Their report found there were no attempts to influence analysts or no evidence that administration officials attempted to coerce, influence, or pressure an analyst to change his or her judgment—not once.

Every member of the Intelligence Committee, Republican and Democrat, approved that report. The Silverman-Robb report and six other major studies found there is no basis for the claim that the administration lied to get us to go to war.

The search for weapons of mass destruction will not be completed on our timetable. Look at this picture: The Iraqis buried entire planes in the desert. We have two photographs of planes being unearthed, full planes buried beneath the sand. When we pulled them out, they were still operable.

Our troops found 30 of these planes buried in the sands of the Al-Taqqadum airfield west of Baghdad—30 planes. That is one-tenth of their entire combat Air Force. If Saddam Hussein's troops had buried one-tenth of their combat aircraft in the desert, who is to say there were no weapons of mass destruction similarly buried? Just because they were not found does not mean they were never there. The Nation of Iraq is the size of California. The materials needed to make weapons of mass destruction could fit in a container the size of a family bathtub. Weapons of mass destruction are no bigger than a family bathtub.

We now stand at a critical moment in history. I believe we must reflect on events leading to the war, but this process is only useful if it is honest and accurate. Those who are trying to rewrite history, revisionist history of these events are simply advancing their own political agendas. They are not advancing the important work due now in the region—and do so on a bipartisan basis.

I agree with the Senator from Virginia, Mr. WARNER, the chairman of the Committee on Armed Services. A flexible timetable for troop withdrawal could jeopardize our men and women in uniform and their mission. The only way we can lose in Iraq is if we defeat ourselves, if we refuse to stay the course. The path to progress is slow and steady. It has milestones, but it does not have timelines. We must remain behind our troops.

Over 200 years ago, our Founding Fathers began the great American experiment. They set out to create a government defined by its commitment to liberty and freedom. Iraq is one of this century's proving grounds for those ideals. Our men and women in uniform, all volunteers, are helping the people of Iraq and Afghanistan build their emerging democracies. Their sacrifices ensure, in the words of Abraham Lincoln, ''that government of the people, by the people, and for the people shall not perish from this Earth.''

Distorting our prewar intelligence will not help them complete their mission. We must support the important work they are doing in Iraq, not send mixed messages. The men and women in uniform were asked to go to Iraq to help Iraq become a democracy dedicated to freedom. They are doing that. I will continue to support those and stay the course and support Iraq's efforts to stand up their own forces so they can defend that freedom.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

TAX RELIEF ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2020.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2020) to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for the fiscal year 2006.

Pending:

Dorgan amendment No. 2587, to amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil and to rebate the tax collected back to the American consumer.

Durbin amendment No. 2596, to express the sense of the Senate concerning the provision of health care for children before providing tax cuts for the wealthy.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, this morning we intend to continue two major amendments from this side of the aisle. The amendment of Senator CONRAD from North Dakota proposes a fiscally responsible substitute; the amendment of the Senator from Washington, Ms. CANTWELL, is regarding energy price gouging. These are both very important amendments and an important debate. I ask consent the pending amendments be temporarily laid aside so Senator CONRAD may offer an amendment.

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

AMENDMENT NO. 2602

(Purpose: To amend the Internal Revenue Code of 1986 to provide tax benefits for areas affected by Hurricanes Katrina, Rita, and Wilma and to extend certain expiring provisions, and for other purposes)

Mr. CONRAD. Madam President, first I thank the ranking member on the Senate Committee on Finance, Senator BAUCUS, for his leadership and for the extraordinary amount of work he does to make the work of the Committee on Finance as responsible as it can be.

There are many provisions in the underlying bill that has come out of the Committee on Finance that I support. I think they are broadly supported extensions of expiring tax provisions that ought to be extended.

I salute the chairman of the Committee on Finance, Senator GRASSLEY, for the good job he has done in putting together this package. While I agree with many of the specific provisions, I have one profound area of disagreement. That profound area of disagreement is that this package is not paid for. The result, if we pass this package, will be to deepen the deficit, to add to the debt, when we already have record deficits and we already have runaway debt.

My colleagues are going to have to answer the question, Why shouldn't we pay for these tax provisions? Why shouldn't we cover the cost? Why shouldn't we prevent the deficit from being expanded? Why shouldn't we prevent the debt from being deepened?

That is the question posed by my amendment. It takes many of the provisions in the Committee on Finance bill, the expiring tax provisions, and extends them for 1 year. It pays for them fully.

It is very important to remember the history. How did we get in the position we are in today? My colleagues will remember this very famous chart that the administration and the Congressional Budget Office presented back in 2001. This part of the chart I call the fan chart showed the range of possible outcomes if we didn't change any budget policies. This range of possible outcomes from a best case scenario; to a median scenario, the midpoint between the range of possible outcomes is the prediction line adopted; to the worst case scenario. These were the projections given to us if we just did nothing.

My colleagues on the other side said: No, this is too conservative, this range of possible outcomes. They said: Don't you understand, if we have tax cuts we will get more revenue so we will be above the midpoint of the range. We might be even above the best case scenario. The problem with that theory is that it did not work out in reality.

Here is what happened in reality: This red line is far below the worst case scenario outlined by the Congressional Budget Office in 2001. I have caught the chairman's attention. He will remember the chart very well from 2001, what the Congressional Budget Office said was the range of possible outcomes. The Congressional Budget Office adopted this midrange of the estimates as their projection.

Many of my colleagues on the other side told me, when I said we shouldn't be betting on a 10-year forecast: Kent, you are way too conservative. Don't you understand if we cut taxes we will get more revenue. We will be above the midpoint of the range of possible outcomes.

Now we can go back and we can check what has actually happened. That is this red line. It is below the worst case possible outcome. Far below it.

So this notion that the tax cuts were going to generate more revenue and were going to prevent massive deficits proved to be wrong. It is very simple.

This is not theory. This is not ideology. This is reality. This is what really happened.

We can look at it in a different way. This chart looks back to 1980, the relationship between spending and revenue of the United States expressed as a share of gross domestic product. Why do we do it that way? Why do we do it as a share of gross domestic product? Because every economist says that is the appropriate way to compare spending over time and revenue over time because it takes out the effects of inflation and growth, so we are comparing apples to apples.

Here is what the line shows: Spending in the 1980s was between 21 and 23.5 percent of gross domestic production. During the 1990s, interestingly enough, during the Democrat administration, the spending came down as a share of gross domestic production each and every year, the 8 years of the Clinton administration. So at the end of that time we were below 19 percent of gross domestic production on spending. Since that time, spending has gone up to approaching 20 percent of gross domestic production now.

My colleagues on the other side of the aisle want to blame Democrats for spending. But Democrats have not been in charge during this period. During this period, Republicans have controlled the White House, the Senate, the House. They are responsible for every dime of this increase.

Let's look at the revenue side. When President Bush came in, revenue—as he correctly stated—was at a very high level historically, about 20.6 percent of gross domestic production. It was substantially above where it was in the 1980s and 1990s.

But look what has happened since. Revenue has collapsed. Last year it was the lowest it has been as a share of gross domestic production since 1959. Some of my friends on the other side want to concentrate on this uptick. And it is true, revenue has increased over the last year. But it is still way below where it has been historically and way below where it was in 2001. The result is the increased spending, the reduced revenue—by the way, about half the reduction in revenue is from tax cuts—the combination of increased spending and reduced revenue has opened up a chasm. That is why we have massive deficits and why we are going to have massive deficits going forward—and, I might add, at the worst possible time.

Why is it the worst possible time? Because the baby boomers are going to start to retire in 2008. Right here the baby boomers are going to start to retire. That is going to change everything in a dramatic way.

The President assured us when we embarked on this course that there would not be deficits. Then, the next year, he told us the deficits would be small and short term. Then, the next year, he told us they would be small by historical standards. Now he says he is going to cut them in half over the next 5 years.

Let's compare rhetoric to reality. Here is what has happened. In 2001, the first year he was in office, inheriting surpluses from the Clinton administration, we had a $128 billion surplus. The next year, we were back in deficit. The next year, 2003, we had the biggest deficit ever, only to be exceeded, in 2004, by an even larger deficit. And this year, again, we have the third largest deficit in our history but somewhat of an improvement.

Let me say to my colleagues, this modest improvement is largely illusory because it focuses just on the deficit. I say to my colleagues, what we ought to be thinking about, what is really far more important to the fiscal future of the country, is not the growth of deficits but the growth of the debt. Why do I say that? Because if you look at what happened to the increase in the debt last year, you see that it increased far more than the deficit figure that is quoted in the news media.

Why is that? Well, the biggest reason is because under the President's plan, $173 billion of Social Security money was taken to pay for other things. That all gets added to the debt. It all has to be paid back. But it is not included in the deficit calculation. Very frankly, these deficit calculations are increasingly irrelevant to understanding the true fiscal condition of the country.

Now, last year, instead of the debt increasing by what was the advertised deficit of $319 billion, the debt of the country actually increased by $551 billion. I find that this is largely not understood. When I do presentations, most people think, in kind of a commonsense way, that the debt must increase by the amount of the deficit. But that is not the case. The fundamental reason it is not the case is because under the President's plan money is being taken from every trust fund in sight to cover the spending, and it all gets added to the debt, but it is not included in the deficit calculation. So last year, the debt of the country increased by $551 billion.

This is so important to understand historically. I see the news media, very frequently, say: Well, as a share of GDP the deficit is not as big as the deficits were in the 1980s. That is true. But it is totally misleading. Why? Because back in the 1980s, there was virtually no Social Security surplus to be used to pay for other things. In fact, until 1984, there was no Social Security surplus—none. Then, in the 1980s, the Social Security surpluses were very modest. But look what has happened over time. The Social Security surpluses have exploded, masking the true size of what is being added to the debt of the country—masking the true size of the deficits is probably a better way to say it.

Last year, the amount of Social Security funds that were taken to pay for other things reached $173 billion, and not a dime of it got counted in the deficit calculation. It all got added to the debt. It is all going to have to be paid back, but you don't read about it anywhere in the news media. They don't talk about how much the debt increased.

This is a shell game of enormous proportion that is going on here. I say to my colleagues, if any private sector entity tried to do what we are doing here, they would be headed for a Federal facility. But it would not be the Congress of the United States, it would not be the White House, they would be headed to Federal prison because any private sector entity that tried to take the retirement funds of its employees and use them to pay for current expenses, they would be guilty of Federal violations of law. They would be guilty of fraud. You cannot take the retirement funds of your employees and use it to pay current expenses. That is exactly what we are doing here, every year.

Under the President's plan, over the next 10 years, at the very time he says Social Security is short of money for the long term, his budget plan and the budget plans that passed here in the Congress of the United States, are going to take $2.5 trillion from Social Security and use it to pay the operating expenses of the Federal Government.

Is anybody paying attention? Is anybody paying attention to what is going on here? Over the next 10 years, $2.5 trillion of Social Security money is going to be taken to pay for other things. We are headed for a train wreck. The President says: Don't worry. We are going to cut the deficit in half over the next 5 years.

Our problem is not a 5-year problem. In fact, that is the sweet spot of the budget cycle. That is the sweet spot because that is before the baby boomers have retired. In addition, the only way the President gets to his claim of reducing the deficit, over 5 years, in half is he just leaves out things. He left out war costs past September 30 of this year. That is $300 billion, according to the Congressional Budget Office. He left out the cost of fixing the alternative minimum tax. That costs $700 billion to fix. There is not a dime of it in his budget.

When you add back the things he left out, here is the picture we see emerging, and this is just the deficit calculation. The debt calculation, as I have described previously, is far worse. We are going into a circumstance in which the next 5 years—these are the good times; it is before baby boomers retire—we are headed for an extraordinarily serious set of circumstances if the budget plan of the President is maintained. Why? Because many of the proposals he has explode in cost right beyond the 5-year budget window. For example, the cost of his tax cuts absolutely explode right beyond the 5-year budget window. So does the cost of dealing with the alternative minimum tax. It explodes beyond the 5-year budget window.

We have had a lot of talk on the floor of the Senate about this being a deficit reduction package. No, it is not. This is not a deficit reduction package, this reconciliation package. This reconciliation package has three parts: spending changes that save $35 billion over 5 years, these additional tax cuts that cost $60 billion over 5 years—so you put the two together, that adds to the deficit; it does not reduce the deficit—and the third chapter is the chapter they do not want you to read in this book because the third chapter is to increase the debt of the country by $781 billion. It is all in one fell swoop.

As we look ahead to the 5-year budget that has been adopted by our colleagues—not with my support; I voted against it—but this is what is going to happen to the debt of the country over the next 5 years under this plan. By the way, these are not my numbers. These are their numbers. These are the numbers in their budget documents about what happens to the debt—not the deficits, the debt.

It is something the news media—it is interesting, the news galleries are absolutely empty. Oh, no, there is one lone soul there—one lone soul. The news media does not want to report on this. Why don't they want to report on it? Because it is a little bit complicated. You actually have to read. You actually have to do a little studying. It is not like covering the latest scandal. They love to cover scandal because that is easy to write about. Budget stories and what is happening to the fiscal condition of the country, that is much more difficult because you actually have to get your numbers right.

No one is paying attention. I have not seen a single national story on the growth of the debt. They are writing about the deficits because that is what they have written about for 20 years. They don't get the whole thing has changed dramatically since the 1980s because of how the policy of our Government has changed to raiding the Social Security trust funds for every dollar that is in them for the next 10 years.

But do you know what? It does not matter they do not write the story. It does not matter because the reality is coming in on us, and it is coming in on us much sooner than people understand because what really affects the strength of America, the fiscal strength of America, is the debt that is being built up, and the budget that has passed both Houses of Congress is going to increase the debt. It started at $7.9 trillion this year. It is going to go up to $8.6 trillion, then to $9.2 trillion, then to $9.9 trillion, then to $10.6 trillion, then to $11.3 trillion over the 5 years of this budget.

Again, these are not my numbers. These are not my numbers. These are the numbers in their own budget documents about their prediction about what will happen to the debt with the budget that has been adopted.

The debt is exploding before the baby boomers retire. What are the implications? Well, here is one of them. Foreign holdings of our debt have doubled in the last 5 years. It took 42 Presidents, pictured here, 224 years to run up $1 trillion of external debt. This President has exceeded them all. He was able to double foreign holdings of our debt in just 5 years. It took 42 Presidents 224 years to run up $1 trillion of external debt. This President has added more than $1 trillion of external debt in 5 years.

To whom do we owe the debt? Well, here is the latest scorecard. We owe Japan $687 billion. We owe China $252 billion. We owe the United Kingdom $182 billion. And my favorite, the Caribbean banking centers, we owe over $100 billion. We owe South Korea over $60 billion. I submit to my colleagues, that does not make America stronger. That makes America weaker.

So now we turn to the legislation before us. One would expect that the Congress would be about reducing the deficit, reducing the debt, in light of what has happened. In light of the fact that the debt during this Presidency has gone up $3 trillion already, in light of the fact that under the 5-year budget before us, the debt is going to go up another $3 trillion over the next 5 years, you would think we would be here trying to reduce the explosion of debt. Surprise, surprise. No. This reconciliation process, a fast-track process that was devised to circumvent the rules of the Senate, was put in place to reduce deficits. That is the whole purpose of reconciliation. But it has been hijacked, and now it is being used not to reduce deficits but to expand them.

I tell you, I go home some nights and I pinch myself thinking I am caught up in some surreal comedy. This has to be a comedy: The debt is exploding before the baby boomers retire, and in the Congress, the reconciliation process that was adopted to reduce deficits has been hijacked and is being used to increase deficits.

What is wrong with this picture? I submit what is wrong with this picture is, it is utterly and completely disconnected from reality. Now we have before us a bill that is going to cut taxes over the next 5 years by $60 billion. It is going to make the deficit worse by $60 billion.

This is what Chairman Greenspan has said about the notion of cutting taxes by borrowing. Federal Reserve Chairman Greenspan opposes deficit-financed tax cuts. He said:

> [W]e should not be cutting taxes by borrowing.

He is right. That is what we are doing. We are borrowing every dime of this, borrowing it from Japan, China, Caribbean banking centers.

Here is the effect of the reconciliation package, $35 billion of spending savings over 5 years, completely and totally wiped out by $60 billion of tax cuts not paid for. The net result is to increase the deficit, to increase the debt by $25 billion, but that is right in line with the fiscal policies that have been adopted by this President and by this Republican majority, because this is their record.

This is where they took over. The debt limit had not been increased for 5 years in this country. In 2002, in one year, they increased it by $450 billion. In 2003, they increased it by $984 billion. In 2004, they increased it by $800 billion. Now, with this reconciliation proposal, they want to increase the debt by $781 billion. Add it all up, and this President will have increased the debt in these 5 years by $3 trillion. Over the next 5 years, according to their own estimates, they are going to increase the debt another $3 trillion. That is real money.

The Chairman of the Federal Reserve has said this:

> All I'm saying is that my general view is I like to see the tax burden as low as possible.

Don't we all. I would like nothing better than to have my tax burden reduced.

> And in that context, I would like to see tax cuts continued. But, as I indicated earlier, that has got to be, in my judgment, in the context of a PAYGO resolution.

What is pay-go? Pay-go says you can have more tax cuts, but you have to pay for them. You can have more spending, but you have to pay for it. Because if you don't, you add to the debt and deficit burden.

That brings me to the amendment that I send to the desk at this time.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from North Dakota [Mr. CONRAD] proposes an amendment numbered 2602.

Mr. CONRAD. I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. CONRAD. Madam President, what does this amendment do? It provides for the extension of the expiring tax provisions that expire this year to be effective next year. It extends all of them. It does not extend provisions that expire next year for 2007 or 2008 or 2009. It is completely paid for over the 10 years. It provides for hurricane disaster relief identical to what Chairman GRASSLEY has included in his provision. It provides for alternative minimum tax relief, but in an even better way than what is in the chairman's mark. Because while the chairman's mark says it is a hold-harmless provision, in fact, 600,000 more American taxpayers will pay the alternative minimum tax than paid it this year. We will go from 3 million people paying the alternative minimum tax to 3.6 million.

Remember, the alternative minimum tax, the old millionaire's tax, has now become a middle-class tax trap. My

amendment is a real hold harmless on alternative minimum tax. There will be no increase in the number of Americans paying the alternative minimum tax—none. Instead of a 600,000 increase of American taxpayers paying the AMT, we will only have the same number paying next year as this year.

In addition, we extend the R&D tax credit, the State sales tax deduction, the college tuition deduction, the welfare-to-work and work opportunity tax credits, the teacher classroom expenses deduction, the leasehold improvement and restaurant depreciation, and all other traditional tax extenders that expire this year to be effective next year. We pay for those provisions. Instead of putting it on the charge card, instead of running up the debt, adding to the deficit, shoving it off on our kids, we pay for it.

How do we do it? First, we use the same offsets that are in the chairman's package with the exception of the charitable revenue raisers because we don't have the charitable package here. They include the provisions that he has to close the tax gap by shutting down abusive tax shelters. I applaud the chairman for having those in his mark. He is exactly right to have them there. We adopt those same provisions.

In addition, we end the loophole for oil companies that lets them avoid taxes on their foreign operations. That is $10 billion. We end the tax benefit for leasing foreign subway and sewer systems. That saves $5 billion.

I want to explain this one to my colleagues. Here is what is going on. This is one of the biggest scams ever cooked up by accounting firms. Most accounting firms don't engage in this kind of activity, but there are a few who do. Here is what they are doing. They are buying foreign subway and sewer systems in U.S. shell operations, depreciating their assets for U.S. tax purposes, and leasing the subway and the sewer systems back to the foreign cities. I know this sounds unbelievable, but that is what is going on. This is a scam.

Some of my colleagues say: Senator, you are increasing taxes in order to pay for this tax cut package. I suppose you could say that. But is this a tax break anybody thinks should be in place? Do you think we should allow companies to buy foreign subway and sewer systems, depreciate them on their books, reduce their U.S. taxes, and then lease them back to those European cities? Does anybody believe that is not abuse?

We also require tax withholding on Government payments to contractors such as Halliburton. Why shouldn't they have withholding, just as working Americans have withholding on their tax obligations? That saves $7 billion.

We renew the Superfund tax so that polluting companies pay for cleaning up toxic waste sites. That tax is 9.7 cents a barrel. Oil right now is going for close to $60 a barrel. It seems entirely reasonable to me that we ask those who have contributed to these sites that need to be cleaned up to pay for it, 9.7 cents a barrel.

We close other tax loopholes as well. That is how we pay for this package. Why would we not pay for this package? Why should we not prevent the deficit and debt from being increased?

Some of my colleagues argued in the Finance Committee: Senator, you are raising taxes to pay for the tax cut. Here is what the chairman said:

> We've found $180 billion over the last few years in things that are examples of loophole closings and abusive tax shelters. And that's what they are, people . . . that are avoiding taxes—

I would amend that to companies as well.

> —now that ought to pay taxes without changing the rate of taxation.

The chairman had it exactly right. We now know the tax gap in this country, the difference between what is owed and what is actually being paid, is $350 billion a year. Let's close down these scams. Let's close down these loopholes. Let's close down these abuses and use a portion of it to pay for extending these very worthy tax provisions that are in this package. That is what my amendment is about.

For those who say they care about fiscal responsibility, for those who say they are concerned about the explosion of deficits and debt, here is a chance to prove it. Here is a chance to vote for this amendment that will extend the tax provisions that are expiring, those that are expiring this year for next year's taxes, and to pay for it by closing abusive tax shelters.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I thought Senator KYL wanted some time. What I would like to do, if it is OK with the other side, is give Senator KYL some time off of our time and then right after him, Senator THOMAS, because Senator THOMAS has been waiting for a long time to speak. I ask unanimous consent to make that the speaking order. These folks are talking about maybe 20 minutes apiece or less.

Mr. CONRAD. Reserving the right to object—and it is not my intention to object—I would like to inquire as to the parliamentary situation. How much time is left on my amendment?

The PRESIDING OFFICER. The Senator has used 7 minutes on his amendment, which leaves him 53 minutes. The first 28 minutes was charged to the bill so that the amendment was not pending at that time.

Mr. CONRAD. So I have 53 minutes remaining on my side, and they have an hour left on their side?

The PRESIDING OFFICER. That is correct.

Mr. CONRAD. I inquire of the Senator from California, why does she seek recognition and how much time does she require?

Mrs. FEINSTEIN. I have two amendments. I will not require more than 15 minutes.

Mr. CONRAD. Is the Senator seeking time off the bill or she would have her own amendment time? I would not object to the request of the chairman to have speaking time. We would then intend to lay my amendment aside.

Mr. GRASSLEY. Yes, we would be willing to do that. We are looking at some votes around noon. Yours would be one of those. We don't have unanimous consent on that.

Mr. CONRAD. I will defer to the manager of the bill.

Mr. BAUCUS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Mr. President, we are moving along on the amendment offered by the Senator from North Dakota. I got clearance from the chairman of the committee to ask unanimous consent that there be 40 minutes of debate remaining on the Conrad amendment equally divided, 20 minutes in favor of those who are speaking against the amendment and then 20 minutes to be controlled by the Senator from North Dakota.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. And also that there would be no second-degree amendments and the vote would then occur immediately following the 40 minutes in relation to the Conrad amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Who yields time?

Mr. GRASSLEY. I yield 10 minutes to Senator KYL.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 10 minutes.

Mr. KYL. I thank the Chair. I thank the chairman.

This is a choice between the product of the Finance Committee and the amendment offered by the Senator from North Dakota. I strongly urge my colleagues to support the product of the committee and to defeat the Conrad amendment.

Let's first focus on this issue of deficit. The deficit reduction that has occurred as a result of the President's tax policies supported by the Republican Members of Congress has been nothing short of incredible.

This is a choice between a continuation of a policy which provides economic growth for our country and more money for our families, more investment for our businesses, and therefore more jobs for Americans. Look at some of these statistics in terms of the gross domestic product growth in our country. Whether you embraced the lower rates at the time, I think everybody has to acknowledge that the rates

we put into effect in 2003 have had a dramatic effect.

Consider: The economy grew at a 3.8-percent annual rate in the third quarter. That is the 10th straight quarter the GDP grew at a rate above 3 percent. We remain the fastest growing industrialized country in the world. That is the longest such period of growth in our history since World War II.

Business investment: In the nine quarters before the 2003 tax rates were put into effect, business investment fell. We passed the tax provisions to cut taxes on capital gains, for example, and we reversed that. In fact, business investment has now increased at an annual rate of 6.9 percent. That means jobs to our economy and more wealth for American families.

In terms of deficit reduction, specifically, we are not undertaxed. Congress is spending too much. That is what is creating the deficit. Nevertheless, as a share of our GDP, the 2005 deficit was 2.6 percent, down from a 3.6-percent share in 2004. In fact, before Hurricane Katrina we were well on the way toward achieving the President's objective of cutting the deficit in half in the next 2 years. In fiscal year 2005, taxpayers sent Washington $274 billion more in revenue than the year before, and $100 billion more than we predicted back in January.

How could we be so far off? This economy is so strong, it is growing so rapidly that even at the lower tax rates we are producing more revenue to the Federal Treasury. This is not a path from which we should deviate. We should continue this path and not adopt the principle of the substitute amendment offered by the Senator from North Dakota. What his amendment presumes is something very strange in economics, and that is that somehow we have reached a magic Minerva, an equilibrium where the Federal Government is taking a tax in the right amount from American citizens never to be changed one iota, notwithstanding the fact we will continue to spend more and more and more, and we will have to have the taxes to pay for that spending or go deeper in debt.

The pay-go amendment that is the centerpiece of the amendment proposed as a practical matter does not affect the most significant aspects of our continued spending, namely the mandatory increases in our mandatory spending, our so-called entitlements—Medicare, Medicaid, Social Security, that which represents about two-thirds of the spending. As a result, the big-ticket items are not restrained in any way. All that is restrained is the ability to promote the continuation of our current tax rates. If we don't continue these tax rates, if we don't take action, for example, this year to extend the capital gains and dividends tax rates for another 2 years, we are going to find in a couple years the American taxpayers are going to be faced with a huge tax increase, and that is because without further action those tax rates will go up by 25 percent in 2 years. That is not right.

Now, some of our colleagues say, well, these tax rates only help the wealthy in our country. Well, is that so? From a column that was authored by Larry Kudlow, a noted economist: The investor class in America ''continues to grow by leaps and bounds . . . The number of families owning stocks has risen to 56.9 million from 54.1 million, meaning nearly 60 percent of U.S. households are invested in equities today.'' We ''have become a society of equity investors.''

Zogby polling shows that nearly all Americans—93 percent—earning $75,000 a year or more own stocks. They can't all be rich. And how about those earning up to $75,000 a year? In this group, more than half, or 56 percent, own shares. Of those earning below $50,000 a year—a group that in the aggregate pays very little taxes overall—30 percent own stocks.

So the continuation of the 15-percent rate on dividends is a matter that affects a very large swath of Americans. As a matter of fact, 23 percent of all filers spread evenly across income categories reported dividend income in 2003 and of that group, 30 percent, 30.6 percent had an adjusted gross income under $30,000. Rich people? I don't think so.

How about capital gains? Seventeen percent of all filers spread equally across income categories reported capital gains in 2003, and of that group 30.1 percent had adjusted gross income of under $30,000. The rich? I don't think so.

How about some of the other provisions in the bill from the committee? The savers credit, only 4 percent of filers benefited from that in 2004.

The above-the-line-deduction for college tuition costs, only 2.7 percent of filers claimed that deduction in 2003.

AMT, only 6 percent of filers are affected by that.

Now, why are all of these things in the committee mark? Because they still represent important policy and we continue to support all of those things.

With AMT, the number of filers is going to double so we have to do something about that. But the bottom line is when you are comparing that to capital gains and dividends, far more Americans are affected by capital gains and dividends and they are not just the wealthy. I read the statistics for $30,000 and under.

The other flaw in the amendment of the Senator from North Dakota is that the whole question of what ''tax cuts cost'' is upside down. The Senator from North Dakota raises that question with respect to revenues to the Federal Government. How much does it cost the Federal Government to have a tax cut? Think about it. That is a strange way to put it. How much does it cost the Federal Government to cut your taxes?

I will put that question the other way around. How much does it cost you when we have a tax increase? Because that is exactly what will happen in 2 years if we don't extend the current tax rates. We should be asking what it costs American families, American taxpayers, and the American economy, American businesses. What is it going to cost them if we take more of their hard-earned money and bring it back to Washington for us in our wisdom to figure out how to spend? That is the question we should be asking.

What is the productive part of our economy? Does the Government create jobs?

Other than these very hard-working clerks here and the other jobs in the Federal Government, we don't create jobs. The private sector creates jobs. It costs money to pay employees. That is why employers try to make money, so they can hire more people, more people will have jobs, their families will be better off. We all understand how the private market works. It requires capital, it requires profits, it requires the Government to get out of the way and not take so much of its money, frankly, and that is why the real question should be with regard to this so-called pay-go, not how much it is going to cost the Federal Government, but how much a tax increase which will result from the policies that are being proposed on the other side of the aisle, how much that tax increase is going to cost hard-working Americans. That is the real question we should be asking.

We need to support the proposal that is before us on the floor today, a proposal which in large measure makes American taxpayers better off and increases the revenues to the Treasury of the Government because the tax policies we have had in place since 2003 are working, both to help stimulate investment in the private sector and create more jobs, and because they are low enough that they create economic activity that can be taxed, providing more revenue to the Federal Treasury. We should reject the amendment of the Senator from North Dakota because it doesn't pursue that same policy goal.

The only caveat to this, of course, is that the capital gains and dividends tax rates I have been talking about are not included in the proposal on the floor or in the proposal of the Senator from North Dakota. But I can assure my colleagues it will be part of the conference report. There is no way we are going to consider a conference report that doesn't continue these current tax policies. To not do so, as I said, would be to begin the biggest tax increase in the history of this country, and we are not going to do that at a time when we need to keep the economy robustly growing as it has been.

I say to my colleagues, the tax proposals of President Bush have been working. Our economy is producing a tremendous number of new jobs, revenue growth for the private sector as well as for the Government sector. Why would we want to turn from that?

With respect to paying for it, let's remember who bears the cost.

There is no free lunch at the end of the day. The taxpayers are going to bear the cost. As a result, the real question we should be asking is not how much these policies cost the Government, but how much they cost the taxpayers.

I urge the Senate to vote against the amendment of the Senator from North Dakota and support the chairman's mark.

The PRESIDING OFFICER. Who yields time? The Senator from North Dakota.

Mr. CONRAD. Mr. President, how much time did the Senator from Arizona consume?

The PRESIDING OFFICER. Ten minutes.

Mr. CONRAD. Mr. President, I wish to take a few minutes to respond.

The Senator from Arizona started with a statement that is truly breathtaking. The Senator from Arizona said that deficit reduction created by the Bush administration policies was, I think he used the word ''extraordinary.'' Yeah, it is extraordinary all right. Here is what has happened to the debt under these policies.

When the President came in, there had been no increase in the debt limit of the United States for 5 years. After 1 year of the President's policies, the debt limit was increased $450 billion. The next year, they increased the debt $984 billion. The next year, they increased the debt $800 billion. In this reconciliation package, they are going to increase the debt limit $781 billion. The Senator from Arizona is on the floor saying they have done something to reduce the deficit? Come on. These are the biggest deficits, the biggest increase in the debt in the history of America, and it doesn't end with what they have already done.

Here is what they are going to do. These are not my calculations. These are the numbers that are in their own budget document. They are going to increase the debt another $600 billion next year, another $600 billion the next year, another $700 billion the next year, another $700 million the next year, and another $700 billion the next year. They already increased the debt $3 trillion, and under this budget plan, over the next 5 years they are going to increase it another $3 trillion, and he is out here talking about deficit reduction? Come on. There is no deficit reduction here.

Mr. KYL. Will the Senator yield?

Mr. CONRAD. No, I won't yield. The Senator had his chance. I am going to respond, and then I will be happy to engage in debate.

Mr. KYL. Since the Senator referred to me by name, I would like the opportunity to ask a question.

The PRESIDING OFFICER. The Senator from North Dakota has the floor.

Mr. CONRAD. I did not refer to the Senator by name. I referred to ''the Senator from Arizona.'' The Senator from Arizona came out here and said there has been extraordinary deficit reduction. There is no deficit reduction. There is record explosion of debt, that is what is going on.

The Senator said that deficit, as a share of GDP, is not so bad. That is only because he leaves out something. And the something he leaves out is all the money that is being taken from Social Security and used to pay for other items because back in the eighties there was no Social Security surplus, or virtually none. Last year, the Social Security funds that were being used to try to mask the true size of what is going on was $173 billion. You add that back in, and the increase in debt of this country was 4.5 percent of GDP.

In the European Union, you can't be a member if you run deficits above 3.0 percent of GDP. But the addition to debt in this country last year was 4.6 percent of GDP when you add back all the money that is being taken from trust funds and used to pay for other items.

Here is what he doesn't want to talk about. Here is the explosion of Social Security money being taken to pay for other things. Look back in the eighties, there was virtually no Social Security surplus. In fact, in 1983, there was none. Then there was a couple hundred million dollars a year. Now it is approaching $200 billion a year, and they want to forget about it, they don't want to count it?

I tell you what is going on here is so utterly disconnected from reality. This chart shows the spending line since the eighties and the revenue line. In the nineties, we brought spending down each and every year as a share of GDP. Now we have had a big tick upwards. The Senator from Arizona said he wonders how we reached some nirvana of balance between spending and revenue. There is no balance, that is the point. That is what is wrong. We see the spending line and the revenue line. Look at the gap.

Our friends on the other side want to complain about the spending. Guess what. They are responsible for every dime of it. This happened on their watch. They control the House, they control the Senate, they control the White House. They are responsible for every dime of the increase in spending.

Here is what has happened to the revenue. It has collapsed. The result is an enormous gap, and he says he wonders how we reached some nirvana of balance between spending and revenue. There is no balance. That is the point.

Then our colleague talked about how wonderful the economic performance has been. No, it hasn't. Here is the record on job creation, comparing the average of the last nine recessions since World War II. Here is what happened over the period of time—this is in number of months on the bottom. This is a jobless recovery. This red line is the average of what has happened after the last nine recessions. By this stage, 55 months after the trough, typically 7 million jobs have been created in the private sector, more than have been created in this recovery.

So we are running 7 million private sector jobs behind the average of the last nine recoveries since World War II. This is great economic performance? It is the worst employment performance we have had of any of the nine recessions since World War II.

It is not just job growth, it is also GDP growth. GDP growth lags behind the typical recovery by 27 percent over the same period of time.

The Senator talked about business investment. Let's look at business investment. Let's look at the last nine recessions. At this stage, we are running 53 percent less business investment than in the nine previous recoveries from recessions. And he touts this economic record? Mr. President, this is not a record of which to be proud.

The Senator also talked about the dividend tax cut, and he talked about capital gains. They are not in the underlying amendment of the chairman of the committee. They are not in the Finance Committee's mark. So he is comparing apples to something else.

My amendment says we have to go back to the disciplines we have used in the past to restore fiscal discipline. What are they? Pay-go is one of the major budget disciplines, and it simply says: If you are going to have more tax cuts, fine, you have to pay for them. If you have more spending, fine, you have to pay for it. That is one of the key things we must do to get this Nation back on track.

This notion that we keep borrowing the money, keep spending the money, keep more and more tax cuts, don't worry if anything adds up is leading us deeper and deeper into debt. When are we going to stop this?

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

The PRESIDING OFFICER. The Senator has 11½ minutes left.

Mr. CONRAD. I ask if the Chair will notify me when I have used 1 more minute.

Mr. President, let me say to my colleagues, I am beginning to wonder what are we thinking around here? What are we thinking of, Republicans and Democrats? When are we going to turn the corner? When are we going to say enough is enough? When are we going to say adding $3 trillion of debt in the last 5 years and headed for the next 5 years adding another $3 trillion, in effect, doubling the debt of our country in 10 years—that is what we are doing. The result is foreign holdings of our debt have doubled in 5 years. Mr. President, I say to my colleagues, this is not sustainable.

On the Republican side, they say we should just cut the spending. OK, do it, cut it. If you don't want to tax anymore, cut the spending to match the taxes you are willing to levy.

The PRESIDING OFFICER. The Senator has used an additional minute.

Mr. CONRAD. I ask for another 30 seconds.

My Republican friends said they are fiscally responsible. When are they

going to demonstrate it? If you are only willing to tax at 17 percent of GDP, then cut the spending 17 percent of GDP. If they think, well, because of the war and because of the need for homeland security, we need to spend more than 17 percent of GDP, which is what they are doing in their budgets—they are not spending 17 percent of GDP, they are spending 19 percent of GDP, in fact they are going to 20 percent of GDP, then tax at 20 percent of GDP so you pay your bills. Do one of the two. But don't just keep putting it on the charge card.

I say to my Democratic colleagues the same thing. We cannot be for more spending than we are for levying the taxes to raise it. What is going on in this town is absolutely and totally irresponsible, and it is going to put us in a very weakened position as a country. We have increased foreign holdings of our debt 100 percent in 5 years. It took 224 years to run up a trillion dollars of external debt. This President has doubled it in 5 years. That does not strengthen America.

I thank the Chair, and I yield the floor.

Mr. GRASSLEY. Mr. President, I yield whatever time he might consume of my remaining time to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator is recognized.

Mr. THOMAS. Mr. President, I thank the chairman. I appreciate the opportunity to deal with this issue that is before us. By the way, I am not speaking on the Conrad amendment, but I am, as a matter of fact, speaking on the Dorgan amendment in general time. I have to say to my friend from North Dakota that I certainly agree with the idea that we have gone out of control in terms of our spending. I don't agree with the idea that we have to raise taxes to offset it. What we ought to be looking at is reducing the size of Government.

Quite frankly, I would like to see some activity on that side of the aisle, as well as this side, to take a look at some of the programs we have and see if they still need to continue to exist. With regard to the idea that the growth of the Federal Government is out of control, we have gotten into a feeling that every time there is a need in the country for anything the Federal Government ought to do it and establish a new program.

I happen to have a bill called the sunset bill which I think we ought to take a look at. We ought to take a look at programs that have been in existence for 10 years and see if they are as important now as they were when they were created. If not, let's change them.

In any event, I want to talk in opposition to the Dorgan amendment, which is the windfall profits tax amendment, which has to do with the bill before us. What we are talking about in this tax bill is the economy. We are talking about growth. Notwithstanding what has been said, we have had growth, 3.5 percent growth in GDP in the last quarter. That is above average in the last 10 years. We do have growth. That is what it is all about.

We also ought to recognize when we are able to leave people with more money in their hands to spend, that is a good thing. If you can reduce taxes so people have money to invest, that is a good thing. That is what creates the economy and economic growth. That is what it is all about, the economy.

The other overriding issue before us, although I don't think it is a specific issue here, is one of the main factors of the economy, and that is energy. Without energy, we don't have an economy. So we are talking a lot recently, and should be, about energy—where we are going to get energy, where it is going to come from, how we are going to invest in new sources of energy. That has been one of the key issues for the last year. We finally got an energy policy. Unfortunately, what we are talking about now, particularly in this windfall profits amendment, is something totally adverse to the philosophy that we have developed to create new energy sources.

The windfall profits tax amendment which has been offered is not only bad policy but it sends the wrong message to American companies and to entrepreneurs.

Supporters of this tax have tried to demonize the whole concept of making a profit. Companies are in business to make a profit. They make profits and create jobs, which is what we are talking about all the time. If they did not make a profit they would not be in business, and we would not have jobs.

The Senator was talking about the number of jobs. Why does one think there are jobs? Because there are profitable companies. That is what we need to be talking about. Supporters of this windfall tax, however, want people to believe that the oil industry somehow managed to reap undeserved profits, resulting in one of the highest profit margins in America.

Well, they have profits. Who would not have profits when there has been that kind of increase in the energy business? It is not the case that they are unusually high profit margins. The profits for the oil companies measured against other factors of the economy, frankly, are quite modest. I have a chart that shows a number of the industries which are much higher. These are the earnings of major industries in the second quarter, net income on sales in 2005. It shows cents per dollar of sales in the various businesses, banks, pharmaceuticals, software, semiconductors, diversified financials, household and personal products, consumer services, insurance, telecommunications, food, beverage and tobacco, real estate, health care, material, all U.S. industries, 7.9, and then next, oil and gas, 7.6 percent.

The third quarter moves them above this to about 8 percent, but look at these businesses that are much above that. They keep talking about how they have had these unusually high and perhaps even illegal profits.

Those who want to argue about this chart because it shows second quarter profits, and they are higher in the third quarter, it has changed somewhat, but whatever it is it will be about 8.1 percent for the oil industry.

I wonder if supporters of this windfall profits tax would suggest that it be on all of these other businesses that are higher in their earnings than the oil and gas industry. I understand one of the sponsors of the amendment comes from a State where there are lots of insurance companies, and despite a profit of over 10 percent, I do not see him rushing to the floor to put a windfall tax on insurance.

We have had this news media focus on the energy industry and so it has become this kind of thing, but I think we have to keep in mind the future. I certainly hope as we go about our business we think not only about today but about 10 years from now: What are we going to do with energy? There has been nothing of more concern to us than energy.

The facts speak for themselves. The Congress tried to take this approach in the early 1980s and it did not work. I understand they are saying this is not like the other windfall, but indeed it is. It takes profits they say are excessive, which are not comparatively, to distribute them back out to the public.

Is that what the business system is about? Is that what the private sector is about? I do not believe so.

The efforts that were made to do that in the past did not work. The nonpartisan Congressional Research Service has documented this policy as a failure in the past, and I can only conclude that it would be a failure again in the future. The whole concept defies common sense.

Who is qualified to deem the profits as determined by the market are too high? The market will adjust for that if that is the case. I certainly do not believe any Member of Congress has those qualifications.

I understand the politics of wanting to distribute money to everyone. That is a great thing to be able to put on one's resume. But it does not conceptually, from a policy standpoint, make sense. We live in a market economy, and it is the model that works. Of course, we need to continue to change our system. But we have the best system in the world, and we need to make sure we continue it, unlike Members who have tried all of these manipulations and the nonmarket approach, which has not worked.

The market economy means if one engages in a risk associated with investment they should reap the benefits from that. Not unlike other industries, the oil and gas industry requires significant investment and risk. I live in the State of Wyoming which is one of the highest producers of energy, and I

can say there is a great deal of investment that has to go into the production of the energy that goes to New England and New York where they do not have any production of their own. That is the way it should be. Nevertheless, one cannot sit off some other place and say we want energy but we do not want to have any investment in it. One cannot sit out on the west coast where there is no production, no refineries, and say, well, we want energy but we do not want any investment in transportation to get it there or in the development of it.

That is what we hear a great deal on the Senate floor. I think not only has that been the case in the past, and it is the case today, quite frankly, it is going to be more the case as time goes on. We are going to have to look for new ways to develop energy. In Wyoming, we are going to have to go to oil shale, for example, which is expensive to develop. We are going to have to go to deep wells. We are going to have to go to secondary recovery. We are going to have to go to alternative fuels. We are going to have to go to converting coal to other things. Those are expensive kinds of investments, and that is what it is all about.

The PRESIDING OFFICER. The majority's time on the amendment has expired.

Mr. THOMAS. Mr. President, as we get to that amendment on windfall profits, I hope we will take this into account.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Could I inquire as to the time on my amendment?

The PRESIDING OFFICER. The Senator has 8½ minutes.

Mr. CONRAD. And the majority?

The PRESIDING OFFICER. The majority time is expired.

Mr. CONRAD. I thank the Chair. Mr. President, I go back to the point that my colleague from Wyoming made about this relationship between spending and revenue. Here is the problem we have. Here is where we are in spending as a percentage of gross domestic product. We are at about 20 percent, a little over. Here is where we are in revenue. We are just over 17 percent. It is this gap between spending and revenue that is creating these massive deficits, and this is before the baby boomers retire. The question is, How do we close this gap?

We could do it one of three ways: We could cut the spending down to the amount of revenue that we are willing to levy. That would mean a 36-percent cut in every part of Federal spending if we were to hold harmless from the cuts Social Security, defense, and interest on the debt. We would have to cut everything else—homeland security, aid to veterans, education, parks, FBI. All the rest would have to be cut 36 percent to cut the spending down to the revenue we currently have.

A second possibility would be to raise revenue up to the spending line. That would mean a very significant revenue increase if we were to do it just with revenues. A third possibility is some combination of spending cuts and revenue increases.

One of the assumptions being made is that to increase revenue, taxes have to be increased. The fact is, the revenue service tells us the tax gap, the difference between what is owed and what is being paid, is now $350 billion a year.

Before we talk about a tax increase on anyone, before we have any suggestion of a tax increase, we ought to go after that tax gap and we ought to do it aggressively. That is part of the amendment that I have offered. Frankly, it is a part of the chairman's mark because the chairman closes $30 billion of loopholes in his proposal.

I agree with those, but I say to the Senator from Iowa he does not go far enough at closing loopholes. In my proposal, we go further. For example, we end the tax benefit for leasing foreign subway and sewer systems.

Why would we not do that? Why do we allow companies to go and buy the sewer and subway systems of foreign cities and depreciate them on their U.S. taxes, cutting their taxes in our country, and then lease back the subway and sewer systems to foreign cities? What a scam. Why are we allowing that? Somebody calls that a tax increase? Is that really a tax increase to say to companies that they cannot go buy the sewer system in a foreign country's city and depreciate it on their U.S. taxes? That is what is going on.

We also would require tax withholding on Government payments to contractors like Halliburton. Just like all the rest of us who have withholding on our taxes, why do they not have withholding on theirs? It would save us a lot of money; renewing the Superfund tax, 9.7 cents a barrel on $60-per-barrel oil to clean up these toxic sites.

One can call those tax increases; I call them closing loopholes. I call them closing scams. We ought to do it and use the money to pay for extending these tax reductions that are included in my amendment; the extending of tax reductions that are reasonable, that are in this package.

I hope my colleagues will think for a minute about what we are doing. Debt is growing out of control. Why are we taking steps to add to the deficit, to add to the debt? Why not pay for something around here?

Let us start paying our bills. That is what pay-go is all about. It says, if my colleagues want more tax cuts, they have to pay for them. If they want more spending, they have to pay for it. That is an American value, paying one's bills. We are not doing that. We are stacking debt on top of debt. We have added $3 trillion to the debt over the 5 years of this Presidency. Under this budget plan, we are getting ready to add another $3 trillion of debt before the baby boomers retire. We can do better than that. America deserves better than that. It certainly does not deserve us stacking debt on top of debt.

I yield the floor and reserve my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that immediately after the coming vote on the Conrad amendment, the next speakers and amendments be in order as follows: First, Senator DOMENICI be recognized to speak for 20 minutes; Senator FEINSTEIN will be recognized to offer two amendments on which there will be a total of 30 minutes equally divided on the two amendments; following that time, that Senator CANTWELL be recognized for the purpose of offering her amendment with respect to energy price gouging, and there be 60 minutes equally divided.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I rise today in support of the substitute amendment.

Let me first explain that this substitute does not contain everything we had hoped to offer. Some of the items that we cannot consider today, though, are extremely important to American families.

They include the Lincoln-Snowe child tax credit fix. The Lincoln-Snowe provisions would ensure that the working poor can continue to receive this valuable credit. Regrettably, the threshold climbs each year. And the minimum wage remains stagnant.

So these families receive a smaller refundable child tax credit each passing year.

Another package we had hoped to include were a few incentives for military families. These include a provision to ensure that families with someone serving in combat can continue to receive the earned income tax credit. With the heavy strain that the Iraq war continues to put on military families, Congress can surely do more for these families.

The substitute today does not address a few items for the Gulf States I had hoped to include.

As I have said many times in the past few months, we must address the immediate needs of the hundreds of thousands of people affected by the hurricanes that ravaged the Gulf States. We cannot forget that the recovery in the gulf region is not over. It has hardly begun.

People have lost everything and need help to rebuild their lives. That help has not arrived. We have more work to do in this Congress to make sure displaced families have access to health care, unemployment benefits while they search for work, childcare so they can get to work, and foster care services for needy kids.

It is irresponsible to leave these people behind and move on to cutting taxes before we have completed our job of providing real relief to those that have been hurt by the storms.

But for procedural reasons, we are offering a different substitute. I believe that this substitute is a better approach than the bill before the Senate today.

I want to highlight some principles that we pursued in this substitute. And what we are not doing here is as important as what we are.

Other than the disaster recovery incentives, we do not add to the deficit. That is an important distinction between our substitute and the bill before the Senate.

I know that the majority leadership hopes that spending reconciliation cuts will occur at some point. But even if Congress does enact those highly controversial cuts, the bill before us today would still add to the deficit.

This is exactly what Alan Greenspan warned us against last week: deficit-financed tax cuts.

How can we face constituents who will see their food stamps or child support services cut? How can we tell them that we had to make those cuts to pay for tax cuts?

How could we tell them that Congress cut their benefits for tax cuts that will not even take effect until several years down the road?

Another thing that we do not do in this substitute is any extension of tax cuts that don't expire this year. The last 3 years have been the 3 highest deficits in the Nation's history. At some point, we need to do some belt-tightening.

In all fairness, I support many of these tax cuts. I have cosponsored and voted for many of them. But we simply need to prioritize this year. We need to do what is urgent first.

The bill before us today does not include the capital gains and dividends tax cuts. But we know that it may well appear at some point during this reconciliation process, especially now that the House tax-writers have chosen capital gains and dividends tax cuts to the exclusion of AMT relief.

Some cite the $20 billion figure for the 2-year extension of capital gains and dividends cuts.

But we are really talking about a $50 billion cost over 10 years. And that is the way that we usually score tax bills.

There are some good items in the bill before us today, but I think in order to be a great bill, we must achieve fiscal responsibility. Our substitute not only meets all the budget numbers, it does better. The 2006 loss is below $11 billion, the 5-year loss is $20 billion, and the 10-year figure actually cuts Federal deficit by $6 billion.

It comes down to timing, priorities, and fiscal responsibility. I urge my colleagues to support this substitute.

Mr. GRASSLEY. Mr. President, are we now ready to dispose of the Conrad amendment?

The PRESIDING OFFICER. The Senator from North Dakota has 2 minutes remaining.

Mr. CONRAD. I will be happy to use my time at this point if that will help the managers.

Mr. President, the question before us is, What is our vision for the future? If this chart shows your vision of the fiscal future of the country, vote against my amendment. If you think the answer to our fiscal future is just to add more and more to the debt, then vote against me. If you believe it is time to get our fiscal house in order, at least to begin steps to get our fiscal house in order, vote with me. If you believe the underlying budget makes sense, here is what the underlying budget does. For the next 5 years it adds to the debt, going from just under $8 trillion to over $11 trillion. It is going to add over $3 trillion to the debt over the next 5 years.

If you think that is a mistake, then support the alternative that I am offering, which says: Yes, we will provide the hurricane disaster relief; yes, we will provide extensions of the expiring provisions on alternative minimum tax—in fact, we will protect 600,000 more taxpayers than the chairman's mark. And we will provide the R&D tax credit, the State sales tax deduction, the college tuition deduction, the Welfare-to-Work and Work Opportunity Tax Credits, the teacher classroom expenses deduction, the leasehold improvement and restaurant depreciation, and all other traditional tax extenders—but we will pay for them.

How do we pay for them? We take the offsets that are in the chairman's mark that are loophole closers that shut down abusive tax shelters, and we add additional tax shelters and loophole closers—ending a loophole for oil companies that lets them avoid taxes on foreign operations, ending the tax benefit for the leasing of foreign subway and sewer systems—again, I say to my colleagues, why would we ever permit that?—require tax withholding on Government payments to contractors like Halliburton, and renewing the Superfund tax so that polluting companies pay for cleaning up toxic waste.

The PRESIDING OFFICER. The time of the Senator has expired. All time has expired.

Mr. CONRAD. I ask my colleagues to support my amendment to pay for the tax breaks we want to extend. I thank the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I raise a point of order the amendment is not germane to the underlying legislation.

Mr. CONRAD. Mr. President, pursuant to section 904 of the Congressional Budget Act, I move to waive the applicable sections of that act for purposes of the pending amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 44, nays 55, as follows:

[Rollcall Vote No. 330 Leg.]

YEAS—44

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Inouye	Pryor
Boxer	Jeffords	Reed
Byrd	Johnson	Reid
Cantwell	Kennedy	Rockefeller
Carper	Kerry	Salazar
Chafee	Kohl	Sarbanes
Clinton	Lautenberg	Schumer
Conrad	Leahy	Stabenow
Dayton	Levin	Voinovich
Dodd	Lieberman	Wyden
Dorgan	Lincoln	

NAYS—55

Alexander	Dole	McConnell
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Roberts
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Snowe
Chambliss	Hatch	Specter
Coburn	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Isakson	Talent
Collins	Kyl	Thomas
Cornyn	Landrieu	Thune
Craig	Lott	Vitter
Crapo	Lugar	Warner
DeMint	Martinez	
DeWine	McCain	

NOT VOTING—1

Corzine

The PRESIDING OFFICER. On this question, the yeas are 44. The nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected and the point of order is sustained. The amendment falls.

The PRESIDING OFFICER. Under the previous order, the Senator from New Mexico is recognized for 20 minutes.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I don't believe I will use 20 minutes.

I am here this morning to ask a few questions and make a few observations about the pending windfall profit tax amendment. I will first explain what I think the amendment is all about.

This imposes a windfall profit tax on all oil sold for more than $40 a barrel. The tax would be 50 percent. Every year whatever tax is collected would be divided up among all individual taxpayers as a credit. The only way for a company to avoid the tax would be for it to spend all of its receipts above $40 a barrel on investments qualified by the Government. In other words, we know best. We know where they should invest; qualified investment for things such as pipelines, new drilling, refineries, as long as the drilling is in areas that are not already proven oil and gas property.

I don't know what the intention is with reference to oil. Is it to produce more oil or not? If it is, it seems to me an investment of oil of any type that comes out of the ground would be

something we should want, but by no means am I suggesting I want to add this list because I believe the whole idea is wrongheaded.

I ask a few questions about what I have observed and what I noted is pretty close to right. If Saudi Arabian oil is being sold at $55 a barrel in Saudi Arabia, am I correct that any entity that sells that oil in the United States would have to pay a tax of $12.50 per barrel, even if they sold that in the United States for the same price they bought it, to wit, $55 a barrel? Is that what we have in mind? That is, if Saudi Arabian oil sells at $55 a barrel, one of our American companies has to buy oil to create gasoline for us—if, in fact, they buy it at $55—that exceeds the $40. So what if they sell it for $55? My arithmetic says that is zero. There is no profit. There is no markup.

Under this amendment, they would still have to pay a tax of $12.50 a barrel, selling it at cost. How could that do anything to encourage production or investment? It would encourage the opposite. As a matter of fact, it would seem to me it would discourage selling oil bought in that manner in the United States—something we would not want. The market value in the world is $55, and they will lose money selling it in the United States. Pretty soon we would have a shortage in the United States. Who would want to sell it here?

In fact, if we look at it, to avoid taking a loss on the sale of that Saudi oil in the United States, any importer of that oil, according to my arithmetic, would have to sell it at $70 just to cover the cost of the tax. It seems to me, in that case, even though the cost of oil is $55 in Saudi Arabia, Senator DORGAN's amendment would deem $30 of that sale price to be a windfall profit. So the seller would owe $15 to the Treasury and would be left with just the $55 necessary to meet the cost.

That is absolutely counterproductive, the wrong thing to do and an unintended, but direct, consequence of this way to raise money and seemingly to send some kind of message to the oil companies about their profits.

Another question in the scenario that I gave, isn't it true this amendment would actually raise the cost of oil from $55 a barrel to $70 a barrel, on pure economics? This amendment would tell the oil companies to sell oil higher than is happening today in order to break even because of the imposition of the tax. That would be very bad. Would it help the country? Who would it help? It hurts us. It hurts our consumers instead of helping the problem attempted to be addressed; namely, get the cost of oil down. It would cause the opposite.

It seems to me, in a general way, the amendment imposes a tax on oil that would drive up the price of oil. It is not a tax on the companies. It is a tax on oil. Does the Senator have any sort of analysis? I don't have one. I wish I did. I wonder what the Congressional Budget Office or the Joint Tax Committee or the Energy Information Agency would show this amendment would do in terms of the cost to our consumers? Such an analysis, which we do not have time to do, would show that American consumers would not have a decrease in the cost of gasoline. Rather, it would go up. I wish we could have that study. I believe, and I think I have a bit of credibility, the imposition of this windfall profit tax would cause the price to our consumers to go up, not down.

It also means that oil companies have an option of selling their oil in the United States and paying a sizable tax in the United States. They will probably sell it overseas to avoid paying the tax. If they have an option to sell it here and paying a tax or selling it overseas, they will take the option of selling it overseas. Why not? It is pure logic. You lose money selling it in the United States.

Is the amendment accompanied by analysis that shows how much less oil would be available in the United States if this amendment is passed? I truly believe it will make less oil available. If less oil is available, the price goes up, not down, for those items that come from crude oil.

Does the proponent of the amendment have any kind of analysis as to what would happen to the prices if companies stop selling some portion of the current imports to the United States? That is a very interesting question. I believe what would happen is the opposite of what is intended. If this is intended to penalize the companies, rather than being a tax on oil, I assure you that if it is a tax on oil, the price will go up, not down. It seems there is no argument about that. If the price goes up because of the tax, does the gasoline coming from the crude oil go down so our consumers get a break? Of course not. The price goes up. So we do not get a break; we get the opposite. We get an increase. And under the guise of a good bill to help American consumers, we get one that clearly will scalp them. They will pay more, rather than less, and we will have some money to claim to our taxpayers that we are giving them back because we are hurting big oil, which seems to be the intention of this amendment.

I also note this amendment allows the oil sellers to avoid a part of the tax if they invest it in new oil wells drilled in areas of the country that are not proven up as gas properties. That is very interesting. They cannot invest it in oilfields that are proven up that require money to drill. They cannot do that. It has to be new oilfields. I ask if the proponent of the amendment would submit a list of unproven areas in the United States where the drilling of oil is supported. Where are the fields for new production that are supported? Frankly, every field you try you cannot get it done because of some objection or another. In fact, I ask the sponsor, more particularly, would he submit to the Senate a list of unproven areas where he, the distinguished Senator, supports drilling new fields? It would be all right if he gave a list that are supported not necessarily by the Senator but by any authentic group.

In its totality, let me summarize: This is not a tax on the oil companies. This is a tax on oil. It will not produce more oil to tax oil. It will not produce lower costs to the consumer by taxing oil. It is very logical if you say: Here is a product for sale for $150. That is the established price. But now the municipality says: Let's have a 15-percent sales tax or a 50-percent tax on the profits or whatever we determine. That makes the price of the product go up, not down. The same will happen with oil. Tax the product, the price goes up. Tax the company on profits, unless they do something, the price goes up, not down.

It would be impossible for the energy companies to invest the money in a timely manner in the manner prescribed. I cannot imagine $3 billion or $4 billion being invested in 1 year in the items recommended by the Congress that knows best where companies should spend it. It seems to me they would have to pay the windfall. They could not do the investing.

There is much more to say. There is no question this will cost the consumers more, not less. Gasoline will go up, not down. The supplies will be less, not more. All of which we do not want. All of which I would think the sponsor of the amendment would not want. It is an absolute certainty that is what will happen.

I yield back the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized to offer two amendments with 30 minutes of debate on each amendment, equally divided.

Mr. REID. If I could direct a question.

The PRESIDING OFFICER. The minority leader.

Mr. REID. It is my understanding that Senator FEINSTEIN and Senator WYDEN have 30 minutes equally divided.

Mrs. FEINSTEIN. No, it is 30 minutes in opposition.

Mr. REID. You have 15?

Mrs. FEINSTEIN. We have 15 minutes; I have two amendments.

Mr. REID. I ask unanimous consent, following the 15 minutes of the two Senators, WYDEN and FEINSTEIN, I be recognized to use some of my leadership time.

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

AMENDMENT NOS. 2609 AND 2610

Mrs. FEINSTEIN. Mr. President, I send two amendments to the desk. The first is an amendment, on behalf of myself, Senators SUNUNU, GREGG, WYDEN, CANTWELL, FEINGOLD, BURR, MCCAIN, KERRY, and COLLINS, ''To repeal certain tax benefits relating to oil and gas wells intangible drilling and development costs.''

The second amendment is an amendment, on behalf of Senator KERRY and myself, which would be a restatement for millionaires of 39.6 percent income tax rate, the pre-May 2003 rates of tax on capital gains and dividend rates and deduction limitations until the budget deficit is eliminated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. SUNUNU, Mr. GREGG, Mr. WYDEN, Ms. CANTWELL, Mr. FEINGOLD, Mr. BURR, Mr. MCCAIN, Mr. KERRY and Ms. COLLINS, proposes an amendment numbered 2609.

The Senator from California [Mrs. FEINSTEIN], for herself and Mr. KERRY, proposes an amendment numbered 2610.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent the reading of the amendments be dispensed with.

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

The amendments are as follows:

(Purpose: To repeal certain tax benefits relating to oil and gas wells intangible drilling and development costs)

At the end of title IV, add the following:

SEC. ___. REPEAL OF CERTAIN TAX BENEFITS RELATING TO OIL AND GAS WELLS INTANGIBLE DRILLING AND DEVELOPMENT COSTS.

(a) IN GENERAL.—Section 263(c) (relating to intangible drilling and development costs) is amended by adding at the end the following new sentence: ''This subsection shall not apply with respect to wells (other than wells drilled for any geothermal deposit (as so defined)) of any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year in any taxable year beginning after December 31, 2005.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

(Purpose: To reinstate for millionaires a top individual income tax rate of 39.6 percent, the pre-May 2003 rates of tax on capital gains and dividends, and to repeal the reduction and termination of the phase out of personal exemptions and overall limitation on itemized deductions, until the Federal budget deficit is eliminated)

At the end of the bill, insert the following:

SEC. ___. REINSTATEMENT FOR MILLIONAIRES OF 39.6 PERCENT INCOME TAX RATE, PRE-MAY 2003 CAPITAL GAIN AND DIVIDEND RATES, AND DEDUCTION LIMITATIONS UNTIL BUDGET DEFICIT ELIMINATED.

(a) REPEAL OF TOP INCOME TAX RATE REDUCTIONS.—

(1) IN GENERAL.—Section 1(i) (relating to rate reductions) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) EXCEPTION FOR TAXPAYERS WITH TAXABLE INCOME OF $1,000,000, OR MORE.—Notwithstanding paragraph (2), in the case of taxable years beginning in a calender year after 2005, the last item in the fourth column of the table under paragraph (2) shall be applied by substituting '39.6%' for '35.0%' with respect to taxable income in excess of $1,000,000 ($500,000 in the case of taxpayers to whom subsection (d) applies).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2005.

(3) APPLICATION OF EGTRRA SUNSET.—The amendment made by this subsection shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

(b) RESTORATION OF PRE-MAY 2003 TAX RATES ON CAPITAL GAINS AND DIVIDENDS FOR INDIVIDUALS IN TOP RATE BRACKET.—

(1) IN GENERAL.—Section 1(h) is amended by adding at the end the following new paragraph:

''(12) INCREASED RATES FOR INDIVIDUALS IN THE TOP RATE BRACKET.—

''(A) DIVIDENDS.—In no event shall the qualified dividend income of a taxpayer for any taxable year exceed the excess (if any) of—

''(i) the minimum dollar amount to which the 39.6 rate applies under subsection (i) for the taxable year, over

''(ii) taxable income, reduced by adjusted net capital gain (determined without regard to this paragraph).

''(B) CAPITAL GAINS.—If a taxpayer has a net capital gain for any taxable year, the taxpayer's tax shall be increased by an amount equal to 5 percent of the lesser of—

''(i) the taxpayer's adjusted net capital gain, determined after application of subparagraph (A) and by only taking into account gain or loss properly allocable to the portion of the taxable year after December 31, 2005, or

''(ii) taxable income in excess of the minimum dollar amount to which the 39.6 rate applies under subsection (i) for the taxable year.''

(2) APPLICATION TO MINIMUM TAX.—Section 55(b)(3) is amended by adding at the end the following new sentence: ''The rules of section 1(h)(12) shall apply for purposes of this paragraph.''

(3) EFFECTIVE DATES.—

(A) CAPITAL GAINS.—Section 1(h)(12)(B) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply to taxable years beginning after December 31, 2005.

(B) DIVIDEND RATES.—Section 1(h)(12)(A) of such Code (as added by paragraph (1)) shall apply to dividends received after December 31, 2005.

(4) APPLICATION OF JGTRRA SUNSET.—The amendment made by this subsection shall be subject to section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

(c) REPEAL OF THE SCHEDULED PHASE OUT AND TERMINATION OF THE LIMITATIONS ON PERSONAL EXEMPTIONS AND ITEMIZED DEDUCTIONS.—

(1) REPEAL.—

(A) PERSONAL EXEMPTIONS.—Section 1(d)(3) is amended by adding at the end the following:

''(6) REDUCTION OF PHASE OUT AND TERMINATION NOT TO APPLY.—Subparagraphs (E) and (F) shall not apply to a taxpayer whose adjusted gross income for the taxable year exceeds $1,000,000 ($500,000 in the case of a married individual filing a separate return).''

(B) ITEMIZED DEDUCTIONS.—Section 68 is amended by adding at the end the following:

''(h) REDUCTION OF PHASE OUT AND TERMINATION NOT TO APPLY.—Subsections (f) and (g) shall not apply to a taxpayer whose adjusted gross income for the taxable year exceeds $1,000,000 ($500,000 in the case of a married individual filing a separate return).''

(2) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

(3) APPLICATION OF EGTRRA SUNSET.—The amendments made by this section shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

(d) SUNSET OF AMENDMENTS IF BUDGET DEFICIT ELIMINATED.—

(1) IN GENERAL.—The amendments made by this section shall not apply to taxable years beginning after the first calendar year for which the certification described in paragraph (2)(B) is made.

(2) ESTIMATES AND CERTIFICATION.—

(A) IN GENERAL.—Not later than October 15 of each calendar year beginning after 2005, the Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, shall estimate—

(i) the Federal budget deficit for the fiscal year ending in the calendar year, and

(ii) the Federal budget deficit for the fiscal year beginning in the calendar year (determined as if the amendments made by this section were not in effect for taxable years beginning in the following calendar year).

(B) CERTIFICATION.—The Director of the Office of Management and Budget shall certify to the President of the United States and to the Congress the first calendar year for which the Director estimates under subparagraph (A) that there will be no Federal budget deficit for both of the fiscal years for which the estimate was made.

AMENDMENT NO. 2609

Mrs. FEINSTEIN. Mr. President, this amendment would strike a tax incentive from the books for the oil and gas companies that allows them to expense their exploration and development costs.

This tax credit is unnecessary, not because I say that it is, but because the oil companies have said they do not need it. The President of the United States has said the oil companies do not need it, and the Joint Committee on Taxation estimates this tax credit costs the Federal Treasury $2.4 billion over 5 years.

I wish to make clear that this amendment only repeals the credit for the major integrated oil companies—ExxonMobil, Shell, BP, Chevron, and ConocoPhillips. This tax credit allows major oil companies, such as the ones I have just mentioned, to deduct 70 percent of their drilling costs up front, then the next 30 percent over the course of 5 years. Costs that can be deducted include workers' wages, fuel costs, drilling equipment, materials, and supplies, et cetera.

Now, why should the oil and gas industry get special treatment? And why should they get tax breaks from the Federal Government when they are making record profits? In the third quarter of 2005 alone, the five biggest companies earned a staggering combined total of more than $30 billion.

ExxonMobil's profits skyrocketed another 75 percent in the third quarter to almost $10 billion. Over the first 9 months of 2005, ExxonMobil made a profit of $25.42 billion.

BP made 34 percent more, or $6.46 billion, in the third quarter of 2005. So far this year, BP has made $18.66 billion.

Shell's profits soared 68 percent to $9 billion in the third quarter of 2005, while making $20.94 billion over the first 9 months of the year.

Chevron's third-quarter profits were 12 percent higher, or $3.6 billion. So far this year, Chevron made $10 billion.

ConocoPhillips saw an 89 percent increase or $3.8 billion in the third quarter, while making a profit of $9.85 billion over the first 9 months of the year.

At the same time this is happening, the Federal budget deficit is the third largest in history, totaling $319 billion, and the national debt has surpassed the $8 trillion mark.

In April of this year, President Bush stated:

> With oil at more than $50 a barrel, by the way, energy companies do not need taxpayers'-funded incentives to explore for oil and gas.

At the joint Senate hearing last week, at which the CEOs of ExxonMobil, Chevron, ConocoPhillips, BP, and Shell testified, Senator WYDEN asked them if, given the fact that oil prices are above $55 per barrel, they needed these Federal tax incentives. They all responded ''No.'' In fact, Lee Raymond of ExxonMobil stated this: ''No and I don't think our company has asked for any incentives for exploration.''

Now, I see Senator WYDEN is in the Chamber, and since I have quoted him, I would like to ask him if I have accurately reported what happened at this Senate joint hearing with the oil executives.

Mr. WYDEN. Mr. President, the Senator from California has accurately reported it.

Mrs. FEINSTEIN. Let me ask this question. Did the Senator get the idea from all of the big oil companies that none of them wanted these tax incentives?

Mr. WYDEN. What is so staggering is, when these big oil companies are charging record prices, making record profits, they are being given record tax subsidies that they show up and tell the American people they do not want.

So I intend to speak on this after the distinguished Senator from California is done. But she has an excellent amendment. I say to the Senator, you have characterized their testimony correctly.

Mrs. FEINSTEIN. I thank the Senator from Oregon.

In essence, Mr. President, this is the biggest handout to the biggest corporations in America—as a matter of fact, in the world. We should not be giving them a tax break so they can do their job—to drill for oil—when they certainly do not need it.

Again, let me be clear: this is a tax credit for the major oil companies only. It should not surprise anyone to learn that these same oil companies' effective tax rates were well below 35 percent. In 2001, their tax rate was 17.3 percent; in 2002, 5.6 percent; in 2003, 13.3 percent. This averages out to 13.3 percent over the 3-year period.

By contrast, 14 industries have higher effective tax rates. The health care industry is 22.3 percent; the financial industry, 19.7 percent; pharmaceuticals pay 21.6 percent; the chemical industry, 20.8 percent; the computer industry, 16 percent; tobacco and food industries, 23.8 percent—and on and on and on, and yet the oil companies pay very little.

So not only are these energy tax incentives taking money out of the Treasury, they are also allowing oil companies to lower their effective tax rate so that less money actually flows from them into the Treasury. That is unacceptable. They say they do not need it. The President says they do not need it. And this would essentially correct that situation.

When this tax bill was considered, the Finance Committee recognized this fact and repealed the amortization of geological and geophysical expenditures for the major integrated oil companies. It also changed the way oil companies with gross receipts over $1 billion can account for their oil inventories. The amendment I offer today takes one more step in taking away unnecessary tax breaks for the oil and gas industry.

So, Mr. President, I hope my colleagues will join me in supporting this amendment. I thank the cosponsors.

AMENDMENT NO. 2610

Now, Mr. President, I would like to speak for a moment on the second amendment, which I call the millionaire's amendment, which is offered to my colleagues by Senator KERRY and me.

I have never had a millionaire come to me and say: I need a tax break. I have had them come to me and say: Frankly, the $100,000 I get a year is de minimis to me. It doesn't make a difference to me.

So I wonder, when we are cutting Medicaid, when we are cutting virtually every domestic program we can cut, why millionaires get $100,000 in tax breaks a year. It does not make sense. They do not ask for them. They do not need them. It does not really make a difference to them.

Our amendment directly targets the budget deficit. It says if the budget is not in balance, tax rates for income, capital gains, and dividends will return to previous levels, and deduction limits, for taxpayers earning more than $1 million. So those taxes would be reinstated only for people earning more than $1 million. According to the Joint Committee on Taxation and the Tax Policy Center, this amendment could increase revenues by more than $100 billion over 5 years.

When I came to the Senate in 1992, the debt was $4 trillion. In the 1990s, we put it down, and by 1998, we achieved the first budget surplus in 29 years. By 2001, the 10-year projected surplus was $5.6 trillion. Now, it has been said on this floor over and over again that projected surplus has been turned into a major projected long-term deficit. The Federal budget deficit will reach $515 billion this year when all trust funds are included. This means over half a trillion dollars will be added to our Nation's debt—a national debt that has already exceeded the $8 trillion mark. Yet millionaires get a $100,000 tax break a year, which they have told me they don't need, it doesn't make a difference. At the same time, this debt and deficit will fuel a rise in interest rates. There have already been a dozen hikes. It will eventually slow down the economy, and it will certainly limit job creation.

In order to cover the costs of our debt, this Senate cut $10 billion in health care spending for the poorest Americans. To make matters worse, the temporary relief for physicians in the spending bill is borne on the backs of Medicare beneficiaries in the form of higher Part B premiums. The spending cuts will directly increase, by $2.90, the amount Medicare beneficiaries pay each month in premiums in 2007. That is a 33-percent increase in monthly premiums. While it is vital that Congress prevent future cuts in Medicare reimbursement to physicians, the spending cuts amounted to a $1.4 billion tax on seniors. This is simply unacceptable.

I do not think it is a bad idea to say that millionaires might be willing to help people on Medicare. They might be willing to provide some support for Medicaid so that the poorest Americans could receive health care.

So here is the bottom line: Realistically, there are very few millionaires in my State. There are about 28,000—28,000 out of 37 million people. The number of people on Medicare and Medicaid affected by these cuts is in the millions. That is the difference. So if you restore this tax for millionaires, it essentially covers the cuts on Medicare and Medicaid.

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

The PRESIDING OFFICER. Eleven and a half minutes.

Mrs. FEINSTEIN. Mr. President, I understand that Senator WYDEN would like to use some of this time. I would be happy to allot him—how much time does the Senator require?

Mr. WYDEN. Mr. President, I think 7 minutes would be fine.

Mr. REID. Mr. President, I ask Senator FEINSTEIN, would it be OK if I use my leader time now?

Mrs. FEINSTEIN. Yes.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. REID. This doesn't take away from their time, Mr. President.

Thank you very much. I appreciate the courtesy. It is so nice of you to let me do this. I know everyone is waiting to offer their amendments. This is leader time. It comes off of the bill.

IRAQ

Mr. President, last night, on the heels of two very bloody days in Iraq where 11 American soldiers have been killed, the President and the Vice President shamelessly decided to play politics. It was another deplorable political ploy from an administration that is growing more and more and more desperate and disconnected. The

American people and our brave soldiers deserve better.

It seems the President and Vice President have decided to treat the war as if it is a political campaign. Instead of giving our troops a plan for success or answering the serious questions of the American people, they have decided to reignite the Rove-Cheney attack machine.

We are at war. We need a Commander in Chief, not a Campaigner in Chief. We need leadership from the White House, not more White House-washing of the very serious issues confronting us in Iraq.

This week, Senate Democrats and Republicans, right here in this Senate, voted overwhelmingly to send the President this message: It is time to change course in Iraq.

Instead of heeding that call, the White House continues to dodge and to duck the questions of Americans and to smear their opponents. That is not leadership, and our troops and the American people deserve better.

Here is what Senator CHUCK HAGEL said. Now, who is CHUCK HAGEL? CHUCK HAGEL is a decorated Vietnam war veteran, a man who, in Vietnam, saved the life of his own brother. Of course, he is also a senior Republican member of the Foreign Relations Committee.

Here is what he had to say about the administration's tactics. These are not my words. They are the words of the Senator from Nebraska:

> Suggesting that to challenge or criticize policy is undermining or hurting our troops is not democracy, nor what this country has stood for, for over 200 years . . . To question your government is not unpatriotic—to not question your government is unpatriotic. America owes its men and women in uniform a policy worthy of their sacrifices.

He is right. The deceiving, dividing, and distorting must end. Of course, this is the same move we have seen from Karl Rove and DICK CHENEY time and time again. Whenever their poll numbers sink, they go back on the attack. This time, though, the stakes are too high to let them get away with it. There is more than poll numbers or votes at stake. The lives of our brave soldiers in Iraq depend on this President coming clean and coming forward with a plan for Iraq.

President Bush, Vice President CHENEY, and Karl Rove must stop the orchestrated attack campaign they launched on Veterans Day. It is a weak, spineless display of politics at a time of war. It is easy to attack. The hard part is leading, coming clean with the American people, and giving our troops a strategy for success.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Parliamentary inquiry: My understanding is that if I take about 7 minutes or so to discuss the Feinstein-Wyden, and others, amendment with respect to energy, that would still leave the Senator from California about 5 minutes to conclude for our side?

Mrs. FEINSTEIN. I am happy to yield the balance of my time to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from California has 3 minutes remaining.

Mrs. FEINSTEIN. I yield my 3 minutes to the Senator from Oregon.

Mr. THOMAS. Mr. Chairman, I asked for some time. Do I have time, then, following the Senator from Oregon?

Mr. WYDEN. I ask unanimous consent that Senator FEINSTEIN and I have 10 additional minutes, Senator THOMAS would be afforded the same amount, so that the total amount for this provision would only be expanded at a maximum amount of 20 minutes. I would take 5 minutes from our side.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask my good friend to cut that down significantly. We are oversubscribed in time. It is a zero-sum game. Extra time you take means less time for other Senators later on. I urge you to modify your request to a much lower number, please.

Mr. WYDEN. The Senator from Montana is gracious. Does the Senator from California need any additional time?

Mrs. FEINSTEIN. I am yielding my remaining 3 minutes to the Senator from Oregon.

Mr. WYDEN. Mr. President, if I could have 3 additional minutes so I could speak for a total of up to 6 minutes.

Mr. BAUCUS. Let's make it 5 and 5.

Mr. WYDEN. That would be fine.

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

The Senator from Oregon is recognized for 5 minutes.

AMENDMENT NO. 2609

Mr. WYDEN. Mr. President, with the CEOs of the major oil companies admitting that they do not need tax breaks, Democrats and Republicans in the Senate are signaling that it is a new day as far as energy taxes. For the first time in 20 years, the Senate is on the brink of cutting back on a portion of the billions of dollars in tax breaks the major oil companies receive annually.

The long march toward reforming the energy provisions in our Tax Code began a couple of days ago, when the Senate Finance Committee accepted my amendment that would limit a brand-new tax break in the 2005 Energy bill that would allow the oil companies to get faster write-offs for their exploration costs. That amendment was, in my view, a beginning at rolling back unnecessary tax breaks. Today, a bipartisan group, under the leadership of Senator FEINSTEIN and Senator SUNUNU, are building on that.

It is preposterous for the Senate to keep voting out tax breaks for the major oil companies when these executives go on national television and say they aren't needed. At a time when the Low-Income Home Energy Assistance Program doesn't have enough funds, at a time when Americans are hurting all across the country, I don't know how it is possible for a Member of the Senate to stand up and say: We are going to continue to dispense tax favors that the oil industry says are not needed.

What I did in the Finance Committee, what Senator FEINSTEIN is building on today, is to say we are going to do a better job in the future of targeting scarce resources. In this case we are going to limit the tax breaks to the small and independent producers. Even with that, the fact is that over the past 2 years, oil companies have already increased their drilling operations, as the price of oil has skyrocketed from $45 per barrel to over $70. The number of rigs in operation and the amount of drilling have both increased by a third since 2003.

Special treatment of oil and gas costs in the Tax Code is exactly the kind of special interest tax break we ought to be working, on a bipartisan basis, to eliminate. By eliminating this and other special-interest tax breaks, it will be possible to simplify the Code, help to lower tax rates, and, most specifically, let the energy markets work, let capital flow to its highest and best use.

This is a pretty big day in the Senate. Literally for 20 years, the Senate has been pouring it on in terms of one tax break after another for the major oil companies. If you look at the statutes, the statutes are not confining these tax breaks to the small independent producer. My legislation in the Senate Finance Committee did just that. I heard the pleas of a number of colleagues on the Finance Committee who said: Be careful about the small independent producers. I did that. We passed it in the Finance Committee.

Senator FEINSTEIN and Senator SUNUNU have picked up on that theme. This is not going to take anything away from the small independent producers, but it is a big first step at reforming the Tax Code and keeping taxpayers' hard-earned money, when major oil executives say they don't need those dollars for tax breaks.

I hope the Senate will support the Feinstein-Sununu amendment, and take the next step in this effort to reform the Tax Code.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, here we are again, faced with another opportunity to make it more difficult for us to meet our needs in energy. Interestingly enough, people on the west coast who need the energy more than anyone seem to be pushing for this.

There is a misunderstanding here as to what has been done. But these tax opportunities are particularly the cost of conducting oil and gas exploration and production, particularly offshore, the difficult ones, the high-cost offshore drilling, the kinds of things we are going to have to get into to continue to have it. We have about expanded all the regular drilling we can.

Here is an opportunity to do something unusual. By the way, I think there has been a little misunderstanding on the question that was asked. The question that was asked, as I understand it, was on geology, G&G, which was in the bill. They said they didn't need that. This is not G&G. This is another issue.

Mr. WYDEN. Will the Senator yield?

Mr. THOMAS. No, I am not going to yield. Thank you.

This is a little different issue than we talked about before. If you would ask these people, do they need it to do these kinds of drilling on the intangibles, that is not geology, which is the one they were talking about, the G&G issue that was in there.

Here again, we went through this in another amendment. We continue to do the same thing. We have spent all this time trying to get an energy bill out there to try to encourage new ways to look at energy, trying to look at new opportunities for energy, all of which are very important. Quite frankly, living in a State where we do a lot of this, the people who are willing and able to put the investment in these kinds of new approaches are not the independents. They are the larger companies. They are the integrated companies that are able to do this.

This continuing idea that somehow these people are too rich—I had my chart out here a little while ago, talking about the return on revenue and profits. They were down below the middle of all the other industries. If we want to talk about taking away windfall profits and giving it back to everyone, you are starting with the wrong industry. We ought to be talking about the 10 or 12 industries that have a higher return on their sales than do the people in this business of producing the fuel and the energy we need to keep our economy going.

If we want to look at having jobs, if we want to look at a growing economy, it is very clear. The more we see of it, the more we see of having to get offshore oil, the more we see of having to do, which we should, conservation and other things, the more important it is for us to have an opportunity to begin to continue to move into new sources of energy, the ones that are more difficult.

This amendment is just another one to inhibit that, based on the idea that the oil companies are getting too much of a profit. Again, take a look at the facts. They are not, compared to others. The return has been a reasonable one, and I believe we ought to not adopt this kind of an amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Washington is recognized to offer an amendment.

AMENDMENT NO. 2612

Ms. CANTWELL. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself, Mr. BAYH, Mr. LIEBERMAN, Mr. SCHUMER, Mrs. BOXER, and Mr. CARPER, proposes an amendment numbered 2612.

Ms. CANTWELL. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To improve the Federal Trade Commission's ability to protect consumers from price-gouging during energy emergencies, and for other purposes)

At the end of the bill, insert the following:

TITLE I—ENERGY EMERGENCY CONSUMER PROTECTION

SEC. ___. UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN COMMERCE RELATED TO GASOLINE AND PETROLEUM DISTILLATES.

(a) SALES TO CONSUMERS AT UNCONSCIONABLE PRICE.—

(1) IN GENERAL.—During any energy emergency declared by the President under section 3, it is unlawful for any person to sell crude oil, gasoline, or petroleum distillates in, or for use in, the area to which that declaration applies at a price that—

(A) is unconscionably excessive; or

(B) indicates the seller is taking unfair advantage of the circumstances to increase prices unreasonably.

(2) FACTORS CONSIDERED.—In determining whether a violation of paragraph (1) has occurred, there shall be taken into account, among other factors, whether—

(A) the amount charged represents a gross disparity between the price of the crude oil, gasoline, or petroleum distillate sold and the price at which it was offered for sale in the usual course of the seller's business immediately prior to the energy emergency; or

(B) the amount charged grossly exceeds the price at which the same or similar crude oil, gasoline, or petroleum distillate was readily obtainable by other purchasers in the area to which the declaration applies.

(3) MITIGATING FACTORS.—In determining whether a violation of paragraph (1) has occurred, there also shall be taken into account, among other factors, the price that would reasonably equate supply and demand in a competitive and freely functioning market and whether the price at which the crude oil, gasoline, or petroleum distillate was sold reasonably reflects additional costs, not within the control of the seller, that were paid or incurred by the seller.

(b) FALSE PRICING INFORMATION.—It is unlawful for any person to report information related to the wholesale price of crude oil, gasoline, or petroleum distillates to the Federal Trade Commission if—

(1) that person knew, or reasonably should have known, the information to be false or misleading;

(2) the information was required by law to be reported; and

(3) the person intended the false or misleading data to affect data compiled by that department or agency for statistical or analytical purposes with respect to the market for crude oil, gasoline, or petroleum distillates.

(c) MARKET MANIPULATION.—It is unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.

SEC. ___. DECLARATION OF ENERGY EMERGENCY.

(a) IN GENERAL.—If the President finds that the health, safety, welfare, or economic well-being of the citizens of the United States is at risk because of a shortage or imminent shortage of adequate supplies of crude oil, gasoline, or petroleum distillates due to a disruption in the national distribution system for crude oil, gasoline, or petroleum distillates (including such a shortage related to a major disaster (as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122))), or significant pricing anomalies in national energy markets for crude oil, gasoline, or petroleum distillates, the President may declare that a Federal energy emergency exists.

(b) SCOPE AND DURATION.—The declaration shall apply to the Nation, a geographical region, or 1 or more States, as determined by the President, but may not be in effect for a period of more than 45 days.

(c) EXTENSIONS.—The President may—

(1) extend a declaration under subsection (a) for a period of not more than 45 days; and

(2) extend such a declaration more than once.

SEC. ___. ENFORCEMENT UNDER FEDERAL TRADE COMMISSION ACT.

(a) ENFORCEMENT BY COMMISSION.—This Act shall be enforced by the Federal Trade Commission. In enforcing section 2(a) of this Act, the Commission shall give priority to enforcement actions concerning companies with total United States wholesale or retail sales of crude oil, gasoline, and petroleum distillates in excess of $500,000,000 per year but shall not exclude enforcement actions against companies with total United States wholesale sales of $500,000,000 or less per year.

(b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—The violation of any provision of this Act shall be treated as an unfair or deceptive act or practice proscribed under a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

SEC. ___. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the provisions of section 2(a) of this Act, or to impose the civil penalties authorized by section 6 for violations of section 2(a), whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a person engaged in retail sales of gasoline or petroleum distillates to consumers for purposes other than resale that violates this Act or a regulation under this Act.

(b) NOTICE.—The State shall serve written notice to the Commission of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(c) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subsection (b), the Commission may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall prevent the attorney general of a State from exercising the

powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) VENUE; SERVICE OF PROCESS.—In a civil action brought under subsection (a)—

(1) the venue shall be a judicial district in which—

(A) the defendant operates;

(B) the defendant was authorized to do business; or

(C) where the defendant in the civil action is found;

(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

(3) a person who participated with the defendant in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action or an administrative action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(g) ENFORCEMENT OF STATE LAW.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a civil or criminal statute of such State.

SEC. ___. PENALTIES.

(a) CIVIL PENALTY.—

(1) IN GENERAL.—In addition to any penalty applicable under the Federal Trade Commission Act—

(A) any person who violates section 2(b) or 2(c) of this Act is punishable by a civil penalty of not more than $1,000,000; and

(B) any person who violates section 2(a) of this Act is punishable by a civil penalty of not more than $3,000,000.

(2) METHOD OF ASSESSMENT.—The penalties provided by paragraph (1) shall be assessed in the same manner as civil penalties imposed under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) MULTIPLE OFFENSES; MITIGATING FACTORS.—In assessing the penalty provided by subsection (a)—

(A) each day of a continuing violation shall be considered a separate violation; and

(B) the Commission shall take into consideration the seriousness of the violation and the efforts of the person committing the violation to remedy the harm caused by the violation in a timely manner.

(b) CRIMINAL PENALTY.—Violation of section 2(a) of this Act is punishable by a fine of not more than $1,000,000, imprisonment for not more than 5 years, or both.

SEC. ___. EFFECT ON OTHER LAWS.

(a) OTHER AUTHORITY OF COMMISSION.—Nothing in this Act shall be construed to limit or affect in any way the Commission's authority to bring enforcement actions or take any other measure under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any other provision of law.

(b) STATE LAW.—Nothing in this Act preempts any State law.

Ms. CANTWELL. Mr. President, my amendment is based on S. 1735 which has been sponsored by about 29 of my colleagues. I certainly appreciate the fact that this amendment is being cosponsored by Senators BAYH, SCHUMER, BOXER, CARPER, and LIEBERMAN. I thank my colleagues for paying attention to what I believe is a very important issue for us to address before we adjourn; that is, the issue of price gouging and the fact that the Senate should say loud and clear that we think price gouging should be a Federal crime. That is exactly what my amendment does. It creates a new Federal statute to make sure that consumers are protected from price gouging.

How did we arrive at this point? While my colleagues, I am sure, would like to adjourn and continue to think about the complications and challenges, the American economy is being hurt by the high price of gasoline, as we saw this summer prior to Katrina. Certainly, we are anxious about the winter months and home heating oil and the costs that consumers are going to pay when they get their bills in the next couple of months.

It is important to note that Americans will spend over $200 billion more on energy this year than they did last year. That is hundreds of billions of dollars coming directly out of family budgets and the bottom lines of businesses across the country. The airline industry is expected to spend $30 billion more on fuel alone this year, which is twice what they spent in 2003. In fact, if you look at what the airline industry is expected to lose this year, it is about $9.5 billion. If you look at the increase in the expense of fuel costs for the airline industry, it is $9.2 billion.

For the airline industry, there is a high correlation between their actual loss and the amount they are paying in higher fuel costs. For the trucking industry, where diesel fuel accounts for almost a quarter of their operating expenses, each penny increase in diesel fuel costs the trucking industry $350 million a year. And what about our farmers who are obviously on low profit margins—about 5 percent—and their challenge? Well, they have had a combination of record diesel fuel costs and price increases of fertilizer of more than 20 percent. So it makes it very challenging for the American farmer to be competitive in this kind of environment.

What about the Air Force? I know the Presiding Officer is interested in the Air Force. The Air Force energy budget is expected to increase 50 percent this year, costing taxpayers another $400 million. Even the Postal Service is paying higher fuel prices, expecting to add another $300 million to the Postal Service transportation costs.

And what about the taxpayers? Well, they pay every week at the pump for higher fuel costs and they want us to protect them. But I don't know if they know that the taxpayers are even paying more for the President's travel. According to reports, the per-hour fuel cost for the travel of Air Force One has increased from $3,974 to now $6,029.

The cost of energy integrated into our economy is costing us all more money and at a time when we are seeing oil companies reach record profits and billions are being sent to countries such as Saudi Arabia, Iran, and Venezuela. I guarantee you do not have our interests at heart.

I am offering an amendment today to say that price gouging is a Federal crime and we should pass this before we adjourn.

Why is it so important to pass new Federal legislation? First, there are 28 States in America, the District of Columbia included, Gulf States such as Louisiana, Mississippi, Alabama, Florida, and Texas, that currently have price-gouging statutes on the books. These States have taken legal action to try to make sure that gas distributors or service stations or oil companies are investigated when allegations of price gouging have occurred, and certainly when you have a state of emergency as we have had after hurricanes. So these State statutes are the very statutes we are saying ought to be in Federal law.

As to examples of how these have been prosecuted at the State level, retailers have been charged with unconscionable pricing attributed to an increase in unreasonable wholesale gasoline prices or because gasoline, oil, or fuel commodities in general are raised to what is an unconscionable price. We based this on what is a New York statute that has been upheld in court. I think it is very important to note that the Federal court system has taken this term of unconscionable pricing and has Federal case law related to it.

Why did we get to this point? We got to this point primarily because current Federal law and the focus of the FTC has been whether there has been collusive pricing activities by these oil companies, collusive meaning whether they got together and fixed the price.

That Federal statute gives very little room to investigate and examine what I believe are key issues about supply and demand. We hear a lot from the oil industry that this is about simple economics and supply and demand.

I guarantee you we ought to be demanding more information about the possible manipulation of supply and why supply was exported out of the United States at a time when it was so needed for American consumers.

We need to pass a Federal price-gouging law to make sure that the current law on the books does not leave us emptyhanded when coming to pursue this issue and to make our point in protecting the American consumers.

This last week we heard from attorneys general at a joint hearing of the Senate Commerce Committee and the Senate Energy Committee talking about this issue. One attorney general from New Jersey, Peter Harvey, who has utilized his own statute on antiprice gouging, told us:

> We need a Federal price gouging statute that applies nationwide to the sale of essential goods and services.

I am also pleased that the attorney general from New York—as I said, we have based this statute on New York law—has also championed this legislation in a letter of support that I ask unanimous consent to have printed in the RECORD.

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

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL,
New York, NY, November 8, 2005.

Hon. TED STEVENS,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR CHAIRMAN STEVENS: thank you for your letter seeking input on the issue of gasoline price gouging, and in particular whether Congress should pass legislation increasing the FTC's powers in this area.

In the aftermath of Hurricanes Katrina and Rita, my office received numerous complaints about the escalation of the price of motor fuel. In response, we launched an investigation and demanded information from about 75 gas stations around New York State that had been the subject of complaints. In those cases where retailers appear to have raised prices more than warranted based on their increased costs, we have undertaken further analysis to determine whether these stations have violated New York's price gouging law (New York General Business Law §396–r). Our investigation is ongoing, and we will vigorously pursue any cases where we determine that illegal price gouging has occurred.

As you undoubtedly are aware, a consumer's view of price gouging usually is focused locally on rising prices at the gas pump or the increase in heating costs over the previous winter, and their complaints are directed at state and local officials. Thus, retail manifestations of price gouging are best suited to on-the-ground scrutiny that state and local officials can provide.

However, the marketplaces for motor fuel and home heating fuel are complex, and are international in scope. If a large oil conglomerate abuses its market position during a real or perceived crisis, the effect is likely to be felt in many (or even all) states. Accordingly, there are levels in the chain of distribution where federal assistance would be both helpful and appropriate.

The FTC is particularly well suited to regulate price gouging in the motor fuel market. As indicated in the FTC's testimony to the House Subcommittee on Commerce, Trade and Consumer Protection on September 22, 2005, FTC staff already actively and routinely monitor prices at all levels of gasoline distribution and, as stated in the testimony, ''[n]o industry's performance is more deeply felt or carefully scrutinized by the FTC.'' Currently, the FTC can act against such companies if they unlawfully agree to fix prices, but cannot act if unfair pricing practices occur simultaneously, but without collusion.

Recently, it was widely reported that oil industry profits soared during the third quarter of 2005, which includes the weeks when the hurricanes affected the Gulf Coast. The net income of Exxon Mobil rose 75% during that period, earning $9.92 billion in profit, and the profits of Royal Dutch/Shell increased by 68% during the third quarter. The Government Accountability Office (GAO) concluded that retail prices rose faster than the price of crude oil, and the magnitude of these increases suggest that the disruption caused by Hurricanes Katrina and Rita may have been exploited by the major oil companies to levy price increases not directly related to increased expenses.

For these reasons, I believe that expanded federal powers in this area are warranted. In particular: the President should be given the power to declare a temporary energy emergency at times of threatened or actual disruption of petroleum supplies, such as occurred during the recent hurricanes; declaration of such an emergency should trigger a prohibition against price gouging; there also should be a ban on manipulative pricing practices in the petroleum markets, similar to what Congress recently adopted for the electricity and natural gas markets; and there should be significant penalties to deter such conduct, and both the FTC and state Attorneys General should be permitted to enforce these violations.

I urge the Senate Commerce Committee to expeditiously consider and pass the Energy Emergency Consumer Protection Act of 2005 (S. 1735), which includes all of these provisions as part of a comprehensive approach to the problem. The bill was introduced on September 20, 2005 by Senator Cantwell, and would provide law enforcement with vitally needed tools to prevent price gouging, as well as allow greater federal scrutiny of possible market manipulation practices.

Thank you once again for soliciting my input on this important issue. It is essential that Congress, federal regulators and state law enforcement officials work together to prevent the types of abusive pricing practices that we have recently witnessed. By doing so, we will be able to protect motorists, homeowners, farmers and businesses across the country.

Very truly yours,

ELIOT SPITZER,
Attorney General.

Ms. CANTWELL. Attorney General Spitzer says:

> Accordingly, there are levels in the chain of distribution where Federal assistance would be both helpful and appropriate . . .
>
> Currently, the FTC can act against such companies if they unlawfully agree to fix price, but cannot act if unfair practices occur simultaneously but without collusion.

I think the Attorney General of New York has it right as to why we need this Federal statute.

We also want to make sure we are recognizing in the next several months what further damage is going to happen to the economy if we do not act, that is, if we leave here without getting a good Federal statute on the books.

For example, in my home State a farmer from Lamont, WA, wrote to tell me that his fertilizer prices have gone up 75 percent since May and 100 percent since last year, and fuel costs have gone from $2 to $3.15. Another eastern Washington farmer told me he is paying more for a gallon of fuel than he received for a bushel of grain. So these farmers are looking at this issue, and as Senator ROBERTS said the other day, the agricultural industry is facing something like a category 5 fuel and fertilizer hurricane. We can't leave these farmers emptyhanded this winter as we go away, without enacting a good, strong Federal statute.

Home heating oil is another issue in which consumers are going to feel an impact. For an American family, it is believed that they will pay an average of $306 or 41 percent more this winter than they did last winter. So we certainly want to implement the Federal statute to protect them during these winter months. I can tell you people are worried in my State. Unfortunately, our local jurisdictions are doing their best, but I think it shows what kind of anxiety Americans have about being able to keep warm this winter.

In my State, in Whatcom County, after the Whatcom County Opportunity Council advertised last week they would take up the low-income energy assistance applications but would only take 200 walk-ins or the first 400 phone-ins, they had over 200 people line up outside their doors, some people standing outside all night long, just to receive assistance from this program, and the local phone service, Verizon, called to say that the unusual volume of incoming calls trying to get energy assistance basically crashed the system for the entire area. I can tell you consumers are anxious about these high fuel costs.

We are dealing in the Senate with airline bankruptcies and pensions. I can tell you the airline industry has been hardest hit by the increase in fuel costs. As Southwest Airline CEO Steve Kelly told the Seattle Times recently:

> We are now facing energy prices that no airlines can make money at, at least with today's [ticket prices].

I want to make sure we do not have other pensions that are defaulted on, other people losing their jobs or their life savings because we have not enacted tough legislation saying that price gouging is a Federal crime.

The amendment I am offering today does a couple of things. First, it creates a ban on price gouging during a national emergency declared by the President of the United States. As I said earlier, the antiprice gouging standard is based on the successfully tested New York State statute.

Second, it gives the FTC and AGs and, because it creates criminal penalties, the Department of Justice the authority to levy civil and criminal penalties for proven price gouging of up to $3 million and 5 years in jail. Additionally it puts in place a new ban on market manipulation and falsifying information to the Federal Government about fuel prices, which is based on a provision of the Energy bill we passed here this year related to electricity and natural gas, trying to stop the market manipulation that happened in response to Enron and the market manipulation in the western energy crisis.

In addition, the bill gives additional remedies available to the FTC to levy fines up to $1 million for violation of market manipulation and false information.

I am very satisfied that this bill has the teeth in it that we need in a strong Federal statute to over the next several months give the Federal Government, attorneys general, and others the ability to prosecute market manipulation of energy prices.

Why do I think this is so important? My colleagues have been on the floor talking about the questions that were asked to oil company executives this week, the questions about whether they cared about tax incentives or tax breaks, whether they participated in energy meetings. My questions were more about the supply of fuel here in the United States and whether we have a greater understanding about the protection and possible manipulation of that fuel supply.

Now for my colleagues in the West who have been out on the floor, we have reeled from an energy crisis on electricity, and my colleagues, Senators WYDEN from Oregon and FEINSTEIN from California, all had economies that were very hurt by the manipulation of the electricity market. In fact, there are some cases in Federal courts now talking about the manipulation of natural gas prices. So I guarantee you with five refineries in the State of Washington, we are doing our part at refining fuel, but we still have some of the highest gas prices in the Nation and had those prior to Katrina, so my constituents want to know what are we going to do to make sure the prices are not manipulated.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from attorneys general across the country who are also supporting my legislation.

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

NOVEMBER 17, 2005.

Hon. TED STEVENS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. DANIEL INOUYE,
Co-Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN STEVENS AND CO-CHAIRMAN INOUYE: Even before the devastation caused by Hurricanes Katrina and Rita, skyrocketing oil and gasoline prices were taxing American families and burdening our nation's economy—with the notable exception of the oil industry which continued to rack up record profits. In fact, according to the Department of Energy, Americans will spend over $200 billion more on energy this year than they did last year, totaling over one trillion dollars. These expenses seem directly proportional to the extraordinary $33 billion in profits reported by the five major oil companies for the third quarter of 2005. Exxon/Mobil alone made an unconscionable $10 billion last quarter, a 75 percent increase over last year. Moreover, the profit that refiners are collecting from gasoline sales has reportedly more than tripled from $7 per barrel in September 2004 to over $22 per barrel on September 27, 2005.

Given the extraordinary impact these energy costs have on families, farmers, and businesses across America, we commend your joint efforts with the Senate Energy and Natural Resources Committee to hold a hearing last Wednesday to try, as Senator Majority Leader Frist put it, to ''examine reasons for high energy prices.'' Given our society's absolute dependency on fossil fuels—whether to power our transportation system, keep our families warm this winter, or countless other uses—both American consumers and the economy are extremely vulnerable to the whims of those with sufficient market power to artificially constrain supply or influence prices.

As the chief law enforcement officers of our respective states, we are writing to urge you to pass federal legislation that imposes a ban on energy price gouging. Any bill must also provide new market transparency and market manipulation authorities for the President and the Federal Trade Commission to better protect consumers in the future.

To this end, we respectfully urge the Senate Commerce Committee to expeditiously consider and pass Senate Bill 1735. While 28 states already have price gouging laws on the books, the Energy Emergency Consumer Protection Act of 2005 introduced by Senator Maria Cantwell on September 20, 2005 and cosponsored by nearly a third of the U.S. Senate, in our opinion would provide law enforcement with vitally needed tools to prevent price gouging. S. 1735 would also finally shine a bright light on the practices of oil companies and refiners—a sector of the economy that historically has not received close scrutiny from federal or state regulators. In addition, we strongly support section five which empowers States with the authority to pursue civil actions on behalf of their residents for violations of price gouging prohibitions.

We look forward to working with you on this critical issue to the American public and our nation's economy. With ninety percent of Americans believing price gouging is occurring at the pumps, we have a responsibility to do everything we can to ensure it is not taking place. We believe the Energy Emergency Consumer Protection Act of 2005 can do that. Even if we determine that there is no market manipulation going on, then it would be a case of ''no harm, no foul.'' Passage will help assure the public that government is providing the oversight they demand.

Sincerely,

Eliot Spitzer, New York Attorney General; Lisa Madigan, Illinois Attorney General; Bill Lockyer, California Attorney General; J. Joseph Curran, Jr., Maryland Attorney General; Tom Reilly, Massachusetts Attorney General; Peggy Lautenschlager, Wisconsin Attorney General; Patricia Madrid, New Mexico Attorney General; Mike Beebe, Arkansas Attorney General; Richard Blumenthal, Connecticut Attorney General.

Ms. CANTWELL. I am also submitting this letter for the RECORD because I think the attorneys general who are chief law enforcement officers across the country for their individual States said it well. If there is no market manipulation going on, then no harm, no foul. It does not mean this is an automatic incrimination; it simply means we have a good Federal statute in place. I certainly appreciate the support of those attorneys general who have signed this letter in support of this legislation.

What we found in our hearings—and the attorney general of Arizona brought this up—is over the last several years the oil industry has moved to a new inventory prop called ''just-in-time inventory.'' Just-in-time inventory is a great idea for the oil industry because it actually saves them dollars because they don't have the same amount of inventory they used to. It used to be that oil companies had a 20 to 30-day supply inventory. Now they only have about 3 to 5 days of supply. You can imagine if you only have 3 to 5 days of supply versus 30 days of supply, the price is going to be different.

Here is what Attorney General Terry Goddard said:

> Just in time delivery almost leaves no cushion when supplies are delayed.

He testified that:

> The entire oil industry has moved to this just in time delivery system vastly reducing the number of refineries available on a nationwide basis and minimizing inventories at stage site. The effect is a constant and precarious supply-demand balance which is exceedingly beneficial to the industry in lowering operating costs but harmful to consumers so that supply is set at a fragile stage where price spikes can occur.

I applaud the attorney general from Arizona for pointing out how important this inventory issue is and how it ought to be investigated. The Energy Department itself had a similar analysis. It found in a 2003 study:

> The reduction of spare capacity has helped drive up the price at the pump and leaves the market vulnerable to shortages caused by plant breakdown or other unpredictable events.

So even the Department of Energy knows the supply issue is what can drive price spikes. But what we want to know is whether oil companies are purposely exporting product. I asked a question at the hearing I thought was very important; that is, have oil companies ever exported oil products to foreign countries for a cheaper profit than they would have gotten if they would have kept the supply in the United States?

The reason I asked this question is because I wanted to know if they were artificially trying to limit supply in the United States just to drive up the price. One would think that is not something they would do. They, obviously, want to sell in the United States. There is one case in the West that we have been very sensitive to, according to the Oregonian newspaper that has reviewed what had been secret reports and documents basically found that BP/Amoco systematically jacked up west coast oil prices by exporting Alaskan crude oil to Asia for less than it could have sold it to U.S. refineries. So there is a specific example where an oil company exported product for cheaper profits just to have less supply in the United States to drive up the overall market. That, I think, is exactly what my amendment is trying to get at.

According to the Department of Energy, between January and August of this year, over 48 million barrels of refined product was exported out of the United States. As my friend, the Senator from Wisconsin, Mr. KOHL, points out, that is 24 times the amount that is stored in the Northeast heating oil reserve, a critical safety net in times of shortage.

One can imagine that my colleagues want answers to why they would export

48 million barrels of refined product at a time when, if you would have kept it in a heating oil reserve for the Midwest, it might actually keep prices down in the Midwest this winter.

As I said, I have already had enough of this as it relates to Enron. In 2001 I sat in a lot of hearings in the Energy Committee and heard from a lot of different people testifying that the electricity market had nothing to do with manipulation. It was all about the fact that some environmental laws prevented us from building enough supply.

After 3½ years of investigation, we found out there was a lot of manipulation going on that terms such as Fat Boy, Get Shorty, and Ricochet were schemes perpetrated on the consumers of the western energy market just to manipulate supply. So you can bet we want to know whether supply is being manipulated in a similar fashion in oil markets today, and we want answers.

The only way to get answers is to put a new Federal statute on the books that says price gouging is a Federal crime and to give the Federal agencies the tools to prosecute that crime.

I feel very strongly that this body needs to act on this legislation before we adjourn. We need to get this to the President's desk and get it signed.

I know my colleagues are going to offer amendments about various tax proposals and tax incentives, whether the oil industry wants those or doesn't. But I care about what is happening to the consumer, to the American farmer who is really getting squeezed out of his family farm, to those flight attendants and pilots who are losing their pensions because we have seen a 293-percent increase in jet fuel costs over 5 years, and to the small businesses in my State that can't exist on low profit margins when they see a 50-percent increase in home heating and fuel costs. So I want to protect consumers, not just now, but if this crisis happens again in the future, I want consumers to be protected.

I hope we can pass this legislation in a good bipartisan effort, that my colleagues will support every effort right now to protect consumers as we head toward the winter months, and we act responsibly in giving Federal regulators the statutes they need to prosecute these crimes.

Mr. President, I also would like to add Senators CLINTON and SALAZAR as cosponsors of the amendment.

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

Ms. CANTWELL. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume. This is for the purpose of addressing two amendments before the Senate. I wish to make a short comment on the amendment that was just proposed by Senator CANTWELL.

In regard to this amendment, what she terms the anti-gouging amendment, obviously I can't help but say the intent of the amendment might be good, but this is a tax relief bill that is before us. It is not a crime bill before the Senate right now.

We just received a copy of the amendment. There are all kinds of policy questions that need to be considered. So because of this and the fact that it is not germane to the bill, I will be raising a point of order at the appropriate time.

AMENDMENT NO. 2610

I also wish to make a comment on the amendment proposed about a half hour ago by Senator FEINSTEIN. Before I go into the problems behind the Feinstein amendment, let me say that it is unfortunate that our Nation has had to respond to so many unexpected crises over the past 4 years. Most recently, we have had to provide an enormous amount of hurricane relief to families in many of our Southern States. Despite this fact, our economy is growing and continues to grow and, even considering the hurricanes, growing at a rate that nobody would have anticipated considering a possible ripple effect that presumably is not rippling as much as we thought through the economy because of that natural disaster.

As far as Federal receipts are concerned, these are up $275 billion over the prior year, and Federal revenues are returning to their average level of GDP. That average level, if you want a little leeway, is somewhere between 17 percent of GDP and 19 percent of GDP, and that is not just recently, that would be a 50-year average where all Federal taxes coming into the Federal Treasury have fallen within that band. Also, it has been our policy, at least in this administration, to do tax policy that falls within that band of 17 to 19 percent of gross domestic product.

I would like to take a look at the tax increase that Senator FEINSTEIN put on the table. It would increase the top rate by almost 5 percent for ordinary income.

The premise of Senator FEINSTEIN's position seems to be that taxpayers in the top brackets are solely Park Avenue millionaires, that somehow these people are sitting around clipping coupons and drawing all the income from them. The facts show differently, so I would like to go to the facts that are put out by the nonpartisan people in the Treasury Department.

About 80 percent of the benefits of the top ordinary income tax rate go to taxpayers with small business ownership. Those of us from the heartland know that the definition of small business is not determined by some gross revenue taxable income that is used as a basis and the arguments for this amendment. It depends upon whether the business is locally based. It depends on where the business finances its growth from its earnings.

The people who own these businesses are drawn from the community. They go to the local church. They support the local little leagues. Small business, as I see it, and as I know it coming from a Midwestern State, is a very stabilizing yet very dynamic social and economic force in their respective communities and tends to be the bulwark of the strength of the American middle class.

Small business income is generally taxed at an individual rate. In most cases, owners of small businesses put the income of the small business on his or her tax return. As a practical matter, then, the individual tax rate is the rate that is paid by these small businesses as opposed to the corporate rate.

The corporate tax rate, with some exceptions, in the case of some older, smaller corporations, generally applies to big business. The relationship between the top individual rate and the top corporate rate then has a bearing on our policy toward small business and whether or not we are going to give small business the incentives to grow and create jobs because these people create 70 percent of the new jobs in America.

If the top individual marginal tax rate is higher than the top corporate marginal rate tends to be—it is very obvious that you can quantify it—then we are sending a bad signal to small business.

Before 2001, the top marginal rate for small business was 39.6 percent, the rate that Senator FEINSTEIN's amendment would return us to. The top corporate rate is 35 percent. When you look at the difference, that is about a 15-percent difference between the top rate for big corporations and the rate that is used for a small business that is not incorporated.

So small business was paying then, before we made these changes in 2001, about 15 percent more. It is what I call a 15-percent small business tax penalty. When you tax labor, when you tax business—the old principle, you tax more and you get less of it, that was the law at that time.

We recognized the detrimental impact that was having on the economy. So we looked at the Federal tax policy bias against small business, and then we had a bipartisan majority in this Senate, including Senator BAUCUS, the ranking Democrat, and one-fourth of the Democratic caucus at that particular time voted to gradually—because we couldn't do it all at once—gradually equalize the top marginal rate between big corporate business and small unincorporated business, small unincorporated business paying the individual rate that was 15 percent higher, a 15-percent small business tax penalty, something that common sense ought to dictate is totally unfair.

Since 2003, for the first time in many years, the top rate, 35 percent, has been the same for Fortune 500 companies incorporated, obviously, as for successful small businesses that file the individual return.

Senator FEINSTEIN's amendment would take the first step to restore and perhaps even enhance the 15-percent penalty on small business.

With all the appetite for taxing and spending around here, rest assured, small business will be facing even higher taxes.

Small business creates 70 to 80 percent of the jobs in this country. Why, then, at this time would any Member of this body want to raise taxes on people for their ingenuity and their willingness to take a gamble in creating a small business? Why would they want to do that to people who create 80 percent of the new jobs in America?

So, without a doubt, anyone voting for Senator FEINSTEIN's amendment is, in effect, saying they support raising taxes on these small business people who create 70 to 80 percent of the new jobs in America.

That does not pass the commonsense test. In 2003, it is worth noting that the business community told us reducing the top rate of taxation was their tax policy priority. The small business community told us, when we were writing this legislation, that doing away with this 15-percent penalty, the small business tax penalty, was their top priority.

Now let's think about this. There seems to be a link between tax relief, economic growth, and jobs. Taxes make a difference. They make a difference whether we are going to have economic growth. Without economic growth, there is no increase in jobs. We have seen evidence of that linkage since 2003. Economic statistics prove that when tax relief kicked in, the economy has grown and more jobs have been created. That is the dynamic of the American free market economic system.

Public policy made by Congress makes a difference, and reducing taxes on small business, or at least making sure there is not a penalty against small business vis-a-vis major corporations, have a great deal to do with whether the free market system works. So that tax policy has helped the enhancement of our economy.

We are in the process of thinking about reversing that course. Whether it is intended or not, that is the impact of Senator FEINSTEIN's amendment. Some would speculate that for the minority party—and that is the Democratic Party—it is good politics for the economy to go into the tank; raise taxes as the economy is coming back and economic growth will be stifled. If economic growth is stifled, then jobs will disappear. If jobs disappear, then voters are more apt to throw out members of the President's party, members of the Republican Party.

I am not that cynical. I do not believe some of the opposition would want to put short-term political advantages over the economic well-being of their constituents, but obviously that is the impact of this amendment. So it does make one wonder what everything is about as we deal with these issues.

To sum up, a vote for the amendment by the Senator from California is a vote that will increase taxes. It is a tax increase that comes during economic recovery. I remind people of a quote from somebody who people listen to more than anybody else on how the economy is going and they respect what he says, Chairman Greenspan. He says that the reason we have had these 2½ to 3 years of economic recovery is because of the tax policies that have been put in place in the recent couple of tax bills.

So we do not want a tax increase when we have a recovery. It is a tax increase on the folks that create jobs in America, and that is our hard-working small business owners. For those reasons, I ask that we reject the Feinstein amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I believe that there is still time remaining so that Senator CANTWELL has an opportunity to speak on her amendment. In the meantime, I ask unanimous consent that the next amendments in order following the Cantwell amendment be the following: an amendment by the Senator from Illinois on FEMA, 30 minutes equally divided; the Senator from Massachusetts, Mr. KENNEDY, on poverty, 30 minutes equally divided; an amendment from the Senator from Rhode Island, Mr. REED, 20 minutes equally divided; and an amendment by the Senator from Oklahoma, Mr. COBURN, on the practice of medicine—there is no time limit at the moment on that one—and that thereafter there be 30 minutes equally divided on the Dorgan amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. I do not see the Senator from Washington on the floor to finish with her amendment. I ask that her time be reserved so she can offer it at an appropriate time, and the same for the time in opposition. So we can now proceed with the Senator from Illinois.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Illinois.

AMENDMENT NO. 2605

Mr. OBAMA. I call up amendment No. 2605 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. OBAMA], for himself and Mr. COBURN, and Mr. LAUTENBERG proposes an amendment numbered 2605.

Mr. OBAMA. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: Expressing the sense of the Senate that the Federal Emergency Management Agency should immediately address issues relating to no-bid contracting)

At the appropriate place, insert the following:

SEC. ____. SENSE OF THE SENATE ON USE OF NO-BID CONTRACTING BY FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) FINDINGS.—The Senate finds that—

(1) on September 8, 2005, the Federal Emergency Management Agency announced that it had awarded 4 contracts for emergency housing relief following Hurricane Katrina to The Shaw Group of Baton Rouge, Louisiana, Fluor Corporation of Aliso Viejo, California, Bechtel National of San Francisco, California, and CH2M Hill of Denver, Colorado;

(2) these contracts were awarded with no competition from other capable firms, and up to $100,000,000 in taxpayer funds were authorized for each of these contracts;

(3) in the midst of concerns about abusive and irresponsible spending of taxpayer funds, the Federal Emergency Management Agency pledged to re-bid these noncompetitive contracts, with Acting Under Secretary of Emergency Preparedness and Response, R. David Paulison, stating before the Committee on Homeland Security and Government Affairs of the Senate that ''[a]ll of these no-bid contracts, we are going to go back and re-bid'';

(4) the Federal Emergency Management Agency has yet to reopen these 4 contracts to competitive bidding, and declared on November 11, 2005, that these contracts would not be reopened for bidding until February 2006;

(5) by February 2006, the majority of the contracts will have been completed and the majority of taxpayer funds will have been spent;

(6) large and politically-connected firms continue to benefit from no-bid and limited-competition contracts, and contracts are not being awarded to capable, local companies;

(7) according to an analysis in the Washington Post, companies outside the States most affected by Hurricane Katrina have received more than 90 percent of the Federal contracts for recovery and reconstruction;

(8) the monitoring of Federal contracting practices remains difficult, with a report by the San Jose Mercury News stating ''The database of contracts is incomplete. Information released by Federal agencies is spotty and sporadic. And disclosure of many no-bid contracts isn't required by law''; and

(9)(A) there is currently no Chief Financial Officer charged with monitoring the flow of all funds to the affected areas; and

(B) the task of financial management is spread across disparate Federal departments and agencies with inadequate oversight of taxpayer funds.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Federal Emergency Management Agency should—

(1) immediately rebid noncompetitive contracts entered into following Hurricane Katrina, consistent with the commitment of the Agency made on October 6, 2005, before millions of taxpayer dollars are wasted on irresponsible and inefficient spending;

(2)(A) immediately implement the planned competitive contracting strategy of the Agency for recovery work in all current and future reconstruction efforts; and

(B) in carrying out that strategy, should prioritize local and small disadvantaged businesses in the contracting and subcontracting process; and

(3) immediately after the awarding of a contract, publicly disclose the amount and competitive or noncompetitive nature of the contract.

Mr. OBAMA. Mr. President, in the immediate aftermath of Hurricane Katrina, there was an enormous urgency, not only in Congress but all

across the Nation, to respond to the needs of the people of the gulf coast region. Although the sense of urgency appears to have subsided, unfortunately, somewhat in Congress, that sense of urgency remains all too real for the hundreds of thousands of Americans who are still dealing with the loss of jobs, the loss of family, and the loss of homes that too many Hurricane Katrina survivors have suffered.

I am pleased the bill we are debating today includes tax relief for those affected by Hurricanes Katrina, Rita, and Wilma. I am fully supportive of those provisions. I also believe that before we go home for Thanksgiving to enjoy our homes and our families, we need to take some meaningful action to help those who might not have as much to be thankful for.

Nearly 2 months after Hurricane Katrina devastated the people of the gulf coast, we are seeing that our Government is still leaving too many Americans behind. Let me give some examples. This week, FEMA is telling 150,000 evacuees who are currently in hotels that they have to be out of their hotels in 15 days. Imagine, someone has lost their home, and they have 15 days to get out of the shelter they are currently in.

Yesterday, we heard a story on NPR that shelter residents in Iberville, LA, will soon be transitioned to a tent city when the shelter closes. That's right—a tent city.

Thousands in Mississippi are currently living in two-person tents, without running water or adequate heat, because FEMA has not provided the mobile homes they promised.

There are concerns that contractors participating in the gulf coast reconstruction are exploiting immigrant labor. There are stories from Mississippi and Louisiana of immigrant laborers being lured to the gulf by promises of good pay, only to be stiffed their salaries and charged for their temporary housing.

In addition to these stories—we are hearing enormous complaints—and I am getting them in Illinois, despite the fact that I do not represent the region—that local companies are being shut out of the reconstruction bidding process.

According to the Washington Post, companies outside the States most affected by Katrina have received more than 90 percent of the Federal contracts for recovery and reconstruction. Ninety percent of the contracts have gone to companies that do not maintain a place of business in the affected States. This is unacceptable.

The American taxpayers and this Congress provided $62 billion for the reconstruction effort precisely so that the people of the gulf coast region, including some of the most vulnerable citizens of our society, would be left behind no more. Yet right now we have no idea where that money is being spent, how that money is being spent, why it is not being spent on fixing the problems I mentioned and why FEMA is still sitting on nearly $40 billion that has not been spent at all.

Now think about that. The managers of this bill have been struggling with the fiscal constraints we are trying to deal with and we have $40 billion that is not spent and we do not know where the other $20 billion has gone. There is absolutely no accountability to this process at all, no accountability to the taxpayers and no accountability to the people who need this help the most.

I am a freshman in the minority party. I am accustomed sometimes to not knowing what is going on around here, but this is, unfortunately, one of those situations in which I do not get a sense that neither the majority party nor the administration has a clear idea of how our money is being spent.

The Hurricane Katrina contracting process has been rife with problems from the very beginning. Rather than use the reconstruction process to help companies and workers in the regions most affected, we are seeing many of the prime contracts going to the largest contractors in the country. These are the same contractors that received reconstruction contracts in Iraq and with only a few exceptions they are not the folks whose businesses were harmed by the ravages of the storm.

Small businesses are not being given a fair shake to bid on these projects, and it is unclear how many contracts have been provided to small businesses. Meanwhile, minority contractors have been left almost entirely out of the contracting process. The Congressional Black Caucus has proposed good legislation to address some of these problems and I hope the Senate will consider it, if it passes the House.

But let me be clear—this is not simply partisan complaining or political point scoring. At a hearing held on November 3, 2005, the inspector general of the Homeland Security Department, a Bush appointee, said about the reconstruction process: Obligations are being made at a rate of $275 million a day in an unstable environment and in an expedited manner. When you mix it all together, it is a potentially perfect recipe for fraud, waste, and abuse.

The GAO's preliminary observations indicate that the Army Corps of Engineers' $39 million purchase of portable classrooms may have resulted in the Army Corps paying more than necessary. The GAO will continue to monitor the reconstruction contracts.

I am certain that we are going to keep on seeing these stories surfacing almost daily about how taxpayer money is being wasted, while the people who are supposed to be helped are not getting what they need.

One of the most egregious examples of this potential waste, fraud, and abuse is in the Government's refusal to rebid $400 million worth of no-bid contracts that they already promised they would rebid. Immediately following Hurricane Katrina, FEMA awarded four $100 million no-bid contracts for reconstruction efforts. Acting FEMA Under Secretary Paulison made the following statement to the Senate Homeland Security and Governmental Affairs Committee on October 6, 2005: I have been a public servant for a long time, and I have never been a fan of no-bid contracts. Sometimes you have to do them because of the expediency of getting things done. I can assure you, we are going to look at all of these contracts very carefully. All of those no-bid contracts, we are going to go back and rebid.

That is what Under Secretary Paulison said before the Senate Homeland Security and Governmental Affairs Committee a month ago.

These contracts have not been rebid. In fact, FEMA officials testified on November 11, just a month after the statement by Under Secretary Paulison, that they would not rebid the contracts until February. Here is the only problem: By February, the contracts will have been completed.

Today, I am offering a sense-of-the-Senate amendment calling on FEMA to immediately rebid these contracts in a competitive fashion before nearly $400 million of taxpayer dollars are spent in an inefficient and potentially abusive manner.

I know this amendment only gets at one element of a multilayer problem, but I firmly believe this body must take a stand to ensure that these Federal agencies that have been entrusted with such a monumental job and so many taxpayer dollars stick to their promises.

I am pleased my colleague from Oklahoma, Senator COBURN, has joined me in offering this amendment.

Senator COBURN and I have also offered a bill that establishes a chief financial officer to oversee the use of Hurricane Katrina recovery funds so that we do not have further problems of this sort. That bill was voted out of the Senate Homeland Security and Governmental Affairs Committee and is awaiting a vote. Unfortunately, that bill so far has not seen the light of this floor, so I am forced to offer this amendment today to provide some accountability and transparency into this contracting process.

I hope my colleagues will support this amendment. I appreciate the time and the attention of Chairman GRASSLEY and Ranking Member BAUCUS.

Before I yield the floor, I ask unanimous consent to call up a pending amendment that has no number yet, submitted by myself and Senator KERRY, filed earlier today by Senator KERRY, which provides relief from the marriage penalty and from the military service penalty faced by many low-income taxpayers who receive the low-income tax credit.

Mr. BAUCUS. Mr. President, I wonder if we can proceed with the second amendment. It was my understanding the Senator had one amendment and

had a time agreement on it. Other Senators have come up, asking for consideration of their amendments. I do not want to inconvenience other Senators.

Mr. OBAMA. I was asked by the Senator from Massachusetts to read that, just to get it into the queue.

At this stage I am not speaking on it, and I am not asking for any additional action on it. I just wanted to get it in. If it is a problem, I am willing to defer.

Mr. BAUCUS. All things considered, Mr. President, I think it proper not to agree to the request at this point because the Senator from Massachusetts already spoke to us about an amendment of his, and that is in the queue.

In fairness to other Senators, I don't want to inconvenience other Senators.

Mr. OBAMA. Fair enough.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield such time as he might consume to the Senator from South Dakota.

The PRESIDING OFFICER. Is the Senator yielding time on the bill or on the amendment?

Mr. GRASSLEY. On the bill.

The PRESIDING OFFICER. On the bill.

Mr. GRASSLEY. I yield off the bill such time as the Senator from South Dakota might consume.

IRAQ AND PREWAR INTELLIGENCE

Mr. THUNE. Mr. President, I thank the distinguished chairman, the Senator from Iowa, for yielding time off the bill. The issue we are debating obviously is one of great consequence, dealing with our budget and how we deal with the issue of the deficit and what we do to continue to keep the economy growing and creating jobs. That is what this debate is about.

I do, however, want to speak in response to something that was said earlier on the floor, also off the bill at hand that we are discussing today, and that has to do with the whole situation in Iraq.

The Democrat leader was on the floor earlier, once again attacking the President and the Vice President with respect to the issue of prewar intelligence. I think the American people deserve to know the facts in this debate. They deserve to know the truth. More important, our troops need to know we stand with them, we support them in completing their mission in achieving victory in the war on terror.

What we have seen instead is the Democrat leader come down here and accuse the President, because he is standing up and telling the truth to the American people, accusing him of deceiving and misleading on prewar intelligence.

Where is the evidence? Where are the facts to support those statements? The distinguished Democrat leader, as well as many Democrats who are still serving in this Chamber, back in 2002 had the same information, the same intelligence that the President of the United States had, the Vice President of the United States had, all our allies had, the United Nations had. Everybody came to the same essential conclusion, and that was that Iraq posed an imminent threat to the security of that region and the security of the United States, and we acted accordingly.

In this Chamber right here, 29 of the 50 Democrats at that time stood up and voted for a resolution authorizing the use of force in Iraq. In the House of Representatives, over 80 Democrats joined the Republican majority in the House of Representatives in support of the resolution for the use of force in Iraq.

What we are seeing now is an attempt to revise that history. You can try. You can disagree with the policy. You can disagree with the decisions that are being made by our commanders. But don't come to the floor of the Senate and don't go out to the public and attack this administration and this President for lying unless you have some evidence to demonstrate that.

There is no proof.

I believe the troops of this country, and our commanders who are valiantly and bravely and courageously leading the effort in Iraq and in Afghanistan to win the war on terror, are fighting to make this country more safe and secure and to make sure that country has a democracy. And all we focus on is the negative.

What about the positive things that are happening in Iraq? The fact is, today Iraq's GDP has more than quadrupled from 2003, Iraq's debt has been cut by more than a third from 2003, inflation and unemployment rates are down from last year while incomes have risen, Iraq's security personnel have doubled since last year, over 1,800 reconstruction projects have been finished, including schools and health facilities, the number of telephone subscribers has more than doubled since last year, and the number of independent television stations has doubled since last year.

We are making progress. It is hard work. The people who know that the best are the people on the ground in Iraq, the young men and women in uniform who are doing freedom's work.

I had the opportunity last week to go up to Walter Reed Army Hospital to visit with some of the casualties of that war, people who have lost limbs, amputees. I have to tell you it is inspiring, absolutely inspirational to see the courage and the determination and the spirit of these young people who have worn the uniform of the United States and have fought for something they believe in. They deserve to have elected leaders in this country, people in this Chamber, the Senate, and the House who are willing to at least acknowledge the good work they are doing and the progress we are making toward winning the war on terror, toward creating a democracy and standing up a government in Iraq, toward raising an army, a security force that can defend the Iraqi people.

What we do not need is demagoguery and people coming on the floor of the Senate and elected leaders getting up and making statements attacking the integrity and the credibility and the truthfulness of the President of the United States, our Commander in Chief, absent any evidence to support their claims. Furthermore, those are the ones who on this very floor have made statements in the past supporting our effort and concluding, based upon the intelligence that they received—just like the intelligence the President and the Vice President and all our allies and the United Nations received—that Iraq posed an imminent threat to the United States and to that region of the world. What we are seeing here is the worst of politics, and that is not the conduct we ought to have in the Senate or the discourse that we ought to be putting before the American people. The American people deserve the truth, and the American troops deserve our support.

I yield.

UNANIMOUS CONSENT AGREEMENT

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I have a unanimous consent agreement that I think has been accepted. I ask unanimous consent that at 3:30 today the Senate proceed to votes in relation to the following amendments in the order sequenced below; further, that they not be subject to second-degree amendments prior to the votes and that there be 2 minutes equally divided between the votes: Dorgan No. 2587; Feinstein No. 2609; Feinstein No. 2610; Cantwell No. 2612; provided further that at 3 today, there be 30 minutes equally divided for debate between the chairman and Senator DORGAN; provided further that following those votes, Senator COBURN be recognized in order to offer his amendment; further, that all votes after the first be limited to 10 minutes each.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

AMENDMENT NO. 2588

Mr. KENNEDY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Ms. LANDRIEU, proposes an amendment numbered 2588.

Mr. KENNEDY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in the RECORD of Wednesday, November 16, 2005, under ''Text of Amendments.'')

Mr. KENNEDY. Mr. President, I think we have a time limit of 15 minutes.

The PRESIDING OFFICER. Thirty minutes evenly divided.

Mr. KENNEDY. I ask the Chair to let me know when there is 2 minutes left.

The PRESIDING OFFICER. The Chair will so notify the Senator.

Mr. KENNEDY. Mr. President, this amendment is a very simple amendment. It recognizes that we have had a dramatic increase in child poverty in recent years. I think the most dramatic recent exposure to that was Hurricanes Katrina and Rita, when the veil was taken off the United States of America and we saw so many of those families who were unable to leave New Orleans and leave the areas along the gulf because they were too poor and they suffered so many consequences that we are reminded about the growth of poverty among children in recent years.

This amendment does a very simple thing. It says for every joint tax return where the income is more than $1 million, there will be a 1-percent surcharge on that income. It will go into a dedicated fund. There will be a board appointed by the Members of Congress, and they will make recommendations to the President about how those resources will be expended.

The best estimate now is that we could have close to $3 billion to $4 billion raised in the first year. It will rise over the next 5 to 7 years up to $5 billion. This is dedicated to reduce the poverty of children in this country.

This chart shows what happened in the period of 2000 to 2004—13 million children are living in poverty. There has been a growth of 1.4 million children since 2000.

We know that in the United States at the present time one in six children lives in poverty. This isn't just general, across the country; it is reflected with different groups having a higher percentage. We find, for example, that children are much more likely to live in poverty than adults or the elderly.

If we look at who is living in poverty in the United States: seniors, 9.8 percent; adults 18 to 65, 11.3 percent; and for children, it is the highest at 17.8 percent. If you look at who is affected by this to the greatest extent, the national average being 17.8 percent, the highest is minority children. The national average is 17.8 percent. If you are looking at Latinos, it is 28 percent. If you are looking at African Americans, it is 33 percent.

Let us look at this chart where the United States has one of the highest child poverty rate in the industrialized world. This red line is the indicator of where the United States is in relationship to Italy, the United Kingdom, Germany, Scandinavia, Japan, Sweden, the Netherlands—all the way down the line. This chart is an indication of where we have the highest poverty rates generally, and the highest child poverty rates.

It should not be an enormous surprise that individuals have the highest child poverty rate down in New Orleans and along that gulf area. Those are the areas which have the highest percentage rate. They were high before and now breathtakingly high.

If we look across the country, this chart shows children living in poverty in every State. The States in blue have the highest concentration of poverty.

This is a real reflection of our national priorities. Are we as a country going to be indignant? Are we going to be sufficiently concerned or outraged about this that we are prepared to do something?

I must say that in the most recent Appropriations Committee conference report, we find that we have basically failed to deal with these issues, both from an educational point of view and a health point of view. We see reductions in terms of the Head Start Program, title I programs, and programs that help and assist disabled children. We are finding reductions as well in other health programs.

This is a way for us to be able to say that in the situation we are talking about, those at the highest end of the economic ladder, those individuals who have more than $1 million are going to pay a tax. Say they are going to pay a tax of $100,000; that is a 1-percent addition. This is just 1 percent. This is $101,000.

With that kind of increase on those who are the most privileged individuals in our country, the wealthiest individuals, they ought to be as concerned as all Americans are by this staggering situation of child poverty in this country.

We are not going in the right direction, as these charts indicate. We are going in the wrong direction. If someone gets up and says, ''Senator, we are going in the right direction, why do we need this'', every economic indicator shows these facts and these statistics are getting worse and worse every single year. They are not going to be altered or changed by what we are doing here in these budget considerations. Investment in these children in and of itself isn't going to be the complete answer, but, nonetheless, providing the help and assistance in a very targeted way to try to deal with child poverty, it seems to me, is an important reflection about what we ought to be about here in the Senate.

I certainly think it has a higher priority than many of the other priorities that are included in this legislation, which is going to provide some very generous tax reduction for some of the most privileged people in our country and in our society. That is basically the issue.

Finally, this is a basically moral issue. There is no great nation that can ignore this challenge. It is a defining issue in terms of what this country is about. It is a defining issue about what the values are for us as a people in this Nation.

I think so many of the great Judeo-Christian religions and other religions talk about the importance of feeding the hungry and clothing the poor and seeing to the needs of the least of those among us. This amendment is a targeted amendment and provides just that kind of help and assistance which is so important for this country.

I hope the Senate will accept what I call the Child Poverty Elimination Fund—as I mentioned, with a board to oversee the fund and design the Child Poverty Elimination Plan. It is a downpayment, a realistic first step toward achieving the goal of lifting children out of poverty.

In the 1960s, President Johnson talked about the ''War on Poverty'' that we are still fighting, but we are fighting and falling further and further behind. Clearly, we have made progress over the past four decades, through Medicaid, Head Start, food stamps, and other measures we have enacted. The poverty rate for all Americans reached a low of 11 percent in 1973, compared to 19 percent in later years.

We continued that battle through the Reagan administration with the enactment of LIHEAP in 1981 and welfare reform in 1996. But, sadly, in the most recent years, we have been falling farther and farther behind.

I am not going to take the time, because I don't have it here, to talk about the growth of hunger in this country in recent years, and particularly the problem of growth of hunger among children.

A 5-year-old named Connor from Massachusetts is one example of what is happening to the vulnerable people in our society. Some days, Connor pretends to be a ''Power Ranger'' fighting intergalactic evils, and other days he is fighting hunger, pretending to be a superhero, taking a lot of energy. And sometimes Connor doesn't feel like playing. That is when his hunger pangs become his worst enemy.

It is shameless that in the richest and most powerful nation on Earth, nearly one in five children goes to bed hungry every night.

Now because of Hurricane Katrina, the silent slavery of poverty is not so silent anymore. The devastation caused by the storm suddenly focused the Nation's attention on the immense hardships low-income Americans face each day. We saw the desperate plight of innocent children who were born poor and forced to bear the impossible burden of poverty.

In fact, the child poverty rate, as I mentioned, in the States hit hardest by Hurricane Katrina was all above the national average. In Louisiana, 29 percent of children live in poverty, 30 percent of children in Mississippi live in poverty, and 23 percent in Alabama.

Hurricane Katrina highlighted the struggle of the poor, but every State in

this country is home to children and families who live in poverty. Children in the United States are more likely to live in poverty than any other age group. This particular amendment indicates what our priorities are.

Poverty is an education issue because poor children often lack the basic nutrition vital to healthy brain development. They have difficulty focusing their attention and concentrating in school. As a result, they often drop out. Some end up in trouble with the law, even in prison.

Poverty is a civil rights issue because minorities are disproportionately poor: 33 percent of African-American children, 28 percent of Latino children live in poverty, triple the rate of white children. How can we possibly keep turning our back on these children? We should all feel a greater, not a lesser, responsibility to them. Where is our compassionate conservatism?

Do they understand when Jesus said ''suffer the little children to come unto me,'' he didn't mean ''let the little children suffer.'' Don't they believe that children are included when he said:

> Inasmuch as you have done it unto the least of these, my brother, you have done it unto me.

We know how to lift children out of poverty in this wealthy land of ours. All it requires is the will to do it and the leadership to make it happen.

The words of Nobel Laureate Gabriela Mistral never rang more true:

> We are guilty of many errors and many faults, but our worse crime is abandoning the children, neglecting the fountain of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being made, and his senses are being developed. To him we cannot answer ''Tomorrow.'' His name is ''Today.''

It is time for Congress to bring true hope, honest opportunity, genuine fairness to children mired in poverty in communities in all parts of our country. This amendment will put us back on the right track. I urge my colleagues to support it.

Mrs. HUTCHISON. I ask unanimous consent I be yielded 5 minutes off the bill.

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

Mrs. HUTCHISON. Mr. President, I wish to speak today on an amendment that has been offered on this bill that I very much hope the Senate will not agree to.

The Dorgan amendment, which has been offered, would institute a windfall profits tax on the major oil and gas companies. There is the belief among many in this country that oil industry profits are excessive compared to profits of other companies that do business in our country. I do not believe that is the case.

In the second quarter of 2005, the oil industry earned 7.7 cents for every dollar of sales. The average profit for all U.S. industry in the second quarter was 7.9 cents for every dollar of sales. Thirteen U.S. industries earned higher profits in the second quarter than the oil and natural gas industry: banking, software and services, consumer services, and real estate.

The rate of return on oil sales for the third quarter of 2005 is slightly higher, at 8.1 cents for every dollar of sales. However, the damage to the oil industry caused by the hurricanes will eat into the bottom line in future quarters. British Petroleum has estimated it will take a $700 million hit to the company's energy production and infrastructure from Hurricane Katrina and Hurricane Rita. The Congressional Budget Office estimates capital losses from Hurricanes Katrina and Rita in the energy producing industries will range from $18 to $31 billion.

Reinvestment in infrastructure, both production and refining, is a critical issue. My good colleague from North Dakota and I would agree on that point. While I am sure his proposal is well intended, the impact would be contrary to the goals we all seek to achieve. His proposal takes a short-term approach to what is a long-term investment issue. Investments in infrastructure in the oil industry are over long-term windows.

What we must do is encourage the oil companies to take their profits and reinvest them back into exploration, production, and refineries. The oil companies seek to invest in refineries, but no one is investing in new refineries in America. In fact, there has been no new refinery built in America in over 20 years.

If we are going to have a bigger supply and bring the price of gasoline at the pump down, we must have more oil refineries and more production. We also need conservation. We also need renewable sources of energy. We need new sources of energy. We all agree on that.

This amendment seeks to single out oil companies, dub them ''excessively profitable,'' take their profit and give it to the Government to spend as it would, rather than letting the oil companies keep it and invest it in the infrastructure, production, and refinery capacity. That is what will get to the issue we are all trying to address; that is, bringing the price of oil down so the price at the pump will be lower.

Senator SCHUMER has discussed another potential amendment that hits at the big oil companies. I realize that is a political thing for him to do right now. We are not here to do the political hit and run. We are here to do the right thing for our country. We are here to try to build more reserves, more production capacity, and more refinery capacity to bring the price of gasoline down at the pump and to bring the price of energy down for the farmer who is trying to use natural gas. The price is rising such that our small farmers are in a tough position. What Senator SCHUMER has discussed doing is instituting a double tax on any income made by a company overseas.

We are severely restricting the ability for an oil and gas company to drill in America today. You basically cannot drill off the East Coast or the West Coast, nor Florida. We can drill in the Gulf of Mexico, but it is very expensive and requires deep drilling. We hope we will be able to open ANWR—but right now we are very limited. We need to have a supply in our country, with American jobs and more production coming back to America. More and more production is going overseas.

I end by saying, the double taxation of one industry is unfair. If we have an oil company and a computer chip company doing business in Italy and they pay taxes in Italy, the computer chip company would get a credit for that tax paid when it files in America, but the oil company would not, thereby paying tax twice. Is that the way to have more oil coming into our country and to drive the price down at the pump? I don't think so. It is counterproductive.

I hope the Senate will do the right thing. It may not be the political thing, but it is the right thing if we are going to reach our goal, which is to bring down the cost of natural gas and gasoline at the pump for the consumers and the small business people of our country, keeping our economy strong and keeping jobs in America. The way to do this is not to single out the oil companies. We must invest in infrastructure, more production, and additional refineries. If we will help them with a regulatory system that does not penalize them and delay construction for 10 or 15 years, we can bring the price of oil down. It will be to the benefit of everyone in our country.

I urge my colleagues to vote against the Dorgan amendment and any potential Schumer amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. So as not to interrupt the flow, the chairman would like to speak on the Senator's amendment first, if that is all right.

Mr. KENNEDY. All right.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield myself such time as I might consume off of our side of the Kennedy amendment.

The PRESIDING OFFICER. The Senator has that right.

Mr. GRASSLEY. I am pleased to be able to report to Senator KENNEDY that we do not need a board to tell us how to end poverty.

I quote Washington Post columnist William Raspberry, writing in a recent op-ed piece:

> Fatherless families are America's single largest source of poverty. The Annie E. Casey Foundation, ''Kids Count,'' once reported that Americans who failed to complete high school, to get married and to reach age 20 before having their first child were nearly 10 times as likely to live in poverty as those who did these three things.

The Brookings Institution, obviously a liberal think tank, published an analysis of a variety of factors that could

reduce poverty. The authors from Brookings concluded that the combination of education, full-time work, and marriage could reduce poverty rates from 13 percent to 17 percent.

The bipartisan welfare reform bill reported out of the Senate Committee on Finance would make substantial progress in helping families make progress in areas that we know would reduce poverty. We could not get an agreement with the other side to get this legislation discussed on the floor. We got it out of the committee in a bipartisan way. It deals with the issues of education, work, and marriage.

Following upon the views of the Brookings Institute and the views of the Annie E. Casey Foundation, rather than engage in politically motivated efforts, we should work together to implement these serious policies of education, of work, and of marriage. Together, by implementing these policies, and we know these policies work, we will take one giant step toward reducing poverty.

I don't think Senator KENNEDY's amendment is necessary. I yield the floor.

Mr. KENNEDY. I ask if the minority would yield 5 minutes?

Mr. BAUCUS. No objection.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I listened to my friend from Iowa. This is the fact: We have one of the highest child poverty rates in the industrial world. I am not saying this afternoon how to do it. The Senator from Iowa can have good ideas. The Senator from Tennessee can have good ideas. The fact of the matter is, we are not doing it now.

There is significant and dramatic growth of child poverty in the United States. I am saying let's do something about it. Give us the opportunity to do it this afternoon. That is the point I make.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, under a unanimous consent agreement we entered into earlier, we are now waiting for Senator REED of Rhode Island to offer his amendment, and also Senator COBURN to offer his amendment. And under the agreement, thereafter, there is time remaining on the Dorgan amendment. But while we are waiting for Senator REED and/or Senator COBURN, or anyone else, to come to the floor, I will say a few words about the alternative minimum tax.

The bill before us today does extend the alternative minimum tax exemption level and provides for an increase in inflation. That is the good news. But it is not all good news because there will still be about 600,000 additional Americans paying higher taxes next year under the alternative minimum tax, sometimes called the stealth tax.

Why is that? That is because the so-called hold-harmless provision in the legislation before us today, or the patch, as some have called it, does not hold everyone harmless. For example, for the year 2005, there are 3.6 million American taxpayers paying the alternative minimum tax. Under the bill before us today, there will be 4.2 million taxpayers paying that tax in 2006. That is an increase of 600,000 taxpayers, and it is an increase I hope we can avoid.

The alternative minimum tax, to refresh recollections, was originally enacted in 1969. Why did Congress do that? Congress discovered in that year there were about 155 very wealthy taxpayers making over $200,000 a year but who paid no taxes. Congress felt: Well, gee, that is not right; people earning over $200,000 a year at least should pay some taxes. So Congress passed the alternative minimum tax. What was once a class tax, unfortunately, has now been morphed into a mass tax.

To refresh your recollection, whenever individuals calculate their income taxes, they calculate their income taxes and then they have to go through a separate, parallel calculation under what is called the alternative minimum tax. Under that separate, parallel calculation, there are certain provisions that cannot be deducted, and that includes the standard deduction or the personal exemptions, and some others. Then you look at the bottom line of the two calculations, and if one is higher than the other—it does not make any difference which one it is—you pay that higher tax.

Because these provisions were not indexed to inflation, over time more and more people are finding they have to pay this stealth tax, this alternative minimum tax. Frankly, if it is not changed by the end of this decade, that tax will ensnare about 30 million Americans, a majority of who will have adjusted gross incomes below $100,000.

The Internal Revenue Service National Taxpayer Advocate has identified this alternative minimum tax as the most serious problem facing individual taxpayers. By the end of the decade, the majority of filers with incomes between $75,000 and $100,000 will be paying this additional tax; that is, the majority of Americans with incomes between $75,000 and $100,000 will be paying this, unless it is fixed.

In addition, virtually all married couples in that income group—$75,000 to $100,000—with two children will be paying the AMT by the end of the decade.

Now, I have filed legislation to repeal the AMT altogether. I am joined in that effort by the chairman, Senator GRASSLEY, and 20 other Senators who have the same view as me. I think we should do it. It is clear, though, that repeal is very expensive. But it is the right thing to do, and we should do our level best to try to find a way to work toward total repeal, and try to find the revenue to pay for it.

In the meantime, though, we should do all we can to make sure this stealth tax does not hit one more family next year.

As you may know, Mr. President, the House companion bill on this same subject, tax reconciliation, which is working its way over here, does not in any way address this AMT issue. But it does contain provisions to extend the capital gains and dividends cuts for 2 more years. Under current law, which we enacted in 2003, deductions will stay in effect at least until the end of 2008. Nevertheless, the House in their bill made the decision to extend that capital gains and dividends cut for 2 more years past 2008. But they did not include the alternative minimum tax. That is wrong.

Senator GRASSLEY and I have discussed this. We want to make a change. At the appropriate time I think we will make a change to the underlying bill so not one more American pays this stealth tax compared to current law. As I mentioned, under the bill currently before us, about 600,000 more Americans will pay it. We feel that is wrong. It is a mistake. We shouldn't do that. We will find a way, as the chairman and I have found, to make sure not one more American has to pay this additional tax.

Otherwise, I might say that under the House-passed version of tax reconciliation, 17 million families will see a tax increase next year. Under the House bill, working its way over here to conference, 17 million families will see a tax increase next year thanks to the alternative minimum tax.

In fact, CRS has found that if the House proposal prevails, next year a family with three children, making $63,000 a year, will also be hit by this additional stealth tax, the AMT. I believe, and I know the chairman believes, and many of us in the Senate believe, this family-unfriendly AMT should not be allowed to creep deeper and deeper into the middle class each year. At the appropriate time, we are going to make that change, that adjustment, because it is the right thing to do.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume off the bill.

The PRESIDING OFFICER. The Senator has that right.

Mr. GRASSLEY. Mr. President, I appreciate the cooperation I have had with Senator BAUCUS in working out some differences on this bill, which he has enunciated very well. I look forward to, hopefully, getting done what he said before we get this bill through the Senate tomorrow.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business, and the time will be off of the bill.

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

THE FDA

Mr. GRASSLEY. Mr. President, today is the anniversary of the hearing on the worldwide withdrawal of Vioxx, the blockbuster drug that became a

blockbuster disaster. As chairman of the Committee on Finance, I called for this hearing a year ago. The Vioxx hearing turned the spotlight on a troubled agency in denial. The type of problems exposed during the hearings have proven to be not isolated but systemic.

Over the past year, my committee staff has investigated allegations coming from within and outside the Food and Drug Administration. Brave whistleblowers, such as Drs. Andrew Mosholder, David Graham, and others, have come forward to expose the too cozy relationship between the agency and the drug industry. I can tell you today that problems exist not only within the Center for Drugs but extend to the centers for devices, biologics, and even into veterinary medicine.

I am concerned—and every other Member of this Senate should also be concerned—about this agency's cozy relationship with industry. To further illustrate this problem, I am sending today a letter to another drug company that appears too cozy with the Food and Drug Administration. Last year, 2 days after the Vioxx hearing, the drug company Wyeth met with former Commissioner Crawford. Why did Wyeth's CEO want to talk with the commissioner? Because Wyeth recently had to remove one of its most profitable veterinary drugs from the market.

So what did Wyeth do? They launched an investigation of a Food and Drug Administration employee, Dr. Victoria Hampshire. It was Dr. Hampshire who concluded that Wyeth's drug was killing hundreds of dogs. I have in my hand what Wyeth presented to former Commissioner Crawford. Every page of this document has on it things that are referred to as confidential. It is a 29-page PowerPoint with 10 pages of backup material. It is dated November 19, 2004. Besides being marked confidential, it says:

ProHeart 6 Apparent Conflict of Interest.

In summary this PowerPoint alleges that Dr. Hampshire had a personal and financial conflict of interest. Dr. Hampshire approached my committee staff because she was scared and felt unfairly targeted by the Wyeth Company and also by her agency. Why? Because she was simply doing her job to check to see if drugs were as effective and safe as they were said to be.

Last week, the Food and Drug Administration briefed my committee investigators on this matter. It turns out that Wyeth succeeded in having Dr. Hampshire removed from reviewing its drugs. Dr. Hampshire's hard work and dedication to science and drug safety placed a bull's eye on her back and destroyed her reputation and career—I should say temporarily destroyed her reputation. When you hear the end of this, she got commendation. Without her knowledge, the Food and Drug Administration also launched a criminal investigation against her.

This sordid story is still unraveling. I can say that no action was taken against Dr. Hampshire, and after the investigation closed, the Food and Drug Administration rewarded Dr. Hampshire for her work on the Wyeth drug, which remains off the market. Unfortunately for Dr. Hampshire, Wyeth's efforts to discredit her did not end when the FDA cleared her. At least one Wyeth sales representative attempted to discredit Dr. Hampshire in the veterinary community. Fortunately for Dr. Hampshire, the salesperson's comments about Wyeth's investigation of her and her alleged conflicts of interest were made to a former colleague of Dr. Hampshire. My letter to Wyeth today seeks information and documents related to Wyeth's investigation of Dr. Hampshire and the salesperson's comments.

So a year later, we are still uncovering the cozy relationship between the agency and the drug industry.

In this case, a company had the guts to go to supposedly an unbiased regulating agency and tried to get somebody fired, removed, and even a criminal investigation against them, do everything to discredit them. That sort of culture and environment should not exist in any regulatory agency with the economic sectors that they are regulating.

Dr. Hampshire's sad story is further proof that the Food and Drug Administration needs a permanent commissioner who can restore order and respect for independence. The Food and Drug Administration cannot serve the American people and the interests of the drug industry at the same time.

A year ago, Dr. Graham created a firestorm when he said at the Vioxx hearing:

I can tell you right now, there are at least five drugs on the market today that I think need to be looked at quite seriously to see whether or not they belong there. . . .

Dr. Graham identified those five drugs: Accutane, Bextra, Crestor, Meridia, and Serevent, when asked by my distinguished colleague, Senator BINGAMAN of New Mexico. Some roundly criticized Dr. Graham's testimony as inflammatory a year ago. Today it is noteworthy that the agency has taken regulatory action or action is pending on four out of the five drugs named by Dr. Graham.

Less than a week after the hearing, the Food and Drug Administration announced it was strengthening its plan to reduce the risk of birth defects associated with Accutane. Then in August the agency issued a public health advisory to help make sure females do not become pregnant while taking this medicine and to release more information about depression and suicidal thoughts associated with that drug. A month after the hearing, December of last year, the Food and Drug Administration issued a public health advisory for Bextra. The agency announced it changed Bextra's label to provide consumers with upgraded warnings about possible heart and blood clotting problems. Ultimately, the agency asked Pfizer to voluntarily remove Bextra from the market in April of this year.

Less than 4 months after Dr. Graham's testimony, Crestor was subject to a public health advisory as part of the agency's effort to notify the public of potentially significant emerging safety data. Crestor's label was changed to highlight important information on the safe use of Crestor. Eight months after the hearing, the Food and Drug Administration convened an advisory committee meeting related to the safety of Serevent and other asthma drugs. The advisory committee recommended strengthening the labels for Serevent as well, but the agency has yet to act. Only one drug, Meridia, has not been the subject of any action by FDA.

American consumers are the beneficiaries of these actions. I don't know if the agency would have acted without Dr. Graham's testimony before my committee a year ago. But I know from experience that sunlight is the best disinfectant. The scrutiny of the last 12 months is just the kind of medicine that the Food and Drug Administration needs. Things have not turned around overnight. Reforming this agency is a long-haul task.

For those of us in Congress committed to oversight, reform, and improvement, the Vioxx investigation and hearings, as well as other investigations, prompted me to cosponsor two Food and Drug Administration reform bills this year. Senator DODD of Connecticut and I introduced a bipartisan bill, the Fair Access to Clinical Trials Act, in February and the Food and Drug Administration Safety Act of 2005 in April of this year. These bills represent part of a sustained effort to restore public confidence in the Federal Government's food and drug safety agency. A number of you have cosponsored these bills with Senator DODD and me. I urge everyone else who hasn't to consider them again.

Enactment of these bills will be a meaningful step towards greater accountability and transparency for the Food and Drug Administration. And if enacted, they would provide the agency with some much needed authority to ensure the safety and efficacy of drugs.

One big opportunity that absolutely cannot be missed right now is the appointment of a new full-time commissioner who is committed to reform. This leader must recognize the problems of a culture that has become too cozy with the industry.

Then that leader must be tough enough to make necessary changes happen.

The FDA has to do a top-notch job on ensuring the safety of the products it regulates.

And where the FDA lacks the tools and resources to do so, Congress has to step in and help.

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

Mr. BAUCUS. Mr. President, I ask unanimous consent——

Mr. GRASSLEY. You mean we have used up all the time on our bill? I took time off of my bill.

The PRESIDING OFFICER. The time between now and 3:30 is equally divided between the chairman and the Senator from Montana.

Mr. GRASSLEY. Then I will forget my last three sentences.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. I ask unanimous consent that the Senator from Rhode Island be recognized to offer his amendment and speak for 10 minutes, and the time thereafter until 3:30 be equally divided on the Dorgan amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object, my understanding is that we have 15 minutes equally divided on the Dorgan-Dodd amendment, and that was to start at 3 o'clock. My recommendation would be that if there is 10 minutes now allocated during that period we simply move the vote to 3:40 so that we will have the 15 minutes equally divided—30 minutes equally divided.

Mr. BAUCUS. Mr. President, I amend my request to accommodate the request of the Senator from North Dakota. The Senator from Rhode Island can offer his amendment, and when he is finished, there will be a half hour on the Dorgan amendment. He gets 15, and the other side gets 15, and the vote will now occur at 3:40.

The PRESIDING OFFICER (Mr. COLEMAN). Is there objection? Without objection, it is so ordered.

Mr. REED. Parliamentary inquiry: What is the pending business?

The PRESIDING OFFICER. The Kennedy amendment is pending. The Senator is authorized to set it aside for his amendment.

AMENDMENT NO. 2626

Mr. REED. The Kennedy amendment being set aside, I would send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED] proposes an amendment numbered 2626.

Mr. REED. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To impose a temporary windfall profits tax on crude oil and to use the proceeds of the tax collected to fund programs under the Low-Income Energy Assistance Act of 1981 through a trust fund)

At the end of title IV add the following:

SEC. 410. TEMPORARY WINDFALL PROFITS TAX.

(a) IN GENERAL.—Subtitle E of the Internal Revenue Code of 1986 (relating to alcohol, tobacco, and certain other excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 56—TEMPORARY WINDFALL PROFITS ON CRUDE OIL

"Sec. 5896. Imposition of tax.
"Sec. 5897. Windfall profit; etc.
"Sec. 5898. Special rules and definitions.

"SEC. 5896. IMPOSITION OF TAX.

"(a) IN GENERAL.—In addition to any other tax imposed under this title, there is hereby imposed on any applicable taxpayer an excise tax in an amount equal to the applicable percentage of the windfall profit of such taxpayer for any taxable year beginning in 2005.

"(b) APPLICABLE TAXPAYER.—For purposes of this chapter, the term 'applicable taxpayer' means, with respect to operations in the United States—

"(1) any integrated oil company (as defined in section 291(b)(4)) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year.

"(c) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage shall be determined by the Secretary such that the resulting increase in revenues in the Treasury equals $2,920,000,000.

"SEC. 5897. WINDFALL PROFIT; ETC.

"(a) GENERAL RULE.—For purposes of this chapter, the term 'windfall profit' means the excess of the adjusted taxable income of the applicable taxpayer for the taxable year over the reasonably inflated average profit for such taxable year.

"(b) ADJUSTED TAXABLE INCOME.—For purposes of this chapter, with respect to any applicable taxpayer, the adjusted taxable income for any taxable year is equal to the taxable income for such taxable year (within the meaning of section 63 and determined without regard to this subsection)—

"(1) increased by any interest expense deduction, charitable contribution deduction, and any net operating loss deduction carried forward from any prior taxable year, and

"(2) reduced by any interest income, dividend income, and net operating losses to the extent such losses exceed taxable income for the taxable year.

In the case of any applicable taxpayer which is a foreign corporation, the adjusted taxable income shall be determined with respect to such income which is effectively connected with the conduct of a trade or business in the United States.

"(c) REASONABLY INFLATED AVERAGE PROFIT.—For purposes of this chapter, with respect to any applicable taxpayer, the reasonably inflated average profit for any taxable year is an amount equal to the average of the adjusted taxable income of such taxpayer for taxable years beginning during the 2000-2004 taxable year period (determined without regard to the taxable year with the highest adjusted taxable income in such period) plus 10 percent of such average.

"SEC. 5898. SPECIAL RULES AND DEFINITIONS.

"(a) WITHHOLDING AND DEPOSIT OF TAX.—The Secretary shall provide such rules as are necessary for the withholding and deposit of the tax imposed under section 5896.

"(b) RECORDS AND INFORMATION.—Each taxpayer liable for tax under section 5896 shall keep such records, make such returns, and furnish such information as the Secretary may by regulations prescribe.

"(c) RETURN OF WINDFALL PROFIT TAX.—The Secretary shall provide for the filing and the time of such filing of the return of the tax imposed under section 5896.

"(d) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(e) BUSINESSES UNDER COMMON CONTROL.—For purposes of this chapter, all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter.".

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"CHAPTER 56. Temporary Windfall Profits on Crude Oil.".

(c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—The first sentence of section 164(a) of the Internal Revenue Code of 1986 (relating to deduction for taxes) is amended by inserting after paragraph (5) the following new paragraph:

"(6) The windfall profit tax imposed by section 5896.".

(d) LOW INCOME HOME ENERGY ASSISTANCE TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following new section:

"SEC. 9511. LOW-INCOME HOME ENERGY ASSISTANCE TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Low-Income Home Energy Assistance Trust Fund', consisting of any amount appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Low-Income Home Energy Assistance Trust Fund amounts equivalent to the increased revenues received in the Treasury as the result of the amendment made by section 410(a) of the Tax Relief Act of 2005.

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Low Income Home Energy Assistance Trust Fund not to exceed $2,920,000,000 shall be available for fiscal year 2006, as provided by appropriation Acts, to carry out the program under the Low-Income Home Energy Assistance Act of 1981 through the distribution of funds to all the States in accordance with section 2604 of that Act (42 U.S.C. 8623) (other than subsection (e) of such section), but only if not less than $1,880,000,000 has been appropriated for such program for such fiscal year.".

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

"Sec. 9511. Low-Income Home Energy Assistance Trust Fund.".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning in 2005.

(2) SUBSECTION (d).—The amendments made by subsection (d) shall take effect on the date of the enactment of this Act.

Mr. REED. I offer this amendment along with Senator KENNEDY, Senator SCHUMER, Senator KOHL, Senator ROCKEFELLER, Senator KERRY, Senator CARPER, Senator LEAHY, Senator LIEBERMAN, Senator DAYTON, and Senator STABENOW.

Mr. President, this amendment is about LIHEAP, the Low Income Heating Assistance Program. Each of us, at this point, is very familiar with the struggle that is taking place today—and if you were outside early this morning, you understand temperatures are falling—that many families are having to heat their homes for this winter. According to EIA's Short-Term Energy Outlook released last week, energy costs for the average family using

heating oil are estimated to hit $1,500 this winter, an increase of $325 over last year's heating season. Natural gas prices could hit $1,000, an increase of $300. For a family using propane, prices are projected to hit $1,300, an increase of $230.

Despite these sharp increases in fuel costs, we sadly continue to fund LIHEAP, the one program that can provide sufficient help, at the same level as last year, which in reality means an actual cut in the level of assistance we can provide low-income consumers this winter's heating season.

The responsible thing for Congress to do is to fully fund LIHEAP at the full $5.1 billion authorized in the Energy Policy Act enacted earlier this year. Indeed, we have tried to do that—not once but three times—in the past few weeks. Senator COLLINS and I, along with some 30 of our colleagues, have offered amendments to the Defense bill, the Transportation-Treasury-HUD bill, and the Labor-HHS bill to fully fund LIHEAP. We have reached across the aisle and across the country to provide more assistance for the LIHEAP program, and in each instance a majority of this body has gone on record to support full funding.

Today, I come to the floor to offer another amendment to fully fund the LIHEAP program. This time I seek to offset that increase with a temporary 1-year windfall profits tax on large oil companies. This tax would be on the excess profits large integrated oil companies have earned as fuel prices reached record heights over the past year.

My amendment draws from Senator SCHUMER's legislation to define windfall profits. My amendment creates a temporary levy on the excess profits of U.S. oil companies and foreign companies that do substantial business in the United States. I would like to thank Senators DORGAN and DODD for proposing the windfall profits tax, and Senator SCHUMER for his modification to this proposal.

The temporary levy applies to major integrated oil companies which have an average daily world-wide production of crude oil of at least 500,000 barrels for the taxable year. Under our revenue mechanism companies will calculate the average of annual profits for the years 2002 to 2004, subtracting the highest year, and then adding 10 percent. The resulting number is the reasonably inflated average profit for calculating the amount of windfall profits. Any profits earned from U.S. operations in 2005 that exceed this reasonably inflated average profit are deemed a ''windfall profit'' and is taxed at the rate necessary to raise the required $2.92 billion needed to fully fund LIHEAP.

This is a temporary 1-year measure. The tax rate is set simply to fund the authorized level of LIHEAP. In America no family should be forced to choose between heating their home and putting food on the table for their children. No senior citizen should have to decide between buying fuel or buying pharmaceuticals. But, unfortunately, this sadly is the case and this winter it will be the case in too many situations. The heat-or-eat dilemma is not just rhetoric. The RAND Corporation conducted a study and found that low-income households reduced food expenditures by roughly the same amount as increases in fuel expenditures. In some respects this is a tidal wave not of rising water like Katrina but of rising energy prices.

We have all gone out and had the opportunity to visit with constituents and get a firsthand glimpse of the struggle they are faced with. I visited a few weeks ago with Mr. Aram Ohanian, an 88-year-old veteran of the U.S. Army in World War II, living on a $779-a-month Social Security check, and money is so tight that sometimes he has to eat with his children or go to a local soup kitchen, and he also has to get assistance from a food bank. These price increases to Mr. Ohanian will be very difficult. He received assistance last year with respect to LIHEAP funding, but that assistance will be relatively less this year because of rising prices and maybe because the demand will be much more.

Last month, the Social Security Administration announced that cost-of-living adjustments for 2006 on average is about $65. That $65 increase to Mr. Ohanian is not going to take up the slack in terms of these tremendous fuel prices.

Now, this amendment would increase LIHEAP funding by $2.92 billion. In fact, even if we did this, there would still be a significant number of Americans who qualify for the program but will not get help. But at least we are taking a step toward fully authorizing this very important program.

I hope we can, in fact, support this effort. Some have objected not because the LIHEAP program does need money but because there was no offset. Today there is an offset. This windfall profits tax will pay for the additional cost of LIHEAP, and I can't think of anything more appropriate than asking fuel companies, oil companies to take some of their very extraordinary profits and put them back so that poor people can buy their products. I think that is fair. I think it is just. I think it makes a lot of sense.

I asked them voluntarily, sent a letter to all the oil executives saying: Would you pledge 10 percent of your profits to the local community agencies that provide support? I have heard but from one company, CITGO, who talked about their plan to give bulk fuel. Everyone else has said nothing. They are going on as if American families are not in desperate situations because of the price of heating oil.

Mr. President, I hope my colleagues, in fact, are able to support this method which fully pays for the increase to LIHEAP which so many of us agree is absolutely necessary.

I yield back the Senator from Montana any time I have.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, if my colleague will yield a second, I ask unanimous consent that after the Coburn amendment is debated or set aside, Senator SANTORUM be recognized to speak for 15 minutes, Mr. BYRD be recognized to speak for 30 minutes, and Senator FEINGOLD be recognized to offer his amendment on pay-go with 30 minutes of debate equally divided.

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

The Senator from Connecticut.

Mr. DODD. Mr. President, may I ask—the understanding at this moment is Senator DORGAN and myself are recognized for how much time?

The PRESIDING OFFICER. Fifteen minutes on each side—15 minutes for the Senators from Connecticut and North Dakota and 15 minutes on the other side.

Mr. DODD. Mr. President, let me thank, again, my colleague from North Dakota for offering this amendment. I am pleased to be the lead cosponsor of it.

This was brought up a number of weeks ago. This isn't something the Senator from North Dakota conjured up in the last several days. It is one he suggested back a number of weeks ago when the first skyrocketing prices occurred and the information emerged about these incredible, historic profits.

Just to put it in perspective in these few minutes, we have remaining before we vote on this amendment, in the space of 12 weeks—12 weeks—the five largest integrated oil companies secured profits approaching $33 billion.

Now, again, let me state the obvious, or hopefully what is the obvious. The Senator from North Dakota and I have no difficulty whatsoever with the idea that businesses, including energy companies, make a legitimate and decent profit because of their investments and their work. But from time to time we have seen in our Nation's history profiteering where excessive profits are made at the expense of what needs to be done for the good of the country. In this case, to develop additional energy resources.

What we are suggesting with this amendment is that with windfall profits that exceed $40 a barrel, we offer the integrated companies an alternative. One: take the windfall profits and invest them back in the development of existing or alternative energy sources; or two: give rebates to consumers in this country who are paying these incredibly higher prices in gasoline and home heating oil. Don't just go out and buy your own stock or engage in merger acquisitions at a time when we need to be less dependent on politically fragile parts of the world such as we are today.

We know over and over again, that the companies are bragging in their own annual reports about record profits. In 2004, one major oil company, in

its annual report, stated that it had recorded 48 percent higher profits because of the higher prices of oil and gasoline. And at the same time they announced to the world in that annual report that they actually reduced their production by 3 percent. We know that refining capacity is near 100 percent. We also know that many of these same integrated companies virtually eliminated 176 refineries in the last 25 years. It is not because of environmental problems or people objecting to existing refineries. They decided themselves to reduce their refining capacity.

Again, you don't need to have a Ph.D. in economics to understand a company is profiteering to such a degree that it hurts our country. We ought to be doing a better job than that.

With this amendment, we are asking this industry to either reinvest these excessive profits into increasing the availability of supply in our country or provide the rebates for individuals who could use the help. It is not just taking the money and putting it in the general fund and saying, We will decide what to do with it later.

I heard my colleague from Rhode Island making an impassioned plea for the LIHEAP program, and I agree with him. I have watched him offer this amendment on several occasions over the last few years. This body has seen fit to turn down those amendments over and over. So we are not going to get much help there.

The suggestion is, why not ask this industry that is recording nearly $33 billion of profits in 12 weeks to do a little something to help the folks in Connecticut, Minnesota, or North Dakota who are going to be paying very high home heating prices. In fact, in my State, the estimated cost in that area alone would be about $325 more this year per household, not to mention, the continued high gasoline prices. While gasoline prices are coming down somewhat, they are still about 32 cents higher than last year.

Again, I think the industry owes it. We saw during another time in our Nation's history, World War II, that another Senator in this body, Harry Truman, demanded a stop to the profiteering that was occurring in this country.

We are not denying anybody a right to make a legitimate profit, but when those profits put our Nation at risk, when they cause people who deserve better to pay exorbitant prices to stay warm and to use the automobiles they need, then we ought to be standing up as a collective body saying: You have to stop that. There is no justification for it. Remember, these prices began to climb before August 29. It wasn't Katrina. These prices began to climb during the spring and summer months. Katrina has caused some problems, no question about it, but to use Katrina as the excuse for these skyrocketing prices is not based on fact at all. We are urging our colleagues to join us in this effort. This would be a major source of relief for people across the country. Alternatively, the industry could do the right thing and invest those windfall profits in new energy sources and refineries instead of merging and buying back their own stock. Half of the profits last year were spent on buying back stock, not in new exploration. The amendment serves as an incentive. That is what the Dorgan amendment does.

I am pleased to be a cosponsor of the amendment. We urge our colleagues to support it.

I yield to my colleague.

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

The PRESIDING OFFICER. Nine minutes.

Mr. DORGAN. Mr. President, first, I thank my colleague from Connecticut for his support on this amendment.

I want to spend a little time responding to some of the opponents who have completely mischaracterized the amendment, which is everyone's right on the floor of the Senate. It is important for everyone to hear the facts.

We did hear last evening a colleague say he was sick of populism, just sick of populism. When the little guy gets hurt, and the little guy is getting rich at the same time, populism means you stand up for the little guy. And I would say, get used to it. If you are sick of it, get used to it, because this Senate floor is where you stand for people who don't have the capability to stand for themselves.

In this case, what is happening in our country is unfair, just unfair. The oil giants, larger because of mergers, are recording record profits, the highest in the history. Here are what the profits look like, unbelievable profits, the highest in the history of corporate America, and the consumers experience all the pain. They wonder, as they see the headlines, ''Big Oil's Burden of Too Much Cash,'' ''High Energy Prices Lift Profits at ConocoPhillips by 89 Percent.'' I could go on and on. ExxonMobil, $9.9 billion in the third quarter. I could go on.

The consumers wonder, as they fill their tanks, about these headlines. They wonder about these headlines as they try to heat their home this winter and pay 40, 50, 60 percent more to do it. They wonder out on the farm someplace about these headlines when they try to figure out, How am I going to be able to buy a tank of fuel?

This proposal is very simple. This proposal says that for oil over $40 a barrel price, we would impose a windfall profits tax, except that no company would pay it if all their profits are being invested into the ground to search for more energy or above ground to build more refineries. If that is what they are doing with profits, this doesn't affect them. They don't have to worry.

We have had all kinds of folks coming out to the floor with talking points. If I was the oil industry, I wouldn't like what we are doing either. I understand that. It is perfectly logic. The talking points say if this amendment is passed, we are going to see less production of oil and gas. That is total rubbish, complete nonsense. In fact, the most significant incentive for the increased production of oil and gas in this country would be the prospect of having to pay a 50-percent excise tax on profits if you don't use them for that purpose.

We say: If you do use them to expand supply of energy and therefore reduce price, you are exempt. Don't worry about this. Let me show what BusinessWeek says:

> Why Isn't Big Oil Drilling More? Rather than developing new fields, oil giants have preferred to buy rivals—drilling for oil on Wall Street.

If you are buying back stock, drilling for oil on Wall Street, or if you are not using the money to expand the supply of energy, then you risk being hit with a windfall profits tax, the entire purpose of which would be to provide rebates to consumers, not to bring money into the Federal Treasury, but instead to provide a recapture and provide rebates to consumers. It is painfully simple.

Again, I say, as my colleague from Connecticut has, I think profits are fine. It is what makes our businesses work. But these are profits the likes of which we have never seen. Last year, the average price of oil was $40 a barrel, and the industry had the highest profits in history. This is unfair in this country, and we need to do something about it.

I have quoted before Bob Wills and the Texas Playboys, but what he said in that song in the thirties certainly does apply to this:

> The little bee sucks the blossom, but the big bee gets the honey.
> The little guy picks the cotton and the big guy gets the money.

And so it goes. At this point, using energy is not a luxury. Using energy for every American is a necessity. The question is, should the oil giants, made larger by blockbuster mergers, be showing record profits and then using the money to drill for oil on Wall Street, hoard cash or buy back their stock at the same time average Americans are trying to figure out how on Earth do I pay this fuel bill? Our amendment tries to solve that.

How much time remains?

The PRESIDING OFFICER. The Senator has 4 minutes 20 seconds.

Mr. DORGAN. I reserve my time. If there are speakers on the other side, I prefer they use their time.

The PRESIDING OFFICER. Who yields time? The Senator from Wyoming.

Mr. THOMAS. Mr. President, we are back on the amendment again. This morning we went through this, but I think it is worthwhile going through it again to talk about the difficulty of trying to do something with a windfall profits tax.

We have done this before, and I know my colleagues put some exemptions in

there. The fact is, they are still taking windfall profits, something we tried before and doesn't work. Distribution doesn't work. We have been through that. This is something that is not consistent with the marketplace functioning. I don't know how many times we have to go through this, but I suppose it is an issue that is certainly worth talking about.

I think, as I said this morning, there are several issues involved in this bill. One of them is the economy, and the economy is to develop jobs, to have organizations that make profits that create jobs and build the economy, and we need to do that.

The second issue, of course, and the most important perhaps for many of us, is energy—to have energy. We can see the energy bills are going down. We are moving beyond that crisis, down to where it was before. But the long-term issue still remains, and that is the one that is important to talk about. That is why we spent 2 or 3 years with an energy policy, a policy that recognizes that what we have been doing in the past, the kinds of sources we have had in the past are not going to always be there. We have to have an opportunity to move forward.

This idea of saying, We will not charge you if you go ahead and invest—there is going to be investment. There has always been investment. I come from a State where energy is being put out there. A lot of you don't. You don't understand what it costs to do some of these things. It is going to cost even more as we go to deeper wells, as we go to oil shale, as we go to secondary recovery. But the idea that is being used by my friend over here is that the energy companies are making too much money.

Take a look at this chart. This chart shows earnings of major industries during the second quarter of 2005. And then it is adjusted to the third quarter of 2005, where we are now. Take a little look here. What is the highest one? Banks. Maybe we ought to have a little windfall profits tax on banks, do you think, and put that money out? Why don't you try that one. Here is pharmaceuticals. My gosh, 18-percent return. That would be great. Then you can hand out a bunch of free drugs. I think that would work into your philosophy. Software services, semiconductors, diversified financials, household personal products, consumer services, insurance, communications, food and beverage, real estate, health care, materials, U.S. industry average, 7.9. Oh, my goodness, here is oil and natural gas, 7.6, below the national average. And this whole thing is predicated on these people making too much money. I don't understand that. That has been adjusted. Now they are right above that, 8. Look where they are. What is unusual about that?

These are big dollars, that is true, but the return on investment is not extraordinary. There has been more activity there, so obviously there are more dollars.

I wish my colleagues would come with me and talk about what we anticipate happening, what we are going to do about changing some of the energy that is going into other kinds of products so that we can have it for the future. Do you think that is going to cost a lot of money? Of course it is. Do you think they want to have to justify what their investment is with the Federal Government? I don't think so.

If there is anything around here we need to be doing, it is getting the Federal Government out of some of these kinds of private sector investments instead of getting into it more and more.

What the Senator is suggesting is, if I am an energy company, I have to go to an agency and find out whether what I am doing justifies me not having a withholding tax. Those are not the kinds of things we need to do.

We continue to hear more and more about let's get the Federal Government involved in making these kinds of decisions. These aren't the kind of decisions that need to be made. That is the marketplace, and that is what the marketplace is about. We can see it changing almost daily, and it should, there is no question about that.

Again, this whole discussion that has gone on today and yesterday makes me wonder why we messed around trying to get an energy policy that gives us some direction in the future, that gives us some idea of how we should be investing in the future, with new kinds of energy and doing it without getting the approval of a Federal Government agency or somebody in the Congress to decide whether that investment is a sound investment. That is what the marketplace is for. We are making real progress in doing that.

I think this idea—and I know the idea is basically how we are going to get some money out to everyone, which is not a brand-new idea. My friends on the other side are big on that one, and I understand it, but this is not the way to do that. This is not the way to take windfall profits, and if so, let's start up here at the top of the chart. Let's start up here. If we are going to play that game, why, that is probably the way we ought to go.

I will stop here and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield myself 2 minutes. That was about as good a presentation supporting windfall profits as could be made. These charts of an 89-percent increase, the highest profits in the history of corporations, and so on, it is a pretty hard case to make on the floor of the Senate that these profits don't exist or this industry somehow isn't very profitable.

My colleague talks about the long run. The problem is you don't heat your home in the long run, you heat your home tonight. And if you are stuck with a 50-percent increase to heat your home tonight, you don't worry about the long run; you have to figure out how you do it now.

My constituents and his, when they order a load of fuel to be delivered to their farm and ranch, they are not going to pay for that in the long run; they are going to pay for it now.

My point is this: This notion of the marketplace functioning—I would love to have a debate about the marketplace. This is so far from the free marketplace, it is unbelievable. There is no free market here. You have OPEC ministers sitting around a table deciding supply and price. There are the biggest oil companies, much bigger because of mergers, that have more raw muscle in the marketplace, and then there are the futures markets which, instead of providing liquidity, have become grand casinos of speculation. Now we call it the marketplace. Too bad for the consumers.

Somebody ought to probably stand on the side of the consumers—that is the point of all of this—to say that this is not fair. This marketplace does not work for everybody. It works to provide the biggest profits in history for the oil companies.

My colleague says: Well, they are just doing a really good job. Yes, they are. BusinessWeek itself says what they are doing is drilling for oil on Wall Street, not drilling for oil underground.

Our point is simple: No major oil companies will pay this windfall profits tax if they are doing the right thing. And if they are not, we will recapture it and send rebates to consumers. If my colleagues are against that, vote against the amendment, and I understand it.

I reserve our time.

The PRESIDING OFFICER. Who yields time?

The Senator from Connecticut.

Mr. DODD. Mr. President, I will just pick up and then let my friend from Wyoming conclude this debate. Again, I commend him on trying to make as strong a case as he could.

There is a fundamental difference here. We are talking about not just any other commodity or service; we are talking about things that are essential for people to survive. We are about to enter the winter season. We have been feeling it in the Nation's Capitol the last 24 hours; the temperature has dropped to 40 degrees. I suspect our Indian summer is over. Across the northern tier States and western States alike, people on fixed incomes do not have any choice on whether to heat their homes and take care of their families. So unlike other sectors of the economy where there are some choices involved, when it comes to this commodity, oil, America depends upon it for people to remain safe, healthy, and sound.

Many people across the country, certainly in western States more than eastern states, have no other alternative in terms of how they get to their jobs or their schools or those

places they must be. It is the automobile. That is what they have to rely on. Mass transit systems do not exist everywhere. So this is not just some random commodity or service we are talking about. That is the first point.

No. 2, the point was made earlier by my colleague from North Dakota, that we are talking about the large, integrated oil companies. I showed the list yesterday. We now talk about ExxonMobil; it used to be Exxon and Mobil. It used to be Conoco and Phillips; now it is ConocoPhillips. At some point we may have one or two companies left. When OPEC sits down, that is hardly free enterprise or a free market system. These prices are being established by a handful of people basically deciding what we will pay as consumers.

One tries to find some economic justification for it and some people are saying it was Katrina. Again, I admit Katrina has caused disruption, but these prices moved long before Katrina occurred. There is no economic justification that I can find. In fact, the industry itself admits that they showed record profits while they reduced production.

Their own annual reports indicate what they are doing with the profits. They are out there buying back their own stock. They are engaging in mergers.

We are saying, Look, you owe some responsibility to increase production or help us develop some alternatives. We just gave you massive tax breaks in the Energy bill. Alternatively, provide some relief to the businesses, the farmers, the consumers who are going to be paying these higher prices. This provides an alternative, an incentive. We provided an incentive with the Energy bill by providing tax breaks for the industry. They get the tax break if they will do certain things.

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

Mr. DODD. We urge the adoption of this amendment. These are essential needs. There is no choice for consumers today. This is a proper role for Government, to go in and demand this kind of accountability.

We yield back the remainder of the time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Do I have some time remaining?

The PRESIDING OFFICER. The Senator has 8 minutes 46 seconds remaining.

Mr. THOMAS. Mr. President, it is interesting, the proper role for Government—I guess that is a choice we make. Certainly we have a different point of view about the role of Government, not only on this but on many things.

We talk about how important oil and gas is. It certainly is important. What about food and beverage—is this important? No, that is just something that we play with. What about insurance—is that important? Of course, all of these things are important. Somehow we want to pick out one commodity and do something with it. We keep talking about these profits. Again, let me say that the profits in these companies are not as equal as these. So the idea that they are overly profitable—they are not.

I am not sure that the Senator is familiar with the costs of energy production. We are talking now about doing offshore things. It costs millions of dollars to drill a well. These are not small-dollar kinds of things.

Again, I say one should not have to subject themselves to the oversight of a Government agency to decide whether they can use the money they earn to invest in their own business. That just does not make much sense.

We talk about reducing the costs. Well, everybody wants to reduce the costs. Take a look at the gas pump over the last 6 months. It has been reduced from about $3 a gallon to now below $2, so we are making some progress.

He talks about OPEC setting the price. Why do my colleagues think that is? Because we are so dependent on importing energy. Our job ought to be to allow ourselves to have these investments in domestic energy, alternative energy, and do some things to avoid what has been done there.

So I understand my friends over there who have a different point of view, but it is quite a different point of view. It is quite a different point of view than we have had in this bill. It is quite a different point of view than we have had in the Energy bill. It is quite a different point of view in the ideas we have had to create a stronger economy and more jobs. So I certainly urge people to vote against this amendment.

I yield the floor.

Mr. BROWNBACK. Mr. President, I rise today in opposition to Senator DORGAN's windfall profits tax amendment. This amendment seeks to punish oil companies with a punitive tax on profits when oil prices go above $40 per barrel. This amendment is shortsighted and extremely bad fiscal policy.

First, this bill already includes a $4.923 billion tax penalty on large integrated oil companies. The Dorgan amendment would simply add on to the penalty currently in this bill. The belief persists that the oil companies' profits are ''extreme'' or ''excessive.'' However, this belief is unfounded. Yes, most oil companies did have record-setting profits during the 3rd quarter. But history has clearly shown that the oil industry is ''boom or bust.'' One needs look no further than my home State of Kansas. During the 1970s and 1980s, the economy in Kansas was tied directly to the oil and natural gas industry. As their profits spiked or fell, our economy would do the same. I say this to prove that I have firsthand knowledge of how volatile the oil industry is. We need not tax a single industry simply because it had a good quarter. Even a record-setting quarter is not reason to add a windfall tax. This is bad policy and sets a negative precedent. This clearly puts a disincentive in the marketplace for American companies, in all sectors of our economy, to not perform their best. This is not the signal we want to be sending in a competitive, global economy.

Building upon the fact that the oil industry has many fluctuations, a windfall tax on profits would reduce needed private investments in energy infrastructure. If the industry is not allowed to benefit during periods of high prices because of a tax on profits, there will be precious little incentive to invest in domestic production. These investments lead to more production, which in turn lead to lower prices. A windfall profit tax would disrupt the normal cyclical movement of the energy industry.

Finally, a windfall profits tax would harm the numerous individuals who have invested in the energy industry through pension plans and mutual funds because this new tax would reduce capital gains and dividends payments.

Mr. President, I believe it is clear this amendment would do much more harm than good. It is shortsighted, market distorting, and sets a bad precedent for every industry in our economy.

The PRESIDING OFFICER. Who yields time?

The Senator from Connecticut is out of time.

Mr. DODD. I yield back our time.

The PRESIDING OFFICER. All time is yielded back.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I raise a point of order that the Dorgan amendment is not germane to the underlying legislation.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant Journal clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 35, nays 64, as follows:

[Rollcall Vote No. 331 Leg.]

YEAS—35

Akaka	Biden	Byrd
Bayh	Boxer	Clinton

Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Murray
Nelson (FL)
Obama
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Wyden

NAYS—64

Alexander
Allard
Allen
Baucus
Bennett
Bingaman
Bond
Brownback
Bunning
Burns
Burr
Cantwell
Carper
Chafee
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Domenici
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Landrieu
Lincoln
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Nelson (NE)
Pryor
Roberts
Salazar
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NOT VOTING—1

Corzine

The PRESIDING OFFICER (Mr. CORNYN). On this vote, the yeas are 35, the nays are 64.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

AMENDMENT NO. 2609

The PRESIDING OFFICER. There are now 2 minutes equally divided in relation to the Feinstein amendment No. 2609.

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I present this amendment on behalf of Senators SUNUNU, GREGG, WYDEN, CANTWELL, FEINGOLD, BURR, MCCAIN, KERRY, COLLINS, CLINTON, SCHUMER, SNOWE, and myself.

In April of this year, the President of the United States stated this:

> With oil at more than $50 a barrel, energy companies do not need taxpayer-funded incentives to explore for oil and gas.

Before a joint Senate hearing last week, the big companies—ExxonMobil, Chevron, ConocoPhillips, BP, and Shell—said they do not need these tax incentives. Each CEO said they did not need it.

This amendment removes those tax incentives. I think the time has come to do that.

Mr. FEINGOLD. Mr. President, I offer my strong support for Senator FEINSTEIN's amendment to change section 263(C) of the Tax Code, and I thank her for her work on it. The provision that her amendment targets allows large, integrated oil companies to expense, instead of capitalize, intangible drilling and development costs, such as fuel costs, workers' wages, and drilling equipment. This is a complicated way of saying that U.S. taxpayer dollars have been subsidizing the regular costs of integrated oil companies doing business, something that doesn't make sense.

Repealing this provision of the Tax Code could result in upwards of $2 billion more dollars in the Treasury over the next 5 years. Two billion dollars instead of simply transferring this significant amount of money to companies we all know are currently experiencing record profits, these funds could support a variety of important programs or could be used to reduce our skyrocketing deficit so that our children don't inherit our fiscal mess. Integrated oil companies are some of the largest corporations in the world—they simply don't need this tax break.

This amendment makes common sense and I encourage my colleagues to vote in favor of it.

Mr. GRASSLEY. Mr. President, I yield 1 minute to the Senator from New Mexico.

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

Mr. DOMENICI. Mr. President, first, the Senator is offering an amendment which purports to respond to what some executives had to say about whether they needed or wanted the tax provisions in the Tax Policy Act we passed. These provisions—the principal ones—are 50 years old. They are not part of the energy package. They have been there for 50 years, upon which the energy companies rely when they drill expensive holes and invest expensive amounts. It has to do with the amortization of costs. Some of it is intangible, meaning it is not a product because part of the cost is intangible. Part of the cost that goes into producing these is seismic information and the like. That is why it is called that. But these were not adopted in the energy package. They have been part of the production of energy in the United States for eons. We want more production, and we come along and take those away.

It seems to me this is the wrong time, and it is not germane.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I raise a point of order that the Feinstein amendment is not germane to the underlying bill.

Mrs. FEINSTEIN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for the purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER (Mr. VITTER). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 48, nays 51, as follows:

[Rollcall Vote No. 332 Leg.]

YEAS—48

Akaka
Bayh
Biden
Boxer
Burr
Byrd
Cantwell
Carper
Chafee
Clinton
Coleman
Collins
Dayton
DeMint
DeWine
Dodd
Durbin
Feingold
Feinstein
Gregg
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Lieberman
Lincoln
McCain
Mikulski
Murray
Nelson (FL)
Obama
Pryor
Reed
Reid
Rockefeller
Sarbanes
Schumer
Snowe
Specter
Stabenow
Sununu
Talent
Wyden

NAYS—51

Alexander
Allard
Allen
Baucus
Bennett
Bingaman
Bond
Brownback
Bunning
Burns
Chambliss
Coburn
Cochran
Conrad
Cornyn
Craig
Crapo
Dole
Domenici
Dorgan
Ensign
Enzi
Frist
Graham
Grassley
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Landrieu
Levin
Lott
Lugar
Martinez
McConnell
Murkowski
Nelson (NE)
Roberts
Salazar
Santorum
Sessions
Shelby
Smith
Stevens
Thomas
Thune
Vitter
Voinovich
Warner

NOT VOTING—1

Corzine

The PRESIDING OFFICER. On this question, the yeas are 48, the nays are 51. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

AMENDMENT NO. 2610

There are now 2 minutes equally divided prior to a vote on the Feinstein amendment No. 2610.

Mrs. FEINSTEIN. Mr. President, we have all seen the HHS bill go down in the Senate. There is a message in this. That is that the people of America are only going to accept so many cuts in health care, in Medicaid, in Medicare, in transportation, and other vital areas.

This amendment directly targets our budget deficit. If the budget is not in balance, tax rates for income, capital gains, and dividends will return to previous levels and deductions for taxpayers earning more than an adjusted gross income of $1 million a year.

According to the Joint Committee on Taxation and the Tax Policy Center, this amendment could increase revenues by more than $100 billion over 5 years. It is a strong step, a first step in helping the budget deficit and also saying to people in this country that millionaires are prepared to forego tax cuts to benefit the very poor of our country.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. I am against the Feinstein amendment. It is a typical Democratic response to a budget: Raise taxes. They happen to think that Americans are crying, ''We are

undertaxed.'' I don't hear that from my constituents. I bet they don't hear it in California either.

If those taxpayers she is talking about were only coupon-clipping, Park Avenue millionaires or somebody from Rodeo Drive, a resident of Beverly Hills, I would not be concerned. But we are talking about taxing small business people 80 percent by the Treasury Department. The people that fall into this category whom she wants to tax are the small business people that create 70 to 80 percent of the jobs in America. There is no reason, when we finally have the individual tax rate at 35, the same as the corporate tax rate, to treat small business the same as we treat corporations—not have a bias in the tax bill. We shouldn't go back to that bias.

The PRESIDING OFFICER. All time has expired.

Mr. GRASSLEY. Mr. President, I raise a point of order.

The PRESIDING OFFICER. The Senator is recognized to state his point of order.

Mr. GRASSLEY. Mr. President, I raise a point of order that the Feinstein amendment is not germane to the underlying bill.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections for the purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announced that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 40, nays 59, as follows:

[Rollcall Vote No. 333 Leg.]

YEAS—40

Akaka	Feinstein	Murray
Bayh	Harkin	Nelson (FL)
Biden	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Carper	Kennedy	Reid
Chafee	Kerry	Rockefeller
Clinton	Kohl	Salazar
Conrad	Lautenberg	Sarbanes
Dayton	Leahy	Schumer
Dodd	Levin	Stabenow
Dorgan	Lieberman	Wyden
Durbin	Lincoln	
Feingold	Mikulski	

NAYS—59

Alexander	Burns	Craig
Allard	Burr	Crapo
Allen	Cantwell	DeMint
Baucus	Chambliss	DeWine
Bennett	Coburn	Dole
Bingaman	Cochran	Domenici
Bond	Coleman	Ensign
Brownback	Collins	Enzi
Bunning	Cornyn	Frist
Graham	Lugar	Snowe
Grassley	Martinez	Specter
Gregg	McCain	Stevens
Hagel	McConnell	Sununu
Hatch	Murkowski	Talent
Hutchison	Nelson (NE)	Thomas
Inhofe	Roberts	Thune
Isakson	Santorum	Vitter
Kyl	Sessions	Voinovich
Landrieu	Shelby	Warner
Lott	Smith	

NOT VOTING—1

Corzine

The PRESIDING OFFICER. On this vote, the yeas are 40, the nays are 59. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

AMENDMENT NO. 2612

The PRESIDING OFFICER. There are now 2 minutes evenly divided prior to a vote in relation to the Cantwell amendment No. 2612.

Who seeks recognition?

The Senator from Washington.

Ms. CANTWELL. My amendment makes price gouging a Federal crime. It does two things. It implements what is in 28 different States the law to make sure consumers are protected from price gouging, and it gives the FTC, the Department of Justice, and State attorneys general the ability to look at market manipulation as a Federal crime when energy markets are manipulated. I urge my colleagues to support, at a time when we are going home to high heating oil prices, something that will protect consumers by giving new tools to the Federal statute.

Mr. KOHL. Mr. President, I rise today in support of the Cantwell anti-price gouging amendment to S. 2020, the tax reconciliation bill. This amendment is identical to Senator CANTWELL's Energy Emergency Consumer Protection Act of 2005, a bill that I cosponsored with 29 colleagues. This amendment will, for the first time, give our Federal Government the needed tools to prosecute those unscrupulous individuals and companies that seek to take advantage of emergencies and disasters by price gouging consumers in the sale of gasoline and other petroleum products.

We have all seen the suffering caused to consumers when gas prices spike in the wake of disruptions in supply caused by natural disasters. While gas prices have come down from their record levels of over $ 3.00 per gallon in many places in the last few weeks, they are still too high. And the experience of this past September teaches us that the danger to consumers resulting from tight supplies and high demand remains acute. We cannot allow consumers to remain vulnerable to price gouging and market manipulation the next time our essential energy supplies face disruption.

Recent experience shows us beyond doubt the need for this amendment. Allegations of price gouging and drastic price spikes were unfortunately commonplace in the immediate days following the Hurricane Katrina disaster—including, for example, gas being sold at $6.00 per gallon in the Atlanta area. It appeared that the human suffering caused by loss of life, housing, and employment, was compounded by some unscrupulous individuals and businesses who took advantage of the emergency by gouging consumers. Yet, under current law, the Federal Government had virtually no ability to prosecute such price gouging. This amendment will correct this critical deficiency.

This amendment contains several important provisions. First, it gives the President the authority to declare an energy emergency during times of disruptions in the supply or distribution of gasoline or petroleum products. Second, the amendment, for the first time, declares illegal under Federal law selling gasoline or petroleum products at a price unconscionably high or when circumstances indicate that the seller is taking unfair advantage to increase prices unreasonably in times of energy emergency. Those who violate this law face civil penalties of up to $3,000,000 per day and criminal penalties, including jail terms of up to 5 years for individuals, as well. The amendment also forbids market manipulation in connection with the sale of gasoline and petroleum products and empowers the experts at the Federal Trade Commission to write regulations setting forth specific conduct constitution market manipulation. Additionally, our amendment gives States attorneys general the power to enforce these provisions as well.

These measures are an urgently needed deterrent to prevent all those would seek to profit from disasters such as Hurricane Katrina by price gouging consumers in the price of gasoline or other essential energy supplies. Our amendment will protect consumers—both those who were the victims of Hurricane Katrina and those who may be victimized in the future—who suffer every day at the gas pumps from the real and growing economic pain caused by high gas and energy prices. As ranking member on the Senate Antitrust Subcommittee, I believe that this measure is necessary to prevent unscrupulous companies from ever again using a natural or manmade disaster to justify uncompetitive gas price hikes. All of us can agree that profiteering and price gouging in the price of an essential commodity like gasoline is simply unacceptable. Such conduct violates every principle of free and fair competition. We must give the Federal Government the necessary tools to prevent such misconduct, and prosecute those who do so.

I urge my colleagues to support the Cantwell amendment.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, the committee held a hearing on this and some of the items we are pursuing,

some of the concepts, might be involved with this amendment. But this is not germane to this bill, nor the place for the Senate to consider this action. The FTC may need some jurisdiction here, but the jurisdiction that would follow with the Cantwell amendment is much too broad. Twenty-seven States have this authority now. The question is whether we should at some time give the FTC jurisdiction over multiple State problems. This is no way to go about it. It is not germane to the bill. I raise a point of order that the amendment is not germane to the underlying bill.

Ms. CANTWELL. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of the act for consideration of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 57, nays 42, as follows:

[Rollcall Vote No. 334 Leg.]

YEAS—57

Akaka	Durbin	Murray
Baucus	Feingold	Nelson (FL)
Bayh	Feinstein	Nelson (NE)
Biden	Graham	Obama
Bingaman	Harkin	Pryor
Boxer	Hutchison	Reed
Byrd	Inouye	Reid
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Salazar
Chafee	Kennedy	Santorum
Clinton	Kerry	Sarbanes
Coleman	Kohl	Schumer
Collins	Landrieu	Smith
Conrad	Lautenberg	Snowe
Cornyn	Leahy	Specter
Dayton	Levin	Stabenow
DeWine	Lieberman	Talent
Dodd	Lincoln	Thune
Dorgan	Mikulski	Wyden

NAYS—42

Alexander	DeMint	Lugar
Allard	Dole	Martinez
Allen	Domenici	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brownback	Frist	Roberts
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Burr	Hagel	Stevens
Chambliss	Hatch	Sununu
Coburn	Inhofe	Thomas
Cochran	Isakson	Vitter
Craig	Kyl	Voinovich
Crapo	Lott	Warner

NOT VOTING—1

Corzine

The PRESIDING OFFICER. On this vote the yeas are 57, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained and the amendment falls.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I propose that we reach a time agreement on this next pending amendment, which is the Coburn amendment. I ask unanimous consent that the time on the Coburn amendment be limited to 1 hour equally divided.

The PRESIDING OFFICER. Is there objection?

The Senator from Oklahoma.

Mr. COBURN. Reserving the right to object, Mr. President, I probably don't have a problem with that. I do not want to make a time agreement——

Mr. BAUCUS. Mr. President, the Senate is not in order. I have a hard time hearing the Senator.

Mr. COBURN. It is my hope that we could finish this in 1 hour, and I will do everything I can to do that. I do not want to limit my ability to answer questions in this case. The Senator has my word that I will limit the amount of debate so that we can try to finish in an hour. But I would object to limiting it formally, and I will do everything I can to finish it in an hour.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I hear the Senator from Oklahoma, with all due respect. I wonder if we could agree to maybe 1½ hours.

Mr. COBURN. I have no objection to that whatsoever.

Mr. BAUCUS. With the understanding that perhaps an hour and a half may not all be used.

Mr. COBURN. I have no objection.

Mr. BAUCUS. I renew my request for 1½ hours equally divided.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Mississippi.

AMENDMENT NO. 2633

Mr. LOTT. Mr. President, I call up amendment No. 2633 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 2633.

Mr. LOTT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify treatment of outside income and expenses in the Senate)

At the appropriate place, insert the following:

SEC. ___. CLARIFICATION OF TREATMENT OF OUTSIDE INCOME AND EXPENSES IN THE SENATE.

(a) IN GENERAL.—For purposes of rule XXXVI and paragraph 5(b)(3) of rule XXXVII of the Standing Rules of the Senate, compensation or outside earned income for any calendar year shall be reduced by actual and necessary expenses incurred by a Member of the Senate in connection with the practice of medicine. A Member of the Senate shall include information with respect to such expenses with any report in which such compensation or income is required to be included.

(b) PAYMENT OR REIMBURSEMENT.—If expenses described in subsection (a) are—

(1) paid or reimbursed by another person, the amount of any such payment shall not be counted as compensation or outside earned income; and

(2) not paid or reimbursed, the amount of compensation or outside earned income shall be determined by subtracting the actual and necessary expenses incurred by the Member from any payment received for the activity.

Mr. LOTT. Mr. President, this is the amendment dealing with the resolution of the Senator from Oklahoma, and I just want to clarify that because it will be referred to as the Coburn amendment. I want to make sure everybody understands that is what we are talking about.

Before I get into my remarks, I would like to yield, as a convenience to him, the first 2 minutes to Senator HATCH, or for additional time if he needs it.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague.

Mr. President, I rise in support of the amendment offered by our colleagues from Mississippi and Oklahoma, the Coburn amendment.

First of all, let me say I am sorry this amendment is even necessary.

It is obvious to everybody that Dr. COBURN, Senator COBURN, is an intelligent and dedicated medical doctor whose respect and love for helping people is legendary.

It is equally obvious that Dr. COBURN is an accomplished legislator whose contributions to the work of this body are important. No one can raise an issue about Dr. COBURN's work ethic, his loyalty to the Senate, to Oklahoma, or his constituents, and I say this as someone who has agreed with him on many occasions and as someone who has clashed swords with him on occasions.

There is no question in my mind the Government in general and the Senate in particular benefit from informed legislators. To preclude, Dr. COBURN—a recognized medical expert—from practicing medicine without any profit motive whatsoever is nonsensical.

There are a lot of people who depend on him and need his services; at the same time, he needs to keep up his clinical skills so that he can continue to practice medicine whenever he decides to leave the Senate. And he will not be able to maintain his surgical skills or his hospital privileges if he doesn't have this privilege.

In fact, it is a simple precept of government life that policymakers should develop some expertise in the issues they are deliberating.

To compare him to attorneys—who very often have a profit motive—is the wrong comparison, I think.

We all know Dr. COBURN to be a fine man who has a great deal of affection for his patients. I believe he deserves

the opportunity to continue to help his patients, continue his medical privileges, and be able to pay for any liability insurance that he may need. He will not make a penny from his efforts, but he will be able to up his skills, which I think is a benefit on all levels.

What better way for a doctor to develop that expertise than to continue the practice of medicine, helping real, live people with real, live problems in the real-world hospital or clinic setting?

I happen to know a little about this, even though I am a lawyer by training.

As my colleagues are aware, I have taken a great interest in health issues since coming to the Congress.

It has been my practice to solicit actively medical professionals to help advise me on health legislative matters.

I have been fortunate, for many years, to have been aided in my working representing Utahns, by the assistance of very capable Robert Wood Johnson Foundation health policy fellows.

These fellows, doctors, nurses, dentists, and health professionals, work each year in congressional offices on both sides of the aisle, and I think all of my colleagues who are fortunate enough to work with RWJ Fellows feel their work as been enriched by the presence of these very capable men and women.

I think back on those who have worked in my office, and I am so proud of what we accomplished together—David Sundwall, M.D., now the head of the Utah Health Department, Phil Marion, M.D., Michael Ashburn, M.D., Larry Kerr, PhD, Marlon Priest, M.D., David Russell, DDS, Mark Carlson, M.D., Kira Bacal, M.D.—they are all superstars.

Several years ago, before my current health policy director, Pattie DeLoatche, joined my staff, I talked to a previous fellow, Dr. Priest, about joining us in the Senate.

I hoped to woo him away from the University of Alabama.

Marlon had been an outstanding addition to my office, as an astute emergency room physician who thrived on the give and take of the Senate. His work on many issues, particularly anti-tobacco efforts and radiation compensation, stands out.

Marlon would have been a fantastic Hill staffer. And we would have benefitted greatly by his presence.

But, you know what? He said to me, ''Senator, as attractive as this offer is, I am almost 50 years old. If I come to the Senate, I can't practice medicine. I will lose my license. And when you leave office, I will no longer have a medical career. I just can't take that chance.''

That was our loss.

Similarly, it is our loss if Dr. COBURN cannot practice medicine while he is a Senator. It is the loss of this body, which can benefit so much by his expertise, and it is the loss of Oklahoma, the Nation, and indeed the world, if he cannot practice medicine.

Some have suggested, in error I believe, that medical doctors should be treated no differently than other professions, such as lawyers.

There is a big difference between those two professions.

I can serve here as a lawyer, and I do not lose my license.

That is not true for a doctor.

With all due respect to my colleagues on the Ethics Committee, and their staff, the ruling by the Ethics Committee is a bureaucratic response to a non-problem.

Dr. COBURN is not asking to make a profit here.

He has sworn to the committee and to this body that a reasonable reinterpretation of the Senate rules should allow him to practice medicine on a not-for-profit basis.

There is no conflict there.

But even more, I find it so commendable that Dr. COBURN has pledged to his constituents that he will be a citizen legislator, a central part of his Senate campaign.

If Dr. COBURN wants to honor and restore the long-standing tradition in this body of serving as citizen legislators, then so be it. More power to him.

And as I noted in the case of my former staffer, a doctor cannot become a Senate employee and retain his or her licensure.

So as a consequence, for all practical purposes, dedicated medical professionals, be they Dr. FRIST, Dr. COBURN, Dr. PRIEST, or any other doctor, dentist, nurse or other health care worker, cannot give their expertise to the Senate on any extended basis.

What we are asking for here is not a conflict of interest by any means.

There would be no profit motive, indeed no profit. So what is the conflict?

Indeed, as Dr. COBURN has noted, no pregnant woman will choose him hoping to sway his vote.

I think it is also safe to conclude with Dr. COBURN's notation that no PhRMA representatives will line up for a physical at the Oklahoma Senator's office.

Mr. President, I think that any objective analysis of the facts would yield one conclusion: the Senate and the American people benefit by having doctors serve here.

We should be turning cartwheels that we have such talented individuals as Dr. FRIST and Dr. COBURN who want to share their expertise with the Senate and our country.

The rules should encourage their working here, not discourage it.

I hope my colleagues will agree.

All I can say is this.

This is a good man.

He is in it for the right reasons.

This amendment will ensure he keeps his medical privileges active.

He is not going to make any profit from it, but he will be able to pay for his medical liability insurance.

Most of all, he will be able to help unfortunate people, patients who believe in him, patients this good doctor helps so selflessly. I think everybody in the Senate should feel happy they have enabled our colleague to continue a vital, valuable medical practice without any hint of ethical compromise. That is what this amendment is intended to do, and I urge that it be adopted.

I hope our colleagues will give some consideration to this issue and allow this man the privilege of doing this. I will be very disappointed if we don't.

I thank my dear friend from Mississippi for granting me this time.

Mr. LOTT. Mr. President, again, I know we will need to alternate back and forth. As a courtesy to a colleague, I yield 5 minutes to the Senator from Pennsylvania, Mr. SPECTER.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Mississippi for filing his resolution and for yielding me a few minutes to talk about the merits. I support the resolution. I believe it would enhance the Senate to have Senator COBURN continue his medical practice on a basis where he does not seek a profit, where he covers his expenses, and where he continues to perform very important medical services for many people who are his patients now and who may become his patients.

When the issue arises as to whether it interferes with Senator COBURN's duties and responsibilities in the Senate, I believe I am in a position to answer that question, categorically, based upon what he has done for a year in the Senate, where I have had very close contact with him on the Judiciary Committee.

He is prompt in attendance. We have grave difficulties maintaining a quorum but not because of Senator COBURN. He lends an expertise which is absent. We had hearings today on the asbestos reform bill, and Senator COBURN was cross-examining the medical witnesses in a way that regular Senators, plain Senators, even though they have some experience in questioning witnesses, can't do. I said to Senator COBURN, after the hearing concluded, that he might be in the wrong profession; he ought to be practicing cross-examination. He thought that was related to being a lawyer. He didn't like that suggestion very much, but it was made only in jest.

He knows things as a result of his medical profession that the rest of us do not know. We have a great many professionals in this body but not medical professionals. There is no conflict of interest, as the Senator from Utah, Mr. HATCH, commented about lawyers and a profit motive and there might be some connection between representing clients in matters to come before the Senate. That is not the situation with Senator COBURN.

There is no conflict of interest. In fact, there is a substantial confluence of interest. That may be a new phrase. If I could attract Senator COBURN's attention, I said there is a confluence of

interest with his work as a doctor and with his work as a Senator.

While I agree with the limitations generally, I think they do not apply to Senator/Dr. COBURN's situation. I believe the resolution ought to be adopted.

Again, I thank my colleague from Mississippi. I yield the floor.

Mr. LOTT. Mr. President, I yield myself such time as I may consume so I can get into some of the specifics of the resolution.

The resolution simply provides that a Senator who is a physician can continue to practice in his profession while serving in the Senate. However, there is an important caveat included in this resolution. A Senator who continues to practice medicine may not receive fees and other payments for medical services that exceed the actual and necessary expenses incurred by the Senator in connection with his medical practice. In other words, the Senator cannot make a profit from his practice.

I have discussed this issue with a lot of our colleagues. There are those who are concerned that once we open this door, we will open it more and more and there will be more and more exceptions to the rule. That is not my intent here. That is a debate for another day, and maybe we should have it, in my opinion. This is narrowly crafted legislation that would allow for Senator COBURN to continue his practice.

I think he should have that opportunity. I think it is fair to him, and I think it is needed in his community. In talking with him, it is not that he is an obstetrician/gynecologist, he is a general practitioner. He treats people who come to him for all kinds of problems. We have a need for more, not less, doctors.

Also, there is a unique difference we have to remember. As lawyers, I guess as long as you keep your bar membership up, when we leave here, oh, yes, we are still lawyers because we got a law degree 40 years ago. But as a doctor, if you don't keep up your practice, you can't go back and say, Oh great, I will take care of your gynecological needs or deliver a baby. They need to keep their skills honed.

Some people say he can practice, he just can't have any income to cover his expenses. Based on the Senate salary, he would not be able to pay for the expenses, primarily because of the exorbitant amount of money now that is involved in medical malpractice.

I note that allowing a physician to continue practicing medicine to the extent of covering actual costs is consistent with an approach that was taken by the House of Representatives. I think it is a very critical point. We are going to have more of a disallowance over here than even the House. This matter was worked through a very lengthy process in the House, and they came to the conclusion they needed to have this exception.

Moreover, the definition of compensation contained in the resolution is identical to the definition used in the U.S. Office of Government Ethics.

The resolution applies only to physicians who practice as sole practitioners and only when the Senate is not in session. So there is not going to be a conflict with his responsibilities. Knowing this Senator from Oklahoma, as we all do already, he would never do that. He wouldn't fly home and start delivering babies when we were having votes.

It also limits it to a sole-practitioner role. The resolution retains the current Senate rule that prohibits a Senator from affiliating with a firm. In addition, the current rule that prohibits a Senator's name from being used by any affiliated firm or company is retained.

Physicians need to continue to practice in order to maintain their skills, as I noted. Because we have not been able to get medical malpractice insurance reform, it costs hundreds of thousands of dollars, in many cases, to stay in practice. We all hear from our doctors about how difficult that is getting to be. I think it is probably even more difficult if you are an OB/GYN to pay the fees that are involved for providing this medical service.

Should a Senator who is a physician have to be recertified to practice when he leaves the Senate because he has been unable to maintain his practice because of Senate rules? I don't believe he should have that additional responsibility. We are putting an additional burden on physicians who would serve in the Senate. We need more diversity here, not less, even though we have had doctors throughout history serve in the Senate. Most of them—in fact, I guess all of them until very recent history—continued to practice medicine. It was never a problem. I am sure the Senator from Oklahoma is going to give us a history of doctors and physicians in the Senate and what they did. I am sure he is going to give us the history of lawyers who continued to practice, great Members of the Congress and Senate who went on to become President.

I think we are setting up a situation that is indefensible. It is not just about this Senator. I want to make the point, too, about why we are doing it this way. I don't want to take away the responsibilities of the Ethics Committee to interpret the rules. I hoped this would be worked out. We have a time problem now. At some point soon, the Senator from Oklahoma is going to have to decide what to do: Is he going to completely shut down his practice or what is he going to do? There are certain limits on how long he has to close out his practice.

I would like the Rules Committee to have acted on this issue, but there is the issue of getting the matter through the Rules Committee and then getting it scheduled for time on the floor. We are doing it this way because it is the only way it could be done. I think the Senator at least deserves to have his case considered.

The current Senate rules do not completely bar outside profit by Senators, I should note. Many Senators now are writing books, and they are able to keep the royalties. There is an ethics exception, I believe, for teaching classes, and that is earned income. Yet that exception is made. Of course, if you are a Senator and you marry a person with money or if you inherit money, that is fine. But if you have an ability, a talent that you can offer, a service that you can provide, even if you do it not for profit, no, you can't do that.

I am very concerned about what we are doing to ourselves. I practiced law. I looked at staying affiliated with a law firm. I think I could have practiced estate law without running afoul of the ethics rules, but you could not do that.

This is a narrow exception that I think is the fair way to allow this Senator to continue his practice without conflicting with the ethics rules or with his duties. This is a profession we need more of, I repeat.

I hope my colleagues will seriously consider this modest exception to the rules of the Senate. This is a Senator who wants to continue serving the medical needs of his constituents without earning a profit. That is pretty magnanimous, it seems to me. I think we should do this. I think what we are doing to this Senator and the people he serves is wrong. At least he will have a vote, and I hope that maybe sometime later we will consider this whole issue in a broader sense. But for now, we should make this narrow exception, as the House of Representatives did in the past.

I yield the floor, Mr. President.

Do we want to alternate. How much time does the Senator desire? I yield 5 minutes to the Senator from South Carolina.

Mr. GRAHAM. Mr. President, I thank the Senator. I stand here in two capacities: speaking as a Senator trying to find a compromise that would be good for the institution and as a friend of TOM COBURN.

If I had any doubt about the effect this would have on the institution, I would not rise in support of my friend, because we all know why we are here. We are here to make the country stronger and the Senate better. Having TOM COBURN here as a physician I think makes the country stronger and better.

It is not about him making money. All of us know Senator COBURN and what he does in Oklahoma. He is not practicing medicine to make money. He is practicing medicine to stay in touch with his constituents, to provide a vital service to rural Oklahoma, and to try to pay the bills. He is doing it for all the right reasons.

You can, as Senator LOTT said, have outside income. This is not about outside income. This is about trying to maintain the skills that are very much in demand in Oklahoma and a relationship that I think will be beneficial to the people he serves and the Senate as a whole.

The bottom line is, it worked in the House. They had the same debate in

the House. They had a compromise where Senator COBURN could practice medicine not for a profit but for the privilege of serving his constituents in two ways: as a Representative and a doctor. It worked very well. It was a win-win. It can be a win-win for the Senate. Physicians who served in the Senate in the past have been allowed to practice.

Perception is important. We don't want to do anything in the Senate on our watch that would give a perception that the body is not at its highest level. And reality is important too. I think the reality of allowing Dr. COBURN to continue to practice in the Senate, such as he did in the House, is extremely beneficial to real people who need a good doctor who is competent at delivering medical care and who has a great heart for serving people. Those individuals need the Senate to understand they are affected, and whatever perception problems anybody is worried about, it did not hurt the House at all, and it is not going to hurt the Senate.

The reality is there are people counting on Dr. COBURN, and it would be a shame for them to be denied medical care from a very good man.

From the Senate's point of view, I think it would be good for us to have a commonsense view of what our role in society is, that we are not a body that should be totally disconnected from everyday life. If you can have a Member of the body serving in a very vital capacity that improves everyday life, then we ought to let that happen. It would be a win-win for the Senate, and it would be a win-win for the people of Oklahoma.

I am here to say that TOM COBURN is not only a great Senator, he is a great doctor, and he practices medicine for all the right reasons. Any perception problem should not stand between him and the ability to deliver a vital service. We are not reduced as a body by him taking care of people in Oklahoma. I think we are enhanced.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I believe I manage the time in opposition on this amendment.

The PRESIDING OFFICER. The Senator has that right.

Mr. BAUCUS. Accordingly, I yield 20 minutes to the chairman of the Ethics Committee, Senator VOINOVICH.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, first I would like to say I have a great deal of respect for Senator COBURN. I think he is acting from honorable motives. I would remind Senators that our colleague, Senator FRIST, is a doctor and is not asking for dispensation from the rule. He continues to practice without compensation on occasion.

I have been hopeful that working in a truly bipartisan manner with the Ethics Committee, which I chair, the Rules Committee, our bipartisan leadership, and Senator COBURN, that we could come to an agreement which would address Senator COBURN's concerns.

While I would like to be able to detail the long history of the Ethics Committee's work to find an accommodation with Senator COBURN to effectively address his concerns, in an effort to maintain the privileged nature of the communications between the committee and the Senator, I must speak only in generalities.

Let me assure my colleagues that we have done everything that the Senate rules will allow us to do to help Senator COBURN in this matter. I can assure you that Senator JOHNSON and I have spent a great deal of time, and the staff of the Ethics Committee as well, trying to accommodate Senator COBURN. Ultimately, we found ourselves in a situation where we were asked to reinterpret what the Senate rules meant or to endorse a change of those rules for Senator COBURN. As I will soon detail, the specific language and legislative history of Senate Rules XXXVI and XXXVII and Federal law prevent us from reinterpreting the rules. With regard to changing the rules themselves, we did not believe the Ethics Committee should be involved in the sole jurisdiction of the Rules Committee.

As my colleagues know, the Rules Committee establishes the rules of the Senate. The Ethics Committee is charged with enforcing those rules. This matter should not be on the Senate floor. It should be before the Rules Committee of the Senate.

Despite these realities and all the work to accommodate Senator COBURN over the past year, here we are considering a sense-of-the-Senate resolution to clarify Senate Rule XXXVII in an effort to put pressure on the Senate Ethics Committee to reinterpret what ''compensation'' means. Unfortunately, this resolution has not been approved or considered by the Rules Committee. There have been no hearings on this matter in the Rules Committee. Nevertheless, here we are.

First, allow me to lay out the Senate rules which guided the Ethics Committee's determination on the Coburn matter.

Senate Rule XXXVII prohibits Senators from, No. 1, affiliating with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; 2, permitting his or her name to be used by a firm, partnership, association, or corporation which provides professional services for compensation; and 3, practicing a profession for compensation to any extent during regular office hours of the employing Senate office.

The Senate Ethics Manual, the meat the committee provides the Senate for the bones of the Senate's rules, indicates on page 71 that Rule XXXVII ''prohibits the paid practice of fiduciary professions,'' which includes the medical profession. On page 72, the manual indicates that the rule applies to ''payment for professional services.'' This is important because it goes to the heart of why the committee determined that Senator COBURN's proposal to allow him to receive reimbursement for expense in lieu of compensation should not be approved.

Senator COBURN has publicly stated that the purpose behind his effort today is to allow him to receive reimbursement to cover the medical malpractice costs associated with providing medical care. He believes that in order to maintain his medical skills and licenses and in order to be a ''citizen legislator,'' he should be allowed to receive this compensation.

Again, to be absolutely clear, as chairman of the Ethics Committee, my job is to provide Senators guidance to help them comply with our rules. Our rules clearly state that payment of any kind for any purpose for fiduciary work is prohibited. Rule XXXVII prohibits exactly what Senator COBURN is asking for today.

The Senate looked at this exact specific situation in 1977. Senator Thurmond, with whom a good number of us had the opportunity to serve—and this is 1977—served as cochair with Senator Gaylord Nelson of the Special Committee on Official Conduct. This committee was charged with developing the original Senate Code of Conduct upon which many of our current Senate ethics rules are based. Senator Thurmond said on the Senate floor in 1977:

> If [doctors] value their duties and they want to keep up, they can visit hospitals and go out and participate, so long as they do not do it for compensation.

Additionally, the Nelson committee report formed the basis for what is now Rule XXXVI and addresses the possibility of outside earned income. Specifically, the report states:

> During its deliberation on this Rule, the Committee was aware of clear and unmistakable practical facts of political life. For example, most Americans regard service in the Senate as a full-time job.

And I can say that was 1977. This is 2005. I can say that I think it is more of a full-time job today than it was back in 1977.

> Senators work long hours devoting a substantial amount of not only their own time, but also time that they could be with their families, attending to Senate business on behalf of their constituents.

Consistent with these duties is the notion that since service in the Senate is a full-time job, considerable skepticism is often raised in the minds of the public whenever outside earned income is received by a Senator because of personal services outside regular Senate duties.

Now, this is to be differentiated from other outside income like farming because the personal services or fiduciary relationship is fundamentally different. A Senator engaged in farming is not put in the situation where he or

she would have to choose between tending to their fields or serving a constituent. A doctor, who is in a fiduciary relationship, could face a situation where he had to choose between constituents and providing medical treatment for a patient. Writing a book is not a fiduciary relationship and would not interfere with a Senator's business because he can pick it up and lay it down.

Not only do our own rules and history prevent the arrangement that Senator COBURN is asking for, but Federal law does as well. The Ethics Reform Act of 1989, enshrined as paragraph 5(b) of Rule XXXVII, explicitly prohibits Senators from entering into professional fiduciary relationships. The rule, again based on the Ethics Reform Act, prohibits:

(1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship.

(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity.

(3) receive compensation for practicing a profession which involves a fiduciary relationship.

There may be an argument made to the Senate today that the ''compensation'' that Rules XXXVI and XXXVII and Ethics Reform Act refer to is profit. We may hear that the resolution we are considering encourages the Ethics Committee to define compensation as money received for costs or that compensation should only apply to for-profit enterprises or that ''breaking even'' is not compensation. Well, allow me to share some facts for the Senate to consider on what ''compensation'' means.

Section 61 of the Internal Revenue Code finds that gross income includes ''compensation for services including fees, commissions, fringe benefits and similar items.''

The U.S. Court of Claims held in 1968 ''that the statutory definition of gross income is broad enough to include as compensation any economic or financial benefit from any source, conferred in any form on any employee, unless specifically exempted by statute.''

Nowhere in the Internal Revenue Code or in our case law will one find ''compensation'' defined as ''breaking even.''

Let me raise some other facts. The Federal Acquisition Regulation defines compensation as ''all remuneration paid or accrued for services rendered by the employees to the contractor during the period of the contract performance.''

Again, in contracts with the Federal Government, breaking even is not an option.

Finally, allow me to offer one more piece of information for my colleagues to consider when the ''actual and necessary expense'' argument is made on behalf of this resolution. The Code of Federal Regulations, 5 CFR section 2636.303(b), states:

Outside earned income and compensation both mean wages, salaries, honoraria, commission, professional fees and other forms of compensation for services other than salary benefits and allowances paid by the United States Government.

Again, the idea of defining compensation as profit is not considered in our Federal Code.

Finally, allow me to offer some thoughts on what changing the committee's interpretation of rules XXXVI and XXXVII, the Ethics Reform Act, the Internal Revenue Code, findings of the U.S. Court of Claims, and our Federal Code would mean.

Enforcement of this rule change will be impossible. The Ethics Committee would need to hire a small army of auditors and accountants to effectively evaluate what expenses were actual and necessary as the resolution would allow. These accountants would need to have some specific, specialized knowledge in the medical field to evaluate if the expenses Senator COBURN had were ''actual and necessary.'' Frankly, the committee is not equipped to handle this responsibility. Moreover, I do not believe that the committee should be asked to take this on.

The rule change would inevitably lead to violations. I can hardly envision a scenario in which every procedure Dr. COBURN is involved with is billed exactly at the actual and necessary expenses. While Dr. COBURN does have a degree in accounting, I believe that should he be permitted to practice medicine, his focus should be on his patients, not on his accounts receivable. If his rates were to exceed or fall short of his actual or necessary expenses, he would be in violation and subject to an Ethics Committee violation. No one wants that.

The rule change would lead to other calls for changes from our colleagues that are fraught with even more dangers. Why should we not provide the same arrangement to our two colleagues who are veterinarians? Do they not need to continue their practices to maintain their skills and licenses? Is this not their chosen profession and one that they may want to return to eventually? How long will it be before one of the many excellent lawyers amongst us will ask to practice but only receive actual and necessary expenses? If we decide today to allow a colleague to pursue their profession and receive compensation to cover their expenses, how will the committee say no to other requests like this? This is the slippery slope and one that I believe we must carefully avoid.

Again, I am sorry this matter has come to the floor of the Senate. I believe Senator COBURN means well in his efforts today. He wants to continue his services as a doctor to help people. I applaud that altruistic commitment to public service. Rather than debating the possibility of reinterpreting our rules, we should be talking about a real, practical solution that would allow Senator COBURN to continue serving people and to maintain his medical skills and licenses.

The committee has long indicated to Senators that they could provide medical services to patients on a volunteer basis where no compensation is received, as the Senate majority leader does, and we are very familiar with it.

The committee has indicated to Senators, consistent with Senator Thurmond's comments in 1977, that they can pursue a volunteer relationship with a VA hospital in their home States or in Washington at Walter Reed or at the Bethesda Medical Center where no compensation is provided. I understand they have arrangements to cover the malpractice insurance of doctors who operate there, so that malpractice problem would not occur.

Unfortunately, instead of congratulating Senator COBURN for finding a solution that will allow him to continue practicing, we are debating a Senate resolution to instruct the Senate Ethics Committee to ignore Rules XXXVI and XXXVII, the Ethics Reform Act, and definitions of compensation that are in Federal statute. We cannot do that.

With that, I urge my colleagues to reject this effort, and I raise a point of order that the Coburn amendment is not germane to the underlying bill.

The PRESIDING OFFICER. The point of order must be made at the conclusion of all debate.

Mr. VOINOVICH. Mr. President, I would ask the Chair to remind me of that.

The PRESIDING OFFICER. Who yields time?

Mr. COBURN. Mr. President, I yield 3 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I lend my strong support for the amendment offered by Senator LOTT. It is measured, it is common sense, and it will help to allow Members of the Senate in the medical profession to function on a not-for-profit basis—I emphasize again, not-for-profit basis.

Dr. COBURN is not fabulously wealthy. He needs to be able to break even. If one Member of the Senate is very wealthy and can afford to carry out medical duties without adequate compensation for it, that is fine.

He is not seeking permission to shirk his Senate responsibilities in any way. I also appreciate the fact that he does not want to walk away from the medical profession. We need people with hands-on health care experience. One of the greatest challenges we face in the coming years is health care costs and health care issues. Would it not be wonderful to have a person who has daily hands-on experience with these health care issues, which is $40 trillion in unfunded liability in the case of Medicare?

He is not turning Senate rules on their head. Somebody is going to have to explain to me how we can have a

blind trust and make money from a blind trust, but we cannot make money from a break-even standpoint in the practice of medicine.

It is bizarre. It is bizarre.

He has demonstrated he is more than a full-time legislator. He has offered dozens of amendments on bills in his first year in office, not making every Member of the Senate happy when he is doing so. No one can question his tenacity, his work ethic. As chairman of the Senate Homeland Security and Governmental Affairs Subcommittee on Federal Financial Management, Senator COBURN has already held 20 oversight hearings.

I believe Senator COBURN can walk and chew gum. I believe he can practice medicine when he is back with his constituents in Oklahoma and serve that State even more admirably, serving them in more capabilities than one. I wish I had the capabilities the doctor from Oklahoma has.

I hope there is an overwhelming vote in favor of the Lott motion.

I appreciate the courtesy of my colleagues.

I yield.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I ask to address the body for 5 minutes on this issue.

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

Mr. JOHNSON. Mr. President, I rise today as vice chair of the Ethics Committee to discuss the resolution being considered by the Senate. I say at the outset that I have great respect for my colleague, Senator COBURN. The resolution before us seeks to provide a special carve-out for the practice of medicine, and medicine only, from the current Senate rules limiting outside compensation and income.

The Senate rules that govern this issue and their interpretation do not come at the whim of the Senate Rules or Senate Ethics Committees, but from a longstanding determination and precedent of this body. In fact, this has been a part of the Senate rules since 1977, when the original Senate Code of Conduct was adopted.

The committee that was established to develop the Senate Code of Conduct was known as the Nelson Committee, after its chairman, Senator Gaylord Nelson, and specifically addressed the restrictions on Senators practicing fiduciary professions in its report by saying:

> This provision reflects the committee's belief that the practice of a profession usually requires substantial amounts of personal involvement and time, and may also present conflicts of interest or in some cases the appearance of such conflicts.

During the Senate debate in 1977 on these rules, Senator Strom Thurmond delivered a strong statement on the purpose and the intent behind including the prohibition on Members of the Senate from continuing to practice and being compensated for outside professional work. He said:

> The job of a U.S. Senator is a full-time job, and if one is able to find time to render professional services for compensation, I seriously question his ability to render the commensurate service necessary to be a full-time Senator.

At that time, the Nelson Committee and the Senate recognized the pitfalls of allowing Members to receive income or compensation for outside professional work. Those pitfalls still exist today.

First, the proposal before the Senate would create a net profit standard in conjunction with medical professionals accepting outside compensation. It is my understanding this would allow physicians to accept payments for services from such sources as individuals, insurance companies, or even Medicare and Medicaid, up to the point at which all of their expenses have been covered.

A major concern I have about this proposal is it does not contain any direction as to how compliance with this net profit standard would be monitored to ensure that the instant all expenses were covered, the compensation would be ended. Without a clear ability to monitor compliance, the potential for violations, abuse of the system, or even mistakes that would affect the credibility of this Senate is very high.

I question whether the Ethics Committee has, or in fact whether it should have, the resources that would be required to properly analyze the complex accounting needed to ensure compliance with this net profit standard.

Furthermore, at this time I simply do not believe the Senate should vote in favor of any proposal that would loosen our ethical boundaries and increase the opportunities for ethical violations.

The resolution also does not provide any limitations on the outside practice of medicine. It appears that under this resolution, a Senator could spend a majority, if not all, of his or her time practicing medicine, to the detriment of the Senate, and without any recourse for the Senate.

As stated before, the Senate has determined our responsibilities are full-time. If the proposal before us is adopted, it will set up a conflict between constituents and a Senator's outside medical responsibilities for which he or she is being compensated.

The question has been raised about whether this carve-out ought to apply only to the medical profession. The fact is there are other professionals in this body of great skill—lawyers, engineers, business people, people of other professions. The fact is each and every one of them could practice their professions outside their service in the Senate, and without that practice, their skills, indeed, do erode as well. There are lawyers here whose membership in the bar is retained but whose skills certainly do erode over time. That is true of every profession. There is no profession, I believe, that is immune from or more prone to profit motives, and I do not think that any profession can be singled out in that regard.

I am not completely insensitive to the motivations behind the resolution, but I remind my colleagues that there is nothing in the Senate Rules that forbids a physician in the Senate from practicing medicine, as the Senate leader, Senator FRIST, oftentimes does. The argument here is not that doctors who serve in the Senate should never be allowed to practice medicine. The rules allow doctors serving in the Senate to practice medicine for free. The argument is that no Senator should practice a profession of any kind and receive outside compensation, no matter what the expenses of that particular profession might be.

If there is going to be a change, then the proper place for that change is through the Rules Committee and the ordinary process where hearings can be held and thoughtful deliberation can be had, and the parliamentary rules of this body would apply. It would be a mistake and an unfortunate precedent for this body to permit an end run around the Rules Committee in order to avoid the supermajority vote that ordinarily would be required to change the rules during the middle of a congressional session.

I do not believe we should take a step today to weaken the Senate rules, and I encourage my colleagues to oppose this resolution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. I yield 4 minutes to the Senator from South Carolina.

Mr. DEMINT. Mr. President, a vote for this amendment is a vote to restore the original purpose of an ethics rule. It was a rule developed to keep special interests from unduly influencing Members of the Senate by forbidding us from receiving outside income while serving here, on either side of the Congress. But, as the Government often does, we seem to have forgotten the original purpose of this rule and are now focusing on a technical interpretation. We are asking for some common sense.

The patients of a doctor delivering babies, many times a poor Medicaid mother, are not going to influence the votes of Members of the Senate. Senator LOTT has mentioned a number of exceptions that already occur. The House, acting on the same rule, decided to allow Dr. COBURN to continue to deliver babies because of the benefit to this institution as well as the benefit to his patients.

Senator LOTT mentioned other exceptions we already make for each other. We can receive millions from a book. But even more important, every Member of this Senate receives compensation every time we travel to speak to a group in different parts of this country. It is compensation only to cover expenses, but it is still compensation. And many Members of this Senate are still involved with businesses and take passive income and help to make some management decisions. It is compensation, but it is not direct compensation.

Senator COBURN's situation is very similar. He is providing an important service, often to poor mothers, and he does not want to make a profit, only to cover his expenses. My appeal to my colleagues tonight is to remember the purpose of these ethics rules.

These women are not going to influence votes. The only time he spends is when we are not in session here.

Let's straighten out one other thing, if we could. This amendment is not to help Dr. COBURN. It is about allowing him to help others, which is what he is doing on the weekends. He is not making any profit from doing this. He is serving others as he has done for years. But it is also about helping us, as an institution, to keep contact with people in the real world and the problems they have—on his own time.

I encourage my fellow colleagues to remember the purpose, to use some common sense, and to allow Dr. COBURN to continue to serve his constituents in ways that many of us are often doing in different ways.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I yield 10 minutes to the Senator from Connecticut, Mr. DODD.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me begin by saying these are the sorts of uncomfortable moments in the Senate when we start to deal with each other on a personal level. I have been in this body for 24 years and I take no comfort in engaging in this kind of discussion. But as the ranking Democrat on the Rules Committee, serving with my friend and colleague from Mississippi, TRENT LOTT, as the chairman of the committee, I felt it was important to at least express to my colleagues here the position this Senator has as a member of that committee and as a former chairman of the Rules Committee.

Very simply stated, as a matter of process—putting aside for a second the arguments on behalf of our colleague from Oklahoma and his noble determination and desire to continue the profession in which he has been engaged for years—there is a means by which we go through changes in the rules in this body. We have established that process for orderly reasons. What is being suggested here by this amendment is a change in the rules of the Senate, and there is a committee established by this body to consider such proposals.

There is nothing in the rules of the Senate which prohibits any Member of this body from engaging in the practice of a profession, except as constrained by Rules XXXVI and XXXVII. As the Senator from Ohio has pointed out, what is being suggested here is that a member be allowed to earn some level of compensation in order to defray certain expenses. That would require a modification of Rule XXXVI and/or XXXVII.

There is a way of doing that and the way is, you come to the Rules Committee, you have a hearing, you listen to witnesses. A person can make a suggestion to modify the rules. We do that all the time. If the Rules Committee decides in its wisdom it believes the rules ought to be modified or changed, then we recommend that change to this body as a whole and we move forward and accommodate a request such as the Senator from Oklahoma is making. But to bypass all of that process, even if you believe strongly that what the Senator from Oklahoma is suggesting he ought to be allowed to do, we ought to be following the process here. You would be setting a precedent, even if you agree with my colleague from Oklahoma and what he suggests here.

There is a way by which you do things here. When you begin to sidestep and short circuit the process, then you put the entire process in jeopardy. I begin by stating that to my colleagues. Even if you feel strongly—and I say I know many of my colleagues do, and I have listened to the remarks over the last several minutes in support of Senator COBURN's request—there is a process which we should go through to achieve that end. I urge the body, if for no other reason than that, to support the motion that will be made by the Senator from Ohio.

Then if the Senator desires to go forward with this, I certainly would be willing—I say this to my colleagues here; my colleague from Mississippi is not here—but if he wants to have a hearing on this matter, I will attend the hearing. I will attend all the hearings on it and listen to witnesses come forward and then consider the proposed change in the rules. If that is what we want to do, we ought to do that process. But I am uneasy about bypassing that process.

As I said earlier, there is nothing in the Senate Rules that precludes a Member of this body from practicing a profession while in public service. But that practice is limited by Rules XXXVI and XXXVII and limitations on compensation earned in a fiduciary relationship. The history of these provisions shows that they are designed to ensure the membership in a profession does not so impose on the responsibilities of a Senator as to effectively render the Member a part-time public servant.

Again, there are circumstances which could be pointed out which I am sure would cause us to consider some changes in all this, but there is a process to go through. When the Founding Fathers envisioned citizen legislators some more than 200 years ago, they did not envision the kind of world we live in today and a Congress, today, that meets not only year round but often throughout the day, well into the night. Witness this evening. We are likely going to be here until 10 or 11 o'clock tonight debating these amendments on the reconciliation bill. We may be here tomorrow and Saturday and Sunday.

Certainly, the Founding Fathers had times when that occurred but not with the regularity that we engage in these practices. My colleague, the chairman of the Rules Committee, whom I have referenced already, suggests that Senator COBURN will not fly home and deliver babies when there are votes.

I can personally bear witness to this—I am sure my colleague from Oklahoma will verify this—that babies don't normally set their time for delivery based on the Senate schedule. I can say as the father of two new recent arrivals that they decided to arrive not during the Senate schedule; they had their own schedule for arrival. Even though we may try to accommodate our colleagues in these areas, it doesn't normally occur on any sort of predictable pattern. It is not elective surgery, in most cases.

Moreover, while I am sympathetic to the concerns that physicians should maintain their skills. In fact, I relish the fact that we have Senator COBURN here as a physician, along with Senator FRIST and the two Members before our body who are veterinarians, who add, I think, to the discussion and debate. It adds a dimension to our deliberations. But again, we have four Members of this body who practice medicine—two who practice the human variety and two who practice the animal variety. I respect them immensely and enjoy speaking to them about their profession. But if we begin this process, what argument is there in response to my colleagues here who practice veterinary medicine? Should they no be able to seek to cover their costs? What about those who like to maintain their skill level as attorneys, engineers, or otherwise?

We decided to put some parameters around this. Again, there is a process we can go through if we decide that we want to change it. It is not in any way to try to impugn the reputation or the contribution of Members. But to suggest that in this 21st century, we ought to begin to start compromising these rules in order to accommodate Members who wish to go back and practice their profession and to receive compensation, which is a critical element here, on their own time I think would be a step in the wrong direction. We have come some distance over the years.

In the previous century, there were Members of this body who would go down on the first floor and try cases before the Supreme Court and then come back up here to vote on the very bills that might have changed the law.

There was a wonderful Senator from New York, Chauncey Depew. He was the president of the New York Central Railroad while a Member of this body and never had a second thought about voting on railroad matters affecting the compensation of the company he was running. But, of course, the world has changed. I believe we are far better

off today because we moved away from that kind of practice in the past.

I am not suggesting that my colleague from Oklahoma is suggesting anything like the behavior that we saw in previous centuries. But, nonetheless, we have established some parameters. Again, that is the reason we have a process here by which we make modifications.

The provisions in the rules are not biblical, they are not etched in marble or granite. They can be changed. But I suggest that if we are going to change them, we ought to go through the normal process of doing that. Taking up what is essentially a sense-of-the-Senate resolution on the tax reconciliation bill is not the way to go.

Again, I say to my friend, we don't know each other terribly well. We haven't engaged in much business together, and I don't want the Senator to perceive what I am saying as disrespectful of his intent—I am not comfortable with these debates. My colleagues have known me over the past quarter of a century, and they know I try to stay away from these matters. It does begin to reflect or suggest somehow our feelings about one another. I don't want anything I have said here to suggest any negative feelings about my colleague because we disagree in the way at which we have arrived at this debate. This is really not an Ethics Committee matter. It is a Rules Committee matter, and that is where it belongs. We ought to consider it there and some of the questions and implications raised in this debate and then come forward. It may be that a majority of the Rules Committee will say the rule ought to be modified or changed. If that is the wisdom, then we come to the body, and have an informed debate. But we ought to be careful about trying to short circuit that process.

I am going to support the motion by the Senator from Ohio. I urge my colleagues to do so—not in any way to impugn the motives of the Senator from Oklahoma but to protect the process of the Senate.

With all due respect, that is a much larger question, it seems to me, than the ambition or desires of any one Member of this body. We bear responsibility to be good caretakers of this institution and to see to it that we preserve and protect the way in which we conduct ourselves. If we wish to change the means by which we do that, there is a process we should follow in doing so. Again, to bypass that process by bringing it directly to the floor I believe does potential damage to this institution that none of us should want to be party to.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I yield 4 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, will you notify me when I have used 2 minutes? I will try to keep this within 2 minutes. I wish to make a couple of points.

I am a licensed veterinarian and am still currently licensed. When I was first elected to the Senate, when we were going through the ethics routine very similar to what they have in the House of Representatives, I still owned an animal hospital when I was in the House of Representatives. I never really gave it much thought because I heard you can own a small business. That is what it was—a small business. But as I was listening to the ethics briefings when I was elected to the Senate, I said: I don't think I can own my animal hospital. I don't think I can be partners anymore in the animal hospital.

What I liked about owning my animal hospital was that I thought it kept me in touch with the real world; that we passed the Congressional Accountability Act because Congress was so out of touch with the laws that we passed up here for the real world. We were so out of touch, we said at least we should live under the same laws in our offices as they live out in the real world. I thought my veterinary practice allowed me to stay in touch with the real world much better.

But I went to the Senate Ethics Committee and asked them about it, and they said, sure enough, you are going to have to sell the animal hospital. That wasn't something that I counted on when I was elected.

I spoke to Don Nickles when it was all done, and he said he thought it was a disservice and that I should have fought it at the time, that I should have fought for a rule change back then.

I apologize to Dr. COBURN for not fighting for a rule change back then. I don't think Dr. COBURN wants to go as far as he actually should be able to go or I should have been able to go. All he wants to do is break even because of the high cost of medical malpractice today and to be able to make enough money to be able to pay his premiums and stay in touch with his patients and practice medicine. Health care costs in this country are skyrocketing, and we need people who understand the practice of medicine and our health care system in the United States.

I wholeheartedly support the Senator from Oklahoma in his efforts to do this. This is not the same as practicing law where you have somebody come down and lay down a retainer of $100,000 or $200,000 with the look of corruption that we may be trying to avoid. The practice of veterinary medicine isn't like that, and the practice of human medicine is not like that. This is somebody who will be a much better Senator if we allow him to practice; somebody who is going to be a better doctor. He is not going to be here forever, and we want him to keep his skills up because when he goes back to the practice of full-time medicine, he will still stay solvent.

As we go forward in the debate, I hope people keep this in mind: Let's us put some common sense back in here. He is one of most ethical people I have ever met in my life, and to allow him to practice will make this institution a better institution.

I yield the floor.

Mr. LOTT. Mr. President, I yield 5 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 5 minutes.

Mr. INHOFE. Thank you.

Mr. President, I may want to ask for a couple more minutes.

First of all, let me state to the junior Senator from Oklahoma that I was not aware of this debate coming up. However, I don't have to practice for a debate; it comes from the heart.

Let me also say to one of my best friends in the Senate, Senator VOINOVICH, that he is doing his job. We may come to a different conclusion on this particular issue, but I know he is in a real situation. You have shared that with several of us.

Let me suggest to you, Mr. President, that there is something sadly lacking in this debate; that is, in the State of Oklahoma. There are only two of us in the Chamber from Oklahoma. We know what Oklahomans want. It is kind of interesting because Senator COBURN and I have kind of the same philosophy—we want to keep it the same place. We have different styles when we talk about trying to reduce the size of government. He talks about projects, and I talk about reducing appropriations. We both want to get to the same place. He has been an advocate and has talked about term limitation. I believe that everyone, if they don't want to go along with term limitations, ought to have to go out like I did and serve in the real world for 30 years, get beat up by the bureaucracy, and then you can come here and speak from the heart as a citizen back home.

But when you look at our State of Oklahoma—and I read this section out of the U.S. Constitution, article I, section 4, which says the time, places, and manner of holding elections for the U.S. Senate preside in each State. That is what it says. That is what the Founding Fathers said—that we should make that determination from our own States. So here we are from the State of Oklahoma. We made the decision. And I have to say this: I know what people in Oklahoma want.

One other thing Senator COBURN and I have in common is we go back every weekend. He may deliver a few babies while he is back there. But I would suggest to you, ask the question. A lot of people stay here in Washington all the time. Would you rather have your U.S. Senator staying in Washington and playing golf all weekend or going back to the State from which he came? We made a decision to go back.

I have to say also that I have a bigger dog in this fight than most people think. I had the honor of going out many years ago and recruiting this

bright young doctor to run for the U.S. House of Representatives. And he did. He came in and agreed to do that. He got an exception to allow him to work hard and still keep up his practice. He did that very successfully.

I have to say this: When the Senator from Connecticut referred to a part-time Senator, which we hear now and then, let me tell you that there is no part-time Senator in Senator COBURN. I know this because we go back every weekend. I go around the State. I know what people want. The State of Oklahoma is not a Republican State or a Democrat State, it is a swing State. For him to come along and get in the race late—he got in the race so late for the U.S. Senate that I was already supporting another Republican. But when he got in and worked hard and went out, he won by 12 points. It wasn't a squeaker it was a landslide. And he was outspent by the other side.

This is what we think in Oklahoma about TOM COBURN.

You can talk all you want to about the rules in the Senate, but I can tell you right now that the Constitution is right when they say in article I, section 4, that the times, places, and manner of holding elections for the State for the office of Senator is within the State.

I am here on behalf the State of Oklahoma, unlike anyone else who has spoken saying this is the right thing to do to carve out this exception, if you want to call it that, for Senator COBURN, he is a hard-working Senator, and he is doing what we in Oklahoma want him to do.

I yield the floor.

Mr. LOTT. Mr. President, I yield the remainder of my time to the Senator from Oklahoma, Dr. COBURN.

Mr. COBURN. Mr. President, I will consume what time I may and then ask for the remaining time when I finish.

The first thing I would like to say is I hold no ill will toward anybody who opposed me on this whatsoever. The Members here understand what their role is, and I understand what mine is. But I also understand that one of the things our country needs is citizen-based legislators. That is what I was in the House.

During my time in the House of Representatives, nobody ever accused me of being anything other than the most hard-working there. I delivered 400 babies in 6 years while I was in the House. I never missed a vote during those times. I might have missed votes associated with the airlines or committee meetings, but I never missed a vote. I campaigned on the fact that I was going to be term limited. I am a term-limited Senator. The most I will be here is 12 years, and maybe not more than 6.

But the point is: Why would I want to practice medicine? I want to practice medicine so I can be involved in what real people experience every day in this country. We don't get to see that enough. We don't get to see that at townhall meetings when we give speeches. But I will tell you that sitting in the middle of a patient's room when there is conflict in a family or death and dying or a new complication associated with an old disease and lives get impacted, I get to measure and I get to see what none of you get to see—what we do and how it affects people.

I want to practice medicine to be the best Senator I can be. I want to maintain my skills so I can go back and deliver babies. There is nothing better in the world than delivering a baby. It is a reaffirmation of why we are all here. It is a reaffirmation of life.

I will tell you that we need to think long and hard about our ethics rules. We have shot ourselves in the foot. Every Member in the Senate is ethical and wants the same thing for our country as I do—a bright and golden future, security and opportunity for our kids. But our ethics rules lack common sense.

I will address one particular statement. This word is all about compensation. Arbitrarily, the decision was made by the Ethics Committee to define ''compensation'' as any compensation. I will read what 5 CFR 26236–303(b)6 of the U.S. Government Office of Ethics for the rest of the Government says.

Compensation in this aspect is net compensation.

This could have very well been solved by the Ethics Committee in a broad and consistent and commonsense interpretation of the word ''compensation,'' but they chose not to do that. I don't know why. I am disappointed and hurt.

I was not allowed to come before the Ethics Committee. I was not allowed to present my case. I was not allowed to discuss with any Ethics member my issue, to explain the basis of why I wanted to do it, and where I thought their interpretation was wrong. I had to secure legal counsel to have any communication with the Ethics Committee. I was notified by the Ethics Committee before I was ever sworn in that they had made this decision even though they lacked or asked for no input from me on my situation.

If that is the pattern under which we operate the Ethics Committee, we have real problems. I don't blame that on the chairman of the Ethics Committee or the ranking member. It is a problem we see in lots of other areas of Government, that staff tend to drive things. People who do not have the ultimate responsibility take the ultimate responsibility.

What I want to do is very simple: I want to be a great Senator. I want to contribute. I know I can contribute in ways that I would not be able to contribute by being a doctor and continuing the practice.

The question of Senator FRIST: Senator FRIST has a wonderful arrangement. It is not available to me. He has a limited number of days that he has a malpractice firm, insurance firm, that will insure him. That is not available in the practice of obstetrics in Oklahoma. It is not available to me, period. If I could do that, I would practice just as Senator FRIST. But I don't have that available to me, so I have expenses four to five times what Senator FRIST would pay for the same type of insurance. Could I secure that, I would be happy to do it.

The other thing we ought to talk about is the history of the Senate. We had reference to the rule change in 1977. There were no doctors in the Senate then. Senator Strom Thurmond's words, in adding physicians, was because he was trying to kill it. He was not trying to put physicians on there—and it backfired on him. That was his own rules. If you read his history of what happened in 1977, his attempt was to exclude many of us by adding doctors in the hopes that the Senate would turn that around.

Some history on the Senate: There have been 37 doctors who have been in the Senate. Senator FRIST and myself are the last two. Every doctor who was a practicing doctor who came to the Senate prior to Dr. Frist practiced, received payment and acted in an ethical fashion while they were here.

It is not about money. It is about the ability to practice. I know not all Senators share my zeal for citizen-based legislators. There is a real difference. To the people of Oklahoma, when I campaigned, I made three promises to them: One, I would guarantee I would not be here for a long time; No. 2, I would continue to practice; and No. 3 is that I would work hard to solve the problems of the country before I tried to solve the problems of Oklahoma.

I put the priorities out there. Oklahomans believe in that. Not necessarily all the editorial writers, not the talking heads, but the people who voted for me, every one of them knew I planned on continuing to practice medicine.

It is also important to look at the confluence of the rules we have, the rules that say I could own a business and not directly direct it but indirectly direct it and have no limitation on my income whatever. I can farm, own a farm, collect government subsidies, with no limit whatever. I can write books. I can write music. I can counsel. I can advise. There is no limitation on us, except if you are a professional that has a fiduciary responsibility.

The question ought to be what was behind the meaning of the rules. Do you think the intention was not to have a doctor practice medicine? That wasn't their intention. The fact that the malpractice crisis has created such a situation where you cannot practice for under $100,000 a year in terms of your expenses and overhead associated with that was never thought about in 1977.

I understand there is going to be a motion, a point of order raised against this. I understand that. That is a high bar for any Member to change anything around here with 60 votes. I understand the feelings and the reasoning

behind the Ethics Committee on why they want to do that. And I understand their motivation and their thinking. But I make one point to my Senate colleagues: There has not been one subcommittee that has had more subcommittee hearings than I have. As a matter of fact, there is not one subcommittee that has had half as many subcommittee hearings as I have. I have missed one vote in the entire year. I practice medicine on Saturdays, on the weekends, and from 6 to 9 a.m. on Mondays. I catch my flight, and I am here for votes. My practicing of medicine does not interfere with my Senate duties. It enhances my Senate duties.

If we don't change our rules, I will live with whatever the Senate says. I will figure out a way to practice medicine in some way that accords me to try to keep my skill and try to do that within the ethical guidelines of the Senate. But I believe we are discouraging anybody else who is a physician to run for the Senate, No. 1. No. 2, we discourage other professionals to run for the Senate. And it would be my hope that you would think about the long-term consequences of what we are doing. This does no damage to the Senate. In fact, it will enhance the Senate.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, is there time on this side?

The PRESIDING OFFICER. Sixteen minutes.

Mr. BAUCUS. I yield whatever time the Senator would appreciate having.

Mr. REID. Mr. President, I haven't known Senator COBURN very long. I didn't know him when he served in the House. During his tenure in the Senate I found him to be a most gracious person. I like him.

I had the good fortune of having served for many years on the Ethics Committee. I am sure there may have been a person or two in the past who served longer than I have, I just don't know, though, who they were. One of the most important responsibilities I have, and I think Senator FRIST has, is putting people on the Ethics Committee. There are six Senators on the Ethics Committee, three Democrats and three Republicans. It ia a very difficult job. The ethics code is large and voluminous. They have an outstanding staff.

Senator VOINOVICH and Senator JOHNSON are the two leaders of that committee and work with the other four members. Having been there, I want everyone here to know they spend hours and hours each week of their time. What do they do? They protect us. They handle complaints that come from the public. They handle complaints that come from other sources. Their job is very difficult.

In the past few weeks—certainly, I will not disclose any names; I could not do that, it would be unethical to do so—they have resolved some very big cases in the Ethics Committee.

These six Senators deserve our support. If we are going to overrule the Ethics Committee, we might just as well get rid of the Ethics Committee. That would be a terrible disaster for this institution.

When I first came here from the House of Representatives I had a law practice at home. I went home and had the ability to practice law. I don't think that was good for the institution.

We now make far more than our constituents make. We make $165,000 a year, or thereabouts. That is a lot of money. It is a full-time job to be a Member of the Senate, to be a Member of the U.S. House of Representatives.

I know Senator COBURN is a nice man. I know he has a big heart. But he is going to have to, I believe, use that big heart and the medical skills he has in keeping with the rules of the Senate and not, in effect, thwart what the Ethics Committee has told us must happen.

If this passes, it would tremendously undermine the work the Ethics Committee does. And speaking from experience, it is a very difficult, and quite frankly, a thankless job. The only thing you get from that is the knowledge that you are doing the right thing for the institution. It takes a tremendous amount of time. I repeat: Senators JOHNSON and VOINOVICH, every week we are back here, spend not a few minutes but hours of their time. No one knows what they do because it is secret. It is confidential.

No matter how we feel about Senator COBURN, no matter what a gracious, nice, thoughtful, caring man he is, it would not be good for the Senate to follow what has been recommended in the form of this amendment that is now before this Senate.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I take whatever time I might consume.

The real difference for my colleagues to know is the definition of the word ''compensation.'' The same lawyer that is on the Senate Ethics Committee today worked for the Senate Ethics Committee in the House when the determination was made for the practice of medicine that compensation was net compensation.

There is no damage done to the House or the institution of the House. As a matter of fact, because that rule was changed, there are now, I believe, 11 doctors in the House. I reject the idea that this would do damage to the Ethics Committee. This is a simple definition. It is one that the Ethics Committee could have chosen to use but chose not to. I don't know the motivation behind that. I know they could have solved the problem, and we wouldn't be where we are today.

I reserve the remainder of my time.

AMENDMENT NO. 2647

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent the pending amendment be set aside, and I send an amendment to the desk that has been cleared by both sides.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] for himself and Mr. BAUCUS proposes an amendment numbered 2647.

Mr. GRASSLEY. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide a Manager's amendment)

Beginning on page 63, line 18, strike all through page 64, line 15, and insert the following:

SEC. 212. EXTENSION AND INCREASE IN MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) IN GENERAL.—Section 55(d)(1) is amended—

(1) by striking ''$58,000'' and all that follows through ''2005'' in subparagraph (A) and inserting ''$62,550 in the case of taxable years beginning in 2006'', and

(2) by striking ''$40,250'' and all that follows through ''2005'' in subparagraph (B) and inserting ''$42,500 in the case of taxable years beginning in 2006''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

Beginning on page 69, line 6, strike all through page 71, line 13, and insert the following:

(d) EXPANSION OF CREDIT TO EXPENSES OF GENERAL COLLABORATIVE RESEARCH CONSORTIA.—Section 41 is amended—

(1) by striking ''an energy research consortium'' in subsections (a)(3) and (b)(3)(C)(i) and inserting ''a research consortium'',

(2) by striking ''energy'' each place it appears in subsection (f)(6)(A),

(3) by inserting ''or 501(c)(6)'' after ''section 501(c)(3)'' in subsection (f)(6)(A)(i)(I), and

(4) by striking ''ENERGY RESEARCH'' in the heading for subsection (f)(6)(A) and inserting ''RESEARCH'' .

Beginning on page 267, line 12, strike all through page 268, line 15, and insert the following:

(b) APPLICABLE PENALTY.—For purposes of this section, the term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

On page 310, between lines 10 and 11, insert the following:

(b) LEASES TO FOREIGN ENTITIES.—Section 849(b) of the American Jobs Creation Act of 2004, as amended by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2005, with respect to leases entered into on or before March 12, 2004.''.

On page 310, line 11, strike ''(b)'' and insert ''(c)''.

On page 320, in the table following line 17, strike ''119.5'' and insert ''120''.

On page 322, line 24, insert ''which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year and''

Mr. GRASSLEY. Mr. President, this is an amendment sponsored by Senator BAUCUS and me. It remedies two matters in the bill. The most important one makes the amendment hold harmless, a pure hold-harmless amendment. The amendment also clarifies that Government contractors will receive the research and development credit. This amendment is fully offset.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is very important. It helps tremendously to improve some provisions in the underlying bill so no one else has to pay AMT; and, second, R&D provisions, enhanced R&D and contractors are not excluded. I support this.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2647) was agreed to.

Mr. GRASSLEY. I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 2633

Mr. BAUCUS. Mr. President, I think we are ready to wrap up debate on the pending amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I will clarify again for my colleagues the fact that the Ethics Committee genuinely tried to accommodate the concerns of the Senator from Oklahoma. We, as I say, worked hard to do it. But the fact is, the rule is clear on its face, and we are being asked to reinterpret what the Senate rules mean or to endorse a change in those rules for Senator COBURN.

I think the specific language and legislative history of the rules and the Federal law prevent us from reinterpreting the rules. I believe, as I mentioned when I started my remarks earlier, this matter should not be here being debated on the floor of the Senate but, rather, as Senator DODD suggested, Senator COBURN should go before the Rules Committee. And if Senator ENSIGN is unhappy that he cannot practice veterinary medicine, perhaps he should go before the Rules Committee and have a hearing and discuss this matter, and do it according to the procedures of the Senate.

If this were to pass today, I think it would set a very dangerous precedent that would encourage people—rather than going through the process of the rules and procedures we have here in the Senate, it would cause them to come to the floor. I do not think that is good for the institution. I ask my colleagues to not support this resolution.

Mr. President, at this time I raise a point of order that the Coburn amendment is not germane to the underlying bill.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. There is time remaining on the amendment.

Mr. COBURN. I yield back all time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, a little bit out of order here, but under the previous order, Senator SANTORUM and Senator BYRD were to speak after the disposition of the pending amendment. At this point I have learned Senator SANTORUM and Senator BYRD wish to speak at a later point.

I ask consent that the pending amendments be laid aside so Senator FEINGOLD may offer his amendment, that is, after the disposition of this amendment.

The PRESIDING OFFICER. Does the Senator yield back the remainder of his time on the Coburn amendment?

Mr. REID. Mr. President, if the manager of the bill will yield, procedurally, do we have any other amendments pending that votes need to——

The PRESIDING OFFICER. Time must be yielded back on the pending amendment, the Coburn amendment.

Mr. REID. If, in fact, the time were yielded back, what would be the first vote in sequence?

The PRESIDING OFFICER. A sequence has not been established.

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

The PRESIDING OFFICER. 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.

Mr. REID. Mr. President, how much time have we locked in under the unanimous consent agreement that is now before the Senate as to time that has been allocated? Senator FEINGOLD has 30 minutes; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. Senator SANTORUM has 15 minutes; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. Is there any other time allocated?

The PRESIDING OFFICER. Senator BYRD for 30 minutes.

Mr. REID. It is my understanding Senator BYRD has indicated he will not be giving his remarks.

Mr. BAUCUS. That is correct.

Mr. REID. Mr. President, that leaves not a lot of time for others who want to come and debate their amendments. So if anyone wants to come and debate their amendments, I am not sure if Senator FEINGOLD will use all of his time or if Senator SANTORUM will use all of his time.

Mr. GRASSLEY. Senator SUNUNU wants a couple minutes.

Mr. REID. Senator SUNUNU wants a couple minutes.

Mr. SUNUNU. Mr. President, if I may make a point through the Chair to the minority leader, I would seek 2 minutes to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Not now.

Mr. REID. Mr. President, I ask unanimous consent that the first vote to occur in this long stack of amendments be in relation to the Coburn amendment, and that the two managers will determine the sequence of votes following that vote, and that Senator BINGAMAN be given 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. SUNUNU. Mr. President, I would ask unanimous consent to be added to that list for 2 minutes to offer an amendment at the end of that list.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. BAUCUS. Mr. President, it is after Senator FEINGOLD's amendment? After that?

Mr. SUNUNU. Yes.

Mr. BAUCUS. OK, fine.

Mr. REID. I accept the modification.

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

The Senator from Montana.

Mr. BAUCUS. Mr. President, I might also say that means as to the list of Senators who come to me and say they want to speak on their amendments, I have said to them they could, but there will be a short period in which to speak, and they will have to come down here and speak some time before 7:30, if they want any time to speak.

The PRESIDING OFFICER. Without objection, all time has expired on the Coburn amendment.

Is there a point of order made?

Mr. VOINOVICH. A point of order was made.

Mr. COBURN. And a motion to waive, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. REID. Mr. President, was the unanimous consent request approved?

The PRESIDING OFFICER. Did the Senator indicate a time for the first vote?

Mr. REID. Ten minutes.

Mr. BAUCUS. The first vote would be at 7:30.

Mr. REID. Mr. President, 7:30. And all votes, the managers agree, should be 10-minute votes?

Mr. BAUCUS. After the first vote.

Mr. REID. After the first vote.

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

Mr. REID. And that we use the standard rule around here with 2 minutes equally divided on each amendment.

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

Mr. BAUCUS. Mr. President, I ask unanimous consent that all pending amendments be set aside so that the Senator from Wisconsin can offer his amendment.

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

Mr. REID. So the unanimous consent request was approved?

The PRESIDING OFFICER. It was approved.

The Senator from Wisconsin.

AMENDMENT NO. 2650

Mr. FEINGOLD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself, Mr. CONRAD, Mr. CHAFEE, Mr. OBAMA, and Mr. SALAZAR, proposes an amendment numbered 2650.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To fully reinstate the pay-as-you-go requirement through 2010)

At the appropriate place, insert the following:

SEC. ____. PAY-AS-YOU-GO POINT OF ORDER IN THE SENATE.

(a) POINT OF ORDER.—

(1) IN GENERAL.—It shall not be in order in the Senate to consider any direct spending or revenue legislation that would increase the on-budget deficit or cause an on-budget deficit for any 1 of the 3 applicable time periods as measured in paragraphs (5) and (6).

(2) APPLICABLE TIME PERIODS.—For purposes of this subsection, the term ''applicable time period'' means any 1 of the 3 following periods:

(A) The first year covered by the most recently adopted concurrent resolution on the budget.

(B) The period of the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget.

(C) The period of the 5 fiscal years following the first 5 fiscal years covered in the most recently adopted concurrent resolution on the budget.

(3) DIRECT-SPENDING LEGISLATION.—For purposes of this subsection and except as provided in paragraph (4), the term ''direct-spending legislation'' means any bill, joint resolution, amendment, motion, or conference report that affects direct spending as that term is defined by, and interpreted for purposes of, the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) EXCLUSION.—For purposes of this subsection, the terms ''direct-spending legislation'' and ''revenue legislation'' do not include—

(A) any concurrent resolution on the budget; or

(B) any provision of legislation that affects the full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of the Budget Enforcement Act of 1990.

(5) BASELINE.—Estimates prepared pursuant to this section shall—

(A) use the baseline surplus or deficit used for the most recently adopted concurrent resolution on the budget; and

(B) be calculated under the requirements of subsections (b) through (d) of section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 for fiscal years beyond those covered by that concurrent resolution on the budget.

(6) PRIOR SURPLUS.—If direct spending or revenue legislation increases the on-budget deficit or causes an on-budget deficit when taken individually, it must also increase the on-budget deficit or cause an on-budget deficit when taken together with all direct spending and revenue legislation enacted since the beginning of the calendar year not accounted for in the baseline under paragraph (5)(A), except that direct spending or revenue effects resulting in net deficit reduction enacted pursuant to reconciliation instructions since the beginning of that same calendar year shall not be available.

(b) WAIVER.—This section may be waived or suspended in the Senate only by the affirmative vote of ⅗ of the Members, duly chosen and sworn.

(c) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of ⅗ of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(d) DETERMINATION OF BUDGET LEVELS.—For purposes of this section, the levels of new budget authority, outlays, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(e) SUNSET.—This section shall expire on September 30, 2010.

Mr. FEINGOLD. Mr. President, I am pleased to bring an old friend back to this body—the pay-go rule. I am even more pleased to say this is not some new pay-go, but rather good old-fashioned ''Classic'' pay-go. This is the pay-go we used to have in the Senate—a rule that said you had to pay for what you wanted. If you want to increase entitlement spending, you have to pay for it. If you want to increase tax expenditures or cut tax rates, then you have to pay for it.

In offering this amendment, I am pleased to be joined by the Senator from Rhode Island, Mr. CHAFEE, the Senator from Illinois, Mr. OBAMA, and in particular I am pleased to, of course, have the Senator from North Dakota, Mr. CONRAD, as a cosponsor.

As I said during the debate over the first part of the reconciliation scheme that was included in the budget resolution, there is no Senator more dedicated to a fiscally responsible Federal budget and to restoring sound budget rules than Senator CONRAD. He is an acknowledged expert on the budget and the rules that govern its consideration, but as I also said during that debate, you do not have to be a Kent Conrad to understand the pay-go rule.

It is a straightforward, commonsense requirement that whenever Congress wants to increase spending through entitlements or wants to reduce revenues from the Tax Code, then we have to pay for it or find 60 votes to make an exception to the rule.

I say to the Presiding Officer, as you well know—and I thank you for your help on this amendment—that rule was an effective restraint on the fiscal appetites of Congress and the White House, and it was critical to our ability to actually balance the Federal books. We balanced the Federal books during the 1990s using the pay-go rule.

Of course, when this body stopped following that rule, the bottom dropped out from under the budget. We went from a projected 10-year unified budget surplus of $5 trillion to massive projected deficits and backbreaking debt.

I marvel at how rapidly this institution loses its fiscal bearings. In 1992, thanks in great part to the remarkable campaign of Ross Perot, the budget deficit became the No. 1 domestic priority of the Nation. I ran on that issue in my 1992 campaign for the Senate. Perhaps a little naively, I offered a plan to balance the budget with over 82 specific proposals to cut wasteful programs in just about every area of Government.

As optimistic as I was, I was surprised at how passionately many in the Senate actually embraced that cause. And because of a tough deficit reduction package in 1993 and a more modest package in 1997, we put the budget on track to be balanced. We actually balanced the Federal budget without using the Social Security surpluses. We actually started paying down the Federal debt, most of which had been run up during the 1980s.

Central to our ability to get on the right fiscal track was this pay-go rule. But all that work, all those tough decisions were squandered in the blink of a budgetary eye. The Federal budget is now in disastrous shape. Worse, we are on a track for even darker times. As Al Jolson famously said, ''You ain't seen nothin' yet.''

As the Senator from North Dakota has tirelessly said: We are in the sweet spot right now. That means the retirement of my generation, the baby boom generation, is around the corner. And with it, we will witness enormous new demands on the budget. If we can't get our act together now, there is little hope that we can face those demands responsibly.

We have to stop running deficits. Running deficits caused the Government to use the surpluses of the Social Security trust fund for other Government purposes rather than to pay down the debt and help our Nation prepare for the coming retirement of the baby boom generation. As Senator CONRAD has noted, it isn't just the annual budget deficits that are the problem, it is our debt as well. Every dollar that we add to the Federal debt is another dollar that we are forcing our children to pay back in higher taxes for fewer Government benefits.

As I have noted before during previous pay-go debates, when the Government in this generation, in our generation, chooses to spend on current consumption and to accumulate debt for our children's generation to pay, it does nothing less than rob our children of their own choices. We make our choices to spend on our wants, but we saddle them with debts that they must pay from their tax dollars and their hard work. That is not right.

That is why this amendment is so critical. We absolutely must reinstate the pay-go rule. We need a strong budget process. We need to exert fiscal discipline. When the pay-go rule was in effect, that tough fiscal discipline actually governed the budget process. Under the current approach, it is the other way around. The annual budget resolution actually determines how much fiscal discipline we are willing to impose on ourselves. That simply has not worked, and it won't work. When Congress decides that it would be nice to create a new entitlement or enact new tax cuts and then adjust its budget rules to permit those policies, we are inviting a disastrous result. That is exactly what has happened.

This amendment is simple and straightforward. It would simply return us to the rule under which Congress operated for the decade of the 1990s. It was instrumental in balancing the Federal budget. Many of us lived under that rule, and we know how effective it was.

A real pay-go rule by itself would not eliminate annual budget deficits and balance the budget, but we will never get there without a real pay-go rule.

I urge my colleagues to support this commonsense, time-tested amendment.

I reserve the remainder of my time and yield the floor.

AMENDMENT NO. 2651

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the pending amendment be set aside, and I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SUNUNU] proposes an amendment numbered 2651.

Mr. SUNUNU. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To repeal State and local taxation exemptions applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation)

At the appropriate place, insert the following:

SEC. ___. REPEAL OF STATE AND LOCAL TAX EXEMPTION FOR FANNIE MAE AND FREDDIE MAC.

(a) FANNIE MAE.—Section 309(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(c)) is amended to read as follows:

''(c) [Repealed.]''.

(b) FREDDIE MAC.—Section 303(e) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(e)) is amended to read as follows:

''(e) [Repealed.]''.

Mr. SUNUNU. Mr. President, I offer an amendment today that deals with what I consider to be a tax loophole that is in the Code that fully exempts private, for-profit corporations, owned by shareholders that have had very high levels of profit in recent years, from paying any State or local taxes. The entities I am talking about are the Government-sponsored entities Fannie Mae and Freddie Mac. These are chartered by the Federal Government. We give them a number of benefits. They help with the secondary mortgage market and have been very successful in that mission. But they are in fact private, for-profit corporations with very large profits, and they do not need to be exempt from paying State and local taxes. In fact, I think if they are really committed to the local communities and the homeowners they serve across the country, they ought to be happy to pay State and local taxes.

We have heard a lot of debate over the last several hours about Big Oil. We have even had some amendments that take away tax benefits from oil companies. Some of those amendments I have supported. There have been other amendments that actually impose special taxes on oil companies. Given the concern people seem to have with high levels of profits at oil firms in recent months, I think people should embrace the idea of getting rid of this tax loophole, imposing the same kind of legitimate State and local taxes on the GSEs as we see anywhere else.

It might be one thing if the levels of profit at these entities had been plowed back into the community. But that isn't the case. The lion's share of these profits have gone to shareholders or in some cases to exorbitant executive pay—$5 million for some of the executives at these corporations, $10 million a year in one case. Clearly, these profits are being used to put back into homeownership. These are companies that can afford to pay State and local taxes. They ought to pay State and local taxes.

I certainly encourage my colleagues to support the amendment.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendments be set aside so that the Senator from New York may offer an amendment.

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

AMENDMENT NO. 2624

Mr. SCHUMER. Mr. President, before I offer my amendment, I ask unanimous consent that Senators WARNER, SANTORUM, and COLEMAN be added as cosponsors of amendment No. 2624, the Leahy amendment, of which I am a lead cosponsor.

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

AMENDMENT NO. 2635

Mr. SCHUMER. Mr. President, I call up amendment No. 2635.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 2635.

Mr. SCHUMER. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil and to use the proceeds of the tax collected to provide a nonrefundable tax credit of $100 for every personal exemption claimed for taxable years beginning in 2005)

At the end of title IV add the following:

SEC. 410. TEMPORARY WINDFALL PROFITS TAX.

(a) IN GENERAL.—Subtitle E (relating to alcohol, tobacco, and certain other excise taxes) is amended by adding at the end thereof the following new chapter:

''CHAPTER 56—TEMPORARY WINDFALL PROFITS ON CRUDE OIL

''Sec. 5896. Imposition of tax.
''Sec. 5897. Windfall profit; etc.
''Sec. 5898. Special rules and definitions.

''SEC. 5896. IMPOSITION OF TAX.

''(a) IN GENERAL.—In addition to any other tax imposed under this title, there is hereby imposed on any applicable taxpayer an excise tax in an amount equal to 50 percent of the windfall profit of such taxpayer for any taxable year beginning in 2005.

''(b) APPLICABLE TAXPAYER.—For purposes of this chapter, the term 'applicable taxpayer' means, with respect to operations in the United States—

''(1) any integrated oil company (as defined in section 291(b)(4)), and

''(2) any other producer or refiner of crude oil with gross receipts from the sale of such crude oil or refined oil products for the taxable year exceeding $100,000,000.

''SEC. 5897. WINDFALL PROFIT; ETC.

''(a) GENERAL RULE.—For purposes of this chapter, the term 'windfall profit' means the excess of the adjusted taxable income of the applicable taxpayer for the taxable year over the reasonably inflated average profit for such taxable year.

''(b) ADJUSTED TAXABLE INCOME.—For purposes of this chapter, with respect to any applicable taxpayer, the adjusted taxable income for any taxable year is equal to the taxable income for such taxable year (within the meaning of section 63 and determined without regard to this subsection)—

''(1) increased by any interest expense deduction, charitable contribution deduction, and any net operating loss deduction carried forward from any prior taxable year, and

''(2) reduced by any interest income, dividend income, and net operating losses to the extent such losses exceed taxable income for the taxable year.

In the case of any applicable taxpayer which is a foreign corporation, the adjusted taxable income shall be determined with respect to such income which is effectively connected with the conduct of a trade or business in the United States.

''(c) REASONABLY INFLATED AVERAGE PROFIT.—For purposes of this chapter, with respect to any applicable taxpayer, the reasonably inflated average profit for any taxable

year is an amount equal to the average of the adjusted taxable income of such taxpayer for taxable years beginning during the 2002–2004 taxable year period plus 10 percent of such average.

"SEC. 5898. SPECIAL RULES AND DEFINITIONS.

''(a) WITHHOLDING AND DEPOSIT OF TAX.—The Secretary shall provide such rules as are necessary for the withholding and deposit of the tax imposed under section 5896.

''(b) RECORDS AND INFORMATION.—Each taxpayer liable for tax under section 5896 shall keep such records, make such returns, and furnish such information as the Secretary may by regulations prescribe.

''(c) RETURN OF WINDFALL PROFIT TAX.—The Secretary shall provide for the filing and the time of such filing of the return of the tax imposed under section 5896.

''(d) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

''(e) BUSINESSES UNDER COMMON CONTROL.—For purposes of this chapter, all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

''(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter.''.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''CHAPTER 56. Temporary Windfall Profit on Crude Oil.''.

(c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—The first sentence of section 164(a) of the Internal Revenue Code of 1986 (relating to deduction for taxes) is amended by inserting after paragraph (5) the following new paragraph:

''(6) The windfall profit tax imposed by section 5896.''.

(d) NONREFUNDABLE CREDIT.—In the case of taxable years beginning in 2005, for purposes of the Internal Revenue Code of 1986, the tax liability of each taxpayer otherwise determined under the Internal Revenue Code of 1986 shall be reduced by $100 for each personal exemption (within the meaning of section 151 of such Code) claimed by such taxpayer for such taxable year.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning in 2005.

Mr. SCHUMER. Mr. President, I rise to offer this amendment which will help balance the oil markets and help families balance their budgets this winter by pulling some of the money out of the gas pumps and putting it back in people's pockets. It would do so by instituting a windfall profit levy on the oil companies and transferring those proceeds back to where they came from, the consumer.

I am going to not use all the rhetoric. We have talked about a windfall levy before. But this one is considerably different than the one that was offered before in a number of ways. I would like to outline those ways.

First, the revenues go directly to the individual's pockets. It does not go through the Government. It does not go through any agency. It simply adds a tax credit of $100 for every person. That means the money goes to everyone. Big families will get more than small families, and it will certainly help taxpayers at the lower end.

The temporary levy we are talking about is also different. The previous one just taxed oil when it was above $40 a barrel. My worry about that is that it could raise the price at the pump. What we are doing is using a method that puts this levy on profits. It means that that happens after the companies have brought in their cash and, therefore, is quite different than an amendment that just goes on to taxes.

Let me describe the amendment. We create a temporary levy on the excess profits of U.S. oil companies and foreign companies that do substantial business in the United States, in order to provide every taxpayer with a nonrefundable tax credit of $100 for 2005 for every person in their household. The temporary levy applies to major integrated oil companies, plus any refiners or producers with more than $100 million in sales. The revenue mechanism is an actual tax on windfall profits in 2005 that exceed a 3-year historic average. It will be very easy for the companies to calculate this based on the numbers they have previously reported on their tax returns. So no one can argue it is administratively difficult.

The proposal is intended to be a complement to the other windfall proposals. It is different. For those who argue against the other proposals on grounds that such levees will increase production costs and thereby fuel costs, this amendment addresses those concerns because it is an actual tax on profits, not production. In other words, those who say they object to windfall profit levees on these grounds will have to show their real colors. Those who don't want to force the oil companies to give up anything under any circumstances will, of course, not vote for this amendment. But for those who have come to the floor to argue against other proposals simply because they say they will increase production costs, this amendment would not. You should vote for it.

As I mentioned, the revenue goes to provide every U.S. taxpayer with a nonrefundable tax credit of $100. The amendment is designed to be revenue neutral. The excess profit tax rate will be adjusted, as necessary, to ensure there will be no net budget impact that violates the reconciliation instructions.

Bottom line: different than the other proposal; money goes directly to the taxpayer; money is levied on profits so it doesn't raise costs or interfere with production because it is after the line.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. BAUCUS. Mr. President, I see Senator SANTORUM. Under previous order, he has the right to speak for 15 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I first want to start out by thanking the chairman for all the hard work he has put in on this package. The work we have done together has been at times a challenging process, but I certainly appreciate working together, particularly on a section of the bill which I will talk about more in detail and that has not been talked about on the floor, and that is the section of the bill dealing with charitable giving, part of an effort that I have been working on, and many have been working on, to try to help those in need in our society by helping those important mediating institutions of our society who are out there every day on the frontlines serving the needs of those who, in many cases, are left behind by society.

I am pleased overall that we are going to be able to pass this package, hopefully soon, that will stop tax increases from going into effect. I call this bill the ''Tax Increase Prevention Act'' because but for this bill, hundreds of thousands of taxpayers in my State alone and millions across America would have their taxes go up starting in January of next year.

In Pennsylvania, almost 350,000 families would see their taxes go up, some dramatically, because of the alternative minimum tax.

Mr. President, 268,000 taxpayers will benefit from the low-income savers credit, which would go away but for this bill; 150,000 families and students would continue to be able to deduct college tuition, another important provision in this bill, and 142,000 teachers in Pennsylvania will be able to deduct expenses that they have in the classroom helping their students.

One of the most important things about this tax bill is that it will in fact provide more certainty for Americans in providing a Tax Code and will continue the policies that have created the economic growth and the vitality that this economy has had after some of the tough blows that were dealt in the early part of this century.

But the focus I wanted to talk about on this bill tonight are some things that I have been working on along in particular on the other side of the aisle with Senator JOE LIEBERMAN. It has been a long road for us on what is called the CARE Act, Charitable Aid and Recovery Empowerment Act. It is an important piece of legislation that does a lot to incentivize people across America to give.

There are several provisions in the bill I want to highlight that are vitally important in encouraging charitable giving. If we look at that in America, what we see is not necessarily a rosy story. Yes, we have seen increases in giving around events such as Katrina and the events of 9/11, but what we have seen after the publicity and after all the attention attracted by those disasters and those horrific instances, actually charitable giving pretty much flat over the past 25 years.

About 25 or 30 years ago we gave almost 2.5 percent of GDP in charitable giving—2.5 percent we were generous enough to give to charitable organizations to help those in need in our society. Today, we are at around 1 percent. That is something that, candidly, I think we need to work on. There are a lot of reasons why that may happen. Some of it may be we have seen an increase in Government over the last 25 or 30 years and, as a result, we have seen some squeezing out of some of the charitable organizations that existed in the past. But the bottom line is that America is strong when our civic and community organizations are strong, and they can only be strong if they have the resources to be out there in the community to meet the needs that are so prevalent.

We have done a couple things in this bill that are important. One that I am very proud of is that we have taken the opportunity, for the first time in a long time in the Tax Code, to give nonitemizers the opportunity to deduct charitable contributions. Heretofore, if you were one of the two-thirds of Americans who filled out a tax form, using the short form, and you could give 10 percent of your income—and in fact many in our society do tithe, give 10 percent of their income—but if you are a low-income person and you do not have any other reason to take other than the standard deduction, you would be denied the opportunity to take those deductions and get some support for your supporting of charitable organizations.

Under this bill, you will now be able to have an opportunity, on the front of the 1040 form, to deduct your charitable contributions similar to those who itemize the deduction.

That is an important incentive because there is a floor on this. For a couple filing jointly, you would have to contribute $420, and that might be changed. We are working on an amendment to maybe lower that floor a little bit. But it will be around $400 before you can claim a deduction on your tax form.

So the charities we have talked to, everybody from the United Way to the Salvation Army and others, they are very excited because they do believe this will incentivize more generous giving instead of giving the deduction for giving that would otherwise have occurred without this incentive. So we think it incentivizes more generous giving both for those who do not itemize, as well as, if we also put a floor on itemizers, we will incentivize itemizers to give more and be more generous through this.

A couple other aspects we have worked on. One is an IRA rollover provision. We have literally billions of dollars stored up in IRAs with some people who candidly have done well enough that they don't need the IRAs to maintain the quality of life they have. But that money is locked up for folks who want to contribute that IRA to charitable organizations. It has been estimated that literally $2 to $3 billion of charitable contributions could occur if we stop what is current law, which is the penalties and interest that would be charged to those who would donate their IRAs to philanthropic organizations. So we remove penalties and interest which I think will unlock literally billions of dollars in money for, particularly in this case, educational institutions, which I think would do more than others to receive these kinds of funds.

We have a food donation provision. According to America's Second Harvest, this provision which focuses on farmers and ranchers and restaurateurs, this provision, I am told by America's Second Harvest, will encourage up to $2 billion over the next 10 years in donations of food and will feed 878 million people with meals. This is a very important provision as we try to attack hunger in America.

We have a provision that the Senator from Montana has been involved in with respect to book donations, which is important to again help educational institutions, libraries, and others.

So there are a variety of different provisions in this bill which are essential for us who want to see our fellow man reach into their pockets and to reach out their hands to help those in need in our society but need more wherewithal to do so.

This package of bills we have put together in this legislation will help charities do just that.

Now, on the other side of the coin, as many of the charities have been following this debate, there was a concern, candidly, about some ''charitable reforms'' that have been the subject of a lot of conversation in the philanthropic world that I have been working on with the chairman, to try to address some of the abuses that the Finance Committee, through several hearings that the chairman has had, that have been documented about some charitable organizations using money for, in some cases, personal gain or for transferring money to members of their family. Some of these concerns are legitimate, but one of the things that I was adamant about is that we did not want to have a series of reforms in place that were going to jeopardize the vast majority of nonprofit organizations that do incredibly good work, most of them volunteers, most of them with very little staff, certainly very little paid staff, and are the heart and soul of so many communities across America. So it has been a balancing act for the Chairman and myself as we have worked through this. We didn't quite get it right, in my opinion, in the committee mark, although the chairman went a long way in scaling back some of the more ambitious changes that he had proposed, but we have worked together, and from the mark to the amendment that will be offered by the chairman later, I think we have accomplished about 90 percent of the concerns and certainly the major concerns that not only I have had but those charitable organizations, particularly the small charitable organizations that are concerned about, if you will, more of a Sarbanes-Oxley approach to dealing with some charitable organizations that would have made it almost impossible for these charities to continue to function, particularly in smalltown America.

We have now been able to come up with compromises that I think will, at least according to all of the feedback we have been getting—and I want to congratulate Melanie Looney in my office. She has done an outstanding job in making sure that the interests of the mom-and-pop charities, if you will, across America have been represented here and that we are not doing anything while, on the one hand, giving incentives for people to contribute to charitable organizations and, on the other hand, shutting these charitable organizations down because they can't survive under the burden of new regulations they would be placed under.

I think we have done a great job in balancing those interests. There are still a couple of things we would like to adjust, but there is always conference and the ability to work together with the House to get that done.

I thank the chairman. We have been discussing this and working on this and, in some respects, battling on this for quite some time, but I believe now that we have reached the point where we have some responsible and proper reforms that the vast majority of the charitable world embraces and understands they need to increase the professionalization in a lot of respects. That has been accomplished as a result of the reforms that we have put forward today. I look forward to working with the Chairman and ranking member and members of the Ways and Means Committee to get a bill that all in the charitable community can embrace that is responsible in improving governance, as well as a great incentive for these organizations to go out and meet the needs that are so pressing our communities across America.

With that, Mr. President, I thank the chairman and ranking member for his time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendment temporarily be laid aside so I can offer an amendment on behalf of the Democratic leader, Senator REID.

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

AMENDMENT NO. 2653

Mr. BAUCUS. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will please report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for Mr. REID, for himself, Mr. KERRY, Mr.

LAUTENBERG, Ms. SNOWE, Mr. SALAZAR, Mr. BINGAMAN, Mr. JEFFORDS, Mr. BAYH, Mrs. CLINTON, Mr. HARKIN, and Mrs. FEINSTEIN, proposes an amendment numbered 2653.

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to extend through 2010 certain tax incentives for renewable energy production and energy efficient building construction)

At the end of title IV, add the following:

Subtitle B—Extending Tax Incentives for Renewable Energy Production and Energy Efficient Construction

SEC. 411. EXTENSION OF RENEWABLE ENERGY PRODUCTION CREDIT THROUGH 2010.

Paragraphs (1), (2), (3), (4), (5), (6), (7), and (9) of section 45(d) (relating to qualified facilities) are amended by striking ''2008'' each place it appears and inserting ''2011''.

SEC. 412. EXTENSION OF RENEWABLE ENERGY INVESTMENT TAX CREDIT THROUGH 2010.

Paragraphs (2)(A)(i)(II) and (3)(A)(ii) (relating to energy credit) is amended by striking ''2008'' both places it appears and inserting ''2011''.

SEC. 413. EXTENSION OF CLEAN RENEWABLE ENERGY BONDS THROUGH 2010.

Section 54(m) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 414. EXTENSION OF ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION THROUGH 2010.

Section 179D(h) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 415. EXTENSION OF NEW ENERGY EFFICIENT HOME CREDIT THROUGH 2010.

Section 45L(g) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 416. EXTENSION OF RESIDENTIAL RENEWABLE ENERGY EFFICIENT PROPERTY CREDIT THROUGH 2010.

Section 25D(g) is amended to read as follows:

''(a) TERMINATION.—The credit allowed under this section shall not apply to—

''(1) property described in paragraph (1) or (2) of subsection (d) placed in service after December 31, 2010, and

''(2) property described in subsection (d)(3) placed in service after December 31, 2007.''.

SEC. 417. EXTENSION OF NONBUSINESS ENERGY PROPERTY CREDIT THROUGH 2010.

Section 25C(g) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 418. MODIFICATIONS OF EFFECTIVE DATES OF LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) IN GENERAL.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by adding at the end the following new paragraph:

''(5) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2004, with respect to leases entered into on or before March 12, 2004.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendment be laid aside so that Senator NELSON of Florida may offer an amendment.

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

AMENDMENT NO. 2601

Mr. NELSON of Florida. Mr. President, I call up amendment 2601.

The PRESIDING OFFICER. The clerk will please report.

The bill clerk read as follows:

The Senator from Florida [Mr. NELSON], for himself, Mr. DORGAN, Mr. LEAHY, Mr. SCHUMER, and Mr. DAYTON, proposes an amendment numbered 2601.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006)

At the end of title IV, insert the following:

SEC. _____. PROTECTION FOR MEDICARE BENEFICIARIES WHO ENROLL IN THE PRESCRIPTION DRUG BENEFIT DURING 2006.

(a) EXTENDED PERIOD OF OPEN ENROLLMENT DURING ALL OF 2006 WITHOUT LATE ENROLLMENT PENALTY.—Section 1851(e)(3)(B) of the Social Security Act (42 U.S.C. 1395w–21(e)(3)(B)) is amended—

(1) in clause (iii), by striking ''May 15, 2006'' and inserting ''December 31, 2006''; and

(2) by adding at the end the following new sentence:

''An individual making an election during the period beginning on November 15, 2006, and ending on December 15, 2006, shall specify whether the election is to be effective with respect to 2006 or with respect to 2007 (or both).''

(b) ONE-TIME CHALLENGE OF PLAN ENROLLMENT FOR MEDICARE PRESCRIPTION DRUG BENEFIT DURING ALL OF 2006.—

(1) IN GENERAL.—Section 1851(e) of the Social Security Act (42 U.S.C. 1395w–21(e)) is amended—

(A) in paragraph (2)(B)—

(i) in the heading, by striking ''FOR FIRST 6 MONTHS'';

(ii) in clause (i)—

(I) by striking ''the first 6 months of 2006'' and inserting ''2006''; and

(II) by striking ''the first 6 months during 2006'' and inserting ''2006''; and

(iii) in clause (ii), by inserting ''(other than during 2006)'' after ''paragraph (3)''; and

(B) in paragraph (4), by striking ''2006'' and inserting ''2007'' each place it appears.

(2) CONFIRMING AMENDMENT.—Section 1860D–1(b)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395w–101(b)(1)(B)(iii) is amended by striking ''subparagraphs (B) and (C) of paragraph (2)'' and inserting ''paragraph (2)(C)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvment, and Modernization Act of 2003 (Public Law 108–173).

Mr. NELSON of Florida. Mr. President, I am offering an amendment to try to help our senior citizens from the state of confusion that many of them are now experiencing since the prescription drug benefit started 2 days ago and being signed up. If other Senators are hearing from their senior citizens as I am—and I met with a group on Monday in West Palm Beach—they will find that many of them are confused, bewildered, and in some cases even frightened because they are afraid of making a choice and then making a mistake, and under the current law—and we need to clean up some of this current law anyway—they could not rectify that mistake for a whole year. And now in trying to make an intelligent decision on something that is as important to a senior citizen as prescription drugs, they are being confronted with a multiplicity of plans.

I had one senior in West Palm Beach tell me they were actually looking at 103 plans. In other parts of the State, you are looking at 18 companies offering 43 stand-alone prescription plans and, in addition, another 37 companies will offer a total of 257 different Medicare Advantage prescription drug plans. And each of these has differing premiums, cost-sharing requirements, different drugs, and pharmacy access.

What about the senior citizen who has one or two pharmacies in their small community and then they have to worry about finding the plan that fits with that pharmacy? Or what about the senior citizen who has a prescription and depends on it, goes and finds the plan that covers that prescription and then what happens if the doctor in the course of the year changes that prescription and then that prescription is not contained on that particular plan's formula?

Sorting through these plans is complicated and time-consuming, and that is what has led our seniors to be confused, in some cases bewildered, and, very sadly in cases that I saw, even frightened.

We can rectify that with this amendment. All it does is give them more time instead of the deadline coming down like an ax in the night next May. It extends that deadline for 6 months, and it allows them, if they make a choice within the course of that year, 2006, the first year that the prescription drug law takes effect for Medicare, if they make a mistake, to rectify it. And if they make a choice to go with the Medicare prescription drug benefit and then realize they want to go back with their former employer's prescription drug plan, they have that option.

That is the essence of this amendment. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. ALLEN). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendments be set aside so that Senator BINGAMAN from New Mexico may offer an amendment. I ask him to limit his remarks to a couple minutes. I yield him 3 minutes.

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

AMENDMENT NO. 2642

(Purpose: To provide for a tax credit for offering employer-based health insurance coverage.)

Mr. BINGAMAN. Mr. President, I call up for consideration amendment No. 2642.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, and Mr. KERRY, proposes an amendment numbered 2642.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. BINGAMAN. Mr. President, this amendment I am offering is to create a tax credit for small businesses so they can provide health insurance for their employees. This is a terrible need, an enormous need in my own State of New Mexico.

I am defining small businesses as businesses with 50 or fewer employees. According to the Kaiser Family Foundation, only 43 percent of small businesses defined in this way offer health insurance to their employees. This chart sets out the range that applies to each State, and you can see that many States have this very same problem.

In my home State of New Mexico, roughly 38 percent of workers who work for small businesses have access to employer-provided health insurance. In a State such as New Mexico where a majority of the businesses have fewer than 50 employees, the lack of employer-provided insurance is reflected in the overall number of uninsured New Mexicans. Yet according to the Kaiser Foundation, 80 percent of the uninsured in our country come from a family in which at least one person is working.

This amendment creates a tax credit that ranges from 30 percent to 50 percent of the cost of qualified health insurance expenses with smaller employers getting the largest credit. In order to keep the costs down, I have provided that this credit will be effective in the 2006 tax year. We will have to take additional action to extend it beyond that.

What we have learned over the years is that employer-provided benefits are the most efficient and effective means to deliver health care coverage and retirement benefits.

This amendment is totally offset by requiring Government contractors to withhold a very small amount of the taxes they will ultimately have to pay.

This is a very meritorious amendment. It is totally offset and paid for. I urge my colleagues to support it, and the small businesses in their States will be very appreciative of that support.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendments be set aside so that the Senator from Illinois, Mr. DURBIN, may offer an amendment. I ask him, too, to limit his remarks to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Illinois.

AMENDMENT NO. 2623

(Purpose: To reduce the tax on patriotic employers, and for other purposes)

Mr. DURBIN. Mr. President, I call up amendment No. 2623.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 2623.

Mr. DURBIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DURBIN. Mr. President, our Tax Code does two things. It raises revenue, but it also tries to encourage good behavior and discourage bad behavior. What this amendment does is reward good behavior on the part of American businesses. It is my belief that if a business does the right thing for its employees and for this country, it should have a tax benefit, and that is why we are designating patriotic employers.

Who are these employers? They are employers who maintain or increase the number of full-time workers in America relative to the number of full-time workers outside of America. They maintain their corporate headquarters in America if the company has ever been headquartered here. They pay decent wages to their employees, a livable wage of at least $7.75 an hour. They provide a retirement plan for their employees, either a defined benefit or defined contribution that matches at least 5 percent of their worker contributions for every employer. They pay at least 60 percent of workers' health care premiums, and when their workers are members of the Guard and Reserve and activated to serve overseas, they make up the difference in salary so their families can have peace of mind financially while their soldiers are off fighting.

I believe the companies who do this deserve a benefit. They deserve a reward. If you are not providing for your employees a decent wage, if you are sending all your jobs overseas, if you don't have a retirement plan, and you don't provide health insurance, why in the world should we reward that?

Let's pick those good, patriotic American companies and give them this tax credit, which is fully offset by this amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendments be set aside so that the Senator from Nebraska, Mr. NELSON, may offer an amendment.

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

Mr. BAUCUS. Mr. President, I ask the Senator if he can limit his remarks to 3 minutes, too.

The PRESIDING OFFICER. The Senator from Nebraska.

AMENDMENT NO. 2625

Mr. NELSON of Nebraska. Mr. President, I thank my colleague from Montana for this opportunity. I call up my amendment No. 2625, which is at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. NELSON], for himself, and Mr. DEWINE, proposes an amendment numbered 2625.

Mr. NELSON of Nebraska. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require the Secretary of the Treasury to establish a disability preference program for qualified tax collection contracts)

At the end of title IV, insert the following:

SEC. ___. DISABILITY PREFERENCE PROGRAM FOR TAX COLLECTION CONTRACTS.

(a) IN GENERAL.—The Secretary of the Treasury shall not enter into any qualified tax collection contract after April 1, 2006, until the Secretary implements a disability preference program that meets the requirements of subsection (b).

(b) DISABILITY PREFERENCE PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—A disability preference program meets the requirements of this subsection if such program requires that not less than 10 percent of the accounts of each dollar value category are awarded to persons described in paragraph (2).

(2) PERSON DESCRIBED.—For purposes of paragraph (1), a person is described in this paragraph if—

(A) as of the date any qualified tax collection contract is awarded—

(i) such person employs not less than 50 severely disabled individuals within the United States; or

(ii) not less than 30 percent of the employees of such person within the United States are severely disabled individuals;

(B) such person agrees as a condition of the qualified tax collection contract that not more than 90 days after the date such contract is awarded, not less than 35 percent of the employees of such person employed in connection with providing services under such contract shall—

(i) be hired after the date such contract is awarded; and

(ii) be severely disabled individuals; and

(C) such person is otherwise qualified to perform the services required.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED TAX COLLECTION CONTRACT.—The term ''qualified tax collection contract'' shall have the meaning given such term under section 6306(b) of the Internal Revenue Code of 1986.

(2) DOLLAR VALUE CATEGORY.—The term ''dollar value category'' means the dollar ranges of accounts for collection as determined and assigned by the Secretary under section 6306(b)(1)(B) of the Internal Revenue Code of 1986 with respect to a qualified tax collection contract.

(3) SEVERELY DISABLED INDIVIDUAL.—The term ''severely disabled individual'' means—

(A) a veteran of the United States armed forces with a disability of 50 percent or greater—

(i) determined by the Secretary of Veterans Affairs to be service-connected; or

(ii) deemed by law to be service-connected; or

(B) any individual who is a disabled beneficiary (as defined in section 1148(k)(2) of the Social Security Act (42 U.S.C. 1320b–19(k)(2))) or who would be considered to be such a disabled beneficiary but for having income or resources in excess of the income or resources eligibility limits established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), respectively.

Mr. NELSON of Nebraska. Mr. President, I ask unanimous consent that Senator COLLINS be added as an original cosponsor.

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

Mr. NELSON of Nebraska. Mr. President, I call up my amendment at the desk and ask for its immediate consideration.

In October 2004, Congress enacted the American Jobs Creation Act of 2004, Public Law 108–357, providing for outsourcing by the Internal Revenue Service, IRS, of collection of unpaid and past due Federal income taxes. The bidding process for the initial contracts is currently underway. Eventually, after full implementation of the program, it is estimated that these contracts will create up to 4,000 well paying private-sector jobs.

The amendment that Senator DEWINE and I are offering today would establish a preference under the debt collection contracting program for contractors who meet certain threshold criteria relating to employment of disabled veterans and other severely disabled persons. The amendment further requires that at least a specified percentage of the individuals employed by the contractor to provide debt collection services under the contract with the IRS qualify as disabled veterans or severely disabled persons.

If Federal employees conducted the same tax collection activities, current law would give preferences to disabled veterans in filling those Federal jobs. In addition, if other persons with severe disabilities were employed by the Federal Government in those jobs, those disabled persons would benefit from the Federal Government's long history of nondiscrimination and policies of promoting job opportunities for the disabled.

Despite multiple Federal programs, benefits offered thorough a variety of agencies, and various tax incentives, unemployment rates for persons with disabilities, PWDs, are extremely high. The 2000 Census estimated that there were 31 million working-age Americans with disabilities, with an unemployment rate of 70–80 percent. Today, there are 2.6 million veterans receiving service-connected benefits, including disability benefits with an additional 340,000-plus applications pending by other veterans.

By enacting legislation to allow the IRS to outsource debt collection, Congress certainly did not intend to curtail the national commitment to creating meaningful job opportunities for disabled veterans and other severely disabled persons. Indeed, the contracts which the IRS will soon execute with private-sector debt collection companies provide a unique opportunity for the Federal government to stimulate creation of well-paying jobs for disabled veterans and other persons with severe disabilities.

To realize this opportunity, however, Congress must act to assure that existing Federal employment preferences for disabled veterans and Federal policies promoting opportunities for other severely disabled persons are carried forward as a part of the IRS's contracting criteria. My amendment, that I am happy to be offering with Senator DEWINE, achieves this goal.

Our amendment would establish a preference for companies that currently employ a minimum of 50 disabled veterans or persons with severe disabilities, who also must be capable of fulfilling the task. Once the IRS award is made, the debt collection contractor would be required to ensure that 35 percent of the workforce fulfilling the contract be new hires that are persons or veterans with disabilities.

Under this amendment, a minimum of 140 full-time equivalent jobs, also known as FTE jobs, would be created for PWDs at third-party debt collection agencies contracted to collect certain past dues income taxes. An FTE job is equivalent to one (1) 40-hour job or two (2) 20-hr weekly employees or four (4) 10-hour per week employees. These jobs are often part-time; 140 FTEs could translate into close to 300 part-time positions for disabled individuals.

This amendment would not only help to alleviate the current unemployment rate of PWDs, it would also generate substantial savings. These jobs pay anywhere from $19,000 annually up to $40,000 annually and can include health and 401(k) benefits. Even at the low end, this income level is too high to qualify for supplemental security income-disability insurance benefits. Thus, individuals in these programs who take these jobs will no longer require government benefit subsidies from SSI or DI, even if otherwise qualified. Over a 5-year period, the SSI/DI savings are estimated to be $69-$75 million.

To qualify under this amendment, a company must hire 50 PWDs. If 10 companies do this, the net result is employment of 500 PWDs who currently do not have jobs. If 20 companies participate, 1,000 PWDs would be gainfully employed. The savings realized with 1,000 PWDs no longer needing SSI/DI benefits could be as high as $344 million.

The IRS debt collection program is already established. The provisions in this amendment offer the added benefit of more jobs for disabled veterans and the reduction of Federal benefit program costs.

We owe it to our service men and women to improve their futures in any way we can. We have the opportunity to not only show our support for our disabled veterans, but to also show the severely disabled that we believe in them and in their abilities.

I urge my fellow Senators to support this amendment, to support our veterans, and to support the severely disabled.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 2650

Mr. FEINGOLD. Mr. President, how much time do I have remaining on my amendment?

The PRESIDING OFFICER. The Senator from Wisconsin has 8 minutes remaining.

Mr. FEINGOLD. I note how pleased I am that the Senator from Colorado, Mr. SALAZAR, is a cosponsor of this amendment.

I yield 2 minutes to the Senator from Illinois who is also a cosponsor of my amendment.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. OBAMA. Mr. President, I rise today to speak in favor of the amendment offered by Senator FEINGOLD. I am pleased to be a cosponsor of the amendment.

In recent years, the philosophy in Washington has been that you can spend without consequence or sacrifice. That we can fight a war in Iraq and a war on terror, protect our homeland, provide our citizens with Medicare and Social Security, and maintain our domestic priorities, all while cutting taxes for the wealthy and funding every local project there is.

If you are wondering how Congress pays for all this, it doesn't. Instead, billions of dollars are borrowed from other countries and put on a credit card for our children to pay off. Yet, when it comes time to pay these bills, no one can seem to agree on any tax cuts to defer or any programs to cut.

Every family knows that it is one thing to use a credit card; it is another thing to keep spending money you don't have. You have to pay as you go, which is a rule most Americans live by.

Washington once did too, until the White House and my colleagues on the other side of the aisle abandoned it to push through the President's tax breaks.

This attempt to pass $60 billion in tax breaks despite record breaking

deficits is just the latest example of the fiscal irresponsibility in this city.

The amendment offered by Senator FEINGOLD is about restoring responsible budgeting. Previously, PAYGO rules applied equally to increases in mandatory spending and tax cuts.

Unfortunately, the rules were changed, and now the requirements of budget discipline apply to only half of the budget—the spending part.

The problem is, that there is no such thing as half a budget. Budget discipline requires enforcing control over both sides of the ledger.

The original PAYGO rules were abandoned to provide for a series of unfunded tax breaks. In order to pay for these tax breaks, the Government had to borrow money from countries like Japan and China.

And we borrowed from the Social Security Trust Fund. In the process, our national debt shot up to $8 trillion, and it is still rising. Last year, for example, our national commitments exceeded our national resources by more than $550 billion.

Americans deserve better financial leadership.

Washington could learn a lot from the American people about fiscal responsibility. The people I talk to in Illinois are not fooled by what's going on. They know what is happening with higher deficits and reduced levels of Government service.

They understand that, in this life, you get what you pay for and if you don't pay for it today, it will cost you more tomorrow.

The people I have met with know that if you need to spend more money on something, you also need to make more money, and if your income falls, your spending must fall, too. This is the essence of the PAYGO rules we are trying to reinstate today. Changes in spending must be offset by changes in revenue, and vice versa.

The people I talk to understand that when you have massive costs coming down the road, you need to prepare for them. There is no excuse for ignoring the financial consequences of foreseeable expenses—whether it is the rising costs of health care, the retirement of the baby boom generation, or the growing inequality of wealth in our society.

So when you are already deep in debt—as the Federal Government is now—and you are facing a mountain of debt in the future, it is just not the right time to be giving out $60 billion in tax cuts, even if many of these cuts have merit.

And if you are intent on giving out these tax cuts, let's find a way to pay for them.

And that is why it is so important that we reinstate PAYGO in a way that meaningfully enforces the budget discipline that both sides of the aisle need in order to honestly tackle our short-term and long-term fiscal challenges.

It is time for some adult supervision to return to the budgeting process. PAYGO provides a necessary tool at a necessary time.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I thank the Senator from Illinois. I ask unanimous consent that it be in order at this time to ask for the yeas and nays on my amendment.

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

Mr. FEINGOLD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2653, AS MODIFIED

Mr. BAUCUS. I ask unanimous consent to modify Reid amendment No. 2653 with the text I now send to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is so modified.

The amendment (No. 2653), as modified, is as follows:

At the end of title IV, add the following:

Subtitle B—Extending Tax Incentives for Renewable Energy Production and Energy Efficient Construction

SECTION 411. EXTENSION OF RENEWABLE ENERGY PRODUCTION CREDIT THROUGH 2010.

Paragraphs (1), (2), (3), (4), (5), (6), (7), and (9) of section 45(d) (relating to qualified facilities) are amended by striking ''2008'' each place it appears and inserting ''2011''.

SEC. 412. EXTENSION OF RENEWABLE ENERGY INVESTMENT TAX CREDIT THROUGH 2010.

Paragraphs (2)(A)(i)(II) and (3)(A)(ii) (relating to energy credit) is amended by striking ''2008'' both places it appears and inserting ''2011''.

SEC. 413. EXTENSION OF CLEAN RENEWABLE ENERGY BONDS THROUGH 2010.

Section 54(m) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 414. EXTENSION OF ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION THROUGH 2010.

Section 179D(h) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 415. EXTENSION OF NEW ENERGY EFFICIENT HOME CREDIT THROUGH 2010.

Section 45L(g) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 416. EXTENSION OF RESIDENTIAL RENEWABLE ENERGY EFFICIENT PROPERTY CREDIT THROUGH 2010.

Section 25D(g) is amended to read as follows:

''(a) TERMINATION.—The credit allowed under this section shall not apply to—

''(1) property described in paragraph (1) or (2) of subsection (d) placed in service after December 31, 2010, and

''(2) property described in subsection (d)(3) placed in service after December 31, 2007.''.

SEC. 417. EXTENSION OF NONBUSINESS ENERGY PROPERTY CREDIT THROUGH 2010.

Section 25C(g) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 418. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.

(a) IN GENERAL.—Section 3402 is amended by adding at the end the following new subsection:

''(t) EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.—

''(1) GENERAL RULE.—The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment for goods and services which is subject to withholding shall deduct and withhold form such payment a tax in an amount equal to 3 percent of such payment.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to any payment—

''(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,

''(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section,

''(C) of interest,

''(D) for real property,

''(E) to any tax-exempt entity, foreign government, or other entity subject to the requirements of paragraph (1),

''(F) made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)), and

''(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually.

''(3) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of any payment for goods and services which is subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2005.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendments be laid aside so that the Senator from Arkansas, Mrs. LINCOLN, may offer an amendment at the very least. If the time has now run and we are going to begin voting, at least she is next in the queue after the amendments that we have already listed.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The majority leader is recognized.

Mr. FRIST. Mr. President, I ask unanimous consent that following the vote in relation to the Coburn amendment the Senate proceed to votes in relation to the following amendments in the sequence ordered; provided there be 2 minutes equally divided between the votes and that no second degrees be in order to the amendments prior to the votes: Grassley amendment No. 2654, Durbin amendment No. 2596, Obama amendment No. 2605, Kennedy amendment No. 2588, Reed amendment No. 2626, Feingold amendment No. 2650, and Sununu amendment No. 2651.

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

AMENDMENT NO. 2647, AS MODIFIED

Mr. BAUCUS. I ask unanimous consent to modify the previously adopted amendment No. 2647. I send the modification to the desk and I ask for its adoption.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 2647), as modified, was agreed to as follows:

On page 322, line 22, insert after 1986 ''which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year and''

The PRESIDING OFFICER. The question is on agreeing to the motion to waive the Budget Act with respect to the amendment of the Senator from Mississippi offered on behalf of the Senator from Oklahoma.

The yeas and nays have been ordered.

The clerk will please call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 51, nays 47, as follows:

[Rollcall Vote No. 335 Leg.]

YEAS—51

Alexander	Crapo	Landrieu
Allard	Dayton	Lott
Allen	DeMint	Lugar
Bennett	DeWine	Martinez
Bond	Dole	McCain
Brownback	Domenici	McConnell
Burns	Ensign	Obama
Burr	Enzi	Santorum
Carper	Graham	Sessions
Chafee	Grassley	Smith
Chambliss	Gregg	Snowe
Coburn	Hagel	Specter
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Talent
Cornyn	Isakson	Thune
Craig	Kyl	Vitter

NAYS—47

Akaka	Frist	Nelson (NE)
Baucus	Harkin	Pryor
Bayh	Jeffords	Reed
Biden	Johnson	Reid
Bingaman	Kennedy	Roberts
Boxer	Kerry	Rockefeller
Bunning	Kohl	Salazar
Byrd	Lautenberg	Sarbanes
Cantwell	Leahy	Schumer
Clinton	Levin	Shelby
Conrad	Lieberman	Stabenow
Dodd	Lincoln	Thomas
Dorgan	Mikulski	Voinovich
Durbin	Murkowski	Warner
Feingold	Murray	Wyden
Feinstein	Nelson (FL)	

NOT VOTING—2

Corzine	Inouye

The PRESIDING OFFICER. On this vote the yeas are 51, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained and the amendment falls.

The Senator from Iowa is recognized.

AMENDMENT NO. 2654

Mr. GRASSLEY. I call up the Grassley amendment.

The PRESIDING OFFICER. The clerk will please report the Grassley amendment.

The bill clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 2654.

The amendment is as follows:

(Purpose: To express the sense of the Senate)

At the end of title IV, add the following:

SEC. _____. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate makes the following findings:

(1) As many as 44,000,000 Americans are estimated to lack health insurance during the course of the year, many of whom are uninsured for a short period of time while a smaller number face longer periods without coverage.

(2) Rising health care costs contribute to the problem of the uninsured and make it more difficult to find a simple solution to make health care affordable.

(3) There is not a one-size fits all solution to address health care coverage issues.

(4) Businesses have competing needs for their resources, including investments to ensure their competitiveness and providing health care coverage for their employees and dependents.

(5) Lower tax rates on dividends and capital gains saved 24,000,000 families an average of nearly $950 on their 2004 taxes, including about 7,000,000 seniors who saved, on average, $1,230 each.

(6) These pro-growth tax cuts have spurred economic development and job creation and have been partly responsible for an increase in tax receipts.

(7) Of the more than 30,000,000 tax returns that included dividend income, those with adjusted gross income of less than $75,000 accounted for 64 percent, or over 19,000,000 of such returns.

(8) Of the nearly 23,000,000 tax returns that included capital gains, 62 percent of these returns, or about 14,000,000, had less than $75,000 in adjusted gross income.

(9) Allowing taxes to increase will make it harder for employers and individuals to afford health care insurance, leading to more individuals without health insurance.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Senate should—

(1) prevent an increase in taxes on millions of Americans by not allowing the tax policy enacted in 2003 to expire; and

(2) extend tax policies that have proven to enhance economic growth, create jobs, and improve business' and individuals' ability to afford health insurance coverage; and

(3) address the multiple aspects of our Nation's health care crisis, including the need to make health care more affordable, to expand coverage, and to strengthen the health care safety net by—

(A) promoting the use of health care technology, which will help reduce medical errors that contribute to higher costs and promote greater efficiency in care delivery;

(B) providing new financial assistance and tax credits to make health insurance more affordable;

(C) creating financial incentives for young adults to purchase lifetime, portable health insurance;

(D) expanding health insurance coverage options for low-income entrepreneurs and self-employed individuals;

(E) increasing access to specialty care within the health care safety net by providing a tax deduction to physician specialists who provide care for patients referred from health care safety net providers;

(F) reducing regulatory burdens on health care safety net providers that lead to higher administrative costs and a diversion of funds that could be spent on patient care; and

(G) improving outreach efforts to maximize participation of eligible beneficiaries in Federal health care safety net programs.

Mr. GRASSLEY. Mr. President, this is an alternative to the Durbin sense-of-the-Senate resolution. The Durbin amendment in essence says certain taxes should be extended and that money ought to be used to provide health care and insurance for children.

We agree that more needs to be done to help uninsured people. But we believe that the pretax policy in place is such a good tax policy—for instance, Chairman Greenspan saying that the tax policy has been good for the recovery and the extended growth, bringing in $274 billion this year over last year. We think we need to do all the things—expanding the economy and everything else—because it is through an expanding economy that middle-income people advance themselves; that we have an opportunity then for more people through more income to be able to buy health insurance. We have to do all those things. We can't change tax policy and count that as doing it.

I urge this as an alternative to Senator DURBIN's amendment.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I greatly respect my colleague from Iowa. The Grassley amendment is a clear explanation of why we have never done anything to expand health care. Do you know why? Because the Grassley amendment says we can have it all. We can give $20 billion in tax cuts to the wealthiest people in America and we can provide health care for children. It doesn't add up, just like this budget doesn't add up. What we have to understand is this. I give you a choice: Take away the tax breaks, half of which go to people who make over $1 million a year, take the money and insure all the children in America. That is my amendment.

Senator GRASSLEY's amendment doesn't provide any resources or any funds to insure the children. What it says is if we give enough money to the wealthiest people in America, surely out of the charity of their hearts they will take care of the kids. We know better. There are more and more uninsured every single year.

I urge you to defeat the Grassley amendment and consider voting for the Durbin amendment.

I raise a point of order that the amendment violates the Byrd rule, section 313(b)(1)(a) of the Budget Act.

Mr. GRASSLEY. Mr. President, I move to waive the budget point of order and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 53, nays 45, as follows:

[Rollcall Vote No. 336 Leg.]

YEAS—53

Alexander	DeWine	McConnell
Allard	Dole	Murkowski
Allen	Domenici	Nelson (NE)
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Smith
Burr	Gregg	Specter
Chambliss	Hagel	Stevens
Coburn	Hatch	Sununu
Cochran	Hutchison	Talent
Coleman	Inhofe	Thomas
Collins	Isakson	Thune
Cornyn	Kyl	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	

NAYS—45

Akaka	Durbin	Lincoln
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murray
Biden	Harkin	Nelson (FL)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Chafee	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Dayton	Leahy	Snowe
Dodd	Levin	Stabenow
Dorgan	Lieberman	Wyden

NOT VOTING—2

Corzine Lott

The PRESIDING OFFICER. On this question, the yeas are 53, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The Senator from Illinois.

AMENDMENT NO. 2596

Mr. DURBIN. It is my understanding under the unanimous consent request that my amendment is next in line.

The PRESIDING OFFICER. The Senator is correct.

Mr. DURBIN. Do I need to call up the amendment?

The PRESIDING OFFICER. The amendment is pending.

Mr. DURBIN. Mr. President, life and the Senate are about choices. Here are your choices with this amendment. You can give a capital gains and dividends tax cut that goes primarily to the wealthiest Americans. In fact, 75 percent of the capital gains tax cuts goes to people making over $200,000 a year; 1.5 million taxpayers will benefit from that new tax cut, people who are doing pretty well in life. Or you can take the same amount of money and provide health insurance for 9 million uninsured children in America. The cost? The same thing: $10 billion each year.

There is the choice—give tax cuts to the wealthiest people in America or provide health insurance for 9 million kids who don't have it, children of families who go to work every single day and don't have health insurance. The choice is pretty clear. A lot of people talk about moral values and family values. Maybe the choice in this amendment gets down to those questions.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I am going to give the Senator from Illinois an opportunity to come down out of the grandstand and play on the same playing field I do, and the Senator will have an opportunity to take care of all those people.

The Senator had an opportunity 2 weeks ago on the Deficit Reduction Act. All the things we had in there for the people who do not have health care the Senator had an opportunity to vote for and didn't.

Just to name a few of these: We had the Family Opportunity Act that would have helped 500,000 severely disabled children. The Senator voted against that. We had a vote against a bill in regard to the children's health insurance shortfall. The Senator voted against that. The Senator voted against an outreach and enrollment to get eligible children health care coverage for which they are entitled. If the Senator were serious about helping low-income people, the Senator would have voted for that because we took care of a lot of the children the Senator is talking about.

Mr. BYRD. I ask that Senators address each other in the third person, not in the second person.

The PRESIDING OFFICER. The Senator from West Virginia is correct; if Senators would address each other through the Chair and in the third person.

Mr. GRASSLEY. I raise a point of order that the amendment is not germane to the underlying bill.

Mr. DURBIN. Mr. President, do I have time remaining?

The PRESIDING OFFICER. All time has expired.

Mr. DURBIN. I move to waive the applicable budget provisions for consideration of the amendment. I ask for the yeas and nays on the motion to waive.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to waive the Budget Act for the consideration of amendment No. 2596.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 43, nays 55, as follows:

[Rollcall Vote No. 337 Leg.]

YEAS—43

Akaka	Boxer	Conrad
Baucus	Byrd	Dayton
Bayh	Cantwell	Dodd
Biden	Carper	Dorgan
Bingaman	Clinton	Durbin
Feingold	Lautenberg	Reed
Feinstein	Leahy	Reid
Harkin	Levin	Rockefeller
Inouye	Lieberman	Salazar
Jeffords	Lincoln	Sarbanes
Johnson	Mikulski	Schumer
Kennedy	Murray	Stabenow
Kerry	Nelson (FL)	Wyden
Kohl	Obama	
Landrieu	Pryor	

NAYS—55

Alexander	DeWine	Murkowski
Allard	Dole	Nelson (NE)
Allen	Domenici	Roberts
Bennett	Ensign	Santorum
Bond	Enzi	Sessions
Brownback	Frist	Shelby
Bunning	Graham	Smith
Burns	Grassley	Snowe
Burr	Gregg	Specter
Chafee	Hagel	Stevens
Chambliss	Hatch	Sununu
Coburn	Hutchison	Talent
Cochran	Inhofe	Thomas
Coleman	Isakson	Thune
Collins	Kyl	Vitter
Cornyn	Lugar	Voinovich
Craig	Martinez	Warner
Crapo	McCain	
DeMint	McConnell	

NOT VOTING—2

Corzine Lott

The PRESIDING OFFICER. On this vote, the yeas are 43, the nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 1 minute.

AMENDMENT NO. 2605

Mr. OBAMA. Mr. President, amendment No. 2605 deals with Hurricane Katrina contracting. This sense-of-the-Senate amendment I offer with Senators COBURN, LAUTENBERG, ENSIGN, and JOHNSON is a simple effort to enforce some accountability and transparency into the contracting process.

FEMA needs to reopen its no-bid contracts. FEMA representatives testified before Senate committees they would do so. They have now backed away from that. That is unacceptable.

I hope my colleagues will support this amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be adopted.

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

The amendment (No. 2605) was agreed to.

AMENDMENT NO. 2588

The PRESIDING OFFICER. The question is now on the amendment from the Senator from Massachusetts, Mr. KENNEDY, with 2 minutes evenly divided.

The Senator from Massachusetts is recognized for 1 minute.

Mr. KENNEDY. Mr. President, this is a very simple amendment but an amendment of enormous importance and consequence for the children of this Nation.

If you look at this chart that shows virtually all the industrial nations of

the world, we have the highest instance of child poverty of all industrial nations in the world.

This amendment I offer adds a 1-percent surtax on millionaires who pay their contributions in terms of the Internal Revenue Service. It is just a 1-percent add-on. It pays into a fund to fight child poverty, a designated fund that will eventually be decided by the leadership and by the President of the United States.

This is a moral issue. It is a children's issue. It is a value issue. And this is something that can make an enormous difference to the children of this country.

Here in the richest country in the world, we allow children to suffer, without money, without a home, without food.

No great nation can ignore this challenge. The images of Katrina proved that. We can lift children out of poverty, all it requires is the will to do it and the leadership to make it happen.

In the powerful word of the gospel, ''To whom much is given, much is required.'' I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, there is substantial research that shows the way to make progress in eliminating poverty is to encourage healthy marriages, responsible fathership, full-time work, and education.

The poverty rate for married couple families is 5.5 percent. The overall poverty rate is 12.7 percent. The poverty rate for single-family households, if there is no husband, is 28 percent.

So it is quite obvious, poverty reduction should not be a partisan issue. We know what we need to do to reduce poverty. So we need to roll up our sleeves, work together, strengthen marriage, strengthen fatherhood, promote education, and get people full-time work. That is the way to end poverty. Statistics prove it.

I make the point that the pending amendment is not germane to the measure now before the Senate, and I raise a point of order against it under section 305 of the Budget Act.

Mr. KENNEDY. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will please call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 36, nays 62, as follows:

[Rollcall Vote No. 338 Leg.]

YEAS—36

Akaka	Feinstein	Lieberman
Bayh	Harkin	Mikulski
Bingaman	Inouye	Murray
Boxer	Jeffords	Nelson (FL)
Byrd	Johnson	Obama
Clinton	Kennedy	Reed
Conrad	Kerry	Reid
Dayton	Kohl	Rockefeller
Dodd	Landrieu	Sarbanes
Dorgan	Lautenberg	Schumer
Durbin	Leahy	Stabenow
Feingold	Levin	Wyden

NAYS—62

Alexander	Crapo	McConnell
Allard	DeMint	Murkowski
Allen	DeWine	Nelson (NE)
Baucus	Dole	Pryor
Bennett	Domenici	Roberts
Biden	Ensign	Salazar
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Smith
Burr	Gregg	Snowe
Cantwell	Hagel	Specter
Carper	Hatch	Stevens
Chafee	Hutchison	Sununu
Chambliss	Inhofe	Talent
Coburn	Isakson	Thomas
Cochran	Kyl	Thune
Coleman	Lincoln	Vitter
Collins	Lugar	Voinovich
Cornyn	Martinez	Warner
Craig	McCain	

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER. On this vote, the yeas are 36, the nays are 62. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, before we have the next rollcall on the Reed amendment, I have been asked by many Members if we could do what worked so successfully for Senator SPECTER on his bill by enforcing the 10-minute rule. The leader has asked me to say that is what we are going to do. So we will have regular order after the 10-minute rollcall vote, so people should stay around close to make sure they get their vote recorded.

We are going to enforce the Specter rule. If you don't like it, blame Specter.

The PRESIDING OFFICER. There is 2 minutes equally——

Mr. SPECTER. Mr. President, I object.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. I don't know how many amendments we have but lots of them tonight. I am sure they are all very meritorious. I have an amendment dealing with renewables. I am going to allow a voice vote on that. I think others might want to follow that example. I think with rare exception we kind of know how they are going to turn out anyway. You either win or lose. The vote outcome is the same whether it is by a rollcall or voice vote. So I am going to have a voice vote on my renewable energy amendment. I hope others would follow suit on some of theirs.

AMENDMENT NO. 2626

The PRESIDING OFFICER. There is 2 minutes equally divided on the Reed of Rhode Island amendment.

The Senator from Rhode Island is recognized.

Mr. REED. I thank the Chair.

My amendment would fully fund the LIHEAP program, providing a 1-year temporary windfall profits tax on large oil companies. Previously, a majority of this body has voted to fully fund LIHEAP. We have not had an offset. This would be an offset. The mechanism I propose would be based upon Senator SCHUMER's proposal. It does not have the problems that were identified by Senator DOMENICI with respect to the Dorgan and Dodd proposal.

My amendment will tax these companies at an equitable rate. It will raise $2.92 billion. It will fully fund LIHEAP, and it will provide relief to families throughout this country who literally struggle, who either choose to heat or to eat. I think we can do much better to help our families. There has been majority support of this bill. I hope we have sufficient support that we can actually provide the resources to provide help to struggling families this winter.

I urge all my colleagues to support the amendment.

I retain any time I have remaining.

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

The Senator from Iowa.

Mr. GRASSLEY. I support the LIHEAP program. Most everybody in this body supports the LIHEAP program. I have had an opportunity to vote for that even in recent days. But we have to make sure we do it in the right way. I have even tried to get oil companies to contribute to the low-income fuel fund. But here we have the Senator resurrecting the old nonworkable windfall profits tax. As Senator DOMENICI said in previous debate, this is one way of raising the price of gasoline and other fuels.

I ask you to oppose this amendment, and I would raise the point that the amendment is not germane.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, pursuant to section 904 of the Budget Act, I move to waive the applicable sections of the act with regard to the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BUNNING). Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant Journal clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 50, nays 48, as follows:

[Rollcall Vote No. 339 Leg.]

YEAS—50

Akaka	Feingold	Nelson (FL)
Baucus	Feinstein	Obama
Bayh	Gregg	Pryor
Biden	Harkin	Reed
Boxer	Inouye	Reid
Byrd	Jeffords	Rockefeller
Cantwell	Johnson	Salazar
Carper	Kennedy	Sarbanes
Chafee	Kerry	Schumer
Clinton	Kohl	Snowe
Coleman	Lautenberg	Specter
Collins	Leahy	Stabenow
Conrad	Levin	Sununu
Dayton	Lieberman	Thune
Dodd	Lincoln	Voinovich
Dorgan	Mikulski	Wyden
Durbin	Murray	

NAYS—48

Alexander	DeMint	Lugar
Allard	DeWine	Martinez
Allen	Dole	McCain
Bennett	Domenici	McConnell
Bingaman	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brownback	Frist	Roberts
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Hagel	Shelby
Chambliss	Hatch	Smith
Coburn	Hutchison	Stevens
Cochran	Inhofe	Talent
Cornyn	Isakson	Thomas
Craig	Kyl	Vitter
Crapo	Landrieu	Warner

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER (Mr. MARTINEZ). On this vote, the yeas are 50, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I have a list of amendments on which I wish to propound a unanimous consent request.

I ask unanimous consent that following the disposition of the Sununu amendment, that Senator LINCOLN be recognized to offer an amendment and speak for 2 minutes, after which the amendment will be withdrawn; further, that the Senate then proceed to votes in relation to the following amendments in sequence order; provided that there be 2 minutes equally divided between the votes and that no second-degree amendments be in order to the amendment prior to the vote: Schumer amendment No. 2635, Reid amendment No. 2653, Nelson amendment No. 2601, Bingaman amendment No. 2642, Durbin amendment No. 2623, and Nelson amendment No. 2625.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Montana.

Mr. BAUCUS. Mr. President, was the last unanimous consent request agreed to?

The PRESIDING OFFICER. It was.

MODIFICATION TO AMENDMENT NO. 2635 VITIATED

Mr. BAUCUS. Mr. President, we have a matter we have to fix. I ask unanimous consent that the modification to the Schumer amendment No. 2635 be vitiated.

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

AMENDMENT NO. 2653, AS MODIFIED

Mr. BAUCUS. Mr. President, the modification should be to the Reid of Nevada amendment.

The amendment, as modified, is as follows:

At the end of title IV, add the following:

Subtitle B—Extending Tax Incentives for Renewable Energy Production and Energy Efficient Construction

SECTION 411. EXTENSION OF RENEWABLE ENERGY PRODUCTION CREDIT THROUGH 2010.

Paragraphs (1), (2), (3), (4), (5), (6), (7), and (9) of section 45(d) (relating to qualified facilities) are amended by striking ''2008'' each place it appears and inserting ''2011''.

SEC. 412. EXTENSION OF RENEWABLE ENERGY INVESTMENT TAX CREDIT THROUGH 2010.

Paragraphs (2)(A)(i)(II) and (3)(A)(ii) (relating to energy credit) is amended by striking ''2008'' both places it appears and inserting ''2011''.

SEC. 413. EXTENSION OF CLEAN RENEWABLE ENERGY BONDS THROUGH 2010.

Section 54(m) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 414. EXTENSION OF ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION THROUGH 2010.

Section 179D(h) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 415. EXTENSION OF NEW ENERGY EFFICIENT HOME CREDIT THROUGH 2010.

Section 45L(g) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 416. EXTENSION OF RESIDENTIAL RENEWABLE ENERGY EFFICIENT PROPERTY CREDIT THROUGH 2010.

Section 25D(g) is amended to read as follows:

''(a) TERMINATION.—The credit allowed under this section shall not apply to—

''(1) property described in paragraph (1) or (2) of subsection (d) placed in service after December 31, 2010, and

''(2) property described in subsection (d)(3) placed in service after December 31, 2007.''.

SEC. 417. EXTENSION OF NONBUSINESS ENERGY PROPERTY CREDIT THROUGH 2010.

Section 25C(g) (relating to termination) is amended by striking ''2007'' and inserting ''2010''.

SEC. 418. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.

(a) IN GENERAL.—Section 3402 is amended by adding at the end the following new subsection:

''(t) EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.—

''(1) GENERAL RULE.—The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment for goods and services which is subject to withholding shall deduct and withhold form such payment a tax in an amount equal to 3 percent of such payment.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to any payment—

''(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,

''(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section,

''(C) of interest,

''(D) for real property,

''(E) to any tax-exempt entity, foreign government, or other entity subject to the requirements of paragraph (1),

''(F) made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)), and

''(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually.

''(3) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of any payment for goods and services which is subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2005.

AMENDMENT NO. 2650

The PRESIDING OFFICER. There are 2 minutes equally divided on the Feingold amendment. Who yields time? The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank my cosponsors, Senators CONRAD, CHAFEE, OBAMA, and SALAZAR. This is a good old-fashioned, classic pay-go amendment. This is the rule under which we used to operate.

It is very simple. Under this pay-go amendment, you pay for what you want. If you want to increase entitlement spending, you have to pay for it. If you want to cut taxes, you have to pay for it. With the help of this budget rule, we actually balanced the Federal books, and we did so without using the Social Security surplus.

Without this rule, we have been driven back into the deficit ditch. We have begun to pile up record amounts of debt that our children and grandchildren will have to pay.

I urge my colleagues to support this time-tested, commonsense rule.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I raise the point, first of all, that we voted on a like amendment a couple of weeks ago. But I want to say why the amendment is defective, as I would have said then. It would require us to raise taxes to extend expiring tax cuts, but it would allow entitlement spending to continue to grow without any offset. This then creates a double standard between current tax law and current spending law.

The amendment also is not germane, and so I raise a point of order.

Mr. FEINGOLD. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for the consideration of the pending amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 50, nays 48, as follows:

[Rollcall Vote No. 340 Leg.]

YEAS—50

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Chafee	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Coburn	Lautenberg	Schumer
Collins	Leahy	Snowe
Conrad	Levin	Stabenow
Dayton	Lieberman	Voinovich
Dodd	Lincoln	Wyden
Dorgan	McCain	

NAYS—48

Alexander	DeWine	Martinez
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Smith
Burr	Gregg	Specter
Chambliss	Hagel	Stevens
Cochran	Hatch	Sununu
Coleman	Hutchison	Talent
Cornyn	Inhofe	Thomas
Craig	Isakson	Thune
Crapo	Kyl	Vitter
DeMint	Lugar	Warner

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER. On this vote the yeas are 50, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

AMENDMENT NO. 2651

There will now be 2 minutes equally divided prior to a vote on the Sununu amendment.

Who yields time?

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, my amendment is quite straightforward. It deals with a very large tax loophole that allows Government-sponsored entities, Fannie Mae and Freddie Mac, to avoid paying any State or local taxes whatsoever. It is a huge exemption for companies that are private, for-profit corporations, with their own shareholders. These companies have far higher profits and return on equity than so-called big oil that we have heard all of this criticism about for the last several hours.

There is no reason they cannot pay State and local taxes like any other private, for-profit company, contribute back to those States, cities, and towns in a legitimate, straightforward way through the Tax Code. I think this is appropriate. There is no reason we should have such an enormous loophole for companies that earn millions of dollars, enough to pay their top executives not $2 million a year or $6 million a year or $8 million a year but in some cases $10 million a year that their chief executives have been paid over the last 3 to 5 years.

That certainly is the kind of money that makes it legitimate for them to be paying State and local taxes like any other for-profit company.

I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

The question is on agreeing to the amendment.

The clerk will call the roll.

(Several Senators addressed the Chair).

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, this amendment only singles out two companies, Fannie Mae and Freddie Mac, which have an important mission: homeownership in our States, moving out regional imbalances in the mortgage supply, integrating regional mortgage markets. If this amendment is passed, here is what happens: The housing markets are hurt. At a time when we are worried about our housing markets, we are worried about a housing bubble that may burst, we are worried about so many parts of the housing market, to pull the rug out from under Fannie Mae and Freddie Mac, which have done an incredible job, would make no sense whatsoever.

All the other corporations are not talked about here, just Fannie and Freddie. Therefore, I think this amendment deserves to be defeated.

Mr. President, the pending amendment is not germane. Therefore, I raise a point of order pursuant to sections 305(b)(2) and 310(e) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The point of order is well taken. The amendment falls.

Under the previous order, the Senator from Arkansas is recognized.

AMENDMENT NO. 2652

Mrs. LINCOLN. Mr. President, I would like to call up my amendment numbered 2652, please.

The PRESIDING OFFICER. The clerk will report.

The assistant journal clerk read as follows:

The Senator from Arkansas [Mrs. LINCOLN], for herself, Ms. SNOWE, Mr. OBAMA and Mr. ROCKEFELLER, proposes an amendment numbered 2652.

Mrs. LINCOLN. Mr. President, I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the income threshold used to calculate the refundable portion of the child tax credit)

At the end of title IV, add the following:

SEC. ____. $10,000 INCOME THRESHOLD USED TO CALCULATE REFUNDABLE PORTION OF CHILD TAX CREDIT.

(a) IN GENERAL.—Section 24(d) (relating to portion of credit refundable) is amended—

(1) by striking ''as exceeds'' and all that follows through '', or'' in paragraph (1)(B)(i) and inserting ''as exceeds $10,000, or'', and

(2) by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(c) APPLICATION OF SUNSET TO THIS SECTION.—Each amendment made by this section shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

Mrs. LINCOLN. Mr. President, in the aftermath of Hurricane Katrina, the gulf breezes blew back the curtains and America and the world very clearly saw the face of poverty in the United States. We and the rest of the world saw a situation where many of our poorest families, our American families, were left to fend for themselves—many not even able to afford a bus ticket out of town to evacuate.

We find ourselves today reconciling our priorities, something that hard-working American families do every day. They reconcile their budgets, they reconcile their priorities, to decide what is essential to that family and what is a luxury.

I do not believe we can have this discussion today without bringing up what I find, in our Nation, to be one of our greatest priorities and by far one of our greatest blessings, and that is our children. I believe we have an opportunity right now to help lift those families in Louisiana and, indeed, across this entire Nation. In 2001 and again in 2003, Senator SNOWE and I worked together to make sure that working families of many low-income children were included in the child tax credit.

Unfortunately, a recent report, highlighted in the New York Times, shows that almost one-third of children do not qualify for that child tax credit because they are in families earning too low an income. When you break that finding down by race, it is even more disheartening. About half of all African-American children and half of all Latino children are left out of the full tax credit, child tax credit, because their family's earnings are too low to qualify.

We are talking about working families. To qualify for this tax credit, you have to be working and you have to have children.

The PRESIDING OFFICER. The Senator has used her 2 minutes.

Mrs. LINCOLN. I thank my colleagues for listening. I understand, due to the refundable nature of this credit, it is not germane to the reconciliation bill, and as a result, I will not ask for a vote, but I do ask our colleagues to

remember what our priorities are tonight.

The PRESIDING OFFICER. Under previous order, the amendment is withdrawn.

There is now 2 minutes equally divided prior to a vote on the Schumer amendment.

The Senator from New York.

AMENDMENT NO. 2635

Mr. SCHUMER. Mr. President, this amendment creates a temporary levy on the excess profits of U.S. oil companies and it does it in a different way. It takes that money and provides a nonrefundable tax credit of $100 in 2005 for every person in the household. The revenue mechanism in my amendment is an actual tax on windfall profits that exceed a 3-year historic average. That makes it easy for companies to calculate. Unlike the other windfall profits tax amendments that have come forward, this one will not increase production costs and fuel costs for American consumers. That is because it is levied on profits, not production; not on profits when oil is above $40 a barrel but only when the band of profits exceeds a set level.

This was the same mechanism that Senator REED used for LIHEAP, and it did get a good number of votes—50. The revenue of the amendment goes back to the U.S. taxpayer, not to any program, not to the Government, with a nonrefundable credit of $100 for every person in their household, and that is for 2005 only. It is revenue neutral.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRASSLEY. Mr. President, I oppose this amendment. This is an increase in the price of gasoline. Also, I don't know how many times we have to vote on a windfall profits tax. This is at least the third or fourth time.

Although there is a tax credit that the tax funds, I want everybody to know there is no guarantee that the tax will not be passed on to consumers with these higher prices at the pump as well as home heating.

This amendment raises revenue. The bill before us raises revenue from oil already taxed. This new tax is not well designed and should be defeated.

I raise a point of order that the amendment is not germane.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I move to waive the relevant portions of the Budget Act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant Journal clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER (Mr. DEMINT). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 33, nays 65, as follows:

[Rollcall Vote No. 341 Leg.]

YEAS—33

Akaka	Harkin	Mikulski
Bayh	Inouye	Murray
Boxer	Jeffords	Nelson (FL)
Byrd	Johnson	Obama
Clinton	Kennedy	Reed
Dayton	Kerry	Reid
Dodd	Kohl	Rockefeller
Dorgan	Lautenberg	Sarbanes
Durbin	Leahy	Schumer
Feingold	Levin	Stabenow
Feinstein	Lieberman	Wyden

NAYS—65

Alexander	Craig	McCain
Allard	Crapo	McConnell
Allen	DeMint	Murkowski
Baucus	DeWine	Nelson (NE)
Bennett	Dole	Pryor
Biden	Domenici	Roberts
Bingaman	Ensign	Salazar
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Smith
Burr	Gregg	Snowe
Cantwell	Hagel	Specter
Carper	Hatch	Stevens
Chafee	Hutchison	Sununu
Chambliss	Inhofe	Talent
Coburn	Isakson	Thomas
Cochran	Kyl	Thune
Coleman	Landrieu	Vitter
Collins	Lincoln	Voinovich
Conrad	Lugar	Warner
Cornyn	Martinez	

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER. On this vote, the yeas are 33, the nays are 65. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

AMENDMENT NO. 2653, AS MODIFIED

The PRESIDING OFFICER. There is 2 minutes equally divided prior to the motion on the Reid amendment.

The Senator from Nevada.

Mr. REID. Mr. President, this is a bipartisan amendment. It is very simple, direct, and to the point. We need more electricity that does not rely on increasingly expensive natural gas.

The quickest way to get more electricity without using more natural gas is through the increased use of renewables with greater efficiency.

Unfortunately, the deadlines for the renewable energy and efficiency tax incentives that we now have in law cut off much too soon to be really effective. So this amendment extends those deadlines through 2010 to match the current tax incentives for conventional and fossil energy projects.

I urge Members to support this amendment. It is fair, it is paid for, and it will make a quick and significant dent in the Nation's enormously expensive natural gas consumption.

Nevadans and all Americans rely heavily on natural gas for electricity and heating. This Congress needs to take action to address the insanely high prices of natural gas as soon as possible.

I ask unanimous consent that Senators KERRY, SNOWE, SALAZAR, LAUTENBERG, BAYH, BINGAMAN, JEFFORDS, and FEINSTEIN be added as cosponsors of the amendment.

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

Mr. GRASSLEY. Mr. President, I happen to be the original author of section 45, renewable fuels.

I have extended this provision already through 2008. The amendment will undermine the reconciliation bill by going beyond our 5-year budget window, and the amendment is no longer paid for.

So, regrettably, I oppose this specific amendment. But as the author of section 45, you can be assured that when it is necessary to extend it, we will. I ask you to vote against this amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment, as modified.

The amendment (No. 2653), as modified, was rejected.

AMENDMENT NO. 2601

The PRESIDING OFFICER. There will now be 2 minutes equally divided on the Nelson of Florida amendment.

Mr. NELSON of Florida. Mr. President, all of you have heard from your senior citizens. With the implementation of the prescription drug bill, our seniors have so many plans to choose from that they are confused—and, in some cases, they are bewildered; in some cases, they are frightened about making the wrong choice by the deadline and then not having the opportunity to correct it for 1 year.

This amendment would extend the deadline from May to December. I hope for the sake of our seniors that you will vote for this amendment.

Mr. GRASSLEY. Mr. President, this amendment is simply not necessary. The first enrollment period began—can you believe it—just 2 days ago, and somebody says, You know, it is not long enough. It is going to last for 6 months—until May 15.

There are lots of resources available. As one example, States have counselors available to assist beneficiaries under the State Health Insurance Program.

That is the whole point of that program—to help beneficiaries understand the Medicare benefits in the legislation.

The bottom line is that it is no picnic to sort through the fine print of health insurance. It even may rank among the most unpopular and complicated responsibilities of American adulthood—like deciphering your income tax.

The Centers for Medicare and Medicaid Services developed a nationwide network of other community-based organizations that can provide beneficiaries one-on-one assistance. The prescription drug plans base their proposal to serve Medicare beneficiaries on the enrollment period specified in the law. The amendment would affect those proposals and could lead to higher costs for both beneficiaries and the government.

I, for one, am tired of people on the other side seeming to have a lack of confidence in our American senior citizens who are often well informed about the choices they can make and make good decisions.

This amendment is not needed, and I raise a point of order on germaneness.

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

The PRESIDING OFFICER. Sixteen seconds.

Mr. NELSON of Florida. Mr. President, so much of what the Senator from Iowa has said simply has not been the case—hundreds of plans that seniors are having to choose between.

I move to waive the relevant parts of the Budget Act, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 51, nays 47, as follows:

[Rollcall Vote No. 342 Leg.]

YEAS—51

Akaka	Feingold	Murray
Baucus	Feinstein	Nelson (FL)
Bayh	Harkin	Nelson (NE)
Biden	Inouye	Obama
Bingaman	Jeffords	Pryor
Boxer	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Chafee	Landrieu	Sarbanes
Clinton	Lautenberg	Schumer
Conrad	Leahy	Snowe
Dayton	Levin	Specter
DeWine	Lieberman	Stabenow
Dodd	Lincoln	Voinovich
Dorgan	Martinez	Warner
Durbin	Mikulski	Wyden

NAYS—47

Alexander	Crapo	Lugar
Allard	DeMint	McCain
Allen	Dole	McConnell
Bennett	Domenici	Murkowski
Bond	Ensign	Roberts
Brownback	Enzi	Santorum
Bunning	Frist	Sessions
Burns	Graham	Shelby
Burr	Grassley	Smith
Chambliss	Gregg	Stevens
Coburn	Hagel	Sununu
Cochran	Hatch	Talent
Coleman	Hutchison	Thomas
Collins	Inhofe	Thune
Cornyn	Isakson	Vitter
Craig	Kyl	

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER. On this question, the yeas are 51, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained. The amendment falls.

Mr. BAUCUS. Mr. President, there are four votes remaining. It is my understanding they will all be voiced. However, other Senators have said they have amendments they want to offer, as well. It is appropriate we begin to cut off the number of amendments we consider tonight. Four Senators contacted me: Senator BOXER, Senator DAYTON, Senator KERRY, and Senator LANDRIEU. The time has come to limit the number of amendments we have tonight. We have done a pretty good job accommodating Senators.

I ask unanimous consent after the three remaining amendments—Senators Bingaman, Durbin, and Nelson—are taken up, and I am told will all be voiced, that following those amendments only the amendments then be in order are amendments offered by Senator BOXER, Senator DAYTON, Senator KERRY, and Senator LANDRIEU, and that those be the only amendments remaining to be considered to the bill tonight and to the bill at all.

I amend that by saying it is my understanding that Senator LANDRIEU has two, but they will be voiced and not require a recorded vote, and there will be a managers' amendment that will be in order to the bill. Senator HARKIN would like to be added to the list with one amendment. So, therefore, it will be: Boxer, Dayton, Kerry, Landrieu, Landrieu—again, Landrieu's will be voiced—and Harkin. I am hopeful some of these others will also be voiced when we get to them.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, reserving the right to object, in the request, please note I have two amendments.

Mr. BAUCUS. Senator DAYTON has two amendments.

Mr. DAYTON. May I ask, do the managers intend to have final passage tonight?

Mr. BAUCUS. That is our intention.

Mr. DAYTON. All right. Thank you.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 2642

There is 2 minutes equally divided prior to a vote on the Bingaman amendment.

The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senate is not in order. We are making a lot of progress tonight, and we will make even greater progress if the Senate stays in order.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I offer this amendment on behalf of myself, Senator KERRY, and Senator SNOWE. This is an amendment that will create a tax credit for small businesses, to encourage them to offer employees health insurance. By ''small businesses,'' I have defined that in the amendment as employers with 50 or fewer employees.

In my State, one of the biggest problems I hear that small employers complain about is their inability to cover the high cost of health care. This is a nonrefundable tax credit for the purchase of health insurance by the employer. The tax credit would range from 30 percent to 50 percent of the cost of a qualified health insurance expense, with smaller employers getting the largest credit.

This is absolutely essential if we are going to expand health care coverage in the country. It is fully offset. I urge my colleagues to support this amendment and add it to this legislation before we complete final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I know this amendment is well-intended because if there is anything I hear from my constituents, particularly small business people, it is the problems with health insurance. But it is not going to work with this legislation because it is going to make the reconciliation process out of order.

So I ask the Members to oppose it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2642) was rejected.

AMENDMENT NO. 2623

The PRESIDING OFFICER. There will be 2 minutes evenly divided prior to a vote on the Durbin amendment.

The Senator from Illinois.

Mr. DURBIN. Mr. President, this amendment provides a fully offset tax credit to the very best companies in America. We call them patriotic employers. They are employers who invest in creating jobs in the United States, not overseas. They are employers who pay a decent wage, at least $7.75 an hour. They are employers who provide a retirement plan, either defined benefit or defined contribution, matching at least 5 percent of workers' contributions. They are employers who pay health insurance, up to 60 percent of the workers' health care premiums. And they are employers who make up the difference when their employees, who are in the Guard and Reserve, go off to serve their country.

These are the very best employers in America. We should reward them with a 1-percent tax credit, fully offset. Stand up for the best employers in America. Support this amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, this amendment is also well intended. It is not germane. I am not going to raise a point of germaneness. I raise the point that it does not fit in with the reconciliation.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2623) was rejected.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Craig-Rockefeller amendment also be added to the list of amendments still in order. And that will be it.

The PRESIDING OFFICER. Will the Senator restate the request.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Craig-Rockefeller amendment be added to the list of amendments still in order tonight.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, in conjunction with the Craig amendment, I had an amendment I was going to offer as a substitute. So I want the Grassley amendment on there as well.

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

AMENDMENT NO. 2625

There will now be 2 minutes equally divided prior to a vote on the Nelson amendment.

The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I call up amendment No. 2625.

The PRESIDING OFFICER. The amendment is pending.

Mr. NELSON of Nebraska. Mr. President, it has already been offered and is ready.

Mr. President, the Treasury Department has the capacity by law to outsource contracts to collect unpaid tax debts. As it currently stands, as they contract with employers, many of the benefits that have existed in the past for the hiring of disabled workers, disabled veterans, would not carry forth in these contract situations as they do for employment in the Federal Government.

This amendment will enable the Treasury Department, in awarding contracts, to give a preference to those companies that hire and engage disabled workers and disabled veterans. There is no tax money involved in this. There is no tax credit. They just have a preference if they hire disabled workers. These disabled workers will come off the Social Security SSI benefits and the disability DI benefits. They will become taxpaying citizens.

I think this is a great amendment. I hope my colleagues will accept it.

I thank the Chair for the opportunity to speak.

Mr. DEWINE. Mr. President, 15 million persons with disabilities are unemployed and actively seeking employment. There simply has been no measurable change in the unemployment situation for persons with disabilities since the American's with Disabilities Act. That is unacceptable. It is wrong. It is something we have to change. We can do better, and we have to do better.

Senator NELSON from Nebraska and I have an amendment that will do just that. Our amendment would establish a preference under the debt collection contracting program for contractors who hire people with disabilities and disabled veterans.

This amendment would require that at least a specified percentage of the individuals employed by the contractor to provide debt collection services qualify as people with disabilities or disabled veterans.

A provision of the American Jobs Creation Act of 2004 authorized the Internal Revenue Service to contract with private collection agencies to collect certain past due income taxes. If the same tax collection activities were still conducted by Federal employees, current law would give employment preferences to disabled veterans in filling those Federal jobs. In addition, if other persons with disabilities were employed by the Federal Government in those jobs, they would benefit from the Federal Government's long history of promoting job opportunities for people with disabilities.

By enacting legislation to privatize debt collection and improve the IRS' tax collection efforts, Congress certainly did not intend to curtail the Government's commitment to creating meaningful job opportunities for people with disabilities and disabled veterans. So I urge my fellow Senators to support this amendment. Again, there are 15 million persons with disabilities who are unemployed and actively seeking employment. We have an opportunity now to help put them back to work.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be adopted.

The PRESIDING OFFICER. Is there objection?

The Senator from Ohio.

Mr. DEWINE. Mr. President, there are 15 million people with disabilities who are unemployed in this country. This amendment will help in a small way to deal with that problem.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be adopted.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 2625) was agreed to.

The PRESIDING OFFICER. The Senator from California is recognized.

AMENDMENT NO. 2634

Mrs. BOXER. Mr. President, I call up amendment No. 2634 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 2634.

Mrs. BOXER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide an additional $500,000,000 for each of fiscal years 2006 through 2010, to be used for readjustment counseling, related mental health services, and treatment and rehabilitative services for veterans with mental illness, post-traumatic stress disorder, or substance use disorder)

At the appropriate place, insert the following:

SEC. ___. TREATMENT AND SUPPORT SERVICES FOR VETERANS.

Out of any money in the Treasury of the United States not otherwise appropriated, and in addition to any amount otherwise appropriated, there are appropriated $500,000,000 to the Secretary of Veterans Affairs for each of fiscal years 2006 through 2010, to provide veterans suffering from mental illness, post-traumatic stress disorder, or drug or alcohol dependency with—

(1) readjustment counseling and related mental health services under section 1712A of title 38, United States Code; and

(2) treatment and rehabilitative services under section 1720A of such title.

SEC. ___. ELIMINATION OF THE SCHEDULED PHASE OUT OF THE LIMITATIONS ON PERSONAL EXEMPTIONS AND ITEMIZED DEDUCTIONS FOR INDIVIDUALS EARNING IN EXCESS OF $1,000,000.

(a) PERSONAL EXEMPTIONS.—Section 151(d)(3)(E) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

''(iii) EXCEPTION.—This subparagraph shall not apply with respect to any individual whose adjusted gross income for the taxable year exceeds $1,000,000 ($2,000,000 in the case of a joint return).''.

(b) ITEMIZED DEDUCTIONS.—Section 68(f) of such Code is amended by adding at the end the following new paragraph:

''(3) EXCEPTION.—This subsection shall not apply with respect to any individual whose adjusted gross income for the taxable year exceeds $1,000,000 ($2,000,000 in the case of a joint return).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

(d) APPLICATION OF EGTRRA SUNSET.—The amendments made by this section shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

Mrs. BOXER. Mr. President, I will explain the amendment. I will do so quickly.

The Boxer amendment provides an additional $500 million per year for mental health services for our Nation's veterans over the next 5 years. This amendment is backed by the American Legion, AMVETS, and Disabled American Veterans.

We pay for this in a very simple way. We say the tax cuts of 2001 that have not yet taken effect for those earning over $1 million a year be deferred. We find that when we pay for this $500 million, we have millions left over to reduce the deficit.

In closing, let me tell my colleagues a story.

I got an e-mail from a woman who was married to CPT Michael Jon Pelkey, who suffered from post-traumatic stress disorder for over a year. He sought help on several occasions but was discouraged by the wait time

and the stigma. He thought his command would perceive him as worthless if he started therapy.

His wife wrote:

Michael passed away in our home at Ft. Sill, Oklahoma from a self-inflicted gunshot wound to the chest on November 5, 2004.

She said:

I feel that my husband is a casualty of this war and to date the Army has not [done enough for post-traumatic stress].

I know millionaires in California, and I know they would give up a tax cut to help—to help—our veterans who are fighting in deplorable conditions every single day.

I hope my colleagues will take a stand for our veterans and say to the millionaires of this country: We know you want to help them.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

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

The PRESIDING OFFICER. No time was provided under this order.

Is there a sufficient second?

Mr. GRASSLEY. Mr. President, I raise a point of order on the germaneness of the amendment.

Mrs. BOXER. Mr. President, I move to waive the point of order, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that these be 10-minute votes, with 2 minutes between the votes, but otherwise 10-minute votes.

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

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 43, nays 55, as follows:

[Rollcall Vote No. 343 Leg.]

YEAS—43

Akaka	Feinstein	Murray
Bayh	Harkin	Nelson (FL)
Biden	Inouye	Obama
Bingaman	Jeffords	Pryor
Boxer	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Dayton	Leahy	Smith
Dodd	Levin	Stabenow
Dorgan	Lieberman	Wyden
Durbin	Lincoln	
Feingold	Mikulski	

NAYS—55

Alexander	DeMint	McConnell
Allard	DeWine	Murkowski
Allen	Dole	Nelson (NE)
Baucus	Domenici	Roberts
Bennett	Ensign	Santorum
Bond	Enzi	Sessions
Brownback	Frist	Shelby
Bunning	Graham	Snowe
Burns	Grassley	Specter
Burr	Gregg	Stevens
Chafee	Hagel	Sununu
Chambliss	Hatch	Talent
Coburn	Hutchison	Thomas
Cochran	Inhofe	Thune
Coleman	Isakson	Vitter
Collins	Kyl	Voinovich
Cornyn	Lugar	Warner
Craig	Martinez	
Crapo	McCain	

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER. On this vote, the yeas are 43, the nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The Senator from Massachusetts is recognized.

AMENDMENT NO. 2616

Mr. KERRY. Mr. President, I call up amendment No. 2616.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KERRY], for himself and Mr. OBAMA, proposes an amendment numbered 2616.

Mr. KERRY. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To accelerate marriage penalty relief for the earned income tax credit, to extend the election to include combat pay in earned income, and to make modifications of effective dates of leasing provisions of the American Jobs Creation Act of 2004)

On page 235, between lines 13 and 14, insert the following:

SEC. ___. ACCELERATION OF MARRIAGE PENALTY RELIEF WITH RESPECT TO THE EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 32(b)(2) (relating to joint returns) is amended—

(1) in clause (ii) by striking ‘‘, 2006, and 2007’’, and

(2) in clause (iii) by striking ‘‘2007’’ and inserting ‘‘2005’’.

(b) INFLATION AMOUNT.—Section 32(j)(1)(B)(ii) is amended by striking ‘‘calendar year 2007’’ and inserting ‘‘calendar year 2005’’.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. ___. EXTENSION OF ELECTION TO INCLUDE COMBAT PAY IN EARNED INCOME.

(a) IN GENERAL.—Subclause (II) of section 32(c)(2)(B)(vi) (relating to earned income) is amended by striking ‘‘January 1, 2006’’ and inserting ‘‘January 1, 2008’’.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. ____. MODIFICATIONS OF EFFECTIVE DATES OF LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.

(a) IN GENERAL.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by adding at the end the following new paragraph:

‘‘(5) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this part shall apply to taxable years beginning after December 31, 2004, with respect to leases entered into on or before March 12, 2004.’’.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

Mr. OBAMA. Mr. President, I rise to speak in favor of the amendment I am offering with Senator KERRY to make two simple yet critical improvements to the earned income credit and to reduce the Federal deficit. Our amendment provides relief from the marriage penalty and from the military service penalty faced by many low-income taxpayers.

The EITC is one of the most effective programs to lift working Americans out of poverty. It rewards work, reduces tax burdens, and supplement wages that help a family to be self-sufficient.

It is an idea that Republicans and Democrats can agree on because it works. Study after study has demonstrated that the EITC increases employment among single mothers and reduces reliance on cash welfare assistance. The EITC lifts millions of children and families out of poverty each year. Census data show that in 2003, the poverty rate among children would have been nearly 25 percent higher without the EITC.

Established by the Ford administration in 1975 and celebrated by Ronald Reagan, George H.W. Bush, and Bill Clinton, this is a program that has long enjoyed bipartisan support. President Reagan characterized the EITC as one of the best ‘‘pro-family’’ and ‘‘anti-poverty’’ programs.

Unfortunately, as currently structured, the EITC has a marriage penalty. Working parents receive less tax relief if they marry than if they stay single. If we want to reduce poverty and improve the life chances of poor children, the last thing we should do is penalize marriage. Children with married parents generally have much lower rates of poverty and better educational outcomes. Fixing the marriage penalty is a matter of common sense.

It is also something that this body agreed on in the 2001 tax bill. Unfortunately, unlike the marriage penalty relief for middle-income taxpayers, which was accelerated in 2003, full relief for the low-income marriage penalty was delayed until 2008.

Our amendment provides full marriage penalty relief in 2006 rather than requiring married taxpayers to endure further delay.

Of all the tax breaks that Congress considers important, this should be among the first deserving action. It is relatively inexpensive. It will have the strongest economic stimulus effect. It will improve the fairness of the Tax Code.

The second fix proposed by this amendment is to ensure that the families of our men and women in combat are not deprived of their tax benefits. In the midst of war, are we really going to tell our troops that their combat pay doesn't count as earned income for purposes of calculating tax credits?

That is hard to image. Our amendment extends the tax protection for combat pay through 2007. Our troops not only earn their combat pay, but they have also earned our respect. They deserve our commitment of support.

The combined cost of these important fixes is about 2 percent of the cost of the tax reconciliation package and provides relief to our most needy taxpayers. Nevertheless, it is important that even this tax cut be deficit neutral. Congress has to make choices and set priorities and cannot get away with new spending or tax cuts that are not paid for. American families expect this country to pay for its priorities.

To pay for relief from the marriage penalty and relief from the military service penalty, this amendment closes a tax loophole related to foreign entities by changing sale-in and lease-out provisions. This sensible change raises more than the cost of the important EITC fixes.

Unlike the tax package as a whole, this amendment does not worsen the deficit, and it does not shift the burden from those in our society fortunate to have the most to those who have the least.

Our amendment is fair. It is fiscally responsible. It is an example of the sort of tax policy adjustments that we ought to be focused on in reconciliation.

I urge my colleagues to support fiscally responsible relief of the marriage penalty and military service penalty for low-income families, and I ask you to support this amendment.

Mr. KERRY. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. KERRY. Mr. President, this amendment does not raise taxes. It does not require a new offset. What it does is provide for our combat troops who currently have the ability to take combat pay and make it count against the earned income tax credit. Believe it or not, there are troops who need that and use that. It expires at the end of this year. What this amendment does is continue it into 2007 through the end of 2007. Secondly, it does something else. It provides a more rapid relief of the marriage penalty which is now charged to people who get the earned income tax credit.

Now, this was already passed under the 2001 tax legislation but will not go into effect until 2008. This is paid for by an offset we have already passed, and there is sufficient money in that offset to accelerate the marriage penalty reduction so that we reward parents with kids who work and we take away the marriage penalty and help our troops at the same time.

I hope my colleagues will support it.

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

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the substance of the legislation is difficult to argue with, but this is an outlay, and you can't have outlays in this particular reconciliation bill. So I raise the point of order.

Mr. KERRY. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections thereof for purposes of this amendment.

We already have the yeas and nays.

I ask for the yeas and nays with respect to the motion to waive.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 43, as follows:

[Rollcall Vote No. 344 Leg.]

YEAS—55

Akaka	Durbin	Murray
Baucus	Feingold	Nelson (FL)
Bayh	Feinstein	Nelson (NE)
Biden	Harkin	Obama
Bingaman	Hutchison	Pryor
Boxer	Inouye	Reed
Byrd	Jeffords	Reid
Cantwell	Johnson	Rockefeller
Carper	Kennedy	Salazar
Chafee	Kerry	Santorum
Clinton	Kohl	Sarbanes
Coleman	Landrieu	Schumer
Collins	Lautenberg	Snowe
Conrad	Leahy	Specter
Dayton	Levin	Stabenow
DeWine	Lieberman	Talent
Dodd	Lincoln	Wyden
Dole	McCain	
Dorgan	Mikulski	

NAYS—43

Alexander	DeMint	McConnell
Allard	Domenici	Murkowski
Allen	Ensign	Roberts
Bennett	Enzi	Sessions
Bond	Frist	Shelby
Brownback	Graham	Smith
Bunning	Grassley	Stevens
Burns	Gregg	Sununu
Burr	Hagel	Thomas
Chambliss	Hatch	Thune
Coburn	Inhofe	Vitter
Cochran	Isakson	Voinovich
Cornyn	Kyl	Warner
Craig	Lugar	
Crapo	Martinez	

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 43. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The PRESIDING OFFICER. The Senator from Minnesota.

AMENDMENT NO. 2629

Mr. DAYTON. Mr. President, I call up amendment 2629 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DAYTON] proposes an amendment numbered 2629.

Mr. DAYTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To allow a refundable tax credit for the energy costs of farmers and ranchers, and to modify the foreign tax credit rules applicable to dual capacity taxpayers)

On page 235, between lines 13 and 14, insert the following:

SEC. ___. REFUNDABLE TAX CREDIT FOR ENERGY COST ASSISTANCE OF FARMERS AND RANCHERS.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. CREDIT FOR ENERGY COST ASSISTANCE FOR FARMERS AND RANCHERS.

''(a) GENERAL RULE.—In the case of an eligible taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

''(1) 30 percent of the amount paid or incurred for qualified energy costs, or

''(2) $3,000.

''(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means any individual engaged in a farming business (as defined in section 263A(e)(4)).

''(c) RESIDENTIAL ENERGY COSTS.—For purposes of this section, the term 'qualified energy costs' means the cost of any fuel, energy utility, natural gas, fertilizer, and heating oil used in the farming business of the taxpayer during the taxable year.

''(d) TERMINATION.—This section shall not apply to qualified energy costs paid or incurred after December 31, 2005.''.

(b) NO DOUBLE BENEFIT.—Section 280C is amended by adding at the end the following new subsection:

''(e) ENERGY ASSISTANCE FOR FARMERS AND RANCHERS.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined under section 36(a).''.

(c) REFUNDABILITY.—Section 1324(b)(2) of title 31, United States Code, is amended by striking ''or'' before ''enacted'' and by inserting before the period at the end '', or from section 36 of such Code''.

(d) CLERICAL AMENDMENTS.—The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 35 and by adding at the end the following new items:

''Sec. 36. Credit for energy cost assistance for farmers and ranchers.

''Sec. 37. Overpayments of tax.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. _____. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 (relating to credit for taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) SPECIAL RULES RELATING TO DUAL CAPACITY TAXPAYERS.—

''(1) GENERAL RULE.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer to a foreign country or possession of the United States for any period shall not be considered a tax—

''(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

''(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

''(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

''(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

''(2) DUAL CAPACITY TAXPAYER.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

''(A) is subject to a levy of such country or possession, and

''(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

''(3) GENERALLY APPLICABLE INCOME TAX.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

''(B) EXCEPTIONS.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

''(i) persons who are not dual capacity taxpayers, and

''(ii) persons who are citizens or residents of the foreign country or possession.''

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DAYTON. Mr. President, this amendment would provide a Federal tax credit to farmers for 30 percent of their 2005 energy costs up to $3,000 per farmer. Qualified energy costs are those for fuels, utilities, fertilizers, heating and drying used in farming businesses of taxpayers during calendar year 2005.

As my colleagues know, farmers have been especially hard hit by soaring energy prices. In addition to skyrocketing energy costs, many farmers have been hit with higher transportation costs. In the aftermath of Hurricane Katrina, American farmers desperately need relief.

The estimated $3 billion cost of this measure is more than offset by closing the tax loophole that gives a foreign oil and gas income tax credit for oil companies that provides $4.1 billion over 5 years.

I ask for the yeas and nays.

Mr. GRASSLEY. Mr. President, this is one of those amendments we have dealt with four or five times. It is a tax on consumers by raising the price of gasoline. It may be used for a good purpose, but it affects the germaneness. I raise a point of order on germaneness. I ask my colleagues to vote against the amendment.

Mr. DAYTON. Mr. President, I move to waive the Budget Act with respect to my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 47, nays 51, as follows:

[Rollcall Vote No. 345 Leg.]

YEAS—47

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Burns	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Coleman	Lautenberg	Schumer
Conrad	Leahy	Stabenow
Dayton	Levin	Talent
Dodd	Lieberman	Wyden
Dorgan	Lincoln	

NAYS—51

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burr	Grassley	Smith
Chafee	Gregg	Snowe
Chambliss	Hagel	Specter
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Collins	Inhofe	Thomas
Cornyn	Isakson	Thune
Craig	Kyl	Vitter
Crapo	Lugar	Voinovich
DeMint	Martinez	Warner

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER. On this vote, the yeas are 47 and the nays are 51. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

The Senator from Iowa.

AMENDMENT NO. 2665

Mr. HARKIN. I send amendment No. 2665 to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and Mr. OBAMA, proposes an amendment numbered 2665.

Mr. HARKIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to restore the phaseout of personal exemptions and the overall limitation on itemized deductions and to modify the income threshold used to calculate the refundable portion of the child tax credit)

At the end of title IV, add the following:

SEC. _____. RESTORATION OF THE PHASEOUT OF PERSONAL EXEMPTIONS AND THE OVERALL LIMITATION ON ITEMIZED DEDUCTION; REDUCTION IN INCOME THRESHOLD USED TO CALCULATE REFUNDABLE PORTION OF CHILD TAX CREDIT.

(a) RESTORATION OF THE PHASEOUT OF PERSONAL EXEMPTIONS AND THE OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.—

(1) RESTORATION OF PHASEOUT OF PERSONAL EXEMPTIONS.—

(A) IN GENERAL.—Paragraph (3) of section 151(d) (relating to exemption amount) is amended by striking subparagraphs (E) and (F).

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to taxable years beginning after December 31, 2005.

(2) RESTORATION OF PHASEOUT OF OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.—

(A) IN GENERAL.—Section 68 is amended by striking subsections (f) and (g).

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to taxable years beginning after December 31, 2005.

(b) REDUCTION IN INCOME THRESHOLD USED TO CALCULATE REFUNDABLE PORTION OF CHILD TAX CREDIT.—

(1) IN GENERAL.—Section 24(d) (relating to portion of credit refundable) is amended—

(A) by striking ''as exceeds'' and all that follows through '', or'' in paragraph (1)(B)(i) and inserting ''as exceeds $9,000 (or $10,000 in the case of taxable years beginning in 2006), or'',

(B) by striking ''2001, the $10,000 amount'' in paragraph (3) and inserting ''2006, the $9,000 amount'', and

(C) by striking ''2000'' in paragraph (3)(B) and inserting ''2005''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2005.

(3) APPLICATION OF SUNSET TO THIS SECTION.—Each amendment made by this subsection shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

Mr. HARKIN. Mr. President, this amendment does three things. One, it stops next year's scheduled phaseout of the so-called PEP and Pease provisions, a phaseout that would cost the

Treasury $29 billion in the first 5 years and explodes to $146 billion in 10 years after that. Over half of this money goes to people making over $1 million a year.

What I would do with that is reduce the deficit by $146 billion over that decade and, secondly, to increase the additional child care credit, making over 600,000 working families eligible and raising the amount that over 6 million families get for the additional child care credit. These are people who are making around the minimum wage.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, this is another way of cutting back on the mortgage deduction, the charitable deduction, and the State and local tax deduction. When these provisions of phaseout of deductions were put in years ago, it was subterfuge for raising the marginal tax rate without raising the marginal tax rate.

From Iowa, we are very transparent. If one wants to raise the marginal tax rate, raise the marginal tax rate but do not do it by subterfuge. Besides, this amendment is not germane. I raise a point of germaneness.

Mr. HARKIN. Pursuant to section 904 of the Budget Act, I move to waive the point of order and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Massachusetts (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 42, nays 56, as follows:

[Rollcall Vote No. 346 Leg.]

YEAS—42

Akaka	Feingold	Lincoln
Bayh	Feinstein	Mikulski
Biden	Harkin	Murray
Bingaman	Inouye	Nelson (FL)
Boxer	Jeffords	Obama
Byrd	Johnson	Pryor
Cantwell	Kennedy	Reed
Carper	Kerry	Reid
Clinton	Kohl	Rockefeller
Conrad	Landrieu	Salazar
Dayton	Lautenberg	Sarbanes
Dodd	Leahy	Schumer
Dorgan	Levin	Stabenow
Durbin	Lieberman	Wyden

NAYS—56

Alexander	Chafee	DeWine
Allard	Chambliss	Dole
Allen	Coburn	Domenici
Baucus	Cochran	Ensign
Bennett	Coleman	Enzi
Bond	Collins	Frist
Brownback	Cornyn	Graham
Bunning	Craig	Grassley
Burns	Crapo	Gregg
Burr	DeMint	Hagel
Hatch	Murkowski	Stevens
Hutchison	Nelson (NE)	Sununu
Inhofe	Roberts	Talent
Isakson	Santorum	Thomas
Kyl	Sessions	Thune
Lugar	Shelby	Vitter
Martinez	Smith	Voinovich
McCain	Snowe	Warner
McConnell	Specter	

NOT VOTING—2

Corzine	Lott

The PRESIDING OFFICER. On this vote, the yeas are 42, the nays are 56. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I have a request for 2 Members to change the order of authorship of amendments, so I ask unanimous consent that the previously agreed amendment No. 2645 should be listed as Coleman and Pryor, instead of Pryor and Coleman.

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

AMENDMENT NO. 2658

Mr. DAYTON. Mr. President, I call up amendment No. 2658 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant journal clerk read as follows:

The Senator from Minnesota [Mr. DAYTON] proposes an amendment numbered 2658.

Mr. DAYTON. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the bill add the following:

SECTION 1. VALUATION OF EMPLOYEE PERSONAL USE OF NONCOMMERCIAL AIRCRAFT.

(a) IN GENERAL.—For purposes of Federal income tax inclusion, the value of any employee personal use of noncommercial aircraft shall equal the excess (if any) of—

(1) greater of—

(A) the fair market value of such use, or

(B) the actual cost of such use (including all fixed and variable costs), over

(2) any amount paid by or on behalf of such employee for such use.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to use after the date of the enactment of this Act.

Mr. DAYTON. Mr. President, this amendment raises money. It does so by ending tax avoidance by high-paid corporate executives through their personal use of company airplanes. A recent Wall Street Journal article described the exorbitant uses of corporate jets for personal recreation, largely untaxed, that costs company shareholders and other taxpayers millions of dollars per year. One CEO made eight weekend roundtrips from his Pittsburgh office to his $5 million home in Naples, FL, where he played golf at his exclusive private club. If the directors and shareholders of that company want to provide that personal luxury perk to an executive already paid $4 million a year, I guess that is their business. But these executives should pay taxes on what are clearly personal benefits, and they should pay taxes on the actual values of those benefits, not on some artificially low fictional cost.

Working men and women have to value their benefits properly for tax purposes or they get penalized if they do not. Certainly, the wealthiest people in America should also have to value their luxury perks properly. My amendment would raise $95 million over 10 years, according to the Joint Committee on Taxation, and will also reduce a truly outrageous and self-indulgent practice.

I ask for the yeas and nays. I will accept a voice vote.

Mr. GRASSLEY. I ask unanimous consent we accept this amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 2658) was agreed to.

Mr. DAYTON. I thank the chairman from Iowa. It was my going-away present. It must be my going-away present.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Montana.

Mr. BAUCUS. Mr. President, I anticipate that Senator LANDRIEU is ready to offer her amendment. I suggest she be recognized.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 2669

Ms. LANDRIEU. Mr. President, I ask unanimous consent to send amendment No. 2020 to the desk, on behalf of myself and my colleague, Senator VITTER.

Mr. GRASSLEY. Mr. President, will the Senator yield for a minute?

Ms. LANDRIEU. Yes, I would.

Mr. GRASSLEY. As modified?

Ms. LANDRIEU. As modified.

Mr. GRASSLEY. The modified amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU], for herself and Mr. VITTER, proposes an amendment numbered 2669.

Ms. LANDRIEU. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment No. 2669 as modified is as follows:

(Purpose: To provide housing relief for individuals affected by Hurricane Katrina)

On page 35, between lines 16 and 17, insert the following:

SEC. 104. HOUSING RELIEF FOR INDIVIDUALS AFFECTED BY HURRICANE KATRINA.

(a) EXCLUSION OF EMPLOYER PROVIDED HOUSING FOR INDIVIDUAL AFFECTED BY HURRICANE KATRINA.—

(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, gross income of a qualified employee shall not include the value of any lodging furnished to such employee, such employee's spouse, or any of such employee's dependents by or on behalf

of a qualified employer for any month during the taxable year.

(2) LIMITATION.—The amount which may be excluded under subsection (a) for any month for which lodging is furnished during the taxable year shall not exceed $600.

(3) TREATMENT OF EXCLUSION.—For purposes of the Internal Revenue Code of 1986 (other than sections 3121(a)(19) and 3306(b)(14), an exclusion under subsection (a) shall be treated as an exclusion under section 119 of such Code.

(b) EMPLOYER CREDIT FOR HOUSING EMPLOYEES AFFECTED BY HURRICANE KATRINA.—

(1) IN GENERAL.—In the case of a qualified employer, there shall be allowed as a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for any month during the taxable year an amount equal to 30 percent of any amount which is excludable from the gross income of a qualified employee of such employer under subsection (a).

(2) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of section 280C(a) of such Code shall apply.

(3) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—The credit allowed under this section shall be added to the current year business credit under section 38(b) of such Code and shall be treated as a credit allowed under subpart D of part IV of subchapter A of such Code.

(c) QUALIFIED EMPLOYEE.—For purposes of this section, the term ''qualified employee'' means, with respect to any month, an individual—

(1) who had a principal residence (as defined in section 121 of the Internal Revenue Code of 1986) in the Go Zone (as defined in section 1400N(1) of such Code) on August 28, 2005, and

(2) who performs not less than 80 percent of the employment services for a qualified employer in the Hurricane Katrina disaster area (as so defined).

(d) QUALIFIED EMPLOYER.—For purposes of this section, the term ''qualified employer'' means any employer with a trade or business located in the Hurricane Katrina disaster area (as so defined).

(e) APPLICATION OF SECTION.—This section shall apply to lodging provided—

(1) after the date of the enactment of this Act, and

(2) before the date which is 6 months after the date of the enactment of this Act.

(3) no credit with respect to such lodging shall be claimed before October 1, 2006.

Ms. LANDRIEU. Mr. President, this amendment would provide a very special and temporary tax relief to employers in the region of the hurricane that was hit so badly, to try to help them get their employees back to work by providing temporary housing and giving them a tax credit to do so. We are having a very serious housing crisis, as you all have been reading, and you have been trying to help us with that. This would go a long way. I thank you for your consideration tonight.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I ask unanimous consent that we accept the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 2669) was agreed to.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 2655

Mr. CRAIG. Mr. President, I call up amendment No. 2655 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant journal clerk read as follows:

The Senator form Idaho [Mr. CRAIG], for himself and Mr. ROCKEFELLER, proposes an amendment numbered 2655.

Mr. CRAIG. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To express the sense of the Congress regarding the conditions for the United States to become a signatory to any multilateral agreement on trade resulting from the World Trade Organization's Doha Development Agenda Round)

At the appropriate place, insert the following:

SEC. ___. SENSE OF CONGRESS REGARDING DOHA ROUND.

(a) FINDINGS.—The Congress makes the following findings:

(1) Members of the World Trade Organization (WTO) are currently engaged in a round of trade negotiations known as the Doha Development Agenda (Doha Round).

(2) The Doha Round includes negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement).

(3) The WTO Ministerial Declaration adopted on November 14, 2001 (WTO Paper No. WT/MIN(01)/DEC/1) specifically provides that the Doha Round negotiations are to preserve the ''basic concepts, principles and effectiveness'' of the Antidumping Agreement and the Subsidies Agreement.

(4) In section 2102(b)(14)(A) of the Bipartisan Trade Promotion Authority Act of 2002, the Congress mandated that the principal negotiating objective of the United States with respect to trade remedy laws was to ''preserve the ability of the United States to enforce rigorously its trade laws . . . and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies''.

(5) The countries that have been the most persistent and egregious violators of international fair trade rules are engaged in an aggressive effort to significantly weaken the disciplines provided in the Antidumping Agreement and the Subsidies Agreement and undermine the ability of the United States to effectively enforce its trade remedy laws.

(6) Chronic violators of fair trade disciplines have put forward proposals that would substantially weaken United States trade remedy laws and practices, including mandating that unfair trade orders terminate after a set number of years even if unfair trade and injury are likely to recur, mandating that trade remedy duties reflect less than the full margin of dumping or subsidization, mandating higher de minimis levels of unfair trade, making cumulation of the effects of imports from multiple countries more difficult in unfair trade investigations, outlawing the critical practice of ''zeroing'' in antidumping investigations, mandating the weighing of causes, and mandating other provisions that make it more difficult to prove injury.

(7) United States trade remedy laws have already been significantly weakened by numerous unjust and activist WTO dispute settlement decisions which have created new obligations to which the United States never agreed.

(8) Trade remedy laws remain a critical resource for American manufacturers, agricultural producers, and aquacultural producers in responding to closed foreign markets, subsidized imports, and other forms of unfair trade, particularly in the context of the challenges currently faced by these vital sectors of the United States economy.

(9) The United States had a current account trade deficit of approximately $668,000,000,000 in 2004, including a trade deficit of almost $162,000,000,000 with China alone, as well as a trade deficit of $40,000,000,000 in advanced technology.

(10) United States manufacturers have lost over 3,000,000 jobs since June 2000, and United States manufacturing employment is currently at its lowest level since 1950.

(11) Many industries critical to United States national security are at severe risk from unfair foreign competition.

(12) The Congress strongly believes that the proposals put forward by countries seeking to undermine trade remedy disciplines in the Doha Round would result in serious harm to the United States economy, including significant job losses and trade disadvantages.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should not be a signatory to any agreement or protocol with respect to the Doha Development Round of the World Trade Organization negotiations, or any other bilateral or multilateral trade negotiations, that—

(A) adopts any proposal to lessen the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions, including proposals—

(i) mandating that unfair trade orders terminate after a set number of years even if unfair trade and injury are likely to recur;

(ii) mandating that trade remedy duties reflect less than the full margin of dumping or subsidization;

(iii) mandating higher de minimis levels of unfair trade;

(iv) making cumulation of the effects of imports from multiple countries more difficult in unfair trade investigations;

(v) outlawing the critical practice of ''zeroing'' in antidumping investigations; or

(vi) mandating the weighing of causes or other provisions making it more difficult to prove injury in unfair trade cases; and

(B) would lessen in any manner the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws;

(2) the United States trade laws and international rules appropriately serve the public interest by offsetting injurious unfair trade, and that further ''balancing modifications'' or other similar provisions are unnecessary and would add to the complexity and difficulty of achieving relief against injurious unfair trade practices; and

(3) the United States should ensure that any new agreement relating to international disciplines on unfair trade or safeguard provisions fully rectifies and corrects decisions by WTO dispute settlement panels or the Appellate Body that have unjustifiably and negatively impacted, or threaten to negatively impact, United States law or practice, including a law or practice with respect to foreign dumping or subsidization.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask my colleagues to join Senator ROCKEFELLER and myself tonight in speaking clearly to our negotiators as they head for the Doha Round in Hong Kong in December.

Congress has made it clear time and time again that U.S. negotiators cannot bring back a trade agreement from the Doha that weakens U.S. antidumping and countervailing duty and safeguard laws that this Congress has put in place. These laws are widely recognized as critical tools to U.S. manufacturers, farmers, ranchers, and workers who sometimes are forced to fight for their rights to compete in fair environments.

As we open up the world's trade, let us make sure that we have in place the tools necessary to keep it fair and balanced, and not negotiated away by our negotiations.

It is a sense-of-the-Senate resolution with that instruction in mind.

Mr. GRASSLEY. Mr. President, I yield my 1 minute.

The PRESIDING OFFICER (Mr. BURR). All time has expired.

The question is on agreeing to the amendment.

The amendment (No. 2655) was agreed to.

The PRESIDING OFFICER. The Senator from Maine.

AMENDMENT NO. 2667

Ms. SNOWE. Mr. President, I call up amendment No. 2667 that was filed earlier, along with Senators BINGAMAN, COLLINS, and REID.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE], for herself, Mr. BINGAMAN, Ms. COLLINS, and Mr. REID, proposes an amendment numbered 2667.

Ms. SNOWE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To impose withholding on certain payments made by government entities and to use the revenues collected to fund programs under the Low-Income Home Energy Assistance Act of 1981 through a trust fund)

At the end of title IV add the following:

SEC. ____. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES AND FUNDING OF LIHEAP TRUST FUND.

(a) IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.—

(1) IN GENERAL.—Section 3402 is amended by adding at the end the following new subsection:

''(t) EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.—

''(1) GENERAL RULE.—The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment for goods and services which is subject to withholding shall deduct and withhold form such payment a tax in an amount equal to 1.75 percent of such payment.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to any payment—

''(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,

''(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section,

''(C) of interest,

''(D) for real property,

''(E) to any tax-exempt entity, foreign government, or other entity subject to the requirements of paragraph (1),

''(F) made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)), and

''(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually.

''(3) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of any payment for goods and services which is subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to payments made after December 31, 2005.

(b) LOW INCOME HOME ENERGY ASSISTANCE TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 (relating to trust fund code) is amended by adding at the end the following new section:

''SEC. 9511. LOW-INCOME HOME ENERGY ASSISTANCE TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Low-Income Home Energy Assistance Trust Fund', consisting of any amount appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

''(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Low-Income Home Energy Assistance Trust Fund amounts equivalent to the increased revenues received in the Treasury as the result of the amendment made by section 410(a) of the Tax Relief Act of 2005.

''(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Low Income Home Energy Assistance Trust Fund not to exceed $2,920,000,000 shall be available for fiscal year 2006, as provided by appropriation Acts, to carry out the program under the Low-Income Home Energy Assistance Act of 1981 through the distribution of funds to all the States in accordance with section 2604 of that Act (42 U.S.C. 8623) (other than subsection (e) of such section), but only if not less than $1,880,000,000 has been appropriated for such program for such fiscal year.''.

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

''Sec. 9511. Low-Income Home Energy Assistance Trust Fund.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

Ms. SNOWE. Mr. President, for months we have seen escalating petroleum and natural gas prices, magnified by the effects of three hurricanes. Now with the onset of winter, home heating oil prices are predicted to increase 44 percent in Maine, while natural gas is predicted to be 41 percent higher nationwide. My colleagues and I have called for LIHEAP funding increases for months on each spending bill. This amendment here may be our last chance this year to keep our seniors and disadvantaged from choosing between eating and heating. No American should face this choice.

My amendment would add $2.92 billion in LIHEAP funding, bringing it up to the fully authorized level. It is fully offset. The offset addresses a longstanding problem: government contractors aren't paying taxes. It requires government agencies to withhold income tax for the employees of government contractors at a rate of 1.75 percent when they purchase goods and services from government contractors.

There should be no mistake—this is an emergency and a crisis we know is coming, and it would be an abrogation of our responsibility to stand by and allow it to occur. It does not take a crystal ball to predict the dire consequences when home heating oil in Maine is $2.45 per gallon, up 38 cents from a year ago, and kerosene prices average $2.75 a gallon, 51 cents higher than this time last year and it's not even winter yet.

This is a necessity of life—so much so that 73 percent of households in a recent survey reported they would cut back on, and even go without, other necessities such as food, prescription drugs, and mortgage and rent payments. The facts are that LIHEAP is projected to help 5 million households nationwide this winter.

On November 4, a representative of the Senior Companion Program called my Bangor Office to say that they already had to admit an elderly client into the hospital due to hypothermia, because she couldn't afford enough heating oil. And, it is only the beginning of November. This simply should not be allowed to happen again.

Ms. COLLINS. Mr. President, this amendment would express the sense of the Senate that any increases in revenues to the Treasury as a result of this act, above the amounts specified in the reconciliation instructions, shall be dedicated to the Low-Income Home Energy Assistance Program, also known as LIHEAP, up to the fully authorized amount.

Just a few months ago, the President signed into law the Energy Policy Act of 2005. This law, which passed the Senate overwhelmingly, authorizes $5.1 billion for the LIHEAP program for Fiscal Year 2006. Unfortunately, even though Chairman SPECTER worked very hard to increase funding in the Labor-HHS bill, that bill only provides $2.2 billion in LIHEAP funding but $2.2 billion is not nearly enough. The amendment I am offering today expresses the sense of the Senate that up to an additional $2.9 billion in excess revenues should be made available to the LIHEAP program.

Our Nation was struck by three extremely powerful hurricanes. While

these hurricanes were devastating to the people of Florida and the gulf coast, they have also had a major impact on the rest of the Nation. Just as the Nation should be building oil supplies for the winter heating season, these hurricanes have disrupted our already strained supplies and sent both heating oil and gasoline prices to painfully high levels.

While high energy prices have been challenging for almost all Americans, they impose an especially difficult burden on low-income families and on the elderly living on limited incomes. Low-income families spend a greater percentage of their incomes on energy and have fewer options available when energy prices soar. High energy prices can even cause families to choose between keeping the heat on, putting food on the table, or paying for much-needed prescription medicine. These are choices that no American family should ever have to make.

We need more LIHEAP funding this year. Let me describe the situation that we are facing in my home state. While the official start of winter is still 2 months away, temperatures have already fallen below freezing in much of Maine. In Maine, 78 percent of households use home heating oil to heat their homes. Currently, the cost of home heating oil is roughly $2.34 per gallon, $0.38 above last year's already inflated prices. These high prices greatly increase the need for assistance, and at least 3,000 additional Mainers are expected to apply for LIHEAP funding this year. With more people in need of assistance, the benefit is expected to fall by roughly 10 percent to $440 per qualifying household. Unfortunately, at today's high prices, $440 is only enough to purchase 188 gallons of oil—far below last year's equivalent benefit of 251 gallons and not nearly enough to get through even a small portion of a Maine winter. With rising prices and falling benefits, we have a problem. Just to purchase the same amount of oil this year as last year, Maine would need an additional $10 million in LIHEAP funds.

The bill before us is still a work in progress, and at this point it is impossible to know whether the final bill that we pass shall provide any increases in revenues to the Treasury beyond the amounts specified in the reconciliation instructions. I would note that Senator WYDEN offered an amendment in committee that eliminates an unnecessary tax subsidy for major oil and gas companies. This subsidy is worth hundreds of millions of dollars. I believe we should eliminate even more unnecessary subsidies for oil gas companies. Regardless, I believe that should this act result in any increase in revenues to the Treasury beyond the reconciliation instructions, those revenues should go to the LIHEAP program, up to the fully authorized amount.

With winter fast approaching and energy prices soaring, home heating bills are set to pound family budgets mercilessly. For low income families, LIHEAP funds can be the factor that prevents families from having to choose between turning off the heat or putting food on the table. I call on my colleagues to support this amendment expressing the sense of the Senate that we should fully fund the LIHEAP program.

Mr. GRASSLEY. Mr. President, I ask my colleagues to vote against this amendment. I am not going to raise a point of order.

I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2667) was rejected.

AMENDMENT NO. 2670

Mr. GRASSLEY. Mr. President, I send to the desk the managers' amendment.

Traditionally, managers' amendments have been worked out with both sides of the aisle.

I urge adoption of the amendment.

Mr. KERRY. Mr. President, today I filed an amendment to the Tax Relief Act of 2005, S. 2020, to provide additional relief for taxpayers from the individual alternative minimum tax by truly holding harmless all taxpayers not currently impacted by the AMT. Senator WYDEN is a cosponsor of this amendment.

This afternoon, the managers of the S. 2020, Senators GRASSLEY and BAUCUS, crafted a managers' amendment including identical language to our amendment, and that managers' amendment was accepted by unanimous consent and is now part of the legislation that will pass the Senate.

I think we misname this tax when we call it the alternative minimum tax. We should call it the family tax, for the simple reason that most taxpayers get hit by the AMT because of where they live and because they have children.

We can call it the AMT or any other innocuous name we like here on Capitol Hill or at the IRS, but in practice it is a tax on children—it is the family tax. If you live in a certain State, and you don't want to pay this family tax, about the only thing you can do is to not start a family. We are literally punishing Americans for having children and building families.

In May, we heard testimony from the Urban Institute about how the AMT was once a ''class tax'' but will soon become a ''mass tax'' because more and more taxpayers—mostly because they want children—will be forced to pay the AMT.

Nina Olson, the National Taxpayer Advocate who works every day on the practical implications of what we do here, has repeatedly testified about the complexities and the inequities of the AMT. She said sarcastically that the AMT ''penalizes taxpayers for such classic tax avoidance behavior as having children or living in a high-tax state.''

If you look at the history of the AMT, you can see that it badly needs reform.

The individual AMT was created in 1969 to address the 155 individual taxpayers with incomes exceeding $200,000 who paid no Federal income tax in 1966. It applied to a tiny minority of households. But it is rapidly growing from those 155 taxpayers in 1969 to 1 million in 1999 to almost 29 million by 2010. It now affects families with incomes well below $200,000. By the end of the decade, repealing the AMT will cost more than repealing the regular income tax.

Unfortunately, we cannot end this family tax today, but we can do more than what is in the bill. When S. 2020 was first brought before the Senate it included a provision that would extend the current exemption level and indexes it for inflation. This provision seeks to ''patch'' or ''hold harmless'' these middle-class taxpayers, but it is a patch with a hole in it. It does not cover all the moderate income individuals who are impacted by the family tax.

The Kerry-Wyden amendment, and the enacted Grassley-Baucus amendment, would protect half a million more taxpayers from the family tax than the original bill. This amendment truly holds taxpayers harmless. The same amount of taxpayers that would be impacted by the AMT in 2005 will be impacted in 2006.

This means 600,000 million taxpayers will be better off under the amendment. We should protect as many families as possible from the unfair family tax. And this amendment is paid for with an offset that has had bipartisan support and passed the Senate.

The cost of our proposal is fully offset. First, it reforms the tax law that now applies to U.S. citizens living abroad, so the income tax exclusion would apply to both foreign income and foreign housing costs. Under current law, individuals get a tax credit for foreign taxes paid. This provision passed the Senate last year and was included in the Joint Committee on Taxation recommendation on ways to reduce the tax gap. Second, it would modify a provision in the underlying bill that makes modifications to the individual estimated tax-safe harbor to the appropriate percentage in 2006.

The Senate should stop punishing taxpayers because of where they live, because they move from one State to another for work or school, or because they decide to start a family. Today we took a step in that direction. I am grateful to Senator WYDEN for cosponsoring the amendment with me, and I am grateful that Senators GRASSLEY and BAUCUS acted as well.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2670) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

COMBATING TAX SHELTERS

Mr. LEVIN. Mr. President, I am offering this amendment with my colleague, Senator COLEMAN. I understand portions of our amendment have been cleared by both sides of the aisle and will be included.

I thank Senators GRASSLEY and BAUCUS for accepting this toughening of the penalties on those who promote abusive tax shelters or aid and abet tax evasion. Senators GRASSLEY and BAUCUS have been battling abusive tax shelters for years now, and it is a privilege to have had them as allies in this fight.

Tax dodging costs the Government between $300 and $350 billion every year. A significant portion of this ''tax gap'' results from abusive tax shelters and tax havens. Mr. President, $350 billion is more than the Government spends on Medicare annually and is close to the size of this year's deficit.

For 3 years, we have had an indepth subcommittee investigation into abusive tax shelters developed, marketed, and carried out by accounting firms, banks, investment advisors, and lawyers. We found that tax advisors cooked up one complex scheme after another, packaged them as generic ''tax products'' and then peddled the products to thousands of taxpayers across the country. This investigative work provides the foundation for our amendment today.

Tax chiseling is undermining the integrity of our tax system. It hurts middle income Americans by forcing them to pay for more than their fair share and constricting resources for essential government programs.

The Levin-Coleman provision that the managers have agreed to will increase penalties to 100 percent on persons who promote abusive tax shelters or knowingly aid or abet taxpayers to understate their tax liability. Currently, promoters face only a 50 percent penalty. Think about this. Why should anyone who illegally pushes an abusive tax shelter get to keep half of the profits?

Even worse, the current penalty for those who knowingly aid and abet a taxpayer in understating its tax obligation face a maximum penalty of $1,000, or $10,000 for a corporation. But this penalty applies only to tax return preparers. It leaves out those who design, market and carry out the tax shelter, unless they also prepared the taxpayer's return. When law firms are getting $50,000 for each cookie-cutter opinion letter they issue, the possibility of a $10,000 penalty provides no deterrent whatsoever. That fine is like a jaywalking ticket for robbing a bank.

I am pleased that today we have reached this agreement to toughen the current penalties, but I hope that eventually we can enact penalties that cause wrongdoers to not only disgorge their ill-gotten gains, but also pay a monetary fine on top of that. Doing so would be fair and would provide a meaningful deterrent.

The Levin-Coleman amendment also prevented abusive tax shelters by getting banks out of the business and authorizing Federal agencies to share information to strengthen abusive tax shelter enforcement. I understand that Senator GRASSLEY is willing to consider these provisions for inclusion in a future bill, and I look forward to working with the chairman and Senator BAUCUS and having our staffs work together on these issues.

Mr. GRASSLEY. Let me say that I agree with the amendment's purpose to combat abusive tax shelters. We need to eradicate the phony tax schemes that abuse our tax laws at the expense of honest taxpayers. I have worked hard to enact legislation to combat tax shelters by shutting them down and raising the penalties on those who promote and participate in those phony deals. This bill contains many more provisions that do just that. I will add to the bill the increased penalties on tax shelter promoters and on aiders and abettors, and I will support these provisions in conference. These provisions will help deter the activities of those who sell illegal tax schemes and those who help participants in these schemes.

I share the Senator's desire to combat tax shelters, and I share his goals of deterring banks' participation in tax shelters and in exploring ways to let agencies work together to prevent tax shelter activity. However, I think that your amendment has some technical matters that I would like my staff to work through with your staff for future consideration. Combating tax shelters is a constant battle that we will continue to fight.

Mr. BAUCUS. I share Chairman GRASSLEY's views with respect to curbing abusive tax shelters, and I look forward to working with Senators LEVIN and COLEMAN to shut down these abusive transactions.

EXCISE TAXES

Mr. HATCH. Will the distinguished Chair of the Senate Finance Committee, Senator GRASSLEY, yield for a brief question?

Mr. GRASSLEY. I will be glad to yield to the Senator from Utah.

Mr. HATCH. The provisions of S. 2020 concerning excise taxes to be levied on transfers of insurance products are of some interest to me. It is clear that there are abuses in the system, and I am appreciative of the chairman and his staff for their substantial work to address those problems.

It is my concern that the proposed excise tax language is so broadly drawn that it will stop what I believe are legitimate transactions that constitute best practice in this area. I am aware of a commercial loan structure that relies upon a valid insurable interest between donors and charities, where the lender has isolated both donors and charities from all lending risks.

Further, there is an agreeable known benefit to the charity at loan inception, which is not reliant upon the payment of an insurance death benefit, and the loan structure does not include outside investors. The loan is never recharacterized from inception to payoff as anything but a loan.

Is it the intent of the chairman in this provision to shut down a straightforward loan transaction?

Mr. GRASSLEY. No, it is my intention that the provision should not affect the ability of charities to borrow to purchase life insurance, particularly where the people insured are officers, directors, employees or in some cases established donors of the charity that benefits.

Mr. HATCH. Does the chairman believe there is room for further discussion in this area?

Mr. GRASSLEY. Yes.

Mr. HATCH. Because of the tight timeframe for action, we were not able to work out language prior to bringing the bill to the floor. Would the chairman be able to give his assurances that he is sympathetic to my constituents' concerns and that he will work to address them in a managers' amendment or in conference?

Mr. GRASSLEY. Yes.

Mr. ALLARD. Mr. President, I rise to engage my colleague, Senator SALAZAR, in a colloquy regarding the technical changes adopted in the manager's amendment to the reconciliation bill. We have worked hard to address unintended consequences relating to changes made to treatment of Type III organizations. This is very important because there are many fine organizations that support noble and much needed causes. I have some of these organizations in my State of Colorado, including one generously supported by the Reisher family.

Mr. SALAZAR. I am happy to engage with my distinguished colleague about the intent of this modification. And I, too, am glad that we were able to make these modifications and create a special rule for certain holdings of Type III organizations.

Mr. ALLARD. Specifically, I am referring to the amendments providing for the special rule for certain holdings of Type III supporting organizations if the holdings are held for the benefit of the community pursuant to the direction of a State attorney general or a State official with jurisdiction over the Type III supporting organization. As some of us with interest in this provision worked to address unintended consequences, we thought it would be a good idea to have the AG or State official direction needed to ensure that the abuses that concerned the chairman would be addressed. As State officials issue this general directive, it is our intention that there is not any burdensome red tape and that once the direction is given for the Type III organization, the charity is not unnecessarily put in limbo by the need for a reissuance when the official changes. It is safe to say that we intend that once the necessary direction is given as part

of this compromise, then there is no requirement for renewals by that attorney general or subsequent attorney general that would put uncertainty at play for the organization. Isn't that my friend's understanding?

Mr. SALAZAR. I agree with Senator ALLARD on his understanding and our intent. Once an organization is required to retain holdings in any business enterprise at the direction of an attorney general, those holdings will not constitute excess business holdings as a result of some future directive or another authority coming in and saying something different. That is precisely the kind of uncertainty we are attempting to avoid with these modifications. The special rule continues to apply. Otherwise, these organizations and their benefit to the community could be put at risk by future inconsistent actions driven by political gain rather than by the benefit to the community. And we must not lose sight of the fact that the primary goal of these organizations is to benefit their community. We all agree it is necessary for an organization to have certainty about its status and its exemption from the excess business holdings rules. I commend my colleague from Colorado for his work in having this much needed clarification included in the manager's amendment.

Mr. ALLARD. Mr. President, I thank my colleague for his kind remarks. There is no question that we intend to encourage more charitable giving in this country. Mr. President, we are a generous nation, as evident from the amazing outpouring of private support for the recent unfortunate rash of natural disasters both here in this country and abroad. The donors and the organizations need to be able to rely on the direction of the State attorney general and their legal status and this amendment does that. I thank my colleague for engaging me in this colloquy. Mr. President, I yield the floor.

EXXON VALDEZ OIL SPILL LITIGATION

Ms. MURKOWSKI. Mr. President, I engage Mr. GRASSLEY in a colloquy concerning income averaglng to recipients of punitive damages awards in the Exxon Valdez oil spill case, Case Number A89–095–CV (HRH). Specifically, I would like to address how this will affect those who engage in commercial fishing in Alaska as their occupation.

Mr. GRASSLEY. Mr. President, I would be happy if Ms. MURKOWSKI explained this issue in further detail.

Ms. MURKOWSKI. As all of us know, the *Exxon Valdez* ran aground in March of 1989, spilling 11 million gallons of oil into Prince William Sound in Alaska. A class action jury trial was held in federal court in Anchorage, AK, in 1994. The plaintiffs included 32,000 fishermen among others whose livelihoods were gravely affected by this disaster. The jury awarded $5 billion in punitive damages to the plaintiff class. The punitive damage award has been on repeated appeal by the Exxon Corporation since 1994. Many of the original plaintiffs, possibly more than 1,000 people, have already died.

Once the punitive damage award of the Exxon Valdez litigation is settled, many fishermen will receive payments to reimburse them for fishing income lost due to the environmental consequences of the Exxon Valdez oil spill. It is estimated that the eventual settlement may be $6.75 billion or more.

Fishermen already are eligible for income averaging of any fishing income. Section 1301 of the Internal Revenue Code allows fishermen to average fishing income over a 3-year period of time. Therefore, I want it to be clear that any commercial fishermen receiving punitive damages under the aforementioned Exxon Valdez oil spill case should be allowed to average their income over a 3-year period.

Mr. GRASSLEY. Mr. President, I thank Ms. MURKOWSKI for explaining this issue in more detail.

Mr. ROCKEFELLER. Mr. President, I rise today to oppose the fiscal course this Senate is pursuing. The legislation before us today will unnecessarily add $60 billion to our Nation's debt. But even more troubling is the insistence that reasonable tax cuts be passed using the reconciliation process. I think most Senators in this body believe that today's action is just the first step toward ultimately approving more tax cuts for wealthy investors. I hope that my colleagues will reject this scheme.

I appreciate the work of the chairman of the Finance Committee, who crafted a bill that includes only broadly supported tax cuts. Tax relief for rebuilding the hurricane-devastated gulf coast; extension and enhancement of the R&D tax credit and the welfare tax credits; limitations on the reach of the alternative minimum tax; and tax incentives for charitable giving are all policies that enjoy broad bipartisan support.

Unfortunately, though, this bill is not fiscally responsible. As the Democratic alternative demonstrates, it is possible to enact the popular tax cuts proposed here without adding $60 billion to the debt we pass down to our children and grandchildren. In an age of record deficits, Congress must choose its priorities. We could close tax loopholes. We could make it more difficult for companies to avoid taxation by moving their headquarters offshore. We could require oil companies to pay their fair share of taxes. We could close the tax gap by more aggressively enforcing our existing tax code.

These reasonable policies are included in the Democratic alternative, and I hope that all of my colleagues will support them to restore fiscal discipline in this Congress. And to anyone who believes the fallacy that ''deficits don't matter,'' I would point out that this year we will spend more money paying interest on our debt than providing health care to our most vulnerable citizens through Medicaid.

The budget reconciliation process, which allows for expedited consideration of legislation on the Senate floor, was created so that Congress could enact difficult policies in order to reduce our national deficits. Sadly, the process is now being abused to enact policies that worsen our deficit and are so narrowly supported that they cannot garner sufficient votes under normal Senate procedures.

Foremost among the current proposals that does not enjoy bipartisan support is, of course, the extension of tax breaks for capital gains and dividends. I recognize that the leadership has dropped those provisions from this bill. However, this Senator has absolutely no confidence that the intention of using the reconciliation process to pass those tax breaks has changed. Extending those tax breaks for even one additional year would cost $10 billion. And it is important to consider who will get that $10 billion instead of the federal treasury. Three quarters of the capital gains and dividend income is received by taxpayers making more than $200,000 per year.

In my State of West Virginia, fewer than 17 percent of taxpayers reported any dividend income; and fewer than 11 percent of taxpayers had any capital gains. Moreover, we ought to keep in mind that even without the extra tax breaks in 2009, people will pay at most 20 percent taxes on capital gains, which is a lower tax rate than we apply to many people's labor. I do not accept the argument that it is a national priority to extend these tax breaks to 2009.

The investor tax breaks simply do not compare favorably with the provisions of this bill. With the ever escalating costs of college and the increasing need for a highly educated population that can be globally competitive, it is appropriate to maintain the tax deduction for tuition and fees that made education more affordable for 3.6 million Americans in 2003, including almost 17,000 West Virginians. And as low-income working Americans struggle to save for their retirement, I am pleased to support the saver's credit which helped 5.4 million Americans in 2003, including more than 40,000 West Virginians.

The tuition deduction, the saver's cedit, and most of the other provisions in this bill enjoy broad bipartisan support. Congress can act before the end of this year, in a bipartisan fashion, to extend these important tax provisions, and offset the cost to the treasury.

I believe that many Senators on my side of the aisle would welcome an opportunity to support legislation providing relief to the gulf coast and extending the expiring tax provisions in a fiscally responsible way—but without the specter of a reconciliation process that is specifically intended to enact more tax cuts for our wealthiest citizens. I cannot support this bill, and I cannot condone a reconciliation process designed to limit the rights of the minority while increasing the deficit.

Mr. CRAIG. Mr. President, in light of Hurricanes Katrina and Rita and the

mounting $319 billion deficit, Americans have increasingly called on Congress to account for its spending. The reconciliation process is designed to answer these calls for fiscal responsibility by forcing lawmakers to look deeply and honestly into the federal budget and make necessary spending cuts and provide deserved tax relief.

The tax reconciliation bill, currently being considered by the Senate, does many worthwhile things to this end—such as extending essential tax provisions set to expire this year like increased exemption levels for the AMT—and providing incentives to encourage charitable giving. The good effects of these provisions, however, are undercut by a fundamental inconsistency in the larger bill—namely, the bill that claims to provide tax relief actually raises taxes. Demanding more taxpayer dollars, in an effort to control federal congressional spending, is not the answer.

Section 561 of the bill, the LIFO provision, not only imposes an additional $4.923 billion tax but does so selectively on the energy industry alone. The LIFO provision artificially raises taxable income solely for a subset of energy businesses, requiring them to report higher profits than those mandated under prevailing accounting rules for the sole purpose of imposing a discriminatory tax on these businesses. Section 561 calls this ''revaluation of LIFO inventories,'' but let us call this provision what it really is—a windfall profits tax.

Proponents of a windfall profits tax on the energy industry justify the tax on two grounds: that (1) energy industry companies currently pay too little in taxes compared to profits, and (2) the tax is effective.

As to the first, over the past 25 years, oil companies directly paid or remitted more than $2.2 trillion in taxes, after adjusting for inflation, to Federal and State governments, including excise taxes, royalty payments and State and Federal corporate income taxes. That amounts to more than three times what they earned in profits during the same period, according to the latest numbers from the Bureau of Economic Analysis and U.S. Department of Energy. And these figures do not include local property taxes, State sales and severance taxes, and on-shore royalty payments.

In addition, far from being excessive, oil industry profits have historically been below the national average. The most recent statistics available show that this continues to be the case. In the second quarter of 2005, the oil industry earned 7.7 cents for every dollar of sales, where the average profit for all of U.S. industry in the second quarter was 7.9 cents for every dollar of sales. The rate of return on oil sales for the third quarter of 2005 is slightly higher at 8.1 cents for every dollar of sale, still very near the average across all industries.

Even more illustrative, 13 U.S. industries earned higher profits in the second quarter than the oil and natural gas industry, including banking, 19.6 cents; software and services, 17 cents; consumer services, 10.9 cents; and real estate, 8.9 cents. The facts speak for themselves.

Proponents of the windfall profit tax also say that the tax is effective. In 1990, however, the Congressional Research Service, CRS, analyzed the effects of the windfall profits tax which was enacted in 1980 and repealed in 1988. CRS found that the tax reduced domestic oil production from between 3 and 6 percent and increased American dependence on foreign oil sources by 8 to 16 percent.

Energy markets are cyclical and the industry must manage its business in the face of significant price fluctuations. The industry has to ride out periods of low prices in anticipation of recovering during the periods of high prices. When oil prices are low, as they were throughout the 1990s, energy industry profits are insufficient to induce investment. Oil supplies are tight today for this reason. When prices rise, however, the industry is induced to invest in new infrastructure and production in hopes of capturing the benefits of higher prices. Eventually, this leads to lower prices again.

Reinvestment is critical. The Congressional Budget Office estimates capital losses from Hurricane Katrina and Rita in the energy-producing industries will range from $18 billion to $31 billion. Imposing a tax on profits, however, reduces essential investment in energy production. If taxing profits prevents the energy industry from benefiting during period of high prices, there will be little incentive to invest in domestic productions, thereby increasing the Nation's dependence on foreign oil.

The goal of Federal energy policy should not be to hurt—or help—the major oil companies. The goal should be to help American consumers. Taxing capital for investment does not grow jobs, does not grow the economy—only fails American consumers.

The tax reconciliation bill is problematic not only for its inclusion of the windfall profit tax but also for its omission of a critical provision—the extension of the 15 percent reduced tax rate for dividends and capital gains. While critics argue that the reduced tax rates of dividends and capital gains are tax cuts for the ''rich'' and that the costs are too high, the lower rates have been remarkably successful. Some of its successes include: significantly boosting capital investment, contributing to the economic efficiency of the corporate sector, and dramatically increasing dividend distributions—benefiting all Americans owning dividend-paying stocks, a significant number of whom are far from wealthy.

Specifically, in the year following enactment of the dividend tax cut, 113 publicly traded corporations initiated dividend payments for the first time, compared to an average of 22 companies in prior years. Further, through July 29, 2005, the 500 U.S. companies making up the Standard & Poor's index alone have increased their dividend payments 626 times, resulting in a 21 percent increase in average quarterly dividends. If these successes are to continue—and reach their full potential—reduced tax rates for dividends and capital gains must be included in any comprehensive tax relief bill.

And continued tax relief is what this country needs to both generate more economic growth and encourage individuals and corporations to save and invest. I am prepared to vote for a tax relief package—I cannot think of a time in the past when I have not—however, it must be effective, and it must actually provide relief. The tax reconciliation bill before the Senate falls short of this. I sincerely hope the conference report on this bill comes back better and stronger—eliminating industry-specific tax increases antithetical to the bill's purpose while providing for sound relief provisions like the reduction in dividend and capital gains tax rates—so that we can satisfactorily answer the American taxpayers' call for a policy of fiscal responsibility.

Mr. BINGAMAN. Mr. President, I regret that I am unable to vote for the legislation. I support the overwhelming majority of provisions that are contained in this bill and appreciate that they need to be extended before next year so they don't expire. I cannot in good conscience, though, vote for another tax bill that is unpaid for and adds to our national debt. For too many years, the majority has passed tax cuts as short term or temporary measures to mask the real costs of these provisions. We can no longer continue on this course of fiscal irresponsibility. It is for this reason that I supported an alternative offered by the minority that provided similar tax relief but did it in a budget neutral fashion by shutting down corporate loopholes. I also supported amendments during debate on this bill that would put back in place budget rules that would prevent Congress from either cutting taxes or raising spending if the net effect is that it adds to our national debt. We operated under these responsible budgetary rules during the previous administration and it gave us our first back-to-back years of surplus in generations. In 5 short years we have not only squandered the opportunities that these budgetary surpluses offered us, but we created a fiscal mess that handicaps future generations. I look forward to working with my colleagues in the coming months to head our nation back towards the days of surpluses. Unfortunately, this bill is not a step in that direction. Even though I support the majority of provisions contained in it, I must respectively oppose its passage.

Mr. GREGG. Mr. President, pursuant to section 313(c) of the Congressional Budget Act of 1974, I submit for the

RECORD a list of material in S. 2020 considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of section 313. The inclusion or exclusion of material on the following list does not constitute a determination of extraneousness by the Presiding Officer of the Senate.

I ask unanimous consent that the material be printed in the RECORD.

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

TITLE V—REVENUE OFFSET PROVISIONS

SENATE

Provision: Sec. 532(c). Violation/Comments: 313(b)(1)(A)—Report to Congress.

Mr. REED. Mr. President, I oppose the tax reconciliation bill now before us. This bill illustrates the cynicism of the whole reconciliation process this year, which, at the end of the day, is just a vehicle to short circuit a full Senate debate on the President's unfair tax cuts.

The fiscal year 2006 budget resolution instructed the Finance Committee to report up to $70 billion of tax cuts. Only half of those tax cuts were to be offset by reconciled spending cuts, so the net effect of reconciliation would be to add to the budget deficit. In the current economic and budget environment, there is no justification for enacting tax cuts that increase the deficit and must be paid for by adding to the debt.

For various reasons, the bill before us does not contain the full $70 billion of tax cuts. Most notably, it does not include provisions to extend the temporary capital gains and dividend tax cuts passed in 2003 and set to expire in 2008. It would be wise and prudent budget policy to abandon the effort to extend those debt-financed tax cuts, which go to taxpayers in the highest income brackets. But what you see is not what you are going to get. Those provisions will be back. In fact, the Majority Leader has said he will not bring a conference report to the floor that does not include an extension of the capital gains and dividend provisions.

Even without any capital gains and dividend provisions, this tax bill provides benefits mainly to upper-income taxpayers. An analysis by the Joint Economic Committee democratic staff finds that about $43 billion of the tax cuts can be allocated by family income group. Of those, about 80 percent would accrue to the 20 percent of families with the highest incomes, That fraction will rise when the extension of the capital gains and dividend tax cuts is added in conference.

''What you see is not what you are going to get'' is a phrase that also applies to the spending piece of reconciliation. There is much to criticize in the Senate's $35 billion spending reconciliation bill, but any conference bill that comes before us is likely to be far worse, with much larger cuts to benefits that middle- and lower-income families rely on that will be way out of all proportion to any tax cuts they might receive.

The Senate can take a step toward restoring fiscal discipline by voting down this tax reconciliation bill.

Mr. HATCH. Mr. President, I rise today in support of the tax reconciliation bill the Senate is now considering.

As with many of my Finance Committee colleagues, I am both relieved and disturbed to see this bill on the floor in its present form.

I am relieved because it includes many important provisions, including some that will serve to help keep the economy strong as well as particular relief provisions for the areas impacted by the hurricanes.

However, I am disturbed because we were unable to include in the bill one of the most important provisions to our continuing prosperity—an extension of the lower tax rates for capital gains and dividends.

I understand perfectly the reasons some of my colleagues wanted the extension removed. In an era of high deficits it is tempting to preserve revenue any way we can. While I also want to reduce the deficit, I believe that leaving out the extension for the special tax rate for capital gains and dividends will ultimately be counterproductive and harmful to the economy.

In an economy where there is universal agreement that Americans are not saving enough, the last thing we want to do is decrease the incentives to save. I urge my colleagues to hearken back to the debates we had over Social Security reform earlier this year.

Over the course of those debates, we found that there was substantial disagreement in the Senate over how to reform Social Security. But at the same time, nearly everyone seemed to agree that Americans need to save more for retirement and that our Government can do much better at encouraging us to save.

Allowing the lower tax rate on dividends and capital gains to expire is going in exactly the wrong direction.

The net return on savings is an important determinant for how much people save, and the higher the tax on saving the less saving we do. Work by Glenn Hubbard of Columbia University and Kevin Hassett of the American Enterprise Institute has shown that the net return on savings is an important determinant in how much people save.

The low returns in the stock market as well as the currently low interest rates throughout the world explain in part the low savings rates that we currently see in the United States.

There is no question that reducing the net returns by increasing the tax rate on dividends and capital gains would definitely harm savings. Not only does treating dividend and capital gain ordinary income depress saving, but it is also just plain unfair.

This is something I hear again and again from Utahns. Just consider how pernicious the tax on dividends is. The person who buys stock for $1,000 already paid taxes on this money when he or she earned it.

The company then pays a corporate tax of 35 percent on its profits. Then, from what remains of its profits, the other 65 cents, it is free to declare a dividend and provide some money back to its stockholders, who also pay a tax on those dividends.

Why on Earth should we not have a lower tax on dividends and capital gains? The Government has already made two grabs at that money.

What is more, the real cost of the lower tax rate on dividends and capital gains has been consistently overstated. As my colleague, Senator BUNNING, remarked in the Finance Committee markup, the revenue collected from these two taxes exceeded the Joint Committee on Taxation's, JCT, estimate by nearly $20 billion in the past year, according to one study.

In fact, the unprecedented 15-percent increase in tax revenue collected in the past year demonstrates that the best way to lessen budget pressures is not to raise taxes but to focus on policies that lead to solid economic growth. That 15 percent growth translates into a $100 billion reduction in the budget deficit this year.

Let us stop and think about that for a minute, Mr. President.

Pro growth tax policies have allowed us to grow our revenues by 15 percent in the past year, this translates into more than $250 billion in higher revenues. If we can find a way to control ourselves on the spending side, this could mean real progress in deficit reduction.

As my colleagues well know, we have gone through a great deal of pain just to find $35 billion in spending growth reductions in the spending reconciliation bill Sometimes I think that many of my colleagues ignore, or are not aware of, the power of strong economic growth on our deficit reduction capabilities.

If we look back to the late 1990s, when we did for a while eliminate the deficit and create some surpluses, it is easy to see that strong economic growth played a very strong part in that success, as did some curbs on spending.

I urge my colleagues not to forget this as we consider the importance of extending these favorable rates on dividends and capital gains.

More generally, the attempt to lay blame for our budget deficit entirely at the hands of the tax cuts is mistaken.

The process of forecasting budget revenues is still a nearly impossible task despite some hard work done by a group of very talented economists at the Congressional Budget Office, CBO, the JCT, and the Office of Management and Budget, OMB.

One fact that is clear from our many years of work is that the principal factor driving the amount of revenue collected by the Government is economic growth.

Estimates done by CBO showed that the shift from budget surpluses to deficits in the 2001–2003 time period owed more to spending increases, much of which could be attributed to 9/11, and the reduction in economic growth than to the reduction in tax rates.

In short, maintaining our pre-2001 tax rates would not have preserved the budget surplus, and in fact would have exacerbated the recession, further reducing revenues.

And today, we are seeing the powerful effects that solid economic growth can have on Government revenue.

As I alluded earlier, the booming tax revenues of today are reminiscent of the 1990s, when a sustained period of solid economic growth not only filled our Government's coffers but dramatically lowered unemployment, increased incomes at all levels, and reduced poverty in a dramatic fashion.

Many opponents of the extension argue that lower tax rates on dividends and capital gains represent yet another tax break for the rich. To boil down the lower tax rate to a tired class-warfare argument is over simplistic and wrong.

Reducing the taxation on investment income benefits everyone in America because it ultimately increases productivity and, with it, wages and economic growth as well.

Nobel Prize-winning economists Robert Lucas and Ed Prescott have argued that eliminating the pernicious taxation on savings is the closest thing there is to a free lunch.

When we save more it means that there is more money available for firms to modernize and expand and compete in the world economy. Former chair of the Council of Economic Advisers Greg Mankiw has shown in his research that even those who do not own stocks benefit in the long run from the lower tax rates on investment income.

The U.S. economy benefits greatly from the presence of a stable, relatively predictable tax and regulatory regime. Investors do not like to be surprised, and they like predictability.

As my colleague Senator KYL has pointed out, leaving the extension of the special tax rates on dividends and capital gains until later has dramatically increased uncertainty in the minds of nearly every person investing in the United States.

Investors are not looking at the tax rates in place today—they are looking at the rates they expect to be in place several years down the road when they plan to take the gains of their investments and pay the taxes.

I note that the tax reconciliation bill approved this week by the House Ways and Means Committee included a 2-year extension of the lower rate for capital gains and dividends. I hope that this provision survives intact in the House bill and that bill passes the other body.

If so, the capital gains and dividends extension will be an item for discussion in the conference of these bills with the House. Therefore, this tax bill may yet include this important provision before it goes to the President for his signature.

Another important provision that needs to be included in this legislation is an extension of the research tax credit. Companies throughout the country, and many in Utah, depend on this credit to remain competitive and to innovate.

A robust research credit is vital for our future world leadership in technology and our economic growth.

The revised mark includes the credit expansion in the form of the alternative simplified credit.

An increase in U.S. R&D spending benefits everyone, by ultimately improving the productivity of the American worker. Increasing productivity invariably results in an increase in wages throughout the economy.

It is interesting to listen to some of my colleagues on the other side of the aisle when they talk about these tax provisions in their entirety. They make it appear that this package is nothing more than a large tax cut for the wealthy in our Nation. Of course, nothing could be further from the truth.

In reality, other than those provisions that are designed to give aid to the victims of the hurricanes, and to help rebuild the gulf coast areas that were the hardest hit, this bill is about extending certain provisions that are set to expire. Most of those provisions expire in just a few weeks.

I think it is important for Utahns and all Americans to understand that enactment of this legislation is necessary to prevent a very large tax increase on middle-class Americans. Practically every single provision in this bill enjoys plenty of bipartisan support.

So while some of my colleagues are deriding this bill as a whole as an unnecessary and unwarranted tax giveaway to the rich, they are quietly promoting the individual provisions in the bill as necessary provisions for their constituents.

While I support this bill and certainly want to see it go forward to conference with the House, where we are hopeful it can be improved further, there are several provisions in it that cause me a great deal of concern.

One of these items of concern relates to a provision located in the charitable reforms section of the bill.

Specifically, it would place a floor of $500 on a joint return on the amount of deduction a taxpayer who itemizes his or her deductions may claim for a charitable contribution.

I see absolutely no rationale for this limitation.

I do know that it would discourage and mistreat many Utahns who make small contributions to their churches and to local charities. It seems to me that this limitation would hit those who make small donations particularly hard.

The entire point of extending the charitable deduction to those who do not itemize is to give an incentive to more people to donate to charity. I believe the non-itemizers deduction would do this, so I have supported it.

But why in the world would we want to give an incentive to non-itemizers and then turn around and remove a current incentive to those who itemize? It makes no sense.

This provision is unfair to itemizers in another way. The standard deduction already assumes a certain level of charitable contributions.

In order to give non-itemizers an incentive to actually give those assumed contributions, we are effectively allowing them to double dip in this provision. I can live with that because I think it will result in increased donations.

However, to take away a current benefit from itemizers is beyond the pale. There are many thousands of Utahns who give 10 percent of their income to their church. Because of this, Utah has a higher percentage of taxpayers who itemize.

Why should they be penalized for doing the right thing?

Why would we remove an incentive to them so we could create another incentive to those who do not give as much?

This is totally unfair.

I am also very concerned about another revenue raising provision in the bill that seems completely counterproductive and foolish to me. I am referring to the provision that would remove the ability of certain integrated oil companies to use the LIFO method of accounting for their inventories.

To me, this seems like a backdoor attempt to place a windfall profits tax on oil companies, which was ineffective the first time it was tried.

I am even more concerned that this provision could very well miss its intended target and hit some of the smaller oil refineries around the nation that we have been trying to help in recent tax bills.

I am told that it would affect three companies in Utah that happen to have some production, some refining, and are retailers. These three Utah companies are not the large integrated oil firms that this revised mark may be targeting.

I do not think this change is good policy for even the large companies, but in addition to being very poor policy, it also seems misdirected.

The American Job Creation Act we passed a year ago included a tax incentive to encourage small refiners to comply with the new low-sulfur diesel regulations. The Energy bill we passed this summer included a provision to allow refiners to expense immediately the cost of additional refinery capacity.

The provision in the bill before us would totally reverse these incentives and much more. Is not this like giving someone a quarter with our right hand

and then taking a dollar away from that same person with our left hand?

If we wish to encourage more production of oil and especially if we wish to encourage the creation of more capacity to refine oil products, this is not the way to go about it. I hope these offensive provisions can be removed, or at least mitigated, in the managers' amendment.

Mr. President, I know that sometimes one must take one step back for each two steps forward. Well, I think that this bill is an example of us taking one step back to take one and a half steps forward, but in the end, we are at least moving forward.

I would rather have an extension of the research tax credit and AMT along with an extension of the low rates for dividends and capital gains, but I will save the battle for the latter for another day.

The Finance Committee has an incredible array of legislative provisions that pass before us each year. The chair has, as usual, done a masterful job of satisfying the diverse interests of the members of the committee with his legislation.

One day, I hope to see a Finance Committee that takes a small step forward in every single piece of legislation to make it easier and more rewarding to save in America. The importance of increasing saving to the growth potential of our economy cannot be underestimated.

I urge my colleagues to join me in supporting this bill.

Mr. LEVIN. Mr. President, for too many years now, the administration and the majority in Congress have been pursuing an irresponsible fiscal policy of giving tax cuts mainly to the wealthiest Americans among us.

By generating revenue less than we are spending, our Nation is falling deeper into the debt ditch. The increase in our debt threatens us with rising long-term interest rates. At a time when so many Americans have variable-rate mortgages, car loans, and other debts, rising interest rates that are predicted to accompany our swelling deficits will have a very real and immediate impact on many American families. And we will be passing this increased debt on to our children and grandchildren.

This tax reconciliation bill contains a number of good provisions. In particular, the provision to ''patch'' the alternative minimum tax, AMT, is critical. Congress originally created the AMT to make sure that the wealthiest Americans paid at least a minimum amount of tax; however, it is now catching many more taxpayers than Congress intended. The ''fix'' in the bill before us today would once again implement a temporary increase in the exemption level of the AMT by indexing it for inflation, thus saving many middle-income taxpayers from being affected by the AMT and having their Federal taxes increased.

Today's bill also includes an expansion and extension on the research and development tax credit. R&D provides strength for our economy. It creates American jobs and improves the competitiveness of U.S. companies in the global marketplace. I am pleased that it will be extended.

I am also glad that this bill would establish an itemized deduction for the mortgage insurance on qualified personal residence and incentives for donations to charitable organizations, as well as extend tax incentives for many important programs, including a deduction for tuition payments and related expenses, a continuation of the new markets tax credit, deductions for teachers who make out-of-pocket payments for classroom expenses.

However, while these tax cuts are well targeted, it would be unconscionable to support their passage without paying for them. To start with, I wish we had adopted Senator Feinstein's amendment. Her amendment would have maintained two little known but important provisions known as ''PEP'' and ''Pease''. The personal exemption phase out, PEP, reduces a taxpayer's total personal exemption for incomes exceeding $218,950 for married couples, $145,950 for individuals. The ''Pease'' provision, which is named after the late Representative Don Pease, reduces certain itemized deductions for higher income taxpayers. There is currently a repeal scheduled to start next year on both of these, which does little for the economy beyond further increasing the deficit. Keeping PEP and Pease could reduce the deficit by an estimated $31 billion over 5 years. That is enough to pay for the entire AMT fix.

Senator Feinstein's amendment also would have rolled back the Bush tax cuts on capital gains rates, dividend rates, and income tax rates for millionaires. I supported this amendment, which unfortunately was defeated.

In closing, I support many of the tax provisions in this bill, but I cannot support passing then without paying for them. On balance this fiscally irresponsible bill will leave our country worse off.

Mr. BYRD. Mr. President, I am increasingly alarmed about the congressional budget process as it now operates.

I helped to write the Budget Act of 1974. At the time, I served as chairman of the Subcommittee on the Standing Rules of the Senate. The subcommittee was tasked with studying the budget process reforms reported by the then-Senate Government Operations Committee as they affected the Senate rules. I met with a working group of staff that was comprised of 10 standing committees of the Senate, and which included 90 hours of meetings during 25 sessions over a 16-day period. After the staff had completed its work, I spent many hours with the Senate Parliamentarian and met in all day sessions and over holiday weekends with the staff from the Congressional Research Service and the Senate legal counsel. I helped to manage the Senate's floor deliberations of the Budget Act as majority whip, and, when the Senate completed its many weeks of debate and amendment, I served on the conference committee that finalized the Budget Act.

I studied the Budget Act. I championed it. I supported it.

And so I can say, without equivocation, that the process the Senate utilizes today hardly resembles the process envisioned in 1974. The budget process used today obscures more than it clarifies the tax and spending decisions of the Congress. Through a growing list of 60-vote points of order, it is weakening the ability of the Congress to exercise its power over the purse, deferring more and more authority over fiscal matters to the executive branch. The budget process increasingly serves as a means to circumvent the role of the Senate to deliberate, and, lately, it has been used in a way that has fostered an unprecedented and unbroken string of deficits and debt.

I have spoken many times about how the budget reconciliation process has been distorted and the extent to which that process has been used to worsen deficits and unnecessarily limit debate and amendment. Here today is another example of one of these reconciliation bills, where debate is limited, amendments are curtailed, and arms are twisted to get the bare minimum of a majority of Senators to advance partisan legislation, only to see a brandnew bill rewritten in a closed conference committee that excludes any voice of dissent.

This week, the already grossly abbreviated reconciliation exercise has been curtailed further, as the normal 3-day debate is crammed into a period allowing for less than 2 days of debate. Meanwhile, Senators are distracted with other legislation that must be addressed before the Senate breaks for the Thanksgiving holiday—legislation that is more pressing than the extension of some of these tax cuts which will not expire for several more years.

The budget process has been distorted, where reconciliation is abused by both sides eager to score political points. Reconciliation is no longer simply a budgetary device to round out the numbers at the end of the fiscal year, as it was intended in 1974. It has become a favorite mechanism for bypassing the rules of the Senate for circumventing the limits imposed upon the capricious passions of a determined majority. Once a Senator's right to debate has been waived, what is left can almost be described as a state of chaos in the Senate. If you think that term ''chaos'' seems a bit extreme, just wait a few more hours for the vote-arama to begin.

Soon, the statutory limit of 20 hours of debate on this bill will expire, and the Senate will enter into a consent agreement whereby 2 minutes of each debate are allocated to each amendment and Senators are forced to vote

blindly in rapid succession on amendment after amendment after amendment. Many of these amendments have never been seen before by the Senate, and many will not even be explained to Senators prior to the casting of their votes.

To the credit of Senators GREGG and CONRAD, the number of amendments considered in vote-aramas have been limited in recent times, but vote-aramas continue to occur nonetheless.

Just 2 weeks ago, the Senate considered the so-called Deficit Reduction Reconciliation Act of 2005. After the 20 hours of debate had expired, the Senate entered into an agreement by unanimous consent that limited debate to 2 minutes per amendment prior to each vote. In one day, the Senate considered 41 amendments, with only 2 minutes of debate per amendment, and with only 16 of those amendments offered prior to the expiration of debate. That is 25 amendments that the Senate had not debated, or even seen before, receiving votes based upon whatever knowledge Senators could extract from the din in just 2 minutes.

In 2003, the Senate considered 84 amendments in this manner, without any of those amendments being offered, debated, or generally made available to Senators before casting their vote. In 2001, the number of amendments considered in this manner was 78, again without any of those amendments being offered, debated, or generally made available to Senators before casting their vote.

All together, in the last 6 years, the Senate has considered 246 amendments to budget resolutions and reconciliation bills, within a so-called vote-arama process that does not allow the Senate to debate amendments or, in too many cases, to even see amendments before Senators are asked to cast their vote. God help the American people.

I once described vote-aramas as pandemonium, which was the Palace of Satan designated by Milton in Paradise Lost. But that term almost fails to describe the ignominy of the Senate when it becomes engulfed in these budget carnivals. It's embarrassing to the institution. It is no way to legislate. We cannot claim to serve the interests of our constituents if we don't have time even to read the amendments on which we are casting our votes. Read The Federalist Paper No. 62 by Madison: ''It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood.'' Vote-arama means Senators are flying blind.

I have pleaded with the Senate to avoid using this reconciliation process because I abhor what it does to this institution. It is not a necessary exercise. The Budget Act does not require it, nor does the Budget Act require, or even mention, the use of vote-aramas. We are doing this to ourselves. This is self-inflicted abuse, and our Nation suffers as a result.

Since 2001, this reconciliation process has yielded an unbroken string of unprecedented deficits and debt. At $339 billion in the fiscal year 2003, $412 billion in the fiscal year 2004, and $317 billion in the fiscal year 2005, budget deficits have grown to record levels 3 years in a row. Within 5 years, the national debt is projected to rise to $11 trillion. The interest payments on that debt is growing to enormous levels and will surpass in 2010 a whopping $314 billion per year. That is $314 billion that could be used to build and modernize our transportation and energy infrastructure, but that will be paid to foreign and domestic bond holders instead. If there is a force that is sinking the budget into an ocean of deficits and debt, it resides, at least in part, among abuses of the budget process.

Outside of the budget reconciliation process, Senators could insist that tax cuts be offset. These are not controversial tax extensions. The alternative minimum tax relief, the deduction of college tuition and teacher classroom expenses, the section 179 expensing and research and development credit—all of these could pass overwhelmingly if offsets could be found, and it could be done without having to put the Senate through this exercise. Senators might even have the opportunity to thoughtfully consider amendments to the bill to develop compromises that improve the legislation and satisfy both parties. Senators could go home touting a piece of bipartisan legislation that all sides find agreeable.

I call upon the Republican and Democratic leadership, as well as the members of the Budget Committee, and all Senators, to help reform this process. The process as it currently operates is intolerable, and it damages this institution severely. Whatever political advantage may be claimed today, this process ultimately weakens the Senate as an institution, and does a great disservice to the American people.

Mr. REID. Mr. President, I oppose this legislation, and I would like to take just a few minutes to explain why. But before I do, I want to begin by commending and congratulating both the chairman and ranking member of the Finance Committee for their hard work on this bill. Senator MAX BAUCUS and Senator CHUCK GRASSLEY work very well together on the broad range of issues that come before their Committee. While we have an honest and good faith disagreement about this particular legislation, I want them to know how much sincere respect I have for both of them and how grateful I am for their outstanding leadership of the Finance Committee.

Mr. President, I have two major concerns about this bill. First, it needlessly increases the deficit when we should be saving for the future. And, second, it paves the way for a budget that is inconsistent with the values of the American people.

Our country faces an enormous fiscal challenge that will begin in a few years, when the baby boomers retire. America's debt now exceeds $8 trillion. Under the Republican budget that figure will increase by more than $3 trillion in just 5 years. We simply must restore fiscal discipline. That means we must do all we can to avoid further increases in the deficit, and to live under the pay-as-you-go rule. We did that in the 1990s, and that is a major reason why we not only eliminated our deficit, but ran record surpluses. That, in turn, is one reason we enjoyed the longest peacetime economic expansion in our Nation's history.

During debate on this bill, Democrats tried to restore fiscal discipline. Led by the distinguished ranking member of the Budget Committee, Senator KENT CONRAD, we offered an amendment that would have fully paid for the tax cuts in the bill. Unfortunately, the amendment was defeated on a largely party-line vote.

Let me be clear: I support most of the tax cuts in this bill. I think we should provide relief from the alternative minimum tax, and we should extend the R&D and work opportunity tax credits, among others. I just think we should pay for them. Here and now. We shouldn't force our children and grandchildren to do so tomorrow.

The other reason why I oppose this legislation is that it will pave the way for adoption of a budget that does not reflect America's values. To understand why, you need to step back and take a broad view of the budget legislation moving through the House and Senate.

This tax reconciliation bill is really just one part of a broader budget plan that the Republican leadership is trying to push through to enactment. That plan includes substantial cuts in a wide range of programs important to middle class and more vulnerable Americans. Not long ago, the Senate approved legislation that cut Medicare, Medicaid, housing and agriculture, while authorizing drilling in a pristine Alaskan wildlife refuge. At the same time, the House is considering legislation to cut student loans, food stamps, and child support enforcement, while making even deeper cuts in Medicaid.

These spending cuts are troubling. But what makes them truly outrageous is that they're intended to partially pay for tax breaks for special interests and multimillionaires.

I know that the bill before us does not include those tax breaks. And I commend Senator BAUCUS and other colleagues on the Finance Committee for their work to keep capital gains and dividend tax breaks out of the bill.

My concern, though, is that Senate Republican leadership has made it very clear that they intend to put those tax breaks right back into the legislation in a final agreement with the House. This isn't a secret. As Senator GRASSLEY told the publication Tax Notes, ''If we pass a tax bill, it is going to have

extension of capital gains in it.'' He further went on to say ''whether we have one in the Senate or not . . . we'll end up with it.''

Other Republican colleagues have echoed the Chairman's comments.

We know that capital gains and dividend tax breaks will be included in a final bill, if we let it get to that point. But why should we care? Why are those tax breaks so problematic?

Well, first of all, remember how they are being paid for. Cuts in Medicare, Medicaid, student loans, food stamps, and other programs for middle class Americans and those who need help the most.

Now let's consider who these tax breaks really help.

Here's the answer: 53 percent of their benefits will go to those with incomes greater than $1 million.

Let me repeat that: 53 percent of their benefits will go—no, not to millionaires—but to people with incomes over $1 million. We are talking about multi-millionaires, a small handful of America's most fortunate. These lucky few will get an average tax break of about $35,000.

But what about those with incomes between, say, $50- and $200,000? Well, they will get an average tax cut of $112.

And what about those with incomes less than $50,000? Six dollars.

$35,000 for those with incomes more than a million dollars. Six dollars for those earning less than $50,000.

And for this, the Republican majority wants to harm some of the Nation's most vulnerable families. That is not just wrong. It is immora1. And that is not my word—it comes from some of our Nation's top religious leaders.

Again, Mr. President, I know this bill does not itself include those tax breaks. But if we send this fast track bill to conference, make no mistake: those tax breaks are coming. It is as clear as night following day. The only way to prevent it is to stop th from going to conference in the first place.

Finally, I want to make one more point. Even if my colleagues disagree about the problems with the Republican budget, I wish they could agree that we have more important things to do.

Gas prices are skyrocketing. Families are struggling to fuel their vehicles and heat their homes. Farmers and businesses are feeling the pinch. Democrats have a plan to respond, to address price gouging and, ultimately, to make our nation energy independent. That is more important than harming the vulnerable to provide tax breaks to special interests and multi-millionaires, while increasing the deficit.

Hurricane survivors are struggling. Thousands lack health coverage; 150,000 live in hotel rooms and face the threat of homelessness in just 2 weeks. Devastated communities have been forced into massive layoffs and are unable to provide even basic services. Democrats have a plan to address these urgent needs. That is more important than harming the vulnerable to provide tax breaks to special interests and multi-millionaires, while increasing the deficit.

The Iraq war is not going as well as the administration promised. More than 2070 Americans have died. More than 15,000 have been wounded. About 150,000 more remain in harm's way, while the Administration still has no plan to end the conflict and bring them home. Instead of being greeted as liberators, the violence continues nearly 2½ years after the start of the conflict. As the Senate said just a few days ago, our Nation badly needs a strategy for success. But we have a long way to go before that bill gets to the President's desk. And making that happen also is more important than harming the vulnerable to provide tax breaks to special interests and multi-millionaires, while increasing the deficit.

While I support tax relief for the middle class, and I endorse most of the specific provisions in this legislation, I am going to vote against it. Approval of this bill will facilitate adoption of a Republican budget that is based on the wrong values and the wrong priorities.

Together, we can do better.

Let's provide middle class tax relief, but let's do it in a fiscally responsible way that doesn't harm families struggling to make ends meet.

Mr. GRASSLEY. Mr. President, we are ready for third reading.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Mr. FRIST. Mr. President, we will be voting tomorrow morning at approximately 9:30. We will do the continuing resolution. We have an amendment on the resolution in the morning.

There is going to be a lot going on tomorrow. We will not be able to further clarify the schedule until tomorrow. We will have multiple votes tomorrow morning beginning at 9:30.

The PRESIDING OFFICER. The question is on passage of the bill. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant Journal clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Alabama (Mr. SHELBY) and the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 33, as follows:

[Rollcall Vote No. 347 Leg.]

YEAS—64

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Baucus	Enzi	Pryor
Bennett	Feinstein	Roberts
Bond	Frist	Salazar
Brownback	Graham	Santorum
Bunning	Grassley	Schumer
Burns	Gregg	Sessions
Cantwell	Hagel	Smith
Carper	Hatch	Snowe
Chambliss	Hutchison	Specter
Clinton	Inhofe	Stabenow
Coburn	Isakson	Stevens
Cochran	Johnson	Sununu
Coleman	Kyl	Talent
Collins	Landrieu	Thomas
Cornyn	Lincoln	Thune
Crapo	Lugar	Vitter
Dayton	Martinez	Warner
DeMint	McCain	
DeWine	McConnell	

NAYS—33

Akaka	Dorgan	Levin
Bayh	Durbin	Lieberman
Biden	Feingold	Mikulski
Bingaman	Harkin	Murray
Boxer	Inouye	Obama
Burr	Jeffords	Reed
Byrd	Kennedy	Reid
Chafee	Kerry	Rockefeller
Conrad	Kohl	Sarbanes
Craig	Lautenberg	Voinovich
Dodd	Leahy	Wyden

NOT VOTING—3

Corzine	Lott	Shelby

The bill (S. 2020), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. ENZI. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS. Mr. President, this legislation did not happen by itself; it took hard work and perseverance. There is a long list of individuals who must be thanked.

First, I want to thank the staff of the Joint Committee on Taxation and Senate Legislative Counsel for their service. They did a tremendous job with this bill.

I want to thank George Yin, the Chief of Staff of the Joint Committee on Taxation, in particular. This will probably be the last tax bill George will work on for the U.S. Congress. George is returning to the University of Virginia where he is a professor. His last day is tomorrow. George has served on the Joint Committee on Taxation for just over 2 years. During that time, he has provided tremendous insight and knowledge to me and my staff. He is called upon to know all the nuances of the Tax Code and provide recommendations on tax policy. He does this with unfailing competence. His work is of the highest caliber. I commend him for his work and thank him for his service to the U.S. Congress.

Next, I must thank the hardworking staff of the Finance Committee. They stayed up many a sleepless night, and I applaud them for their expert counsel. I want to thank some staff members in particular. I appreciate the cooperation we received from the Republican

staff, especially Kolan Davis, Mark Prater, Cathy Barre, Elizabeth Paris, Christy Mistr, Dean Zerbe, Chris Javens, John O'Neill, and Nick Wyatt.

I also thank my staff for their perseverance and dedication, including Russ Sullivan, Patrick Heck, Bill Dauster, Melissa Mueller, Matt Jones, Judy Miller, Jon Selib, Ryan Abraham, and Tom Klouda. I also thank our dedicated fellows, Mary Baker, Brian Townsend, Richard Litsey, Jorlie Cruz, and Stuart Sirkin.

Finally, I thank our hardworking interns: Jennifer Alwood, Ray Campbell, Mandy Cisneros, Will Larson, and James Reavis.

I want to thank the chairman of the Finance Committee and my good friend, Senatory GRASSLEY. It is not easy putting together a reconciliation bill. I thank Senator GRASSLEY for once again ensuring a result that could receive broad support. It is my hope that we can maintain the spirit and substance of the Senate bill as we move through conference. We have a good bill before us.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in Book II.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

ORDERS FOR FRIDAY, NOVEMBER 18, 2005

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9 a.m. on Friday, November 18. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow morning after we convene, we will immediately proceed to the continuing resolution. Senator HARKIN will have an amendment which will require a vote. Therefore, Senators should expect a couple votes early in the morning. Those votes will occur at approximately 9:30 in the morning.

Following those votes, we expect to have a better idea of what additional business will be available on Friday. There are a couple of appropriations conference reports that will likely be available, the PATRIOT conference report, the House message on the spending reconciliation bill, as well as other legislative and executive items we are trying to clear. Therefore, additional votes may occur and will occur, and we will try to clarify Friday's schedule as early as possible.

I remind everyone that a weekend session is expected and Senators should remain available Friday and Saturday and beyond until we finish our remaining work. I will have to say, starting now about 3 weeks ago we set out a very aggressive agenda, and to date we have stayed right on target to accomplish that agenda. The House is in session right now and is voting actually right now, and I understand they will be conducting more business tonight and in the morning that we will have to act on after they act on much of the legislation they are considering. So it will be a full day tomorrow. I expect to have a number of votes over the course of tomorrow. And again, as we have said for the last 3 weeks, it will be important for our colleagues to keep their schedules flexible through tomorrow and Saturday, Sunday, and possibly beyond that.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 12:58 p.m., adjourned until Friday, November 18, 2005 at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate November 17, 2005.

TENNESSEE VALLEY AUTHORITY

DENNIS BOTTORFF, OF TENNESSEE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2011. (NEW POSITION)

ROBERT M. DUNCAN, OF KENTUCKY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2011. (NEW POSITION)

WILLIAM B. SANSOM, OF TENNESSEE TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2009. (NEW POSITION)

HOWARD A. THRAILKILL, OF ALABAMA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2007. (NEW POSITION)

SUSAN RICHARDSON WILLIAMS, OF TENNESSEE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR THE A TERM PRESCRIBED BY LAW, VICE GLENN L. MCCULLOUGH, JR., TERM EXPIRED.