus brief in the Arizona case, and they said ''application of the law requires racial profiling.'' I agree with these law enforcement experts. I am confident section 2(B) will eventually be struck down as the other provisions of the Arizona law were.

The Arizona law is the wrong approach for America. It is amazing to me how this Nation of immigrants, in which we are all part of the family, has struggled for so long to deal with the whole issue of immigration. I think it is wrong to treat people as criminals simply because of their immigration status, and it is not right to make criminals of people who literally go to work every day, cooking our food, cleaning our rooms, and caring for our children in day care centers or caring for our parents and grandparents in nursing homes.

Here is the reality: Treating immigrants as criminals will not help combat illegal immigration. Law enforcement doesn't have the time or the resources to prosecute and incarcerate every undocumented immigrant among the 10 million or 11 million in this country. Making undocumented immigrants into criminals simply drives them into the shadows. That is why the Arizona Association of Chiefs of Police opposes the Arizona law considered by the Court today. They say it will make it more difficult for them to make Arizona a safe place. Immigrants are less likely to cooperate with the police if they fear they are going to get arrested for even trying to help.

Instead of measures that harm law enforcement and promote racial profiling, such as the Arizona immigration law, we need practical solutions to fix a broken immigration system. That case was before the Supreme Court. The Court made its decision today because this body—the Senate and the House—have failed to accept their responsibility. We have a responsibility, if, in fact, immigration is a Federal issue, for a Federal response, and we failed.

The first step we should take in passing comprehensive immigration reform is to pass the DREAM Act—legislation that would allow a select group of immigrant students who grew up in this country to earn citizenship either by attending college or serving in the military.

Russell Pearce is the author of the Arizona immigration law. He had this to say about the DREAM Act:

The DREAM Act is one of the greatest legislative threats to America's sovereignty, national security and economic future.

I see it differently and so do many others, including GEN Colin Powell and former Defense Secretary Robert Gates. They support the DREAM Act because it would make America a stronger country by giving these talented immigrants the chance to serve in the military and contribute to the future of America.

The best way to understand the problems with the Arizona immigration law and the need for the DREAM Act and comprehensive immigration law is to hear the stories of some of the immigrant students who would be eligible for the DREAM Act. They call themselves DREAMers. Almost every week in the session I come to the floor of the Senate to tell the story of one of these young people. Over the years I have told stories of several DREAMers from the State of Arizona. Under the Arizona law, these young people would be targets for prosecution and incarceration. Under the DREAM Act, they would be future citizens who could make America and Arizona stronger.

Today, I wish to introduce one of them from Arizona. Her name is Angelica Hernandez. She was brought to Phoenix, AZ, when she was 9 years old. She started school in the fourth grade, and by the time she reached the sixth grade, Angelica no longer took English as a second language. She was proficient in the language of English.

At Carl Hayden High School in Phoenix, AZ, Angelica served in Junior ROTC and was president of the National Honor Society. She became a dedicated member of the school's robotics club, where she found her true love, engineering.

Angelica graduated from high school with a 4.5 GPA and in 2007 was named Outstanding Young Woman of the Year for district 7 in Phoenix. Last year, Angelica Hernandez graduated from Arizona State University—we can see her holding her graduation certificate—as the outstanding senior in the Mechanical Engineering Department, with a 4.1 GPA.

Under the Arizona immigration law, Angelica Hernandez would be a target for prosecution and incarceration. Under the DREAM Act, she would be a future citizen and engineer who could contribute her talents to making this a better country. What a choice: to take this woman, who has spent virtually her entire life, as she remembers it, in America, attending our schools, excelling in those schools, being acknowledged as one of the better students so her ambition takes her to a great university, Arizona State University, where she graduated at the top of her class in mechanical engineering and, some would say, tell her now she must leave America, I think is wrong. Angelica Hernandez, and people like her, will make this a better country. Unlike the Arizona immigration law, the DREAM Act is a practical solution to a broken immigration system. The Arizona law would harm law enforcement and encourage profiling. The DREAM Act would make America stronger.

President Obama understands this. That is why he challenged the Arizona law, taking the case to the Supreme Court. That is why earlier this month I saluted the President for announcing his administration will no longer deport people, such as Angelica Hernandez, who would be eligible for the DREAM Act. I strongly support President Obama's courage and his decision. It is one of the most historic, humanitarian moments of our time. His decision will give these young immigrants the chance to finally come out of the shadows and be part of the only country they have ever called home. It was the right thing to do.

These students didn't make the decision to come to this country. Angelica was brought here at the age of 9, and it is not the American way to punish children for the wrongdoing of their parents. President Obama's new deportation policy will make America better by giving these talented immigrants the chance to contribute.

Studies have found DREAM Act students will literally boost the American economy during their working lives. This policy is also clearly legal. Throughout our history, the government has decided who to prosecute and who not to prosecute based on law enforcement priorities and availability resources. Past administrations of both political parties have used their authority to stop deportation of low-priority cases. The courts have recognized that.

Listen to what the Supreme Court said today in the Arizona immigration law case:

A principal feature of the removal system is the broad discretion exercised by immigration officials. . . . Discretion in the enforcement of immigration law embraces immediate human concerns.

The President's plan is smart and realistic. The Department of Homeland Security has to set priorities. It is not amnesty; it is simply a decision to focus limited government resources on those who have committed serious crimes and are a threat to public safety, not the DREAM Act students.

Compare President Obama's approach with the Presidential candidate from another party who said the Arizona law was a ''model'' for the rest of America. That other Presidential party candidate has promised that if he is elected President he will veto the DREAM Act. He has refused to say whether he would even maintain or rescind President Obama's order banning the deportation of DREAM Act students. That is the wrong approach for America.

The administration's new policy on the DREAM Act is only temporary. I understand that. The burden is still on us in the Senate and the House to do something about the many thousands of students across America, just like this dynamic young lady in Arizona,

who simply want a chance to be a part of America and its future. Our first step: Pass the DREAM Act. Do it and do it now.

Justice Kennedy wrote in his opinion today:

> The history of the United States is in part made of the stories, talents, and lasting contributions of those who crossed oceans and deserts to come here.

Justice Kennedy is right. Congress should reform our immigration laws so we can once again welcome those who cross oceans and deserts to revitalize and strengthen this Nation of immigrants.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I came to the floor to discuss another issue. But since my friend from Illinois, with whom I share many of his comments, I have to comment. The fact is that the irony of the Supreme Court decision today said it is a Federal responsibility to ensure our borders and not the States' responsibility. The State of Arizona acted because the Federal Government wouldn't act, because our borders were broken, because the people in the southern part of our State were living in fear, because a rancher was killed by someone who had crossed our border illegally, because people are on mountaintops today guiding drug runners across our border into Arizona with drugs ending up in Phoenix, AZ, and distributed all over this Nation, $887 million wasted on a contract for a virtual fence.

Coyotes bring these people across and then treat them in the most abominable fashion, where they are put into drop houses and kept in the worst kinds of conditions and held for ransom.

Because the Federal Government would not secure our borders, the State of Arizona believed they had to act because people in the southern part of our State and even other parts of our State were living in fear. They are living in fear because of the drug dealers who are coming across, because of the coyotes who are mistreating the people they were bringing.

Of course we want to address the issue of children who weren't born here. But we also have an obligation to have our borders secured. I repeat—today, I say to my friend from Illinois—there are people sitting on mountaintops hired by the drug cartels who are guiding the drug runners across our borders and up to Phoenix. You can ask the DEA. These drugs are then distributed throughout the country from Phoenix, AZ. People are murdered, and the violence on the other side of the border threatens every day to spill over to our side of the border. So I hope, as a result of this decision, the administration will get serious about actually securing our border. Every expert agrees that because of the work that has been done in California and Texas it has funneled through the State of Arizona.

Have there been improvements? Of course there have been improvements. Is it still going on? As long as we have guides sitting on mountaintops guiding drug dealers, we haven't got a secure border. That is what the people of Arizona not only want but they also deserve.

By the way, Mitt Romney agrees that we have to address this issue in a comprehensive fashion as well as concern about the plight of the children who are brought here illegally. But I would also point out to my friend that part of the DREAM Act, as proposed by the Senator from Illinois, is 2 years' service in the military. We don't sign people up for 2 years. Average citizens, in order to get on a path to a green card and citizenship, sign up for 4 years. That is just one of the areas that need to be worked out.

So there will be a lot of conversation about this. But I believe people who live inside of our country—no matter whether it is in Arizona or Illinois—deserve the right to live in a safe environment. The people who live in the southern part of our State do not have that.

So I hope we can get our borders secure and we can move forward with comprehensive immigration.

By the way, then-Senator Obama was one of the key reasons it failed because he wanted to sunset the guest worker program. That is a fact, and you can look it up, I say to my friend from Illinois. Although it was killed by people on this side, it was also a broken promise on the part of then-Senator Obama who assured Senator Kennedy and me that he wouldn't vote for an amendment that would impair the progress of comprehensive reform at that time.

I look forward to having further discussions with the Senator from Illinois as we move forward—sooner or later—with comprehensive immigration reform, which is absolutely needed. But we also have to ensure the security of all of our citizens and stop the flow of drugs across our southern border, which is killing our young Americans.

By the way, I would say to the Senator from Illinois, the price of an ounce of cocaine on the streets of Chicago today is not one less penny higher than it was 10 years ago, which means we are not restricting the flow of drugs coming into our country. As we all know, the majority of it comes across from our southern border.

Finally, I would remind my friend from Illinois that then-Senator Obama promised in the campaign of 2008 that immigration reform would be his first priority. The Senator had 60 votes over here and an overwhelming majority in the House of Representatives in the first 2 years of the Obama administration. I never saw a proposal come to the Senate for comprehensive immigration reform. Now, the DREAM Act did. Comprehensive immigration reform? No. That is what then-Senator Obama promised.

Mr. President, I ask unanimous consent for a colloquy between myself and the Senator from Illinois.

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

The Senator from Illinois.

Mr. DURBIN. Let me say, the Senator from Arizona is my friend, and there are many things we have worked on together, and I respect him very much. He knows, as I do, when the DREAM Act was called, we thought the introductory may be the easiest part of immigration reform. It was stopped by a Republican filibuster.

Mr. MCCAIN. I don't dispute that point, I say to my friend from Illinois. There was no comprehensive immigration reform proposal that came over from the White House or from the Democrats, as was promised by then-Senator Obama when running for the Presidency. That is a fact.

Mr. DURBIN. I would say to the Senator from Arizona, as part of this colloquy, we thought that would be the first step. We couldn't get past the first step because of the Republican filibuster.

Mr. MCCAIN. I wish that when then-Senator Obama was running for President he would have said: But first I am coming over with the DREAM Act. He didn't. He said: My first act will be comprehensive immigration reform.

I was invited over to the White House in 2009. We talked about comprehensive immigration reform and I said: I will await a proposal from the administration on comprehensive immigration reform. My phone never rang.

Mr. DURBIN. I say to the Senator from Arizona, perhaps the day will come in our lifetime when we can see that, and you and I can work on it together again as we once did before. I would look forward to that.

Mr. MCCAIN. I look forward to it, and I want to say there has been no more passionate advocate in the Senate than the Senator from Illinois. I respect him and admire him for his compassion and his concern about young people whose lives, as he very well described, need to have some kind of assurance for their future since it is clearly a compelling humanitarian situation. I thank my friend from Illinois.

HEALTH CARE RULING

Mr. President, later this week the Supreme Court will issue its ruling on the health care bill, designed and negotiated by the White House and rammed through Congress during President Obama's first year in office when the economy was near its weakest.

Instead of focusing on recovery and persistent unemployment, the President and the Democratic majorities controlling Congress squandered the opportunity and forced the unpopular and potentially unconstitutional legislation on the American people.

Today we are voting on final passage on the reconciled FDA user fee bill. During Senate consideration of this bill I offered an amendment to allow safe drug importation from legitimate

Canadian pharmacies. But the pharmaceutical industry spread misleading and inaccurate information about the amendment, as they have done time and a time again. As I said then, there is no greater example of the influence of special interests on this body than the failure to enact an amendment that would have allowed drugs from legitimate Canadian pharmacies so people could purchase their much needed medication at sometimes half the cost of what it is in the United States of America. I am embarrassed to this day that nine of my Republican colleagues also voted against it.

I don't know if there was a sweetheart deal to protect PhRMA at the expense of American patients from the vote on my amendment. But we do know that PhRMA was protected by the White House and Senate Democrats from provisions they didn't like in ObamaCare only after they offered up advertising in exchange for more accommodating policies.

From a recent House Energy and Commerce Committee investigation, it is now confirmed that PhRMA orchestrated a grand deal with the White House and Senate Democrats to oppose importation and other policies. I might point out then-Senator Obama supported drug importation.

This is how the New York Times described the deal that was done in exchange for reportedly $150 million in advertising to support ObamaCare, June 8, 2012:

After weeks of quiet talks, drug industry lobbyists were growing nervous. If they were to cut a deal with the White House on overhauling health care, they needed to be sure President Obama would stop a proposal by his liberal allies intended to bring down medicine prices.

On June 3, 2009, one of the lobbyists e-mailed Nancy-Ann DeParle, the president's top health care adviser. Ms. DeParle sent a message back reassuring the lobbyists. Although Mr. Obama was overseas, she wrote, she and other top officials had ''made a decision, based on how constructive you guys have been, to oppose importation on the bill.'' Just like that, Mr. Obama's staff abandoned his support for the reimportation of prescription medicines at lower prices and with it solidified a growing compact with an industry he had vilified on the campaign trail the year before.

A president who had promised to air negotiations on C–SPAN cut a closed-door deal with the powerful pharmaceutical lobby, signifying to some disillusioned liberal supporters a loss of innocence, or perhaps even the triumph of cynicism.

Still, what distinguishes the Obama-industry deal is that he had so strongly rejected that very sort of business as usual.

Ironically, candidate Obama sang a very different tune on the campaign trail in 2008:

You know, I don't want to learn how to play the game better. I want to put an end to the game playing.

Now, PhRMA is the lobbying group for the pharmaceutical industry. The New York Times article continued:

The e-mails, which the House committee obtained from PhRMA and other groups, document a tumultuous negotiation, at times transactional. . . .

In the end, the White House got the support it needed to pass its broader priority, but industry emerged satisfied as well. ''We got a deal,'' wrote Bryant Hall, then senior vice president of the pharmaceutical group.

In July, the White House made clear that it wanted supportive ads using the same characters the industry used to defeat Mr. Clinton's proposal 15 years earlier. ''Rahm asked for Harry and Louise ads thru third party,'' Mr. Hall wrote.''

Talks came close to breaking down several times. In May, the White House was upset that the industry had not signed onto a joint statement. One industry official wrote that they should sign: ''Rahm is already furious. The ire will be turned on us.''

The e-mails also detail extensive and direct negotiations with PhRMA, its drug company members, the American Medical Association, AARP, the American Hospital Association, unions, and many more. Members of the alliance all participated because they thought they were getting something more valuable—revenue to their organization or membership because the Federal Government was going to force everyone into some form of government-designed health insurance coverage—than what they were going to have to spend on advertising to support the legislation. Some reports have the PhRMA advertising commitment as high as $150 million, spread out through direct advertising in certain important States and among groups created to sound like they were looking out for patients or to tout the economic benefits of ObamaCare.

On June 11, 2012, the Wall Street Journal described the e-mails about the 2009 negotiations:

The joint venture was forged in secret in spring of 2009 amid an uneasy mix of menace and opportunism. The drug makers worried that health-care reform would revert to the liberal default of price controls and drug reimportation that Mr. Obama campaigned on, but they also understood that a new entitlement could be a windfall as taxpayers bought more of their products. . . .

Initially, the Obamateers and Senate Finance Chairman Max Baucus asked for $100 billion, 90% of it from mandatory ''rebates'' through the Medicare prescription drug benefit like those that are imposed in Medicaid. The drug makers wheedled them down to $80 billion by offsetting cost-sharing for seniors on Medicare, in an explicit quid pro quo for protection against such rebates and re-importation.

''Terms were reached in June. . .lead PhRMA negotiator Bryant Hall wrote on June 12 that Mr. Obama ''knows personally about our deal and is pushing no agenda.''

But Energy and Commerce Chairman Henry Waxman then announced that he was pocketing PhRMA's concessions and demanding more, including re-importation. We wrote about the double-cross in a July 16, 2009 editorial called ''Big Pharma Gets Played,'' noting that Mr. Tauzin's ''corporate clients and their shareholders may soon pay for his attempt to get cozy with ObamaCare.''

Mr. Hall forwarded the piece to Ms. DeParle with the subject line, ''This sucks.'' The White House rode to the rescue. In September Mr. Hall informed Mr. Kindler that deputy White House chief of staff Jim Messina ''is working on some very explicit language on importation to kill it in health care reform. This has to stay quiet.''

''PhRMA more than repaid the favor, with a $150 million advertising campaign coordinated with the White House political shop. As one of Mr. Hall's deputies put it earlier in the minutes of a meeting when the deal was being negotiated, ''The WHdesignated folks . . . would like us to start to define what 'consensus health care reform' means, and what it might include. . . . They definitely want us in the game and on the same side.''

More on the ''WH-designated folks . . .'' in a moment. The June 11 WSJ editorial continued:

In particular, the drug lobby would spend $70 million on two 501(c)(4) front groups called Healthy Economy Now and Americans for Stable Quality Care. In July, Mr. Hall wrote that ''Rahm asked for Harry and Louise ads thru third party. We've already contacted the agent.

Other groups like the AMA were also willing to commit their membership dollars to advertising in support of the legislation in exchange for their policy priorities. According to the Wall Street Journal:

''At least PhRM/I deserves backhanded credit for the competence of its political operatives—unlike, say, the American Medical Association. A thread running through the emails is a hapless AMA lobbyist importuning Ms. DeParle and Mr. Messina for face-to-face meetings to discuss reforming the Medicare physician payment formula. The AMA supported ObamaCare in return for this ''doc fix,'' which it never got.

''We are running out of time,'' this lobbyist, Richard Deem, writes in October 2009. How can he ''tell my colleagues at AMA headquarters to proceed with $2m TV buy'' without a permanent fix? The question answers itself: It was only $2 million.''

The emails uncovered by the House committee also describe potentially serious conflicts of interest for senior White House staff, their former businesses, who was really writing the legislation—the White House, Congress or affected industries—and questions about the appearance of the White House staff orchestrating the outside advertising campaign. On June 21, 2012 the Wall Street Journal further reported on the 2009 secret deals:

STRASSEL: AXELROD'S OBAMACARE DOLLARS

(By Kimberly A. Strassel)

Rewind to 2009. The fight over ObamaCare is raging, and a few news outlets report that something looks ethically rotten in the White House. An outside group funded by industry is paying the former firm of senior presidential adviser David Axelrod to run ads in favor of the bill. That firm, AKPD Message and Media, still owes Mr. Axelrod money and employs his son.

The story quickly died, but emails recently released by the House Energy and Commerce Committee ought to resurrect it. The emails suggest the White House was intimately involved both in creating this lobby and hiring Mr. Axelrod's firm—which is as big an ethical no-no as it gets.

Mr. Axelrod—who left the White House last year—started AKPD in 1985. Mr. Axelrod moved to the White House in 2009 and agreed to have AKPD buy him out for $2 million. But AKPD chose to pay Mr. Axelrod in annual installments—even as he worked in the West Wing.

The White House and industry were working hand-in-glove to pass ObamaCare in 2009, and among the vehicles supplying ad support was an outfit named Healthy Economy Now (HEN).

House emails show HEN was in fact born at an April 15, 2009 meeting arranged by then-White House aide Jim Messina and a chief of staff for Democratic Sen. Max Baucus. The

two politicos met at the Democratic Senatorial Campaign Committee (DSCC) and invited representatives of business and labor.

The call was from Nick Baldick, a Democratic consultant who had worked on the Obama campaign and for the DSCC. Mr. Baldick started HEN. The only job of PhRMA and others was to fund it.

Meanwhile, Mr. Axelrod's old firm was hired to run the ads promoting ObamaCare. At the time, a HEN spokesman said HEN had done the hiring. But the emails suggest otherwise. In email after email, the contributors to HEN refer to four men as the ''White House'' team running health care.

In one email, PhRMA consultant Steve McMahon calls these four the ''WH-designated folks.'' He explains to colleagues that Messrs. Grossman, Grisolano and Del Cecato ''are very close to Axelrod,'' and that ''they have been put in charge of the campaign to pass health reform.''

A 2009 PhRMA memo also makes clear that AKPD had been chosen before PhRMA joined HEN. It's also clear that some contributors didn't like the conflict of interest. When, in July 2009, a media outlet prepared to report AKPD's hiring, a PhRMA participant said: ''This is a big problem.'' Mr. Baldick advises: ''just say, AKPD is not working for PhRMA.'' AKPD and another firm, GMMB, would handle $12 million in ad business from HEN and work for a successor 501(c)4.

A basic rule of White House ethics is to avoid even the appearance of self-dealing or nepotism. Could you imagine the press frenzy if Karl Rove had done the same after he joined the White House?

Until the White House explains all this, voters can fairly conclude that the President's political team took their Chicago brand of ethics into the White House.''

Mr. President, I ask unanimous consent to have printed in the RECORD a New York Times article, June 8, 2012; a Wall Street Journal article, June 11, 2012; and June 21 Wall Street Journal editorial, and the memos about the e-mails associated with this report.

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

MAY 16, 2012.

To: Energy and Commerce Committee Republican Members

From: Subcommittee on Oversight and Investigations Majority Staff

Re Investigation Update: Closed-Door Obamacare Negotiations

From: Messina, Jim

Sent: Friday, January 15, 2010 6:04 PM

To: Bryant Hall

Subject: FW: TAUZIN EMAIL

What the hell? This wasn't part of our deal.

OVERVIEW

The purpose of this memorandum is to update Republican Members on the Energy and Commerce Committee on the Committee's ongoing investigation into the potential agreements made by the White House and health care industry stakeholders prior to passage of the Patient Protection and Affordable Care Act (PPACA). As reported on April 17, 2012, the Committee's investigation is attempting to answer the following questions:

Were ''deals'' made between the Administration and outside stakeholders that exchanged specific policy outcomes for public support of the law?

Who made these deals, and to what extent was Congress excluded?

What specifically was negotiated by the White House and these outside interests? What policies are now law as a result of these negotiations, and what did the White House obtain in exchange?

This investigation has produced further information regarding the substance of the ''deal'' between the White House and the Pharmaceutical Manufacturers of America (PhRMA), the details of which have never been fully disclosed to the public. Further, based on email exchanges and other primary source material, it appears that deal was reached not solely between PhRMA and the United States Senate Finance Committee, but that top personnel in the White House were involved in negotiating and approving this deal. The following update is based on internal records obtained from outside stakeholders who engaged in negotiations outside the public's view during the development and passage of PPACA.

I. WAS THERE A DEAL?

The existence of an agreement or series of agreements between powerful health care industry stakeholders and the authors of PPACA is a widely known—albeit poorly understood—aspect of the health care law. Media accounts dating back to 2009 speculated on the existence and details of such deals leading up to the law's enactment. However, those accounts have lacked concrete evidence of exactly what policies the White House accepted or rejected as part of these agreements, and what the interest groups delivered in return. Moreover, media accounts and public statements from policymakers at the time were often conflicting or incomplete, failing to provide a clear picture to the American people about how this law was being written, and by whom.

For example, while President Obama referred to the agreement in June 2009, reports at the time also indicated that ''many details of the . . . deal remained unclear.'' A month later, The Wall Street Journal reported that House Democrats had been told that the Administration ''doesn't feel bound'' by the agreement. Because of increased pressure from the Hill to scuttle the agreement, eventually the White House attempted to publicly support the deal in early August when The New York Times reported that the drug industry ''. . . successfully demanded that the White House explicitly acknowledge for the first time it had committed to protect drug makers. . . .'' Yet, a week later reports still indicated that ''[s]ince mid-July, the White House and the drug industry's lobby, PhRMA, have denied any specific agreement. . . .''

This investigation has confirmed the existence of a deal between the White House and PhRMA that explicitly bound both parties to certain commitments. As the email exchange at the top of this memorandum demonstrates, the deal was so clearly understood to be binding that White House Deputy Chief of Staff Jim Messina made direct contact with PhRMA's chief lobbyist for the negotiations regarding the deal to express his displeasure with an apparent violation of the agreement more than two months before the legislation was given final approval by Congress.

II. WHY DID THE WHITE HOUSE HIDE ITS INVOLVEMENT?

On June 20, 2009, the White House issued a 296-word statement from President Obama announcing an agreement between the nation's pharmaceutical companies and the Senate. The statement makes no mention of White House involvement.

The investigation has determined that the White House, primarily through the Office of Health Reform Director Nancy Ann DeParle and Messina, with involvement from Chief of Staff Rahm Emmanuel, was actively engaged in these negotiations while the role of Congress was limited. For example, three days before the June 20 statement, the head of PhRMA promised Messina, ''we will deliver a final yes to you by morning.'' Meanwhile, Ms. DeParle all but confirmed that half of the Legislative Branch was shut out in an email to a PhRMA representative: ''I think we should have included the House in the discussions, but maybe we never would have gotten anywhere if we had.''

Given these facts, it is unclear why the White House did not fully disclose its involvement with outside stakeholders in the development of the legislation. Their efforts are particularly surprising given the President's repeated promises of transparency.

After this Committee initiated its investigation into the potential promises or agreements made between PhRMA, labor unions, insurers, medical associations, and other trade and advocacy organizations, the White House derided the Committee's request for basic information about its legislative efforts as ''vast and expensive.'' The White House refused to produce any of the requested documents and only produced to the Committee a list of meetings based on ''calendar entries and other readily available information.'' These calendar entries do not provide information on the attendees or details of discussion. For example, the calendar provided by the White House identifies a July 7, 2009, event as follows: ''Meeting with PhRMA representatives.'' No further information is provided. This investigation, however, has revealed that this was not only a meeting between representatives of PhRMA and top White House aides; it was the critical meeting to solidify the deal. As a PhRMA representative said at the time: ''It's just to go over the principal elements of the deal w[ith] Rahm, Messina and DeParle. ''

III. WHAT DID THE WHITE HOUSE PROMISE TO DO?

Even news stories that indicated that there was a potential agreement with the pharmaceutical industry could not report the entirety of the agreement. The August New York Times story that reported White House acknowledgment of the deal ''for the first time'' could not report any specifics ''beyond an agreed-upon $80 billion'' in cost savings. This investigation will show that the agreement between the White House and the pharmaceutical industry was much more explicit. In the coming weeks the Committee intends to show what the White House agreed to do as part of its deal with the pharmaceutical industry and how the full details of this agreement were kept from both the public and the House of Representatives.

After two years, the health care law has failed to lower costs while only increasing its unpopularity with the public. According to a PhRMA official: ''[W]e got a good deal.''

The important question to answer is what did the White House get in return.

MAY 31, 2012.

To: Energy and Commerce Committee Republican Members

From: Majority Staff

Re Investigation Update: Closed-Door Obamacare Negotiations

EXECUTIVE SUMMARY

The White House negotiated a deal with the Pharmaceutical Research and Manufacturers of America (PhRMA) in mid-June 2009. After attempting to secure a commitment from the industry for $100 billion in payment cuts, eventually the White House settled for approximately $80 billion in payment reductions through expanded and increased Medicaid rebates and a new health reform fee. PhRMA also had direct input into the actual legislative policies that produced the $80 billion, including the proposal for closing the Part D doughnut hole.

Under the deal, ''the White House and Senator Baucus agreed'' that neither price controls nor a government-run Medicare Part D

plan would become law, the White House would oppose price controls on dual eligible beneficiaries, and that savings from a follow-on biologics proposal would be applied to the total $80 billion commitment.

White House Office of Health Reform Director Nancy-Ann DeParle told PhRMA's chief lobbyist for negotiating the deal that the White House would oppose new drug importation policies because of ''how constructive'' PhRMA had been. According to PhRMA's lobbyist, White House Deputy Chief of Staff Jim Messina told him that the ''WH is working on some very explicit language on importation to kill it in health reform.''

According to internal e-mails, PhRMA's chief lobbyist believed the White House eventually cut a deal with the pharmaceutical industry during the week of June 20, 2009, because the White House had suffered a bad week politically.

Despite countless promises of televised negotiations and transparent government, the White House met in private with PhRMA representatives and drug company CEOs in July 2009, ''to look the other side in the eye and shake their hand on whatever deal we work out.''

The White House was not above threatening PhRMA to get its way. According to PhRMA's chief lobbyist, the White House was going to have President Obama call for rebating all of Medicare Part D, a policy PhRMA staunchly opposed, in his Weekly Radio Address unless PhRMA cut a deal with the White House to support health reform.

JUNE 8, 2012.

To: Energy and Commerce Committee Republican Members

From: Majority Staff

Re: Investigation Update: Closed-Door Obamacare Negotiations

EXECUTIVE SUMMARY

As part of its agreement with the White House, the Pharmaceutical Research and Manufacturers of America (PhRMA) needed to undertake a ''significant public campaign.'' PhRMA was willing to spend as much as $150 million on advertising, with nearly $70 million spent on two 501(c)(4) groups that could spend unlimited corporate money with little public disclosure: Healthy Economy Now and Americans for Stable Quality Care.

Healthy Economy Now was created after a meeting at the Democratic Senatorial Campaign Committee (DSCC) organized in part by White House Deputy Chief of Staff Jim Messina. Participants were told that the White House wanted to see ads linking the poor economy to the need for health care legislation, with one attendee remarking that ''given who is behind this ask'' their group should support the effort.

In early June 2009, PhRMA representatives met with ''the team that is working with the White House on health care reform'' to learn about White House messaging and ''how our effort can be consistent with that.'' The team was a who's who of Democratic strategists that included a previous head of the DSCC; the producer of the 2008 Democratic National Convention; and two partners at AKPD Message and Media, the advertising firm founded by then Senior Advisor to the President David Axelrod.

When PhRMA's representative indicated that PhRMA was not prepared to run advertisements before seeing how the health care legislation developed, the White House team specifically referred to a meeting the PhRMA CEOs had with Jim Messina the day before and to White House efforts on drug importation policy which had been communicated to PhRMA's chief lobbyist that day.

PhRMA's chief lobbyist reported that White House Chief of Staff Rahm Emanuel asked for ''Harry and Louise ads thru third party'' on July 7, 2009, the same day White House officials met with PhRMA CEOs. PhRMA aired the ad a week later.

Public revelations about the hiring of political firms close to the White House were perceived to be a ''big problem.'' Presumably, because the firms producing and placing some of PhRMA's advertising, including the advertising through both Healthy Economy Now and Americans for Stable Quality Care, had also received over $340 million to handle advertising for President Obama's 2008 election campaign.

The White House attempted to steer the advertising and advocacy tactics of a number of organizations, including the AFL-CIO and AARP.

[From the Wall Street Journal, June 11, 2012]

OBAMACARE'S SECRET HISTORY—HOW A PFIZER CEO AND BIG PHARMA COLLUDED WITH THE WHITE HOUSE AT THE PUBLIC'S EXPENSE.

On Friday House Republicans released more documents that expose the collusion between the health-care industry and the White House that produced ObamaCare, and what a story of crony capitalism it is. If the trove of emails proves anything, it's that the Tea Party isn't angry enough.

Over the last year, the Energy and Commerce Committee has taken Nancy Pelosi's advice to see what's in the Affordable Care Act and how it passed. The White House refused to cooperate beyond printing out old press releases, but a dozen trade groups turned over thousands of emails and other files. A particular focus is the drug lobby, President Obama's most loyal corporate ally in 2009 and 2010.

The business refrain in those days was that if you're not at the table, you're on the menu. But it turns out Big Pharma was also serving as head chef, mâtre d'hotel and dishwasher. Though some parts of the story have been reported before, the emails make clear that ObamaCare might never have passed without the drug companies. Thank you, Pfizer.

The joint venture was forged in secret in spring 2009 amid an uneasy mix of menace and opportunism. The drug makers worried that health-care reform would revert to the liberal default of price controls and drug reimportation that Mr. Obama campaigned on, but they also understood that a new entitlement could be a windfall as taxpayers bought more of their products. The White House wanted industry financial help and knew that determined business opposition could tank the bill.

Initially, the Obamateers and Senate Finance Chairman Max Baucus asked for $100 billion, 90% of it from mandatory ''rebates'' through the Medicare prescription drug benefit like those that are imposed in Medicaid. The drug makers wheedled them down to $80 billion by offsetting cost-sharing for seniors on Medicare, in an explicit quid pro quo for protection against such rebates and re-importation. As Pfizer's then-CEO Jeff Kindler put it, ''our key deal points . . . are, to some extent, as important as the total dollars.'' Mr. Kindler played a more influential role than we understood before, as the emails show.

Thus began a close if sometimes dysfunctional relationship with the Pharmaceutical Research and Manufacturers of America, or PhRMA, as led by Billy Tauzin, the Louisiana Democrat turned Republican turned lobbyist. As a White House staffer put it in May 2009, ''Rahm's calling Nancy-Ann and knows Billy is going to talk to Nancy-Ann tonight. Rahm will make it clear that PhRMA needs a direct line of communication, separate and apart from any coalition.'' Nancy-Ann is Nancy-Ann DeParle, the White House health reform director, and Rahm is, of course, Rahm.

Terms were reached in June. Mr. Kindler's chief of staff wrote a memo to her industry colleagues explaining that ''Jeff would object to me telling you that his communication skills and breadth of knowledge on the issues was very helpful in keeping the meeting productive.'' Soon the White House leaked the details to show that reform was making health-care progress, and lead PhRMA negotiator Bryant Hall wrote on June 12 that Mr. Obama ''knows personally about our deal and is pushing no agenda.''

But Energy and Commerce Chairman Henry Waxman then announced that he was pocketing PhRMA's concessions and demanding more, including re-importation. We wrote about the double-cross in a July 16, 2009 editorial called ''Big Pharma Gets Played,'' noting that Mr. Tauzin's ''corporate clients and their shareholders may soon pay for his attempt to get cozy with ObamaCare.''

Mr. Hall forwarded the piece to Ms. DeParle with the subject line, ''This sucks.'' The duo commiserated about how unreasonable House Democrats are, unlike Mr. Baucus and the Senators. The full exchange is among the excerpts from the emails printed nearby.

Then New York Times reporter Duff Wilson wrote to a PhRMA spokesman, ''Tony, you see the WSJ editorial, 'Big Pharma Gets Played' ''? I'm doing a story along that line for Monday.'' The drug dealers had a problem.

The White House rode to the rescue. In September Mr. Hall informed Mr. Kindler that deputy White House chief of staff Jim Messina ''is working on some very explicit language on importation to kill it in health care reform. This has to stay quiet.''

PhRMA more than repaid the favor, with a $150 million advertising campaign coordinated with the White House political shop. As one of Mr. Hall's deputies put it earlier in the minutes of a meeting when the deal was being negotiated, ''The WH-designated folks . . . would like us to start to define what 'consensus health care reform' means, and what it might include. . . . They definitely want us in the game and on the same side.''

In particular, the drug lobby would spend $70 million on two 501(c)(4) front groups called Healthy Economy Now and Americans for Stable Quality Care. In July, Mr. Hall wrote that ''Rahm asked for Harry and Louise ads thru third party. We've already contacted the agent.''

Mr. Messina—known as ''the fixer'' in the West Wing—asked on December 15, 2009, ''Can we get immediate robo calls in Nebraska urging nelson to vote for cloture?'' Ben Nelson was the last Democratic holdout toward the Senate's 60-vote threshold, and, as Mr. Messina wrote, ''We are at 59, we have to have him.'' They got him.

At least PhRMA deserves backhanded credit for the competence of its political operatives—unlike, say, the American Medical Association. A thread running through the emails is a hapless AMA lobbyist importuning Ms. DeParle and Mr. Messina for face-to-face meetings to discuss reforming the Medicare physician payment formula. The AMA supported ObamaCare in return for this ''doc fix,'' which it never got.

''We are running out of time,'' this lobbyist, Richard Deem, writes in October 2009. How can he ''tell my colleagues at AMA headquarters to proceed with $2m TV buy'' without a permanent fix? The question answers itself: It was only $2 million.

Mr. Waxman recently put out a rebuttal memo dismissing these email revelations as routine, ''exactly what Presidents have always done to enact major legislation.'' Which is precisely the point—the normality is the scandal. In 2003 PhRMA took a similar road trip with the Bush Republicans to create the Medicare drug benefit. That effort included building public support by heavily funding a shell outfit called Citizens for a Better Medicare.

Of course Democrats claim to be above this kind of merger of private profits and political power, as Mr. Obama did as a candidate. ''The pharmaceutical industry wrote into the prescription drug plan that Medicare could not negotiate with drug companies,'' he said in 2008. ''And you know what? The chairman of the committee who pushed the law through''—that would be Mr. Tauzin—''went to work for the pharmaceutical industry making $2 million a year.''

Outrage over this kind of cronyism is what animates the Tea Party and Occupy Wall Street, whose members aren't powerful enough to get special dispensations from the government—or even a fair hearing from their putative representatives.

In one email, an AARP lobbyist writes the White House to say ''We really need to talk,'' noting that calls from seniors are running 14 to one against ObamaCare. But she isn't calling to say that AARP is withdrawing support—only that the White House needs to adjust its messaging. This is how a bill passes over the objections of most Americans.

The lesson for Republicans if they do end up running the country next year is that their job is to restore the free and fair market that creates broad-based economic growth. The temptation will be to return for the sake of power to the methods of Tom DeLay and Jack Abramoff. If they do, voters will return the GOP to private life as surely as they did the Democrats in 2010.

The warning to business is also fundamental. Crony capitalism undermines public trust in capitalism itself and risks blowback that erodes the free market that private companies need to prosper and that underlies the productivity and competitiveness of the U.S. economy. The political benefits of cronyism are inherently temporary, but the damage it does is far more lasting.

As for Big Pharma, the lobby ultimately staved off Mr. Waxman's revolt and avoided some truly harmful drug policies—for now. But over the long term their products are far more vulnerable to the command-and-control central planning that will erode medical innovation, and their $80 billion fillip is merely the teaser rate.

Mr. Kindler resigned from Pfizer in December 2010 under pressure from directors, its stock having lost 35% of its value since he became CEO. Mr. Tauzin left PhRMA in February 2010, with the Affordable Care Act a month from passage.

The truth is that this destructive legislation wasn't inevitable and far better reforms were possible. They still are, though they might have gained more traction in 2009 and 2010 with the right support. The miracle is that, despite this collusion of big government and big business, ObamaCare has received the public scorn that it deserves.

[From the New York Times, June 8, 2012]

LOBBY E-MAILS SHOW DEPTH OF OBAMA TIES TO DRUG INDUSTRY

(By Peter Baker)

WASHINGTON.—After weeks of quiet talks, drug industry lobbyists were growing nervous. If they were to cut a deal with the White House on overhauling health care, they needed to be sure President Obama would stop a proposal by his liberal allies intended to bring down medicine prices.

On June 3, 2009, one of the lobbyists e-mailed Nancy-Ann DeParle, the president's top health care adviser. Ms. DeParle sent a message back reassuring the lobbyist. Although Mr. Obama was overseas, she wrote, she and other top officials had ''made decision, based on how constructive you guys have been, to oppose importation on the bill.''

Just like that, Mr. Obama's staff abandoned his support for the reimportation of prescription medicines at lower prices and with it solidified a growing compact with an industry he had vilified on the campaign trail the year before. Central to Mr. Obama's drive to overhaul the nation's health care system was an unlikely collaboration with the pharmaceutical industry that forced unappealing trade-offs.

The e-mail exchange that day three years ago was among a cache of messages obtained from the industry and released in recent weeks by House Republicans—including a new batch put out on Friday morning detailing the industry's advertising campaign in favor of Mr. Obama's proposal. The broad contours of the president's dealings with the drug industry were known in 2009 but the newly public e-mails open a window into the compromises underlying a health care overhaul now awaiting the judgment of the Supreme Court.

Mr. Obama's deal-making in 2009 represented a pivotal moment in his young presidency, a juncture where the heady idealism of the campaign trail collided with the messy reality of Washington policymaking. A president who had promised to air negotiations on C-Span cut a closed-door deal with the powerful pharmaceutical lobby, signifying to some disillusioned liberal supporters a loss of innocence, or perhaps even the triumph of cynicism.

But if it was a Faustian bargain for the president, it was one he deemed necessary to forestall industry opposition that had thwarted efforts to cover the uninsured for generations. Without the deal, in which the industry agreed to provide $80 billion for health reform in exchange for protection from policies that would cost more, Mr. Obama and Democratic allies calculated he might get nowhere.

''There was no way we had the votes in either the House or the Senate if PhRMA was opposed—period,'' said a senior Democratic official involved in the talks, referring to the Pharmaceutical Research and Manufacturers of America, the drug industry trade group.

Republicans see the deal as hypocritical. ''He said it was going to be the most open and honest and transparent administration ever and lobbyists won't be drafting the bills,'' said Representative Michael C. Burgess of Texas, one of the Republicans on the House Energy and Commerce subcommittee that is examining the deal. ''Then when it came time, the door closed, the lobbyists came in and the bills were written.''

Some of the liberals bothered by the deal-making in 2009 now find the Republican criticism hard to take given the party's long-standing ties to the pharmaceutical industry.

''Republicans trumpeting these e-mails is like a fox complaining someone else raided the chicken coop,'' said Robert Reich, the former labor secretary under President Bill Clinton. ''Sad to say, it's called politics in an era when big corporations have an effective veto over major legislation affecting them and when the G.O.P. is usually the beneficiary. In this instance, the G.O.P. was outfoxed. Who are they to complain?''

Dan Pfeiffer, the White House communications director, said the collaboration with industry was in keeping with the president's promise to build consensus.

''Throughout his campaign, President Obama was clear that he would bring every stakeholder to the table in order to pass health reform, even longtime opponents like the pharmaceutical industry,'' Mr. Pfeiffer said. ''He understood correctly that the unwillingness to work with people on both sides of the issue was one of the reasons why it took a century to pass health reform.''

In a statement, PhRMA said that its interactions with Mr. Obama's White House were part of its mission to ''ensure patient access'' to quality medicine and to advance medical progress.

''Before, during and since the health care debate, PhRMA engaged with Congress and the administration to advance these priorities,'' said Matthew Bennett, the group's senior vice president.

Representative Henry Waxman of California, the top Democrat on the House committee and one of those who balked at Mr. Obama's deal in 2009, now defends it as traditional Washington lawmaking.

''Presidents have routinely sought the support and lobbying clout of private industry in passing major legislation,'' Mr. Waxman's committee staff said in a memo released in response to the e-mails. ''President Obama's actions, for example, are no different than those of President Lyndon B. Johnson in enacting Medicare in 1965 or President George W. Bush in expanding Medicare to add a prescription drug benefit in 2003.''

Still, what distinguishes the Obama-industry deal is that he had so strongly rejected that very sort of business as usual. During his campaign for president, he specifically singled out the power of the pharmaceutical industry and its chief lobbyist, former Representative Billy Tauzin, a Democrat-turned-Republican from Louisiana, as examples of what he wanted to change.

''The pharmaceutical industry wrote into the prescription drug plan that Medicare could not negotiate with drug companies,'' Mr. Obama said in a campaign advertisement, referring to Mr. Bush's 2003 legislation. ''And you know what? The chairman of the committee who pushed the law through went to work for the pharmaceutical industry making $2 million a year.

''Imagine that,'' Mr. Obama continued. ''That's an example of the same old game playing in Washington. You know, I don't want to learn how to play the game better. I want to put an end to the game playing.''

After arriving at the White House, though, he and his advisers soon determined that one reason Mr. Clinton had failed to pass health care reform was the resilient opposition of industry. Led by Rahm Emanuel, his chief of staff and a former House leader, and Jim Messina, his deputy, White House officials set out to change that dynamic.

The e-mails, which the House committee obtained from PhRMA and other groups after the White House declined to provide correspondence, document a tumultuous negotiation, at times transactional, at others prickly. Each side suspected the other of betraying trust and operating in bad faith.

The White House depicted in the message traffic comes across as deeply involved in the give-and-take, and not averse to pressure tactics, including having Mr. Obama publicly assail the industry unless it gave in on key points. In the end, the White House got the support it needed to pass its broader priority, but industry emerged satisfied as well. ''We got a good deal,'' wrote Bryant Hall, then senior vice president of the pharmaceutical group.

Mr. Bryant, now head of his own firm, declined to comment. So did Mr. Emanuel, now mayor of Chicago; Mr. Messina, now the president's campaign manager; and Ms. DeParle, now a White House deputy chief of

staff. Mr. Tauzin, who has left his post as the industry's lobbyist, did not respond to messages.

The latest e-mails released on Friday underscore the detailed discussions the two sides had about an advertising campaign supporting Mr. Obama's health overhaul.''They plan to hit up the 'bad guys' for most of the $,'' a union official wrote after an April meeting with Mr. Messina and Senate Democratic aides. ''They want us to just put in enough to be able to put our names in it—he is thinking @100K.''

In July, the White House made clear that it wanted supportive ads using the same characters the industry used to defeat Mr. Clinton's proposal 15 years earlier. ''Rahm asked for Harry and Louise ads thru third party,'' Mr. Hall wrote.

Industry and Democratic officials said privately that the advertising campaign was an outgrowth of the fundamental deal, not the goal of it. The industry traditionally advertises in favor of legislation it supports.

Either way, talks came close to breaking down several times. In May, the White House was upset that the industry had not signed onto a joint statement. One industry official wrote that they should sign: ''Rahm is already furious. The ire will be turned on us.''

By June, it came to a head again. ''Barack Obama is going to announce in his Saturday radio address support for rebating all of D unless we come to a deal,'' Mr. Hall wrote, referring to a change in Medicare Part D that would cost the industry.

In the end, the two sides averted the public confrontation and negotiated down to $80 billion from $100 billion. But the industry believed the White House was rushing an announcement to deflect political criticism.

''It's pretty clear that the administration has had a horrible week on health care reform, and we are now getting jammed to make this announcement so the story takes a positive turn before the Sunday talk shows beat up on Congress and the White House,'' wrote Ken Johnson, a senior vice president of the pharmaceutical organization.

In the end, House Democrats imposed some additional costs on the industry that by one estimate pushed the cost above $100 billion, but the more sweeping policies the firms wanted to avoid remained out of the legislation. Mr. Obama signed the bill in March. He had the victory he wanted.

[From the Wall Street Journal, June 22, 2012]

STRASSEL: AXELROD'S OBAMACARE DOLLARS

(By Kimberley A. Strassel)

Emails suggest the White House pushed business to the presidential adviser's former firm to sell the health-care law.

Rewind to 2009. The fight over ObamaCare is raging, and a few news outlets report that something looks ethically rotten in the White House. An outside group funded by industry is paying the former firm of senior presidential adviser David Axelrod to run ads in favor of the bill. That firm, AKPD Message and Media, still owes Mr. Axelrod money and employs his son.

The story quickly died, but emails recently released by the House Energy and Commerce Committee ought to resurrect it. The emails suggest the White House was intimately involved both in creating this lobby and hiring Mr. Axelrod's firm—which is as big an ethical no-no as it gets.

Mr. Axelrod—who left the White House last year—started AKPD in 1985. The firm earned millions helping run Barack Obama's 2008 campaign. Mr. Axelrod moved to the White House in 2009 and agreed to have AKPD buy him out for $2 million. But AKPD chose to pay Mr. Axelrod in annual installments—even as he worked in the West Wing. This agreement somehow passed muster with the Office of Government Ethics, though the situation at the very least should have walled off AKPD from working on White-House priorities.

It didn't. The White House and industry were working hand-in-glove to pass ObamaCare in 2009, and among the vehicles supplying ad support was an outfit named Healthy Economy Now (HEN). News stories at the time described this as a ''coalition'' that included the Pharmaceutical Research and Manufacturers of America (PhRMA), the American Medical Association, and labor groups—suggesting these entities had started and controlled it.

House emails show HEN was in fact born at an April 15, 2009 meeting arranged by then-White House aide Jim Messina and a chief of staff for Democratic Sen. Max Baucus. The two politicos met at the Democratic Senatorial Campaign Committee (DSCC) and invited representatives of business and labor.

A Service Employees International Union attendee sent an email to colleagues noting she'd been invited by the Baucus staffer, explaining: ''Also present was Jim Messina. . . . They basically want to see adds linking HC reform to the economy . . . there were not a lot of details, but we were told that we would be getting a phone call. Well that call came today.''

The call was from Nick Baldick, a Democratic consultant who had worked on the Obama campaign and for the DSCC. Mr. Baldick started HEN. The only job of PhRMA and others was to fund it.

Meanwhile, Mr. Axelrod's old firm was hired to run the ads promoting ObamaCare. At the time, a HEN spokesman said HEN had done the hiring. But the emails suggest otherwise. In email after email, the contributors to HEN refer to four men as the ''White House'' team running health care. They included John Del Cecato and Larry Grisolano (partners at AKPD), as well as Andy Grossman (who once ran the DSCC) and Erik Smith, who had been a paid adviser to the Obama presidential campaign.

In one email, PhRMA consultant Steve McMahon calls these four the ''WH-designated folks.'' He explains to colleagues that Messrs. Grossman, Grisolano and Del Cecato ''are very close to Axelrod,'' and that ''they have been put in charge of the campaign to pass health reform.'' Ron Pollack, whose Families USA was part of the HEN coalition, explained to colleagues that ''the team that is working with the White House on health-care reform. . . . [Grossman, Smith, Del Cecato, Grisolano] . . . would like to get together with us.'' This would provide ''guidance from the White House about their messaging.''

According to White House visitor logs, Mr. Smith had 28 appointments scheduled between May and August—17 made through Mr. Messina or his assistant. Mr. Grossman appears in the logs at least 19 times. Messrs. Del Cecato and Grisolano of AKPD also visited in the spring and summer, at least twice with Mr. Axelrod, who was deep in the health-care fight.

A 2009 PhRMA memo also makes clear that AKPD had been chosen before PhRMA joined HEN. It's also clear that some contributors didn't like the conflict of interest. When, in July 2009, a media outlet prepared to report AKPD's hiring, a PhRMA participant said: ''This is a big problem.'' Mr. Baldick advises: ''just say, AKPD is not working for PhRMA.'' AKPD and another firm, GMMB, would handle $12 million in ad business from HEN and work for a successor 501(c)4.

A basic rule of White House ethics is to avoid even the appearance of self-dealing or nepotism. If Mr. Axelrod or his West Wing chums pushed political business toward Mr. Axelrod's former firm, they contributed to his son's salary as well as to the ability of the firm to pay Mr. Axelrod what it still owed him. Could you imagine the press frenzy if Karl Rove had done the same after he joined the White House?

Messrs. Axelrod and Messina are now in Chicago running Mr. Obama's campaign. Mr. Axelrod, the White House and a partner for AKPD didn't respond to requests for comment on their role in HEN, the tapping of Mr. Baldick, and the redolent hiring of AKPD. Until the White House explains all this, voters can fairly conclude that the President's political team took their Chicago brand of ethics into the White House.

Mr. MCCAIN. Mr. President, I know my other colleagues are waiting to speak, but last month when we voted down this amendment to allow drug reimportation from pharmacies that are accredited by both the Canadian and American Governments, my statement was, and I will repeat it:

In a normal world, this would probably require a voice vote. But what we are about to see is the incredible influence of the special interests, particularly PhRMA, here in Washington.

What you are about to see [as I predicted just before the vote] is the reason for the cynicism the American people have about the way we do business in Washington. PhRMA—one of the most powerful lobbies in Washington—will exert its influence again at the expense of average low-income Americans who will, again, have to choose between medication and eating.

In response the Senator from New Jersey said, in opposition to my amendment:

It is not the special interests that have caused the Senate countless times to reject this policy. . . . .

This is about the health and security of the American people. That is why time after time the Senate has rejected it. It is why it should be rejected once again.

He was correct. It was rejected. The American people were rejected in favor of one of the most powerful special interest lobbies in Washington and it is a shame.

I suggest the absence of a quorum.

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

FLOOD INSURANCE REFORM AND MODERNIZATION ACT

Mr. REID. Mr. President, I ask unanimous consent that the remaining time postcloture be yielded back and the Senate adopt the motion to proceed to S. 1940.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

The bill (S. 1940) to amend the National Flood Insurance Act of 1968, to restore the financial solvency of the flood insurance fund, and for other purposes.