House of Representatives

The House was not in session today. Its next meeting will be held on Wednesday, December 23, 2009, at 11:30 a.m.

Senate

TUESDAY, DECEMBER 22, 2009

The Senate met at 7 a.m. and was called to order by the Honorable EDWARD E. KAUFMAN, a Senator from the State of Delaware.

PRAYER

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

Let us pray.

Eternal Spirit, whom we seek in vain without unless first we find You within, may the hush of Your presence fall upon our spirits, quiet our minds, and allay the irritations that threaten our peace. Breathe through the heat of our desires Your coolness and balm.

Strengthen the Members of this body. Take their spirits from strain and stress, and let their ordered lives confess the beauty of Your peace. Fill them so full of Your goodness that they will know how to discern Your best for their decisions. Make them faithful leaders by Your standard of righteousness.

We pray in Your Holy Name. Amen.

NOTICE

If the 111th Congress, 1st Session, adjourns sine die on or before December 26, 2009, a final issue of the Congressional Record for the 111th Congress, 1st Session, will be published on Thursday, December 31, 2009, to permit Members to insert statements.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–59 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 30. The final issue will be dated Thursday, December 31, 2009, and will be delivered on Monday, January 4, 2010.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event, that occurred after the sine die date.

Senators’ statements should also be formatted according to the instructions at http://webster/secretary/congr_record.pdf, and submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at “Record@Sec.Senate.gov”.

Members of the House of Representatives’ statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerk.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–59.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, Chairman.

This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
PLEDGE OF ALLEGIANCE

The Honorable Edward E. Kaufman led the Pledge of Allegiance, as follows: I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. Byrd).

The legislative clerk read the following letter:

U.S. SENATE,
President pro tempore,

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Edward E. Kaufman, a Senator from the State of Delaware, to perform the duties of the Chair.

Robert C. Byrd, President pro tempore.

Mr. KAUFMAN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will resume consideration of the health care legislation. The time until 7:18 this morning is equally divided and controlled between the two leaders or their designees. The Senate will then proceed to a series of three rollcall votes—they will be stacked—in relation to the Reid motion to table the Reid amendment No. 3278, the Reid-Baucus-Dodd-Harkin amendment No. 3276, and a motion to invoke cloture on the Reid substitute No. 2786. Pending:

SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved. The Minority leader will then be recognized, and the time until 9:30 will be equally divided and controlled between the two leaders or their designees. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I will be taking the leader time on our side. How much time is there?

The ACTING PRESIDENT pro tempore. Six minutes.

Mrs. HUTCHISON. I thank the Chair. Mr. President, today we are taking another step toward passing a bill that has not been introduced during the 111th Congress, that is, the Service Members Home Ownership Tax Act of 2009. This is a bill that changes health care policy for every American. What is going to be said about this bill that changes health care policy for every American? What is going to be written about how the votes were brought together to have a bill that would tax our American people $½ trillion and take Medicare away? It is a bill that changes health care policy for every American. I think we can do better. We can do better in this country than having the history of the overhaul of our health care system that is going to affect the quality of life and the tax burden on every American. I think we should have a better history.

So I am asking my colleagues to think about this vote. We could change one vote, one person who says: I don’t think it is a good idea. We could do better.
want the Senate to do something this way. I want the Senate to rise to the level that we know has been the tradition of this Senate for all of the years of our Republic, and that is that we would have an open, transparent process; that we would have bipartisan input; that a Republican amendment—one might have passed; that what we offer is what we promised the American people: lower costs in health care.

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

Mrs. HUTCHISON.—and a way for people to have more affordable access. We still have a chance. That is why we are here today. And I hope we can turn away from this process and share the light of day with our colleagues and with America.

Thank you, Mr. President. I yield the floor.

The ACTING PRESIDENT pro tempore. The deputy majority leader is recognized.

Mr. DURBIN. Mr. President, a famous Washington figure once wrote a book entitled “Slouching Towards Gomorrah.” If you were to describe what is happening in the Senate traditionally, we would call it lurching to cloutage. The cloture rules in the Senate require 30 hours between votes, and as a consequence we find ourselves in the early morning hours trying to finish this before the Christmas holiday, and it calls for the Senate to convene at extraordinary times, as we did this morning, but it is for a good purpose.

This is to bring to a close a debate which has gone on for more than 3 weeks. You have noticed more and more Republican Senators now coming to the floor with ideas and amendments, and the obvious question we have to ask is, Where have you been? For the first 21 days of debate on this bill, the Republicans offered four substantive amendments. They offered six motions to take the bill off the floor, send it back to committee, and quit the deliberations, but only four substantive amendments. Now they say they are just brimming with all of these notions and ideas that can improve this bill. They had the chance. In fact, they had more than a chance. They were invited into this process early on.

I would say to the Senator from Texas, she knows that 3 of her colleagues met over 61 times with their leagues, but only four subcommittees. They were invited into this process, but only four subcommittees. You have noticed more and more that this is somehow a mystery amendment. This amendment has now been before the American public for at least 70 hours on the Internet. You can find it not only on the Democratic Senate Web site, you can find it on the Republican Web site. They put their bill on their Web site because they don’t have a comprehensive health care reform bill. They put ours up for people to read. There has been ample opportunity for people to read, dissect, and to be critical of it and raise questions about it. Before our final vote, America will have had its chance to read and understand the importance of this effort and this effort is substantive.

This is something we have built up to for decades. To finally put the Senate on record as to whether we are endorsing the current health care system in America that is unaffordable, discriminations against people, and leaves so many behind, a system that currently rations care and says to 50 million Americans you have no coverage, and to millions of others that you have coverage that will not be there when you need it—we have to bring that to an end.

As Senator HARKIN said the other day in closing the debate, this is a real debate whether health care will be a right or a privilege in America. If you believe it is a privilege for those who are wealthy and well off, then, of course, you will vote against this. If you believe it is a right that should be extended to more Americans, I hope you will join in supporting it.

I yield the floor.

Mr. REID. Mr. President, has all time expired?

The ACTING PRESIDENT pro tempore. The time is yielded back.

Mr. REID. Mr. President, I move to table amendment No. 3278, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

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

The result was announced—yeas 60, nays 39, as follows:

(Rollcall Vote No. 386 Leg.)

YEAS—60

Akaka  Franken  Mikulski
Baucus  Gillibrand  Murray
Bayh  Hagan  Nelson (NE)
Begich  Harkin  Nelson (FL)
Bennet  Inouye  Pryor
Bingaman  Johnson  Reid
Boxer  Kaufman  Rockefeller
Brown  Kirk  Sanders
Brown  Klusuchar  Schumer
Burkholder  Kohl  Shaheen
Byrd  Landrieu  Specter
Cantwell  Lautenberg  Stabenow
Casey  Leahy  Test
Conrad  Levin  Udall (CO)
Dodd  Lieberman  Udall (NM)
Durbin  Lincoln  Warner
Feingold  McCain  Webb
Feinstein  Menendez  Whitehouse

NAYS—39

Alexander  Crapo  Lugar
Barrasso  DeMint  McCain
Bennett  Ensign  McConnell
Bond  Enzi  Sessions
Brownback  Feingold  Schumer
Bunning  Grassley  Roberts
Burton  Gregg  Sessions
Chambliss  Hatch  Shelby
Coburn  Hatchsen  Snowe
Coakley  Johnson  Vitter
Collins  Kyl  Voinovich
Corker  Lieberman  Wicker

NOT VOTING—1

Inhofe

The motion was agreed to.

The PRESIDING OFFICER. The majority leader.

AMENDMENT NO. 327 WITHDRAWN

Mr. REID. Mr. President, it is my understanding that the second-degree
The PRESIDING OFFICER. The amendment has been withdrawn; is that right?

Mr. REID. Mr. President, I ask for the yeas and nays on amendment No. 3276.

The PRESIDING OFFICER. The yeas and nays were previously ordered.

The question is on agreeing to amendment No. 3276.

The assistant legislative clerk will call the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Oklahoma (Mr. INHOFE).

Mr. KYL. The following Senator is necessarily absent: the Senator from Oklahoma (Mr. INHOFE).

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

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 388 Leg.]

YEAS—60

Alaska
Franken
Mikulski

Baucus
Gillibrand
Murray

Bayh
Hagan
Nelson (FL)

Begich
Harkin
Nelson (NE)

Bennet
Inouye
Pryor

Bingaman
Johnson
Reed

Boozman
Kaufman
Reid

Brown
Kerry
Rockefeller

Burris
Kirk
Sanders

Byrd
Klobuchar
Schumer

Cantwell
Kohl
Shaheen

Cardin
Landrieu
Specter

Carpenter
Lautenberg
Stabenow

Casey
Leasy
Tester

Conrad
Levin
Udall (CO)

Dodd
Lieberman
Udall (NM)

Dorgan
Lincoln
Warner

Durbin
McCAIN
Webb

Feingold
Menendez
Whitehouse

Feinstein
Merkel
Wyden

NOT VOTING—1

Inhofe

The amendment (No. 3276) was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, 35 days before the Senate the following cloture motion which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Reid substitute amendment No. 2786 to H.R. 3590, the Service Members Home Ownership Tax Act of 2009.

Christopher J. Dodd, Richard Durbin, Paul G. Kirk, Jr., Max Baucus, Claire McCaskill, Jon Tester, Maria Cantwell, Barbara A. Mikulski, Mark Udall, Sherrod Brown, Arlen Specter, Bill Nelson, Mark Begich, Sheldon Whitehouse, Roland W. Burris, Kirsten E. Gillibrand, Ron Wyden.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 2786, as amended, offered by the Senator from Nevada, Mr. REID, to H.R. 3590, the Service Members Home Ownership Tax Act of 2009, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Oklahoma (Mr. INHOFE).

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

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 387 Leg.]

YEAS—60

Akaska
Franken
Mikulski

Baucus
Gillibrand
Murray

Bayh
Hagan
Nelson (NE)

Begich
Harkin
Nelson (FL)

Bennet
Inouye
Pryor

Bingaman
Johnson
Reed

Boozman
Kaufman
Reid

Brown
Kerry
Rockefeller

Burris
Kirk
Sanders

Byrd
Klobuchar
Schumer

Cantwell
Kohl
Shaheen

Cardin
Landrieu
Specter

Carpenter
Lautenberg
Stabenow

Casey
Leasy
Tester

Conrad
Levin
Udall (CO)

Dodd
Lieberman
Udall (NM)

Dorgan
Lincoln
Warner

Durbin
McCAIN
Webb

Feingold
Menendez
Whitehouse

Feinstein
Merkel
Wyden

NAYS—39

Alexander
Crapo
Lugar

Barrasso
DeMINT
McCain

Bennet
Ensign
McConnell

Bond
Enzi
Murkowski

Brownback
Graham
Risch

Bunning
Grassley
Roberts

Burris
Gregg
Sessions

Chambliss
Hatch
Shelby

Coburn
Hutchison
Snowe

Coats
Isakson
Thune

Collins
Johannes
Vitter

Corker
Kyl
Voinovich

Cornyn
LeMieux
Wicker

NOT VOTING—1

Inhofe

The PRESIDING OFFICER. On this vote the ayes are 60, the nays are 39. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The majority leader is recognized.

AMENDMENT NO. 2878

Mr. REID. Mr. President, I ask the clerk to call and report amendment No. 2878.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. REID) proposes an amendment numbered 3292 to amendment No. 2787.

The amendment is as follows:

(Purpose: To change the effective date)

The amendment has been agreed to under the rule by unanimous consent. The amendment is effective 5 days after enactment.

Mr. REID. Mr. President, I ask every one to acknowledge that we have our regular weekly caucuses at 12:30. We will come back at 2:30, and we will be going back to blocks of time until 5:30 this evening.

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

Mr. REID. Mr. President, I said when the Senate opened today and I will say again, because of the long hours we have spent here for weeks now, there is a lot of tension in the Senate. Feelings are high, and that is fine. Everybody has very strong concerns about everything we have done and have to do. But I hope everyone would go back to their gentlemanly ways. I was trying to figure out how to say this—gentlemanly ways. We used to say in the House gentlemanly ways. I was trying to figure out how to say this—gentlemanly ways. We used to say in the House gentlewomen, so I guess it is the same here.

Anyway I hope everyone has—I have said to a number of people—Rodney King—let’s all just try to get along. That is the only way; we need to do it. This is a very difficult time in the next day or so. Let’s try to work through this.

For those of the Christian faith we have the most important holiday, and that is Christmas.
I would hope everyone would keep in mind that this is a time when we reflect on peace and the good things in life. I would hope everyone would kind of set aside all the personal animosity, if they have any in the next little bit, and focus on the holiday.

The PRESIDING OFFICER. The minority leader.

Mr. MCCONNELL. Mr. President, let me add, to my good friend the majority leader, he and I have an excellent relationship. We speak a number of times in the course of every day and have no animosity whatsoever. We are working on an agreement that will give certainty to the way to end this session. Hopefully, the two of us together can be recommending something that makes sense for both sides in the not-too-distant future.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. What is the regular order?

The PRESIDING OFFICER. The time until 9:30 is equally divided between the leaders or their designees.

The Senator from Montana.

Mr. BAUCUS. Mr. President, it has been more than a month since the majority leader moved to proceed to the health care reform bill before us today. At long last, the Senate is now in the final throes of passing this historic legislation.

From the beginning, this Senator has sought out what Abraham Lincoln called “the better angels of our nature.” That is the way this Senator has always sought to legislate.

A year and a half ago, I convened a bipartisan retreat at the Library of Congress. Half a year ago, I convened three bipartisan roundtables with health care experts. Half a year ago, the Finance Committee conducted three bipartisan walk-throughs of the major concepts behind the bill before us today.

We went the extra mile. I reached out to my good friend, the ranking Republican member of the HELP Committee. We sought to craft a bill that would appeal to the broad middle. We sought to craft a bill that could win the support of Republicans and Democrats alike.

We met, a group of six of us, three Democrats and three Republicans. We met more than 30 times. We met for months, encouraged by the President to do so. Our group met with the President several times. The President encouraged us to keep pursuing our negotiations, hoping to reach bipartisan agreements.

No, we did not reach a formal agreement. The leadership on the other side of the aisle went to great lengths to stop us from doing so. But even though we did not reach a formal agreement, we came very close to doing so. The principles that we discussed are very much the principles upon which the Finance Committee built its bill. The principles that we discussed are very much the principles reflected in the bill before us today. Our work began much earlier than I have mentioned. We met all the preceding year, held about ten hearings in the Finance Committee working toward health care reform. We also finished a white paper in November 2008. I say with trepidation that basically that is the foundation from which all major health care reform emanated. To be fair, the ideas in that paper had been floating around, principles from the Massachusetts health care reform, for example. Most policy experts and health care economists who had been working on reform published their ideas. We sought the best, compiled them, and put together that white paper published in November of last year.

From the debate that the Senate has conducted this past month, you would not know it. During this debate, some on the other side of the aisle have mischaracterized the bill before us. Some on the other side of the aisle have set about a systematic campaign to demonize this bill. Through hearings alone, with the thinnest connection to fact, they have sought to vilify our work. If one listened to their assertions alone, one would not recognize the bill before us.

And so, let me, quite simply, state the facts.

Some on the other side of the aisle assert that this bill is a government takeover of health care.

The fact is that the nonpartisan Congressional Budget Office says that this bill would reduce the government’s fiscal role in health care. Just 3 days ago, CBO wrote, and I quote: CBO expects that the proposal would generate a reduction in the federal budgetary commitment to health care during the decade following the 10-year budget window.

Some on the other side of the aisle assert that this bill would add to our Nation’s burden of debt.

The fact is that the nonpartisan Congressional Budget Office says that this bill would reduce the deficit by $132 billion in the first 10 years and by between $650 billion and $1.3 trillion in the second 10 years. The fact is that this is the most serious deficit reduction effort in more than a decade.

Some on the other side of the aisle assert that this bill would harm Medicare.

The fact is that Medicare’s independent actuary says that this bill would extend the life of Medicare by 9 years. The fact is that this is the most responsible effort to shore up Medicare in more than a decade.

Some on the other side of the aisle assert that this bill does not do enough to ensure the uninsured. The fact is that the nonpartisan Congressional Budget Office says that this bill would extend access to health care to 31 million Americans who otherwise would have to go without. The fact is that CBO says, and I quote:

The share of legal nonelderly residents with insurance coverage would rise from about 83 percent currently to about 94 percent.

Nothing that Senators on the other side of the aisle have proposed would come close. CBO estimated that the Republican substitute offered in the House of Representatives would have extended coverage to just 3 million people. The fact is that CBO says of the plan and I quote:

The share of legal nonelderly residents with insurance coverage in 2019 would be about 83 percent, roughly in line with the current share.

I would cite the facts about the Republican substitute in the Senate. But the fact is that there is no Republican substitute.

Some on the other side of the aisle assert that they simply prefer a more modest reform of health care.

The fact is that the Republicans controlled the Senate from 1995 to 2001 and from 2003 to 2006. The fact is that before they took control, in 1994, 36 million Americans, 15.8 percent of nonelderly Americans were without health insurance coverage. In the last year of their control, in 2006, nearly 47 million Americans, 17.8 percent of nonelderly Americans were without health insurance coverage. The legacy of Republican control was 10 million more Americans uninsured.

Some on the other side of the aisle say that we are moving too fast.

The fact is that it was 1912, when former President Theodore Roosevelt first made national health insurance part of the Progressive Party’s campaign platform. The fact is that people of good will have been working at this for nearly a century.

The fact is, health care reform for America is now within reach. The fact is, the most serious effort to control health care costs is now within reach. The fact is, life-saving health care coverage for 31 million Americans is now within reach.

Let us, at long last, grasp that result. Let us, this time, not let this good thing slip through our hands. And let us, at long last, enact health care reform for all.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to each side.

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

The clerk will call the roll.

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

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

Mrs. HUTCHISON. Mr. President, are we now in a period where we go back and forth with a bill?

The PRESIDING OFFICER. We are.

Mrs. HUTCHISON. Mr. President, I ask to be notified after 5 minutes, after
which Senator Vitter is going to speak.

The PRESIDING OFFICER. The Chair will so notify.

Mrs. HUTCHISON. Mr. President, we have talked a lot about what is in this bill, the tax increases, the massive cuts in Medicare. But there is another issue I think, looking down the road, we are going to need to pursue. We have talked about how groundbreaking this bill is. In fact, the majority calls it historic, and it is historic. We believe it is historic in the bad precedents it is setting, both in process and in substance. I think some of these precedents are going to be tested under the Constitution of the United States.

I wish to start by talking about a couple of those. No. 1, in the effort to get the last vote, clearly there were deals made. There were deals that affect individual States and even one that affects two insurance companies that will not have to pay the tax increases of the insurance companies that will be levied on the other insurance companies. This is an issue that must be raised under the Constitution, the equal protection clause of the Constitution. To take a set of companies in an industry, competitors—and we value the free market system and the free enterprise system—to pluck out two competitors and say: You will be treated differently because we need your vote to pass this bill should be tested under the Constitution of the United States.

It is my hope some insurance company that has standing to bring this suit will be able to test this precedent. It is a very bad precedent, and it is certainly bad policy to start passing laws that distinguish some parts of an industry from other parts of an industry that would be treated in a different way. I hope we will do that.

No. 2, I believe there is a 10th amendment issue. Here is my concern. Many States, including my State of Texas, have self-insurance plans for State employees. States with large numbers of State employees find that self-insurance is a better way to go than private insurance programs. In this bill, every insurance company that plans to increase its premiums must get approval from the Department of Health and Human Services first.

Now, my State of Texas, with its self-insurance plan, then, has to go to the Secretary of Health and Human Services to ask permission to increase the premium on their State self-insured insurance plan. That is a violation of the 10th amendment, as I see it.

I am very concerned that a State that has State employees who accept a self-insurance plan, would then be able to be told by the Federal Government that they cannot increase their premiums to cover the cost and keep the sound system that they have in place.

Now, other States have self-insurance plans, so I believe they would also be very affected by this, and I believe there will be a standing for a State with this type of plan to be able to challenge this part of this bill and, hopefully, bring it down if it is a violation of the 10th amendment, as I see it.

I want to talk about another area that I think is a stretch in this bill; that is, apparently the individual mandate is being justified by the commerce clause. The commerce clause says that the commerce clause, basically says no State may impede interstate commerce. You may say, out in America: I don't see the connection. I am going to be mandated to buy health insurance or be fined if I don't because States cannot impede interstate commerce.

Well, I would agree with people out there that seems like a disconnect because, apparently, using the commerce clause, the majority is saying the Federal Government has the right to mandate that individuals have health insurance. This is an issue that has to go to the Supreme Court.

I think this whole individual mandate issue is going to be a center for discussion, debate, and opposition to the bill that is clearly moving down a path that we are now going to talk about the individual mandate. People are saying to me: How can the Federal Government tell me I have to buy insurance? I think they have a point.

You have to buy automobile insurance because, but that comes with the right to drive. So you get the right, licensed by the State, to drive your car, and in exchange for that a State may require that you have collision insurance, which many of my fellow States do. But when you say you have to buy an insurance policy, I think that crosses a line where a person has a right to say: I am not going to buy insurance if I guarantee that I am not going to be a burden to the Federal Government or to the State government or to any other taxpayer. I think you should have that right, but that is not the way this bill is written.

The bill is a Federal mandate that every person has to have health insurance or be fined if they do not. So at least if we were going to write such a provision, to keep the right of an individual not to have a mandate under the commerce clause of the Constitution, at least you ought to say that a person would have to sign something that says: I will give you a promissory note if I do not choose to buy insurance. But that is not the way this bill is written.

So I think this, along with the State mandates on Medicaid—which, again, I think is an equal protection issue, and maybe that is a stretch—but that one State will not have to ever pay the State's share of the increase in Medicaid that is in this bill but the other 49 States in America will is certainly a violation of our responsibility to treat all States equally or to have formulas that have some ability to say there is a standard that has been set that applies to all States.

My State of Texas will have almost a $10 billion increase in its State's share of Medicaid because of the expansion in this bill. But there are States that are exempted from the increases and one State that is exempted from an increase because of a deal made to get that 60th vote to pass this bill.

I think people are looking at this issue in America today and saying: What has gotten into the people in Congress who are voting for this bill?

So, Mr. President——

The PRESIDING OFFICER. The Chair apologizes. The Chair did not notify the Senator at 5 minutes. The Chair forgot. The Senator's 5 minutes have expired.

Mrs. HUTCHISON. Mr. President, thank you for the notification.

I think there are issues now that will be raised going forward in the future, and there is still time for one Senator to change the vote. Therefore, I hope one will hear from his or her constituents enough that that person will say: It is time to slow this bill down. I am going to change my vote so people can see all the effects that we want to talk about yet, and let's do this right.

We can lower the cost of health care, we can provide more access to more people to have health care coverage, which should be the goal of this legislation, this massive reform of a health care system that is working for many and has provided the best quality of health care in the world. We have a chance to keep it by slowing this bill down. That is why we are fighting, that is why we are still here talking 3 days before Christmas. We want to stop this bill and do it right. Doing it right is more important than doing it fast, and I think the American people believe that too.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, how much time remains on the minority side before 9:30 a.m.?

The PRESIDING OFFICER. There is 21 minutes remaining on the minority side.

Mr. VITTER. Thank you, Mr. President.

Mr. President, since this latest version of comprehensive health care reform was unveiled a few days ago—a 2,733-page bill—I have been looking at it very carefully, particularly, of course, with the Louisiana perspective, and I want to share my strong concerns with you but also share a Louisiana perspective with my colleagues today.

Of course, we have all heard this Senate health care reform bill referred to
as the “Louisiana purchase” because of the special $300 million provision in it related to our Medicaid match rate.

Quite frankly, I do not much like that nickname for two reasons. First of all, the fact that we in Louisiana have to pay a higher Medicaid match rate under present law because of the hurricanes is a real inequity, which I support fixing. It is a shame the merits of that fix, which are very real, have been completely lost in this debate because of the way this Louisiana fix has been used. Quite frankly, I am particularly concerned about the “Louisiana purchase.” I think the bill could be very accurately called the “Louisiana sellout.”

With this in mind, I ask the Senator to tell us about those serious problems for Louisiana I am talking about.

Let’s start with Medicaid, the program for the poor. Let’s start with that $300 million fix. It is certainly true that $300 million is paid from the State under our Medicaid Program—but that is not all of the picture. It is not even all of the Medicaid picture because besides that fix, in the bill overall there is a dramatic expansion—and the Louisiana State government and Louisiana taxpayers have to help pay for that expansion. That extra cost to the State government, to the State taxpayer, is way more than the $300 million benefit.

By very conservative estimates by the Louisiana Department of Health and Hospitals, it is at least $1.3 billion over 10 years of full implementation. So, sure, a $300 million benefit but, at least $1.3 billion, a $1.3 billion cost—extra cost—to the State.

Now, three things are important about these figures. One is obvious: $300 million is a whole lot less than $1.3 billion. But, secondly, this $1.3 billion over 10 years of full implementation is a very conservative estimate from the Louisiana Department of Health and Hospitals. And, No. 3, while this money, the $300 million, is one time, this other goes on forever. This $1.3 billion is the first decade cost, but it goes on forever; and every 10 years, this grows and is repeated.

So what does that mean? That means in the first 10 years of full implementation, the net impact on the State is very negative, at least $1 billion, and it goes on from there.

I am very concerned about a lot of other groups in Louisiana, not just the State government and State budget. I am particularly concerned about Louisiana seniors. Of course, Louisiana seniors, like seniors everywhere, depend on Medicare. They have paid into it their whole lives. This bill—it is a simple fact; it is confirmed by the Congressional Budget Office, nonpartisan—this bill cuts Medicare $466 billion. Medicare now is already facing insolvency by 2017. So instead of fixing that in a real way, the bill steals almost $1/2 trillion from Medicare and uses it not within Medicare but to help pay for a brand-new entitlement.

Mr. BAUCUS. Mr. President, will the Senator yield for a question?

Mr. VITTER. I will not at this time. I will be happy to yield after my presentation.

That means real cuts in terms of hospitals, home and hospice, nursing homes, and Medicare Advantage. There are over 151,000 Louisiana seniors on Medicare Advantage. They are going to be particularly hard hit. They like that choice now. They will not have that choice as it exists now under this bill.

How about Louisiana taxpayers? I am also very concerned about Louisiana taxpayers. Again, according to the nonpartisan Congressional Budget Office, the bill contains $518 billion of tax increases nationwide—over $1/3 trillion of tax increases. As for that oft repeated promise that no one who earns under $200,000 will be affected, well, again, think again. The Joint Committee on Taxation has already estimated that over 42.1 million Americans earning below $200,000 will get a tax increase over the next several years—42.1 million. That means hundreds of thousands of Louisiana taxpayers will be hit, will get a tax increase. I want to talk about folks who earn well below $200,000—will also pay more in the form of higher insurance premiums because, again, the nonpartisan Congressional Budget Office has said this bill increases overall health care costs. It does not decrease those costs.

Well, what about Louisiana small businesses? Surely, this bill protects them in the midst of this serious recession. Well, not exactly. The biggest impact on businesses is a brand new mandate in the bill. Most businesses have to either provide a government-defined health insurance benefit or they have to pay a new tax to the government. NFIB, the National Federation of Small Business, says that is going to cost the Nation 1.6 million jobs. Translated to Louisiana, that is tens of thousands of additional lost jobs on top of our current high unemployment. Again, we are in the middle of a serious recession. This will cost us jobs on top of that.

There is also another big problem, which is an incentive for businesses to drop coverage. I mentioned that brand new mandate: Either you provide a government-defined health benefit or you pay a new tax to the Federal Government. The other problem with that is, for a lot of business, it is going to be cheaper to drop coverage and pay the new tax. So many employees who have coverage now that they are reasonably satisfied with are going to lose it, and that is a big concern as well.

Just for good measure, the bill forces pro-life taxpayers to, in many very meaningful ways, subsidize abortion. Louisiana is one of the most proudly pro-life States in the Nation, so that is particularly offensive. Everyone who cares about life, who has followed this issue, whether it is the Catholic Bishops, National Right to Life, and other pro-life groups and organizations have said, clearly, the language in this bill doesn’t protect against taxpayer-funded abortion. The language in this bill does not honor the Hyde amendment, which has been Federal law since 1977. The language in this bill, this important line, does not offer the conscience protections we have depended on for years. So this sets radical new precedent in terms of taxpayer and Federal Government support of abortion. That is a big Louisiana concern as well.

So what do we have? We have a 2,733-page bill, mega health care reform, with all these very serious problems for Louisiana and important Louisiana groups, with no health care reform or not; this is a debate about what the right kind of health care reform is.

To me, we need to start over with that right kind of reform. To me, that would mean something such as starting by passing five bills. Each one doesn’t need to be longer than 25 pages. Each one would be focused like a laser beam on a real problem that affects real Louisianans, real Americans, offering a real, concrete, focused solution. My five bills would be this: Cover pre-existing conditions. That is a real problem in Louisiana. That is a real problem in America. Let’s have a focused bill that does that.

Secondly, allow buying insurance across State lines. That would dramatically expand competition in the marketplace. That would lower premiums. That would give all folks wanting health insurance dramatically decreased costs than they have now.

Third: Let’s do something real about prescription drug prices. Let’s not sell out to PhRMA and cut a special deal with the pharmaceutical industry, as the White House has. Let’s pass re-importation and pass real generics reform.

Fourth: Let’s pass tort reform and take all that unnecessary cost out of the system. That doesn’t provide better health care for anyone. It doesn’t do anything positive for anyone except wealthy trial lawyers. Let’s pass tort reform.

And fifth: Let’s allow small business to pool across State lines to form larger pools of insurance across State lines.
and gain from that extra buying power. Why shouldn’t a restaurant in Baton Rouge that may only have seven or eight people to cover in health insurance, why shouldn’t they be able to pool through the National Restaurant Association, create a pool of millions nationwide and enjoy the same buying power Apple Computers or Toyota has and get the same benefit in the insurance marketplace through that increased buying power and increased competition.

So I urge all my colleagues to put their State first and vote no, to put our Nation first and vote no, and to start anew with the right sort of focused reform as I have outlined.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I just have a couple of statements to make, points to make in the last statement, to correct some misstatements given by the last statement.

The last speaker said Medicare cuts apply this is going to cut Medicare. The fact is—I wish the previous speaker would stay on the floor, but he is fleeing the floor because he knows I am going to mention facts in total refutation to the assertions he is making. He leaves the floor. He will not stay with me to talk about what is going on. He makes statements that are misrepresentations and then he leaves the floor.

Let me talk about some of the things he said which are incorrect. One, he basically says Medicare is going to be hurt by these huge cuts to Medicare. The fact is, we are helping the Medicare trust fund with this legislation.

The fact is, the Joint Committee on Taxation says there are $436 billion of tax cuts in this legislation, reductions in taxes; $436 billion in tax cuts in the form of tax credits for people who purchase insurance in the exchange. It is a tax cut of $436 billion of tax cuts in the exchange. I might say $40 billion of that is small business tax cuts. They are not increases, they are tax cuts for small business and the tax cuts for individuals is $436 billion.

Frankly, I wish I had a lot of the data before me. I don’t have it right now to refute other points he made. He talked about premiums going up. The Congressional Budget Office basically says Medicare is going to find their premiums will come down because of this legislation, and for a certain class of individuals—those in the individual market and the small group market will get very significant reductions in premiums on account of this bill.

It irritates me, frankly, when Senators come to the floor and make all these misstatements and they are not based on the facts. In fact, what we need to do around here is get more and more institutions to objectively analyze policy so we know what the facts are. It is pretty hard to argue the facts. That is a pretty good job. The Joint Committee on Taxation does a pretty good job. But if somehow this country could turn to an organization or organizations to find the facts—just the facts—this would be a lot better because it is hard to argue the facts. If you have good facts, you generally can create good policy.

Back to premiums. CBO says 93 percent of premiums go down. Actually, for about five-sixths of those insured that is, those who work for larger companies, it is called the large group markets—premiums will go down not a lot but a little. According to CBO, it is up to a 3-percent reduction in premiums. They look at the year 2016 as a benchmark year, and for those, about 70 percent of Americans who work for large markets, premiums will actually go down 3 percent.

What about 13 percent of Americans who work for small companies? Basically, CBO and the Joint Committee on Taxation say those could go up 1 point as well as down 2 percentage points. It is about even. It is difficult to tell. But those who get credits in the small group market will find their premiums go down by about 8 to 11 percent. Those who work for small companies will find their premiums go down 8 to 11 percent.

What about the nongroup market—individuals. Well, basically, if you compare today’s insurance premiums with what it might be in the future, the premiums will go down 14 to 20 percent, but because of better benefits, premiums could go up 10 to 13 percent for 7 percent of Americans. As I mentioned earlier, 93 percent of their premiums go down. For 7 percent they will go up, but for those 7 percent, they are going to have a lot better coverage, a lot better insurance in 2016. All the insurance market reforms will have kicked in; denial of preexisting conditions, market status, health status and so on and so forth.

Get this: For the nongroup market, 17 percent of Americans who buy insurance through the nongroup market, 10 percent of them, because of tax credits, will find their premiums go down by—guess how much—56 to 59 percent. Once more: 17 percent of Americans buy insurance individually. Of those 17 percent, 10 percent of them will find their premiums will be reduced 56 to 59 percent. That is according to the Joint Committee on Taxation. Only one small group, according to the Joint Committee on Taxation, will find an increase in 2016. That is 7 percent of Americans in 2016, but that 7 percent of Americans will get a lot better insurance, high-quality insurance. No more rescissions. No more denial based on preexisting conditions. The rating reforms will have kicked in and the annual limits, the lifetime limits will have been repealed. It will be a heck of a lot better insurance. So maybe their premiums will go up a little bit, but they will get a heck of a lot better buy in that 7 percent. It is similar to buying a new car instead of used car—hopefully, a good new car. All in all, in a very real sense, all Americans are going to find his or her premiums will go down. Seven percent will find something a little bit, but they will get a heck of a lot better insurance for the premiums they will be paying.

The previous speaker is wrong when he says it will increase premiums. The Joint Committee on Taxation says it will not. I didn’t hear him quote the Joint Committee on Taxation saying premiums will go up. If you look at the actual analysis by the Joint Committee on Taxation, they find the premiums will go down.

So I urge you who wish to speak, I wish to address the question of the constitutionality of the individual mandate. Let me read into the RECORD an analysis by Mark Hall, prepared by the O’Neill Institute. Basically, he says the following:

Health insurance mandates have been a component of many recent health care reform proposals. Because a Federal requirement that individuals transfer money to a private party is unrelated to the achievement of any legitimate public purpose, the Federal government’s taxation power cannot be used to impose such a requirement. A federal health insurance mandate involves an unconstitutional use of the taxing power and is invalid under the Commerce Clause of the United States Constitution. A federal mandate to purchase health insurance is well within the breadth of Congress’s power to regulate interstate commerce. Congress can avoid legal challenges related to the 10th Amendment and states’ rights by providing state insurance laws and implementing the mandate on a Federal level. If Congress wants states to implement a federal mandate, it has the following two options:

Conditional Spending: Congress may condition federal funding, such as that for Medicaid or public health, on state compliance with federal initiatives. Conditional Preemption: Congress may allow states to opt out of complying with direct federal regulation as long as states implement a similar regulation that meets Federal requirements.

Congress’s Authority to Tax and Spend for the General Welfare: Congress also has the authority to legislate an insurance mandate under its Constitutional authority to tax and spend. There are no plausible Tenth Amendment and states’ rights’ challenges to a mandate originating from Congress’s taxing and spending power. However, Congress’s taxation power cannot be
used in a way that burdens a fundamental right recognized in the Constitution’s Bill of Rights and judicial interpretations by the U.S. Supreme Court. Since there is no fundamental right to be uninsured, no fundamental right challenge exists.

Other Relevant Constitutional Rights: Challenges to First and Fifth Amendment provisions relating to individual rights may arise, but are unlikely to succeed. The federal government should include an exemption on religious grounds to a health insurance mandate as an added measure of protection from legal challenges based on religious freedom. In the alternative, the federal government can simply exempt a federal insurance mandate from existing federal legislation protecting religious freedom.

Considerations: To avoid a heightened level of scrutiny in any judicial review, the federal government should articulate its substantive rationale for mandating health insurance during the legislative process.

It takes time and it is probably too lengthy to read. Professor Hall wrote this. He is a professor at Wake Forest University. I will read the conclusion:

The Constitution permits Congress to legislate a health insurance mandate. Congress can use its Commerce Clause powers or its taxing and spending powers to create such a mandate. Congress can impose a tax on those who do not have insurance, or provide tax benefits to those that do purchase insurance. If Congress would like the states to implement an insurance mandate, it can avoid conflicts with the anti-commandeering principle by either preempting state insurance laws or by conditioning federal funds on state implementation.

The First Amendment’s Free Exercise Clause or RFRA are unlikely to succeed, although a federal insurance mandate would include a statement in the statute that the RFRA would not apply or provide a religious exemption. Fifth Amendment Due Process and Takings Clause challenges are also unlikely to be successful. A legal analysis presented is likely to endure the Supreme Court’s current position and approach to interpreting relevant constitutional provisions.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. BURRIS. Mr. President, as this debate draws to a close and my colleagues and I prepare to vote on a health care reform bill, I recognize that long hours and tense negotiations have left some nervous and tempers frayed. That is why I come to the floor. Although our work keeps us away from our family and friends for much of the season, I see no reason why we cannot share good cheer with one another right here in Washington.

So in the spirit of the season, I would like to share my own version of a classic holiday story with my good friends on both sides of the aisle.

It goes something like this:

‘Twas the night before Christmas and all through the Senate
The right held up our health bill, no matter what was in it.
The people had voted—they mandated reform—
But Republicans blew off the gathering storm—
‘We’ll clog up the Senate!’ they cried with a grin.

They knew regular folks need help right this second—
But fundraisers, lobbyists and politicians beckoned.

So, try as they might, Democrats could not win.
Because their majority was simply too thin.
Then, across every state there arose such a clatter
The whole Senate rushed out to see what was the matter.

All sprang up from their desks and ran from the floor
Straight through the cloakroom, and right out the door.

And what in the world could be quite this raucous?
But a mandate for change! From the Democratic caucus!

The President, the Speaker, and of course Leader Reid
Had answered the call in our hour of need.

More rapid than eagles the provisions they came,
And they whistled, and shouted, and called them by name.

‘Better coverage! Cost savings! A strong drama.
More rapid than eagles the provisions they came,
And they whistled, and shouted, and called them by name.

And Democrats explained, as they drove out of sight:
‘Better coverage for all, even our friends on the right!’

And I say to all of my colleagues: In this season, Merry Christmas and a happy, happy New Year.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, in a little while, I will be making a constitutional point of order against the substitute amendment. I won’t make that now because we are working on an agreement on when we can have that vote.

I want to start talking about the reason I believe this substitute amendment is unconstitutional—the individual mandate contained in it. I will be speaking for about 10 minutes now, and then I will resume my remarks at 9:30, after one of the Democrats comes down and uses their 15 minutes.

If this constitutional point of order is rejected and the health care reform bill is passed, I believe the Court should reject it on constitutional grounds.

Some of my colleagues may not be aware of the Finance Committee’s debate on the constitutionality of this health care reform bill. During the committee markup of its version of the bill, Senator HATCH raised some thought-provoking constitutional questions. He offered an amendment, which I supported, to provide a process for the courts to promptly consider any constitutional challenge to the Finance Committee bill.

If we have the power simply to order Americans to buy certain products, why did we not require Americans to buy certain cars, dishwashers, or refrigerators?

Where do we draw the line? Will we even draw one at all? The Constitution draws that line. It is called the enumerated powers. I don’t think Congress has ever required Americans to buy a product or service, such as health insurance, under penalty of law.

My friend and colleague, Senator HATCH, raised similar questions during the debate in the Finance Committee. In fact, he raised the following question:

What if Americans can only have them if they comply with this new bill and buy a bronze, silver, gold, or platinum health insurance program?

What happened to life, liberty, and the pursuit of happiness? I guess Americans can only have them if they comply with this new bill and buy a bronze, silver, gold, or platinum health insurance program.

America’s Founders and subsequent generations fought dearly for the freedoms we have today.

I question the appropriateness of this bill and specifically the constitutionality of this individual mandate. Is it really constitutional for this body to tell all Americans they must buy health insurance coverage? If so, what is the line? What product, service, or liberty will Congress seek to take away from Americans next?

While this is a constitutional point of order, I feel it is important to note that in the Declaration of Independence, America’s Founding Fathers provided that:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

What happened to life, liberty, and the pursuit of happiness? I guess Americans can only have them if they comply with this new bill and buy a bronze, silver, gold, or platinum health insurance program.

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I doubt Congress has the power to do that in the first place.

As the CBO explained during the 1990s:
A mandate requiring all individuals to purchase health insurance would be an unprecedented form of Federal action. The government has never required people to buy any good or service as a condition of lawful residence in the United States. 

Yet that is exactly what this health care bill would do. This bill would require Americans to buy a product many of them do not want or simply cannot afford.

Some individuals have raised the example of car insurance in the context of this debate. But requiring someone to have car insurance for the privilege of being able to drive is much different from someone having to have health insurance. As Senator HATCH pointed out, people who do not drive do not have to buy car insurance. Senator HATCH is right. If you live in New York City, you probably rely on subways or some other form of mass transit. You probably do not own a car, so you have no reason to buy car insurance and you are not forced to do so. Yet this health care reform bill requires Americans to buy health insurance whether or not they ever visit a doctor, get a prescription, or even go to the hospital. Under this bill, if you do not buy health insurance coverage, you will be subject to a penalty. Let’s call this penalty what it really is—a tax. Even worse, this penalty operates more like a taking than an ordinary tax. If an American chooses not to buy minimal essential health coverage, he or she will face rapidly increasing taxes—up to $750 or 2 percent of taxable income, whichever is greater, by the year 2016. There is no penalty for Americans who qualify for hardship or religious exemptions. There is also no penalty for illegal immigrants or prisoners.

Americans typically pay taxes on a product or service they buy or on income. For example, if you fill up your car at the pump, you pay a gas tax. If you earn income, you pay an income tax. Yet this bill creates a new tax on Americans who choose not to buy a service. It is very counterintuitive. This bill taxes Americans for not doing something and not other than just existing. This penalty is assessed through the Internal Revenue Code.

Senator HATCH made the following statement:

If this is a tax at all, it is certainly not an excise tax. It is a direct tax. While the Constitution requires that excise taxes must be uniform throughout the United States, it requires that direct taxes must be apportioned among the States by population. Just as the excise tax on high premiums is not uniform, this direct tax on individuals who do not purchase health insurance is not apportioned.

I recognize that the authors of this health reform bill included an individual mandate in this bill based on the idea that health care costs would be spread among all Americans and would ultimately reduce their health insurance costs. The claim is, insurance costs will be lowered because cost shifting will be reduced. This cost shift arguably takes place because health care providers—doctors and hospitals—who provide free or uncompensated care to the uninsured, shift the cost to the insured or paying patients. The hospital or doctor then shifts the cost of that unpaid care to the insured patient in the form of higher charges in order to cover the cost of uninsured patients.

I understand this concept, but I am incredibly concerned that the individual mandate provision takes away too much freedom and choice from Nevadans and from Americans across the country.

I have read and studied multiple articles by scholars on the constitutionality of the individual mandate. I believe the individual mandate provision in this health care reform bill calls into question several provisions of the Constitution. I think the Congress does not have the authority, under the federal government powers, to enact such a mandate.

I know the supporters of the individual mandate have claimed the commerce clause and the taxes and general welfare clause in article I, section 8 of the Constitution authorize Congress to enact such a mandate. I wholeheartedly disagree with that assessment.

According to the Constitution, the Federal Government only has limited powers. Although the Supreme Court has upheld some far-reaching regulations of economic activity—most notably in Wickard v. Filburn and Gonzales v. Raich—neither case supports enactment of the individual mandate based on the commerce clause. In these cases, the court held that Congress was allowed to regulate intrastate economic activity as a means to regulate interstate commerce in fungible goods. The mandate to purchase health insurance, however, is not proposed as a means to regulate interstate commerce, nor does it regulate or prohibit activity in either the health insurance or the health care industry. The mandate to purchase health insurance does not purport to regulate or prohibit activity of any kind, whether economic or noneconomic. Instead, the individual mandate provision regulates no action. It purports to regulate inactivity by converting the inactivity of not buying insurance into commercial activity. In effect, advocates of the individual mandate contend that under congressional power to ‘regulate commerce ... among the several states’ Congress may reach the doing of nothing at all.

In recent years, the Supreme Court has invalidated two congressional statutes that attempted to regulate non-economic activity. Ahold, the individual mandate based on the commerce clause, the Supreme Court would have to concede that the commerce clause provides unlimited authority to regulate. This is a position that the Supreme Court has never affirmed and that it rejected in recent cases.

Congress lacks the authority to regulate the individual’s decision not to purchase a service or enter into a contract. Similarly, Congress cannot rely on its power to tax to justify imposing the individual mandate.

In addition to being beyond the scope of Congress’ enumerated powers, this individual mandate also amounts to a taking under the fifth amendment takings clause. I would like to take a moment to read the relevant parts of the fifth amendment. It says in part:

No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Let me repeat the part of the fifth amendment that applies to the issue at hand. It says:

. . . nor shall private property be taken for public use, without just compensation.

The bill before us today would require an American citizen to devote a portion of income—his or her private property—to health insurance coverage. There is an exception, of course, for religious reasons and for financial hardships.

If one of my constituents in Nevada does not want to spend his or her hard-earned income on health insurance coverage and would prefer to spend it on something else, such as rent or a car payment, this requirement could be a taking of private property under the fifth amendment.

As noted in a recent article co-authored by Dennis Smith and the former Deputy General Counsel of the Department of Health and Human Services, Peter Urbanowicz, requiring a citizen to purchase health insurance ‘could be considered an arbitrary and capricious ‘taking’ no matter how much hardship exemptions the federal government might dispense.’

Some of my colleagues may also be familiar with David B. Rivkin and Lee A. Casey. They are attorneys, based in Washington, DC, who served in the Department of Justice during the Reagan and Bush administrations. In September, Rivkin and Casey published an op-ed in the Wall Street Journal entitle: ‘Mandatory Insurance is Unconstitutional.’ I urge my colleagues to read this article and many others I will be submitting for the RECORD.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks this Wall Street Journal by David B. Rivkin, Jr., and Lee A. Casey.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. ENSIGN. In the op-ed, Rivkin and Casey argue that the health insurance mandate:

would expand the federal government’s authority over individual Americans to an unprecedented degree. It is also profoundly unconstitutional.

Continuing the quote:

Making healthy young adults pay billions of dollars in premiums into the national health care market is the only way to fund universal coverage without raising substantial new taxes.
In effect, this mandate would be one more giant, cross-generational subsidy—imposed on generations who are already stuck with the bill for the federal government’s prior spending.

A “tax” that falls exclusively on anyone who is uninsured is a penalty beyond Congress’s authority. If the rule were otherwise, Congress could evade all constitutional limits by “taxing” anyone who doesn’t follow an order of any kind.

As the fourth Chief Justice of the Supreme Court, John Marshall, stated:

The power to tax involves the power to destroy.

Unfortunately, this could certainly be true in the context of this health bill.

We in Congress must zealously defend our citizens’ rights and prevent this from happening. I believe the legislation before us violates the greatest political document in the history of the world, the Constitution of the United States.

I urge my colleagues to think very carefully about the constitutional issues. I know many people around here do not like to talk about whether something is constitutional. We just want to do what feels good because we think we are helping people. But our Founders set forth in the enumerated powers limits on what this body and this Federal Government could do.

As Members of Congress, one of our most important responsibilities is to protect, to defend, and preserve the Constitution of the United States. In that light, it is not only appropriate but essential for this body to question whether it is constitutional for the Federal Government to require Americans to buy health insurance coverage.

We should also question whether it is constitutional for the Federal Government to tell Americans what kind of health insurance coverage they have to purchase. So not only does this bill tell them they have to buy health insurance, it tells Americans what kind of health insurance must be purchased.

Americans deserve to know how the bill will impact their ability to choose the health insurance coverage that best fits their needs. That is exactly why I will raise this constitutional point of order. Freedom and choice are very precious rights. Let’s not bury our heads in the sand and take away freedom and choice from American citizens. We need to think about this individual mandate very carefully.

I have several articles, and I would like to read a couple of quotes from these articles. The first one is from the Washington Post. The article is entitled, “Illegal Health Reform.” It is written by David Rivkin and Lee A. Bamberger.

The other uninsured would be required to buy coverage, not because they were even tangentially engaged in the ‘production, distribution or consumption of commodities’, but for no other reason than people without health insurance exist. The federal government does not have the power to regulate Americans simply because they are there. Significantly, in two cases, United States v. Lopez (1995) and United States v. Morrison (2000), the Supreme Court specifically rejected the proposition that the commerce clause allowed Congress to regulate non-economic activities merely because, through a chain of causal effects, they might have an adverse effect on interstate commerce. The Court’s recognition of the power that is not freely exercised by the states.

Mr. President, to read further from the article in the Washington Post:

Like the commerce power, the power to tax is the Federal Government’s vast authority over the public, and it is well settled that Congress can impose a tax for regulatory rather than purely revenue-raising purposes. Yet Congress cannot use its power to tax solely as a means of controlling conduct that it could not otherwise reach through the commerce clause or any other constitutional provision. In the 1922 case Bailey v. Drexel Furniture, the Supreme Court ruled that Congress could not impose a tax on “penal and regulatory” conduct that it could not also regulate under the commerce clause. Although the court’s interpretation of the commerce power’s breadth has changed over time, it repudiated the fundamental principle that Congress cannot use a tax to regulate conduct that is otherwise indisputably beyond its regulatory power.

Of course, these constitutional impediments can be avoided if Congress is willing to raise corporate and/or income taxes enough to finance a new national health system. Absent this politically dangerous—and therefore unlikely—scenario, advocates of universal health coverage must accept Congress’s constitutional limits on its power.

In other words, not buying health insurance is a penalty beyond Congress’s authority. It is well settled that Congress can impose a tax for regulatory rather than purely revenue-raising purposes. Yet Congress cannot use its power to tax solely as a means of controlling conduct that it could not otherwise reach through the commerce clause or any other constitutional provision. In the 1922 case Bailey v. Drexel Furniture, the Supreme Court ruled that Congress could not impose a tax on “penal and regulatory” conduct that it could not also regulate under the commerce clause. Although the court’s interpretation of the commerce power’s breadth has changed over time, it repudiated the fundamental principle that Congress cannot use a tax to regulate conduct that is otherwise indisputably beyond its regulatory power.

That is within the bill.

Continuing to quote:

The second prong of its Commerce Clause analysis requires a determination that a petitioner has engaged in the regulated activity, making him or her a member of the regulated class. In its modern Commerce Clause cases, the Supreme Court rejects the argument that a petitioner’s own conduct or participation in the activity is, by itself, either too local or too trivial to have a substantial effect on interstate commerce. Rather, the Court has made clear that, “where the class of activities is regulated and that class is within the reach of federal power, the courts have no powers ‘to inquire into the particular effect of the conduct of any individual’ in that class.” Thus, for example, a potential challenger of the proposed mandate could not argue that because her own decision not to purchase health insurance would have little or no effect on the broader market, the regulation could not be constitutionally applied to her. The Court will consider the effect of the relevant “class of activity,” not that of any individual member of the class.

A long line of Supreme Court cases establishes that Congress may regulate three categories of activity pursuant to the commerce power. These categories were first summarized in Perez v. United States, which recent reaffirmed in Gonzalez v. Raich. First, Congress may regulate the channels of interstate or foreign commerce such as the regulation of the marijuana trade, the air-craft transportation or prevent them from being misused, as, for example, the shipment of stolen goods or of persons who have been kidnapped. Second, the commerce power extends to protecting the “instrumentalities of interstate commerce,” as, for example, the destruction of an aircraft, or persons or things in commerce. Third, Congress may regulate economic activities that “substantially affect interstate commerce.”

Under the first prong of its Commerce Clause analysis, the Court asks whether the class of activities regulated by the statute falls within one or more of these categories. Since an individual health insurance mandate is not even arguably a regulation of a channel or instrumentality of interstate commerce, it must either fit in the third category or none at all. The bill asserts (erroneously) that: “[t]he individual responsibility requirement . . . is commercial and economic in nature, and substantially affects interstate commerce. The requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased.”

I want to read from another article that was written by Randy Barnett, Nathaniel Stewart, and Todd Gaziano. This article is entitled, “Why the Personal Mandate to Buy Health Insurance is Unprecedented and Unconstitutional.”

Members of Congress have the responsibility, pursuant to their oath, to determine the constitutionality of legislation independently of whether it has ruled or may rule in the future. But Senators and Representatives also should know that, despite what they have been told, the health insurance market is vulnerable to challenge because it is, in truth, unconstitutional. And all other considerations aside, the highest obligation of each Member of Congress is fidelity to the Constitution.

I ask unanimous consent to have printed in the RECORD, following my remarks, the articles I have before me. The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit No. 2.)

Mr. ENSIGN. Continuing to quote, Mr. President, from the Barnett, Stewart, and Gaziano article:

Under the first prong of its Commerce Clause analysis, the Court asks whether the class of activities regulated by the statute falls within one or more of these categories. Since an individual health insurance mandate is not even arguably a regulation of a channel or instrumentality of interstate commerce, it must either fit in the third category or none at all. The bill asserts (erroneously) that: “[t]he individual responsibility requirement . . . is commercial and economic in nature, and substantially affects interstate commerce. The requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased.”

That is within the bill.

Continuing to quote:

The second prong of the Court’s Commerce Clause analysis requires a determination that a petitioner has engaged in the regulated activity, making him or her a member of the regulated class. In its modern Commerce Clause cases, the Supreme Court rejects the argument that a petitioner’s own conduct or participation in the activity is, by itself, either too local or too trivial to have a substantial effect on interstate commerce. Rather, the Court has made clear that, “where the class of activities is regulated and that class is within the reach of federal power, the courts have no powers ‘to inquire into the particular effect of the conduct of any individual’ in that class.” Thus, for example, a potential challenger of the proposed mandate could not argue that because her own decision not to purchase health insurance would have little or no effect on the broader market, the regulation could not be constitutionally applied to her. The Court will consider the effect of the relevant “class of activity,” not that of any individual member of the class.

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Proponents of the individual mandate are contending that, under its power to "regulate commerce ... among the several states," Congress may regulate the doing of nothing. Under those words, the statute purports to convert inactivity into a class of activity. By its own plain terms, the individual mandate provision regulates the absence of action. To uphold this power under its existing doctrine, the Court must conclude that an individual's failure to enter into a contract for health insurance is an activity "economic" in nature—that is, it is part of a "class of activity" that "substantially affects interstate commerce."

Never in this Nation's history has the commerce power been used to require a person who does nothing to engage in economic activity.

Let me repeat that. "Never in this Nation's history has the commerce power been used to require a person who does nothing to engage in economic activity."

Let me close with this because I see the senior Senator from Utah is on the Senate floor, and he has argued eloquently on the unconstitutionality of this provision. Again, I am quoting:

Today, even voting is not constitutionally mandated. But if this precedent is established—

That is the precedent in this bill is established—Congress would have the unlimited power to regulate, prohibit, or mandate any or all activities in the United States. Such a doctrine would abolish any limit on federal power and alter the fundamental relationship of the national government to the states and the people. For this reason it is highly doubtful that the Supreme Court will uphold this assertion of power.

Mr. President, I reserve the remainder of my time, and I yield to the senior Senator from Utah.

EXHIBIT 1

[From the Wall Street Journal, Sept. 18, 2009]

MANDATORY INSURANCE IS UNCONSTITUTIONAL

(By David B. Rivkin, Jr. and Lee A. Casey)

President Obama has called for a serious and reasoned debate about his plans to overhaul the health-care system. Any such debate should include the proposition of whether it is constitutional for the federal government to adopt and implement the president's proposals. Consider one element known as the "individual mandate," which would require every American to have health insurance, if not through an employer then by individual purchase. This requirement would particularly affect young adults, who often choose to save the expense and go without coverage. Without the young to subsidize the old, a comprehensive national health system will fail. But can Congress require every American to buy health insurance?

In short, no. The Constitution assigns only enumerated powers to Congress and the president to regulate interstate commerce or to impose taxes, would support a federal mandate requiring anyone who is otherwise without health insurance to buy it.

Although the Supreme Court has interpreted Congress's commerce power expansively, this type of mandate would not pass muster under the reasonable economic regulation commerce clause cases. In Wickard v. Filburn (1942), the court upheld a federal law regulating the national wheat markets. The law was drawn so broadly that wheat grown for consumption on individual farms also was regulated. Even though this rule reached purely local (rather than interstate) activity, the court reasoned that the consumption of homegrown wheat by individual farmers would, in the aggregate, have a substantial economic effect on interstate commerce, and so was within Congress's power.

The court reaffirmed this rationale in 2005 in Gonzales v. Raich, when it validated Congress's authority to regulate the home possession of marijuana. In doing so, however, the justices emphasized that—as in the wheat case—"the activities
regulated by the [Controlled Substances Act] are quintessentially economic.” That simply would not be true with regard to an individual health insurance mandate.

Therefore, conduct would be required to buy coverage, not because they were even tangentially engaged in the “production, distribution or consumption of commodities, but for conduct that is otherwise without health insurance exist. The federal government does not have the power to regulate Americans simply because they are there. The Federal Court in United States v. Lopez (1995) and United States v. Morrison (2000), the Supreme Court specifically rejected the proposition that the Commerce Clause empowers Congress to regulate noneconomic activities merely because, through a chain of causal effects, they might have an economic impact. These decisions reflect judicial recognition that the commerce clause is not infinitely elastic and that, by enumerating its powers, the framers denied Congress the type of general police power that is freely exercised by the states.

This leaves mandate supporters with few palatable options. Congress could attempt to condition some federal benefit on the acquisition of health insurance, for example, generally condition issuance of a car registration on proof of automobile insurance, or on a sizable payment into an uninsured motorist fund. This arrangement, however, would collapse universal health coverage. No federal program or entitlement applies to the entire population, and it is difficult to conceive of a “benefit” that some part of the population would not choose to eschew.

The other obvious alternative is to use Congress’s power to tax and spend. In an effort, perhaps to mandate this mandate in that power, the Senate version of the individual mandate envisions that failure to comply would be met with a penalty, to be collected by the IRS. This arrangement, however, is not constitutional either.

Like the commerce power, the power to tax gives the federal government vast authority over the public, and it is well settled that Congress can impose a tax for regulatory rather than purely revenue-raising purposes. Yet Congress cannot use its power to tax and spend to enact a law that, among other things, would give Congress the ability to reach purely noneconomic conduct that is otherwise indisputably beyond its regulatory power.

Of course, these constitutional impediments to a federal mandate to buy insurance do not prevent Congress from enacting any law that it chooses. If Congress were to raise corporate and/or income taxes enough to fund fully a new national health system, absent a political decision by the American people.

EXECUTIVE SUMMARY: WHY THE PERSONAL MANDATE TO BUY HEALTH INSURANCE IS UNPRECEDENTED AND UNCONSTITUTIONAL

By Randy Barnett, Nathaniel Stewart, and Todd F. Gaziano

As the Congressional Budget Office explained: “A mandate requiring all individuals to purchase health insurance would be an unprecedented form of federal action. The government has no precedent to buy any good or service as a condition of lawful residence in the United States.” Yet, all of the House and Senate health-care bills being debated require either obtain or purchase expensive health insurance, estimated to cost up to $15,000 per year for a typical family, or pay substantial tax penalties for not doing so.

The purpose of this compulsory contract, coupled with the arbitrary price ratios and controls, is to require some people to buy artificially high-priced policies as a way of subsidizing coverage for others and an industry saddled with the costs of other governments and regulators. Rather than appropriate funds for higher federal health-care spending, the sponsors of the current bills are attempting, through the personal mandate, to keep the forced wealth transfers entirely off budget.

This takes congressional power and control to a strikingly new level. An individual mandate is a tax in the sense that it requires a particular product from a private party is literally unprecedented, not just in scope but in kind, and unconstitutional either as a matter of first principles or under any reasonable reading of judicial precedents.

THE COMMERCE CLAUSE

Advocates of the individual mandate have claimed that the Supreme Court’s Commerce Clause jurisprudence demonstrates that the insurance requirement is a constitutional exercise of that power. They are wrong.

Although the Supreme Court has upheld some far-reaching regulations of economic activity, most notably in Wickard v. Filburn and Gonzales v. Raich, neither case supports the individual mandate. In these cases, the Court held that Congress’s power to regulate the interstate commerce in a fungible good—for example, wheat or marijuana—authorized otherwise regulatory scheme included the power to regulate or prohibit the intrastate possession and production of this good. In both cases, Congress was allowed to regulate economic activity as a means to the regulation of interstate commerce in goods.

Yet, the purchase health insurance is not proposed as a means to the regulation of interstate commerce; nor does it regulate or prohibit activity in either the health insurance or health care industry. Indeed, the health care mandate does not purport to regulate or prohibit activity of any kind, whether economic or noneconomic. By its own terms, the individual mandate provision regulates no action. To the contrary, it purports to “regulate” inactivity by converting the inactivity of not buying insurance into a regulatory activity. Proponents of the individual mandate are contending that, under its power to “regulate commerce . . . among the several States,” Congress may reach the doing of nothing at all!

In recent years, the Court invalidated two congressional statutes that attempted to use the power to regulate interstate commerce under the United States v. Lopez (1995), it struck down the Gun-Free School Zones Act, which attempted to reach the activity of possessing a gun within 1,000 feet of a school. In United States v. Morrison (2000), it invalidated part of the Violence Against Women Act, which regulated gender-motivated violence. Because the Court found the regulated activity in each case to be noneconomic, it was outside the reach of Congress’s power, regardless of its effect on interstate commerce.

To uphold the insurance purchase mandate, the Supreme Court would have to conclude that the Commerce Clause has no limits, a proposition that it has never affirmed, that it rejected in Lopez and Morrison, and from which it did not retreat in Raich. Although Congress may possibly regulate the operations of health care or health insurance companies directly, given that they are economic activities with a substantial effect on interstate commerce, it may not regulate the individual’s decision not to purchase a service or enter into a contract.

If Congress can mandate this, then it can mandate anything. Congress could require every American to buy a new Chevy Impala every year, or a pay a “tax” equivalent to its blue book value, because such purchases would stimulate commerce and help repay government loans. Congress could also require all Americans to buy a certain amount of wheat bread annually to subsidize farm

Even during wartime, when war production is vital to national survival, Congress has not compelled such a thing. No farmer was ever forced to grow food for the troops; no worker was forced to build tanks. And what Congress cannot do during wartime, national survival aside, it cannot do in peacetime simply to avoid the political cost of raising taxes to pay for desired government programs.

OTHER CONSTITUTIONAL PROBLEMS

Senators and Representatives should also know that:

There are four constitutionally relevant differences between a universal federal mandate to obtain health insurance and the state requirements that automobile drivers carry liability insurance for their injuries to others on public roads;

A review of the tax provisions in the House and Senate bills raises serious questions about the constitutionality of using the taxing power in this manner;

Since there literally is no legal precedent for this decision, the precedent was highly unlikely that the Supreme Court would break new constitutional ground to save an unpopular personal mandate.

Members of Congress have a responsibility, pursuant to their oath, to determine the constitutionality of legislation independently of how the Supreme Court has ruled or may rule in the future. But Senators and Representatives also should know that, despite what they have been told, the health insurance mandate is highly vulnerable to challenge because it is, in truth, unconstitutional. And all other considerations aside, this is a central reason why each Member of Congress is fidelity to the Constitution.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I rise to support the constitutional point of order raised again and again before us by the distinguished Senator from Nevada. I applaud the senior Senator from Nevada for taking this step so that all Senators can take a position on whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional, or whether this legislation is constitutional.
and he will remember that I started raising constitutional questions and objections against this legislation more than 3 months ago during the committee markup, and so has he.

This body has spent its time debating the policy of this legislation. This is a terrorizing piece of legislation that would raise insurance premiums, raise taxes, and limit access to care.

Mr. President, I ask unanimous consent that an editorial from yesterday's Wall Street Journal, that said “Change Nobody Believes In,” be printed in the RECORD following my remarks.

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

(See Exhibit 1.)

Mr. HATCH. From the standpoint of policy, Mr. President, we should not pass this bill. Perhaps more importantly, from the standpoint of the Constitution, we may not pass it.

Much has changed since the founding of this country, but one thing has not: The liberty we love requires limits on government. It requires limits on government. It always has and it always will. America's founders knew that and built limits into the system of government they established. Those limits came primarily from a written Constitution that delegates enumerated powers to the Federal Government. We must point to at least one—quite clearly, one—of those powers as the basis for any legislation we pass.

The Constitution imposes no meaning whatever we want to mean.

This legislation brings America into completely uncharted political and legal waters and I will not be at all surprised if there is litigation challenging it on constitutional and other grounds. In the Finance Committee, I offered an amendment to add a procedure for the courts to handle constitutional challenges in an expedited fashion. The Finance Committee chairman ruled that amendment out of order so that it could not even be considered. That was his decision, but that means that anything we choose to do and ordering them to do it. The difference between regulating and requiring is liberty. I agree with the 75 percent of Americans who believe that the insurance mandate is unconstitutional because Congress's power to regulate interstate commerce does not include telling Americans what they must buy.

Second, the financial penalty enforcing the insurance mandate is just that, a penalty. It is not a tax and therefore, it is constitutional only if the insurance mandate it enforces is constitutional. If it is not a tax, it is a direct tax on individuals rather than an excise tax on transactions and therefore, it violates article I, section 9, of the Constitution which requires that direct taxes be apportioned according to population.

Third, the excise tax on high-cost insurance plans, which applies differently in some states than in others, is unconstitutional because it is not uniform throughout the United States as required by article I, section 8. The Supreme Court has said that to be uniform and to be a tax, an excise tax must have the same force and effect wherever the subject of the tax is found. Not only is this not the case with this tax, which makes it plainly unconstitutional, but that is exactly the design and intention of those who drafted this legislation.

Fourth, the legislation orders states to establish health benefit exchanges which will require states to pass legislation and regulations. If they do not, the Secretary of Health and Human Services believes they will not by a certain date, the Secretary will literally step into each state and establish and operate this exchange for them. This is a direct violation of the division between federal and state government. The Supreme Court could not have been clearer on this point, ruling over and over that Congress may regulate individuals but may not regulate states. Congress has no authority to order states, in their capacity as states, to pass legislation and regulations. If they do not, the Secretary will literally step into each state and establish and operate this exchange for them. This is a direct violation of the division between federal and state government. The Supreme Court could not have been clearer on this point, ruling over and over that Congress may regulate individuals but may not regulate states. Congress has no authority to order states, in their capacity as states, to pass legislation and regulations. If they do not, the Secretary will literally step into each state and establish and operate this exchange for them.

Should this legislation become law, there would be nothing that the federal government could not do. Congress would be remaking the Constitution in its image, rather than abiding by the Constitution's limits as liberty requires. There must come a time when we say that the political ends cannot justify the constitutional means that the Constitution and the liberty it protects are more important than we wonderfull Members of Congress are. That time is now, and that is why we will vote to sustain this constitutional point of order.

I wish to personally thank and congratulate the distinguished Senator from Nevada for his work on this issue, for his work on the committee, because he was one of the more energetic and capable people on the committee in raising some of these very important issues such as this constitutional set of issues we have been discussing over this short period of time today. I am grateful for him, I am grateful he has raised it, and I am grateful to be able to be here on the floor to support him in his raising of this constitutional point of order when he chooses to do so.

I yield the floor.

[Exhibit 1]

(From the Wall Street Journal, Dec. 21, 2009)

CHANGE NOBODY BELIEVES IN

And tidings of comfort and joy from Harry Reid too. The Senate Majority Leader has decided that the last few days before Christmas are the opportune moment for a narrow majority of Democrats to stuff ObamaCare through the Senate to meet an arbitrary White House deadline. Barriring some extraordinary reversal, it moves as if they have the 60 votes they need to jum off this cliff, with one-seventh of the economy in tow.

Mr. Obama promised a new era of transparent good government, yet on Saturday morning Mr. Reid threw out the 2,100-page bill that the world's greatest deliberative body spent just 17 days debating and replacing it with a new amendment—"that was stapled together in covert partisan negotiations. Democrats are barely even pretending to care what's in it, not that any Senator had the chance to digest it in the 38 hours before the first close vote at 1 a.m. this morning. After procedural motions that allow for no amendment, the final vote could come at 9 p.m. on December 24.

Even in World War I there was a Christmas truce. The rushed, secretive way that a bill this destructive and unpopular is being forced on
the country shows that "reform" has de-

dveled into the raw exercise of political

power for the single purpose of permanently

expanding the American entitlement state.

An influx of spending under ObamaCare, ac-

cording to the Administration's own Medicare

actuaries, among the most innovative U.S. indus-

tries, and business are looking on aghast at a bill

that is so large and convoluted that no one

can truly understand it, as Finance Chair-

man Tim Geithner testified on the "Today" show

last week. The only goal is to ram it into law

while the political window is still open, and

clean up the mess later.

Heads are likely to roll at the outset, the White

House's core claim was that reform would re-

duce health costs for individuals and busi-

nesses, and they're sticking to that story, "An-

nonetheless, simple read the bills," Mr. Obama said over the

weekend. This is so utterly disingenuous that we doubt the President really believes it.

The best and most rigorous cost analysis was

recently released by the insurer WellPoint, which mined its actuarial data in various

regional markets to model the Senate

case. WellPoint found that a healthy 25-

year-old in Milwaukee buying coverage on

the individual market will see his costs rise by

178%. A small business based in Richmond

with eight employees in average health will

see a 23% increase. Insurance costs for a 40-

year-old in Wisconsin whose two kids living

in an apartment will pay 106% more. And on and on.

These increases are solely the result of

ObamaCare—above and far beyond the status

quo—because they encourage younger and

healthier buyers to wait until they need

care, increasing costs for everyone.

Benefits and pricing will now be determined by

political fiat.

As for the White House's line about cutting

costs by eliminating supposed "waste," even

Victor Fuchs, an eminent economist gen-

erally supportive of ObamaCare, warned last

week that these political theories are overly

simplistic. "The oft-heard promise 'we will

reduce health costs for individuals and busi-

nesses' is closest to the patient and work in the

system every day," Brent Eastman, the

chairman of the American College of Sur-

geons, said in a statement for his organiza-
\ntion and 18 other specialty societies oppos-

ing ObamaCare. For no other reason than

ideological animus, doctor-owned hospitals

are closest to the patient and work in the

system every day, and who they're allowed to treat. Physician

Hospitals of America says that ObamaCare

will "destroy over 200 of America's best and

safest hospitals."

Blowing up the federal fisc. Even though

Medicare's unfunded liabilities are already

about 2.5 times bigger than the entire U.S. econ-

omy in 2008, Democrats are crowing that

ObamaCare will cost "only" $781 billion over

the next decade while fantastically reducing the

deficit by $122 billion, according to CBO.

Yet some 98% of the total cost comes after

2014—remind us why there must absolutely

be a vote this week—and most of the taxes

that pay for this Obamacare mandate will only

increase for individuals earning more than

$200,000 that rose to 0.9 from 5.5 percentage

points in Mr. Reid's final machinations. Job

creation, uninsured Americans, etc.

Other deceptions include a new entitle-

ment for long-term care that starts col-

lecting premiums tomorrow but doesn't start

paying off until 2026. But its actuarial is the

worst is not accounting for a formula that

automatically slashes Medicare pay-

ments to doctors by 21.5% next year and

deeper after that. Everyone knows the pay-

ment cuts won't happen but they remain in

the bill to make the cost look lower. The

American Medical Association's priority was

improving doctors' growth rate and slowing

but all they got in return for their year of

ObamaCare cheerleading was a two-month

patch smuck into the defense bill that passed

over the weekend.

The truth is that no one really knows how

much ObamaCare will cost because its as-

sumptions on paper are so unrealistic. To

hide the cost increases created by other

parts of the bill and transfer them onto the

federal balance sheet, the Senate sets up

government programs and then uses special

rules to pretend that they're saving the

country trumps innovation and transfer

mand-and-control regulation, in which bu-

reaucracy trumps innovation and transfer

payments are more important than private

investment and individual decisions. In

short, the Obama Democrats have chosen

the option that blended the best ideas from

both parties. A more honest and more

thoughtful approach might have even done

some good. But as Mr. Obama suggested, the

Democratic old guard sees this plan as the

culmination of 20th-century liberalism.

So instead we have this vast expansion of

federal control. Never in our memory has so

unpopular a bill been on the verge of passing

Congress, never has social and economic leg-

islation of this magnitude been forced through on a purely partisan vote, and never has our country exhibited such political willfulness that is reckless even for Wash-

ington or had more warning about the con-

sequences of its actions.

The 60 Democrats are creating a future of

epic increases in spending, taxes and com-
mmand-and-control regulation, in which bu-

reaucracy trumps innovation and transfer

payments are more important than private

investment and individual decisions. In

short, the Obama Democrats have chosen

the option that blended the best ideas from

both parties—and when it passes America will

be paying for it for decades to come.

EXHIBIT 2

CONSERVATIVE ACTION PROJECT

The Conservative Action Project, chaired by

Edwin Meese, former Attorney General;

Calabresi, Eastern Law School; Mathew D. Staver, Founder &

Chairman, Liberty Counsel; Curt Levey, Executive

Director, Committee for Justice; Meditation, Founder &

President, Free Congress Foundation; Kenneth

Klukowski, Senior Legal Analyst, American
Civil Rights Union; Wendy Wright, President, Concerned Women for America; J. Kenneth Blackwell, Visiting Professor, Liberty School of Law; Grover Norquist, President, Americans for Tax Reform; William Wilson, President, Americans for Limited Government; Matt Kibbe, President, Freedom Works; Jim Martin, President, 60 Plus Association; Richard Gueviler, Chairman, ConservativeHQ.com; Alfried Regnery, Publisher, American Spectator.

MEMO FOR THE MOVEMENT
The Individual Mandate in “Obamacare” is Unconstitutional

Both sides agree that under the Obama-Pelosi-Reid healthcare legislation requiring American citizens to purchase health insurance violates the U.S. Constitution.

Action is necessary to make this point to members of the U.S. Senate—and if a bill passes the Senate to impress upon members of both chambers of Congress—that the key provision in the healthcare legislation violates the U.S. Constitution.

Issue: Mandating that individuals must obtain health insurance and imposing a penalty—civil or criminal—on any private citizen for not purchasing health insurance is not authorized by any provision of the U.S. Constitution. As such, it is unconstitutional, and should not survive a court challenge on that issue. Supporters of the legislation have incorrectly contended that the legal justification for the legislation is authorized by the Commerce Clause, the General Welfare Clause, or the Taxing and Spending Clause. Given that this mandate provision is essential to Obamacare; its unconstitutionality renders the entire program untenable.

The individual mandate is unconstitutional unless there is a specific constitutional provision that authorizes it. The federal government is a government of limited jurisdiction. It has only enumerated powers. Therefore, if the mandate is not authorized by the Commerce Clause, the General Welfare Clause, or the Taxing and Spending Clause. Given that this mandate provision is essential to Obamacare; its unconstitutionality renders the entire program untenable.

The individual mandate is unconstitutional regardless of whether there are criminal penalties. There is no distinction between criminal and civil penalties for determining the constitutionality of legislation, and the penalty imposed in Wickard v. Filburn (1942) and the Obamacare mandate is imposed on people who are making no purchase, and is a tax that some people in a state would pay, but others do not. The Sixteenth Amendment allows an income tax. But any tax imposed only on earnings, but people would have to pay this tax even if they had no income. Therefore it is a violation of these constitutionally-permitted taxes.

The individual mandate is unconstitutional regardless of whether there are criminal penalties. There is no distinction between criminal and civil penalties for determining the constitutionality of legislation, and the penalty imposed in Wickard v. Filburn (1942) and the Obamacare mandate is imposed on people who are making no purchase, and is a tax that some people in a state would pay, but others do not. The Sixteenth Amendment allows an income tax. But any tax imposed only on earnings, but people would have to pay this tax even if they had no income. Therefore it is a violation of these constitutionally-permitted taxes.

The Commerce Clause requires an actual economic effect, not merely a congressional finding of an economic effect. When the Court struck down the Violence Against Women Act in United States v. Morrison (2000), the Court noted that although the statute made numerous findings regarding the link between such violence and interstate commerce, it held that those findings did not actually establish an economic effect. Therefore the various interstate-commerce findings in the Senate version of the “ObamaCare” legislation do not make the bill constitutional.

The individual mandate is not authorized under the General Welfare Clause. The Supreme Court struck down the United States v. Butler (1936) and Helvering v. Davis (1937) that the General Welfare Clause only applies to congressional spending. It applies to monies raised from the government, not to congressional authorization. Therefore it cannot confer or concern any government power to tax in money, such as would happen with the individual mandate. Therefore the mandate lies outside the scope of the General Welfare Clause.

The individual mandate is not authorized under the Taxing and Spending Clause or Income Tax. The Constitution only allows certain types of taxation from the federal government.

The Article I Taxing and Spending Clause permits duties, imposts, excises and capitation taxes—duties, imposts and excises are taxes on purchases. A capitation tax is a tax on the number of people who are making no purchase, and is a tax that some people in a state would pay, but others do not. The Sixteenth Amendment allows an income tax. But any tax imposed only on earnings, but people would have to pay this tax even if they had no income. Therefore it is a violation of these constitutionally-permitted taxes.

The individual mandate is unconstitutional regardless of whether there are criminal penalties. There is no distinction between criminal and civil penalties for determining the constitutionality of legislation, and the penalty imposed in Wickard v. Filburn (1942) and the Obamacare mandate is imposed on people who are making no purchase, and is a tax that some people in a state would pay, but others do not. The Sixteenth Amendment allows an income tax. But any tax imposed only on earnings, but people would have to pay this tax even if they had no income. Therefore it is a violation of these constitutionally-permitted taxes.

The Commerce Clause only extends to persons or organizations voluntarily engaging in commercial activity. Government can only regulate economic action; it cannot coerce action on the part of private citizens who do not wish to participate in commerce. In the most expansive case for Congress’ power to regulate interstate commerce, Wickard v. Filburn (1942), the Court upheld the agricultural regulation in question against a wheat farmer who earned his entire living from growing and selling wheat, making him a willing participant in interstate commerce.

FOR ADDITIONAL INFORMATION ON THE UNCONSTITUTIONALITY OF THE HEALTH CARE MANDATE, PLEASE VISIT THESE WEBSITES

http://www.washingtonpost.com/wpdyn/content/article/2008/09/28/AC2008092303134.html

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I know we are waiting for the chairman of the Finance Committee to come. I ask unanimous consent to speak in the meantime, in these few seconds.

Senator from Nevada. He is one of the best constitutional scholars we have here in the Senate. I appreciate his words and analysis on why this bill is unconstitutional. I think his words this morning were eloquent. I appreciate his support and raise this constitutional point of order.

I yield to the Senator from Montana, the chairman of the Finance Committee.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I have a unanimous consent request that I understand has been cleared by both sides.

I ask unanimous consent that after Senator ENSIGN raises the point of order that the Reid substitute amendment No. 2786 is in violation of the Constitution, the point of order be set aside to recur on Wednesday, December 23, at a time to be determined by the majority and Republican Leaders.

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

The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I rise to make a constitutional point of order against this bill on the grounds that it violates Congress’ enumerated powers in article I, section 8 and that it violates the Fifth amendment of the Constitution. I ask for the yeas and nays.

The PRESIDING OFFICER. Pursuant to the unanimous consent, the point of order shall be set aside until a time tomorrow to be determined by the majority leader and the minority leader, where a sufficient second? There appears to be a sufficient second. The yeas and nays are ordered on the point of order.
Mr. ENZIGN. 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. SESSIONS. 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. SESSIONS. Mr. President, I would like to share some thoughts on a central issue to this health care reform legislation. It is something that has gotten away from us. I do not believe we fully comprehended it. It is a critical issue.

It seems to me we are double-counting the money. We are counting money twice—maybe the largest amount of money ever having been counted twice in the history of the world. It is dangerous with regard to the financial viability of the legislation we are looking at today.

It was proposed by the President that health care legislation would not add one dime to the national debt. He said yesterday that this legislation would strengthen Medicare. This is his quote: . . . and Medicare will be stronger and its solvency extended by nearly a decade.

I don’t think that is accurate. We have had Members of the Democratic leadership say that.

What we know is we have, I think it is about $460 billion in tax increases and $490 billion in tax increases and a little less than that, $400-and-some-odd billion in savings to Medicare, and that accounts for the $871 billion the bill is supposed to cost in the first 10 years. Of course, that is not an accurate ultimate cost since most of the benefits in the bill do not start until the 15th year. So when you go the first full 10 years of the bill, it costs $2.5 trillion. But, regardless, let’s take this first 10 years. The assertion is that Medicare can be improved and that we can take money out of Medicare and that this is going to make Medicare stronger and that somehow this is going to extend the solvency of Medicare, which is going insolvent by 2017. That is because more and more people are retiring and people are living longer, among other reasons. So the cost of Medicare goes up.

I guess what I am framing now is what I believe to be a matter of the greatest importance. The argument is that somehow, by cutting benefits in Medicare by almost, $400-and-some-odd billion in savings to Medicare, and that this is going to make Medicare stronger and that somehow this is going to extend the solvency of Medicare, which is going insolvent by 2017. That is because more and more people are retiring and people are living longer, among other reasons. So the cost of Medicare goes up.

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PRESIDENT OF THE UNITED STATES: The PRESIDING OFFICER (Mr. BURRIS). The Senator from Arizona.

Mr. KYL. Mr. President, I listened carefully to what my colleague said, and as a member of the Finance Committee, I can tell him that he is not in error. What he said about premiums going up under this legislation is true. The promise was that premiums would not go up. Well, they continue to go up. In fact, in the case of the individual market, the legislation itself causes them to go up between 10 and 13 percent. My colleague is not in error.

If the Reid bill has a motto, it is “in government we trust.” With the turn of every page, it is no exaggeration to say the Reid bill creates a Washington takeover of health care, to wit, $2.5 trillion in new government spending; $494 billion in new taxes; $465 billion in Medicare cuts; 70 new government programs; and higher health insurance premiums for individuals and businesses. It is packed with new Federal requirements and mandates that amount to a stunning assault on liberty. Even in the absence of a government-run insurance plan, this bill would give the government virtually total control over health care. The bill itself is the government option.

Michael Cannon, a health policy expert at the Cato Institute, warns that the bill’s linchpin, the requirement that every individual purchase government-approved insurance plan, would be “the most sweeping and dangerous measure in any of the bills before Congress.” Of course, if Congress mandates that every American purchase health insurance, then Congress won’t know exactly what that health insurance entails. Welcome to the future, where bureaucrats and politicians know what is best for families, small businesses, and seniors. For example, under this legislation the government would not accept new Federal rating rules. Rating rules dictate how insurers may calculate premiums, which experts estimate would
increase premiums by a whopping 72 percent in my home State of Arizona. They would determine the coverage benefits for all plans regardless of consumer preferences or health care needs. The government would limit insurers to offering only four plans. You have to offer two or more plans, not to mention four. They would prohibit individuals over the age of 30 from enrolling in a catastrophic health care plan. And to highlight the magnitude of government interference and sources management, the bill even dictates the number of pages—by the way, it is no more than 4—and the font size—no smaller than 12 point—of the summary of benefits. These are just a few examples of the heavyhanded government controls. Indeed, the word “shall” appears 3,607 times in the Reid bill. I haven’t had a chance yet to count how many more times it appears in the almost 400-page amendment that has been now filed.

In fact, however, the most dangerous consequence of the Washington takeover of health care is the inevitable rationing that will result in the delay and denial of care. Ensuring access to the highest quality care and protecting the sacred doctor-patient relationship is the foundation of any health reform effort. These intangibles are the cornerstones of U.S. health care, the very things Americans value most, that the Reid bill puts in jeopardy. Don’t look for the word “ration” or “delay access to care” in the bill. Obviously, they are not there. Instead, contemplate the inevitable result of new Federal rules that aim to reduce health care costs but will ineluctably result in delayed or denied tests, treatments, and procedures deemed to be too expensive. For example, the Reid bill would establish a Medicare Commission. This is an unelected body of bureaucrats with the task of finding, and I am quoting here, “the sources of excess cost growth,” meaning, of course, tests and treatments that are allegedly too expensive or whose coverage would mean too much government spending on seniors. The Commission’s decisions will result in the delay and denial of care.

Medicare already delays more medical claims than private insurers do, but this bill would redistribute Medicare payments to physicians based on how much health care they deliver, not on their patients’ health status. It would rely on recommendations from the U.S. Preventive Services Task Force—the entity, by the way, that recently recommended against mammograms for women under the age of 50—to set preventive health care benefits, and it would authorize the Federal Government to use comparative effectiveness research when making coverage determinations. It is this last issue—comparative effectiveness research—that I wish to discuss in more detail.

The Reid bill would create a new entity called the Patient-Centered Outcomes Research Institute to conduct comparative effectiveness research. This research, which is already done in the private sector, compares the effectiveness of two or more health care services or treatments, and, of course, it is used to provide doctors with information as to what works best in most cases. But the Reid bill would authorize the Federal Government to use comparative effectiveness research to determine whether the research should be used by the government to determine the treatments and services covered by insurance.

In a recent interview, President Obama said:

What I think the government could do effectively is to be an honest broker in assessing and evaluating treatment options.

The President believes the government should assess and evaluate health care treatments, and certainly that is how health care works in other countries such as Great Britain. For example, there, they have the National Institute for Health and Clinical Excellence; the acronym is NIHCE. NIHCE routinely uses comparative effectiveness research to make cost-benefit calculations. They don’t even attempt to hide it. On its Web site, NIHCE says:

With the rapid advancement in modern medicine, most people accept that no publicly funded health care system, including the National Health Service, can possibly pay for every new medical treatment which becomes available. The enormous costs involved mean that choices have to be made.

Choices are made, and this is the key: They are made by the government, not by patients and doctors.

The National Health Service, which runs Britain’s health care system, has issued guidance known as the Liverpool Care Pathway whereby a doctor can withdraw fluids and drugs from a patient if they have been diagnosed that the patient is close to death. Many are then put on continuous sedation so that they die free of pain. Doctors warn that some patients are being wrongly put on the pathway, which is creating a self-fulfilling prophecy that they would die because sedation often masks the signs of improvement.

Also, due to excessively long waiting periods, the National Health Service launched what they call an End Waiting Initiative. The goal here was to reduce patients’ waiting times to 18 weeks from referral to treatment—18 weeks. That is supposed to be a good thing? That is 4½ months for an appointment. This is why many Europeans and Canadians visit the United States each year, places such as the Mayo Clinic in Arizona, for access to the treatments that are denied to them in their own countries.

These are the dangers of a government-run health care system. The government, not patients and doctors, makes the health care decisions. The government decides if your health care is an effective use of government resources, and the government inevitably interferes in your ability to access care. That is rationing, and it is wrong. This is not what Americans want or expect from health care reform. Yet it is precisely the path Congress is taking. Perhaps that is why the American public disapprove of this bill.

Nothing in the Reid bill would prohibit the Federal Government from using comparative effectiveness research, just as it has done in Britain, and to delay or deny coverage of a health care treatment or service. The bill actually empowers the Secretary of Health and Human Services to use comparative effectiveness research when making coverage determinations. Use on the Senate floor, on page 1,684 of the original bill, it says:

The Secretary may only use evidence and findings from research conducted under section 1181 to make a determination regarding coverage . . .

And so on.

As the Washington Examiner notes:

Health and Human Services Secretary Kathleen Sebelius would be awarded unprecedented new powers under the proposal, including the authority to decide what medical care should be covered by insurers as well as the terms and conditions of coverage and how much insurers would receive it. The Reid legislation lists 1,697 times where the Secretary is given the authority to create, determine, or define things in the bill.

I know my colleagues will point to language that says: Well, the Secretary can’t make these decisions on rationing care solely on the basis of comparative effectiveness research. Whoopee. I am not sure if that is a word we can use in the Senate. We can’t make up our minds.

Can’t make it costly on that basis, but you can use comparative effectiveness research to ration care. That is wrong, and that is what this bill permits. And despite numerous times to give a simple amendment I offered to say no comparative effectiveness research can be used by a Federal agency to deny care or treatment—simple—the other side says: No, we already have it covered. It is good enough. Our language is fine. You can use a simple statement that would prevent this research from being used in that fashion. I think it is pretty clear that the attempt here is to be able to do it.

During the Finance Committee, I asked the majority counsel why they didn’t bar the Federal Government from using comparative effectiveness research as a tool to ration care. The staff replied:

The reason why we did not include an express prohibition is we did not want to limit the institute from considering areas of science that have a budgetary impact, if you will.

That is, of course, precisely the problem. Americans do not want the Federal Government using this research as a cost-cutting tool.

Regina Herzlinger, a professor at Harvard Business School, warned CER could easily morph into an instrument of health care rationing by the Federal Government without the appropriate safeguards.
That has been their philosophy for decades. That is not the philosophy of the Democratic Party. We believe in a public-private partnership. We believe in a level playing field. We believe in giving people the opportunity to earn their way, with fair rules in place. That is why the Senate leadership and that is at great issue in the underlying debate. They can continue to fabricate myths and lies about this bill, but those of us who support it will proudly continue to tell the truth about it.

The Small Business Committee has held 23 hearings and roundtables just this year, and several of them have been focused on how the current health care system and volatile health care costs are hurting our Nation’s small businesses.

Today, small businesses are seeing their health care costs increase faster than the prices of the products and services they sell four times faster than the rate of inflation since 2001. Premiums for single policies increased by 74 percent for small businesses in the last eight years, according to a 2009 Kaiser Family Foundation survey. Nationally, 40 percent of small businesses say that health care has had a negative impact on other parts of their business.

What are we supposed to do, stand here and do nothing? No—that is why action now is so important. Why is this bill so important, because the status quo is unsustainable. It is unsustainable for our government and it is unsustainable for small businesses.

Even though families, businesses, and government budgets are being squeezed by unsustainable costs, Senate Republicans are doing everything they can to argue for the status quo. Why? I don’t know. Every day, they find a new excuse for their obstruction. I wish they had put the same amount of passion, energy, and creative thinking into contributing policies and ideas to this debate as they have into their delaying tactics. Every amendment they offered was to send the bill backward, not forward. They seem hell-bent on defeating and not improving this bill, contrary to their statements on the floor.

The Republicans have charged that we are rushing in this bill. They tell us that is not good for the bill. That is simply not true. We have been debating this issue on and off for the last 87 years.

Republican President, Theodore Roosevelt, made national health insurance a plank in his party platform when he sought the Presidency in 1912. President Harry Truman, in 1945 and then again in 1948, called on Congress to pass reform legislation to expand quality health care coverage to all Americans. President Truman believed we needed a stronger system and that the federal government must play a role in establishing a more robust system of care. His critics called his approach socialized medicine.” Sound familiar?

Only in Washington would 87 years be considered rushing! This has been a debate that has gone on with particular intensity for the last 2 years, as our Presidential candidates took to the airwaves in debate after debate—Republican and Democratic—outlining their ideas for reform. This hasn’t sprung up in the last...
2 weeks. This hasn’t sprung up in the last 2 months.

Millions of Americans went to the polls, understanding, in large measure, what we needed to do to change the system. Despite the rhetoric from the other side, reality will. The record will reflect that. Instead of coming to the table and working with Democrats to write a bipartisan bill, Republicans chose to put partisan party politics first. I listened to my friend Senator John McCain this morning. If, this month, he himself had said what he said then, we would not be in this position today. They have engaged in a relentless misinformation campaign, aimed solely at using fear to sway public opinion against this bill.

Recently—just yesterday—Senator John McCain, our colleague from Arizona, claimed that the American people are opposed to reform, and he speaks about the will of the majority. I remind my colleague from Arizona that the will of the majority spoke loud and clear last year when they elected President Obama to be President and decided not to elect him. The President is carrying out the will of the American people by trying to provide for them hope and opportunity in an area that has eluded us for 87 years.

This is a good effort, a strong effort, and I most certainly believe that the will of the American people is being heard. The other side has tried to paint a picture that opposes health care reform. Recent polls show otherwise. When we cut through the misinformation and scare tactics, when Americans hear what is in the bill, they overwhelmingly support it.

According to a recent CNN poll, 73 percent of Americans support expanding Medicaid for the poor. Americans know what most of us know: Most people on Medicaid are the working poor. These are people who wake up early in the morning, work hard all day, and they go back home at night, often by taking public transportation because they don’t have an automobile. They work hard. They are American citizens. But they don’t have enough money to spend 60 percent or 80 percent of their income on health insurance in a broken, unbridled, unfixed private market. So we join together with our States to provide them access to care through the Medicaid system.

And in this bill, the Federal Government will pick up a large share of the cost of expanding coverage. That same poll showed that providing subsidies for families that make up to $88,000 a year is favored by 67 percent of Americans. Additional regulations on insurance companies, such as banning denial of coverage for those with pre-existing conditions and favored by 60 percent of the American people.

I am one of the Democrats who didn’t want to eliminate insurance companies. I believe in private markets. But there have to be certain rules and regulations in order for the private market to work for everyone, not just for those with wealth or those with the inside scoop on how private markets work.

So we are incentivizing a healthier insurance industry—not codding it but encouraging it to be competitive and to provide services and coverage for more people in our country.

A recent poll by the Mellman Group shows that support for this bill exists in all States. In my home State of Louisiana, when the provisions of the bill were polled, 57 percent of Louisianians supported the bill, with 43 percent strongly supporting the reform effort. And most importantly, 62 percent of Louisianians oppose using the filibuster to stop health care reform.

I will read the language used in the poll because people say you can say anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. If pollsters are not reputable, they can twist anything in polls, which is true. 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Through tough negotiations, Senate Democrats have developed a consensus that blends the best of public and private approaches to reduce costs, expand coverage, and increase choice and competition for Americans and have done so without a government-run public option.

Since I continue to hear distortions from my colleagues on the other side, let me be clear: there is no government-run public option in this bill. Instead, the Administration has worked to provide private health insurance plans to be sold nationwide. The Office of Personnel Management will negotiate lower premiums, just as they negotiate the plans currently available to federal employees and to Members of Congress. Importantly, we ensured that at least one nonprofit plan will be offered in every State exchange and that the States cannot opt out at the whim of every Governor and legislature. For the first time in our Nation’s history, Americans will have an opportunity to have the same kind of insurance that federal employees, including Members of Congress, have.

In addition, there has been a lot of talk about the cost of this bill to the government. Taxpayers. The truth is, there have been a number of false claims about how this bill will add to the deficit and be a burden to our children and grandchildren. The fact is, this bill is completely paid for and it will reduce the deficit by $1 trillion over the next 10 years and as much as $1.3 trillion in the following 10 years.

Based on our efforts, the Congressional Budget Office and the Nation’s premier economists have confirmed that premiums will go down over time or remain stable so that wages for millions of Americans can increase. When this bill is passed, 31 million uninsured Americans will have access to quality health coverage.

This is a big step toward fiscal responsibility and a stronger economy. It aims to achieve these goals by streamlining the health insurance market, ensuring efficiency, and limiting insurance company administrative costs, and to some degree, their profits. It also imposes an excise tax on insurance companies with high-cost plans. This will encourage employers to be more value-conscious purchasers of health insurance. Employers are expected to choose cheaper plans, and as less capital is spent on health care, wages will go up for hard-working families. Economists predict that this could give American workers a $223 billion pay raise, amounting to $660 per household.

I strongly urge that this provision be included in the final legislation. I know that there is fierce opposition to this on the House side. But—and the President has said this publicly and privately to us—this is one of the most significant provisions that will help drive down costs for the entire health care system. It cannot be jettisoned at this point in the debate. This provision must be in the bill for me to give my final support.

We have also created administrative savings through insurance exchanges, and during Senate consideration of the bill we strengthened the Independent Medicare Advisory Board to find more ways to reduce cost growth and improve quality.

The final Senate bill includes a substantial investment in community health centers and will provide funding to expand access to health care in rural communities and under-served urban areas as well. In Louisiana, federally-supported health clinics have saved the state over $354 million in emergency room visits by the uninsured. The legislation also expands access by increasing funding for rural health care providers and training programs for physician and other health care providers.

There are many parts of the current bill that I am proud to have fought for. The bill creates health insurance exchanges that the states can opt into, provide reinsurance for early retirees, small businesses receive information regarding the tax credits for small businesses. The exchange will help the uninsured obtain needed coverage and will also help at least 17 million Louisiana residents who currently do not have insurance through their employer to get quality coverage at an affordable price. Many of these Louisianians in the exchange will qualify for a tax credit to help them purchase the insurance of their choice.

For example, in Calcasieu Parish, the median household income is $39,713. In the exchange created by this bill, the average family in Calcasieu would receive an exchange credit that would limit what they spend on their premium to around 5.6% of their income or $2,235. Considering, right now the average Louisiana family is spending up to 28% of their income on health care, this is a huge improvement.

This version of the bill that we improved on the Senate floor now includes additional much-needed help for small business owners, led by Senator LINCOLN, Senator STABENOW, myself, and other members of my committee. Senator BYRD, Senator CANTON, Senator HAGAN, Senator BAYH, and others worked very diligently on these provisions.

While small businesses make up 74 percent of Louisiana’s businesses, only 37 percent of them have offered health coverage benefits in 2008. Of those, 62 percent say they are struggling to do so. Of the 64 percent who don’t provide insurance, 87 percent say they can’t afford it.

I worked closely with Senator STABENOW to improve affordability and choices for small businesses and amended the bill to make the bridge credit available immediately to help small businesses afford health insurance for their employees, and improve the tax credits for small businesses. This means that small businesses who want to offer quality health insurance to their employees don’t have to wait for breaks right away, rather than waiting until 2011. I also worked with Senator LINCOLN to expand the number of small businesses that will be eligible for tax credits so that more small businesses and their employees will be able to get help to buy high-quality health coverage for their employees—allowing more small business workers to benefit. In all, these changes bring an additional $13 billion in tax relief—on top of the $27 billion already in the bill—to small businesses.

If you own a small business of 25 or less employees here is how reform will help you: Businesses with 25 or less employees whose average annual wages were a $3,460 bridge credit per employee would help through a three-year bridge credit. The creation of exchanges and a 2 year exchange tax credit will lift the burden of excessive paperwork administrative costs. The exchanges will create more stable, secure choices for your employees.

In Louisiana, more than 50,000 small businesses could be helped by this small business tax credit proposal! This will help small business owners such as Mary Noel Black and her husband, who own a UPS franchise store in Baton Rouge. They offer their four employees group coverage and are willing to pay half the cost, but the premium and tax credits have gone up, so neither the workers nor the business can afford to pay the $3,600 a year per employee for insurance. To help Mary pay for the health insurance of each employee, beginning in 2011, Mary could get a $3,460 bridge credit per employee under this bill for 3 years. Then, in 2014, if she purchases coverage through the exchange, her business is eligible for an exchange credit of $1,800 per employee for an even more generous tax credit, and another 2 savings could mean the difference between offering insurance or dropping coverage because instead of costing her business $14,400 a year now for her four employees—a cost that is just unaffordable—the tax credit could initially bring her cost down to $9,360 and later to $7,200. Through our work on the Senate floor during this public debate, we have made this good bill better for small business. Not only have we extended and expanded the small business tax credits, the legislation includes several amendments I authored to ensure small businesses continue to have a seat at the table once this bill is implemented.

The bill requires that small businesses receive information regarding reinsurance for early retirees, small business tax credits, and other issues specifically for small businesses regarding affordable health care options. It lists Small Business Administration resource partners as eligible recipients of exchange public awareness.
grants and will include all Small Business Administration partners in the program, including Women’s Business Centers, SCORE, Minority Business Centers, Veteran Business Centers, and others.

The bill now requires the Government Accountability Office to specifically review the impact of exchanges on access to affordable health care for small businesses to ensure that exchanges are indeed making a difference for small business owners.

It also specifies that agencies cannot waive the Federal acquisition regulation, which requires them to report small business contracting numbers and meet small business contracting goals of 25 percent.

There is a provision that modifies the definition of a full-time employee to take into account fluctuation in employee hours, and reduce the impact of employer responsibility requirements for industries with high turnover and that use temporary employees.

The bill eliminates penalties for businesses that wait up to 60 days to provide health insurance to their full-time employees.

Finally, the Patient Protection and Affordable Care Act establishes a national workforce commission to gather information on the health care workforce and better coordinate and implement workforce planning and analysis. The managers’ amendment ensures that employees who are self-employed will be represented on the commission.

These are important considerations for small businesses and I was proud to ensure these concerns were addressed through the amendment process.

Despite claims from opponents of the bill, we have taken important steps to strengthen Medicare, not weaken it. The Senate health care reform bill creates an independent Medicare advisory board to reduce cost growth and improve quality and moves to a system that rewards quality over quantity. It reduces payments for preventable hospital readmissions in Medicare, and cuts waste, fraud and abuse by enhancing oversight, identifying areas prone to fraud and requiring Medicare and Medicaid providers and suppliers to establish compliance programs.

As much as our Republican colleagues have tried to scare seniors into opposing this bill, the fact is that Louisiana’s 650,000 Medicare beneficiaries stand to gain from this health care reform bill. The AARP and many seniors’ organizations are continuing to support the bill because they know it improves care for our seniors.

The bill lowers premiums by reducing Medicare’s overpayments to private plans. All Medicare beneficiaries pay the price of excessive overpayments through higher premiums—even the 78 percent of small businesses and self-employed who are not enrolled in a Medicare Advantage plan. Without reform a typical couple in traditional Medicare would pay nearly $90 in additional Medicare premiums next year to subsidize these private plans.

Our bill extends the life of the Medicare Trust Fund by 9 years and lays the groundwork for a more sustainable health care system. In reform efforts, there will be no additional cost for preventive services under the Medicare program. This includes a free wellness visit and personalized prevention plan designed to help give beneficiaries the resources they need to take better care of themselves in these important years.

This legislation puts taxpayers’ dollars above insurance company profits by forcing insurers to bid competitively for the business of Medicare beneficiaries and makes changes to the Medicare Advantage payment structure that will give insurers an incentive to deliver more value.

Another critical aspect of the bill is that it increases the amount of coverage Medicare Part D beneficiaries receive before they begin to pay out of pocket for their prescriptions. Right now, roughly 116,000 Medicare beneficiaries in Louisiana hit a wall in Medicare Part D drug coverage that forces some of them an average of $4,080 per year. This reform legislation will provide a 50 percent discount for brand-name drugs.

Some of the bill’s most important provisions will benefit the most important population—children.

The underlying bill includes a provision allowing children to remain on their parents’ plans up until the age of 26. I have children. I would like to think that by 22 or 23, they will be on their own, they will be gainfully employed and off my payroll. But any of us who have raised children know that sometimes it takes a little more time to launch our children. I see Senator SHAHEEN, who is nodding. She has done the research. It takes a little time to launch them. According to the latest data from the Census Bureau, in 2007 there were an estimated 13.2 million uninsured young adults. So the bill includes this important provision to allow kids to stay on their parents’ insurance for a bit longer as they transition into adulthood.

But my question was, where do the young people who age out of the foster care system sign up, because they do not have insurance? I was proud to work on a provision that Leader REID included in this bill to ensure that every young person who ages out of the foster care system will be able to stay on Medicaid until the age of 26. Starting in 2014, almost 30,000 young people age out of the foster care system every year, having never been adopted or re-unified with their birth parents. The fact that they aged out is our failure as government. We have failed them once and we just can’t fail them twice. We must support Louisiana’s who are not enrolled in a Medicare Advantage plan. Without reform a typical couple in traditional Medicare would pay nearly $90 in additional Medicare premiums next year to subsidize these private plans.

When this legislation is signed into law, insurance companies will not be able to drop children for preexisting conditions beginning immediately. This is crucial for families with children who have battled cancer or diabetes. When a parent loses a job, they may struggle to get insurance when they find new employment. Once this bill becomes law, no insurance company will be able to deny a child with preexisting conditions.

Finally, I was also proud to work with Leader REID and Finance Committee Chairman MAX BAUCUS to address an inequity in the formula that determines the federal match of Medicaid dollars. As we all know, in 2005 Hurricanes Katrina and Rita ravaged the Gulf Coast and destroyed homes, families and communities throughout South Louisiana. In an effort to aid the recovery, Congress approved a much-needed aid package for Louisianians that infused grant dollars and direct assistance to speed our recovery.

Some of the necessary one-time recovery dollars were calculated into our state’s per capita income. In addition, labor and wage costs increased because there was heightened recovery activity on the ground. Consequently, Louisiana’s per capita income was abnormally inflated and put us in a category with richer states.

The result is that our federal match for Medicaid is scheduled to drop precipitously. I worked with my colleagues to correct this formula. I never asked for special treatment for Louisiana, but only for understanding of our state’s unique situation. We only wanted to be treated fairly and not to get penalized because we have been raising the bar and following the worst natural disaster in the United States’ history. Our federal Medicaid match rates should reflect that the reality on
the ground in Louisiana, not the cold calculations of inflexible federal formulas.

An important note is that this Medicaid funding fix was supported by every Member of our Congressional Delegation. It was repeatedly requested by our Republican Governor Bobby Jindal. Some politicians in my state may run and hide when the heat gets turned up, but that’s not the way I was raised. I never have and never will run from what I think is right, no matter how hard the heat may be for my state and that is exactly what I’m doing.

Those who have dubbed this provision the “Louisiana Purchase” know little about lawmaking and even less about my views on health care reform. This Medicaid fix alone would not have been enough to earn my vote on this legislation. This was one of literally a dozen priorities I had as the Senate considered health care reform. I am voting for this bill because it achieves the goals I laid out at the beginning of this debate: it drives down costs and expands affordable health care choices for millions of families and small businesses in Louisiana and around the nation. The contrary, is a pathetic lie meant to derail this bill, a tactic that was all too common during this debate.

Today, we stand on the verge of history, with an opportunity to support a bill that will help the health care across to 31 million more Americans, reducing the deficit by $132 billion over the next ten years.

The bill is not perfect. It is not the exact health care bill that I would have written. I think the same could be said for each of my colleagues. It was a long, difficult process and during the course of completing this landmark bill there were a lot of twists and turns. But, as former President Clinton said, a good deal is going to be able to get help as they try to cover their employees for health care. I also wish to congratulate her for all her good work to help children in the foster system. It is significant they will be able to get health insurance once the children are in the foster system and of course, to help those, as she has pointed out, who have children who are in their early twenties and who are still trying to get settled in a profession.

My daughter was fortunate enough to have health insurance last year in her first job out of college. But now she is going to a new job that doesn’t have health insurance, and so she will be able to be covered once this legislation is passed. As Senator LANDRIEU points out, it is going to make a real difference for families and for small business.

I am very pleased to be here today to support this legislation and also to try to dispel some of the myths we have heard from our colleagues on the other side of the aisle about what is actually in this legislation. Despite what many of our colleagues may want us to believe, passing this bill is the fiscally responsible thing to do. The current health care system is a threat to the security of our families, our small businesses, and the entire economy of this Nation. The costs of health care in America make up almost 18 percent of our economy—our gross domestic product. That is more than any other industrialized country. Health care costs are rising three times faster than wages. The leading cause of about two-thirds of the bankruptcies in America is medical bills. Our current health care system is simply unsustainable.

The Patient Protection and Affordable Care Act moves us in a new direction—a direction that is fiscally responsible because this bill is fully paid for. In fact, according to the Congressional Budget Office, the Patient Protection and Affordable Care Act would reduce our Federal deficit by $132 billion over the next 10 years. In fact, this legislation represents one of the largest deficit-reduction measures we have seen certainly in many years and possibly ever.

Small businesses in my home State of New Hampshire and across this country are going to benefit from this legislation. We heard Senator LANDRIEU talk about many of the provisions she worked on—and many of which I cosponsored—to help improve the legislation for small business. The fact is, the steep annual increases in the cost of health insurance have been forcing more and more businesses to make the very difficult decision to either drop coverage for their workers or to increase their employees' contribution to the point that too many workers have had to do neither for their families and themselves.

I have heard from a number of businesspeople in New Hampshire, and I wish to read what a couple of them have said.

A young woman named Adria Bagshaw testified this summer at a Small Business Committee field hearing we held in New Hampshire. Adria and her husband Aaron own the W.H. Bagshaw Company. It is a fifth-generation small manufacturing company in Nashua, NH. There aren’t a lot of those fifth-generation companies left that are owned by the same family. They offer health insurance to their 18 employees and cover anywhere between 10 to 25 percent of their monthly premium. But now the premiums are $1,100 per month per family, and Adria is afraid she will have to cut back on the quality of their health insurance plan or the amount the company covers to make ends meet. The sad thing is that she says right now they are spending more on health insurance than they are for raw materials to make their products.

I also heard from a man named John Colony, who is a small business owner in the small, very picturesque town of Harrisville, NH. He e-mailed me saying:

The cost of health insurance is the biggest problem that our small business faces. He has 24 employees. He went on to say:

The present system is expensive, inefficient and broken. I can’t tell you how the 20 to 25 percent annual increases depress us all and there is no end in sight. Over the past five years, most of our employees have had to drop coverage because they simply can’t afford to pay their share of the premium. I really believe that the time has come to put the existing system out of its misery.

Well, I am happy to tell John we are about to do that, because under this legislation, beginning next year, we provide significant tax credits for small businesses to help them pay for the cost of coverage for their workers. This bill contains a number of significant measures to rein in runaway health care costs—measures such as creating a new pathway for biologic drugs so we can get biologic generic drugs to the market and help lower costs for people. There are measures in this bill that will eliminate waste, fraud, and abuse—something that takes too big a chunk out of our health care dollar. There are also measures in here that will get rid of the subsidies...
the government pays to insurance companies for Medicare Advantage plans. These are all commonsense actions that will save the government and health care consumers money over time.

In addition, this bill makes significant improvements to our health care delivery system. That is the way we provide health care for people. It injects more competition into the health care marketplace. Controlling health care spending is critical to address the fiscal health of the Nation—no pun intended. This legislation takes a very important first step in slowing down the growth.

I am sure every Member of the Senate—Republican and Democratic alike—has heard heartbreaking stories from our constituents about health care—stories about being denied health insurance, about having to stay at a job they do not like because of the fear of losing coverage, about frustration over the lack of choice and who provides their health insurance or a lack of understanding about their plan's limits until it is too late and they are facing financial peril. Well, this bill will. I am happy to say, change that. Not only does this provide coverage for an additional 31 million people.

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

Mrs. SHAHEEN.—but we eliminate the abuses of the insurance companies. It will be back to talk about some of these other areas.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, first, I wish to thank my friend from New Hampshire for her advocacy on health care reform in general, but specifically working together on the areas that affect small business. I very much appreciate and were so pleased to have her in the Senate.

I come to the floor to join my colleagues. I know the chair of the Small Business Committee, Senator LANDRIEU, has been here and others will be here—Senator LINCOLN, who has played such a critical role in putting together the small business provisions in the bill.

I am very pleased to have authored one of the provisions in the managers' amendment that will guarantee that small businesses get immediate help starting next year—tax cuts to help them pay for the cost of health insurance. Michigan has close to 200,000 small employers that represent about 96 percent of the employers in our State.

Most folks who think of Michigan think of large employers, large manufacturers. But, in fact, the majority of our employers, as in the majority of each of our States, are small businesses. That is where the majority of the new jobs are being created. We have just 41 percent of our firms that have fewer than 50 employees who actually are able to offer health insurance. So less than half our small businesses are able to offer health insurance, which is why we are focused on small businesses in this reform bill.

The majority of people in this country who do not have insurance are actually working. The majority of us—about 60 percent—have insurance through our employers. We have about another 20 percent or so who receive their insurance through Medicare or Medicaid, the Veterans Administration or some other public entity and then 15 to 20 percent of the people overall in America who don't have insurance are predominantly small businesses—people working for small businesses or they are self-employed or they are working one, two, or three part-time jobs just to try to hold things together. So that is a major focus of the health care reforms that are in the legislation that is before us.

I am very pleased we have been able to provide business with $40 billion in direct tax cuts—$40 billion in direct tax cuts—for small businesses across America to help them afford health insurance going forward, rather than waiting for the new insurance coverage, health insurance reform, which will provide additional help for small businesses. This help, this tax cut, starts right away. We will see 3.6 million small businesses that could qualify for the tax cuts in this bill that will begin next year.

In my State, that means over 100,000 small businesses that could be helped by the small business tax cuts that will make premiums more affordable. So I am very pleased to be part of a group of Members who came together and worked very hard to focus on the fastest growing part of the economy, which are our small businesses.

I will just share one story, and this was from Crain's Detroit, a highly respected business publication in Michigan. Mark Hodosh, who is the owner of an Ann Arbor home and garden store, said he has seen his health insurance premiums go up more than 300 percent since 1997. In 1996, he paid $132 in health care premiums a month per employee; and this year, regular premium increases have led him to pay upward of $375 per month for each employee. So that is a 300-percent increase. He says:

I have been in small business for 40 years, and my conclusion is that without health care reform, these increasing costs will put me out of business.

That is the reality for businesses across this country. I do believe health care reform is directly tied to jobs, whether it is large businesses competing internationally that make a determination to move their facility because of health care costs, whether it is small businesses going out of business or having to decide if they keep people because they can't afford insurance or whether it is the self-employed person out on their own, in their own enterprise—maybe it is local realtor. We know realtors have struggled for years because they haven't been able to buy through a large insurance pool. That is what this reform is all about. That is what this legislation is all about, to help small businesses, people who are working out of their homes, who are self-employed as well as people who have lost their job and then lost their insurance. That is what this is all about.

When we look at this legislation, according to the Small Business Majority, health care insurance reform is that is in this legislation the annual costs of health benefits will more than double in less than a decade. They will more than double. We know, because we have seen the statistics, that when we talk about doubling health care costs for businesses in the next 10 years, it is estimated to equal another 3.5 million jobs.

We cannot afford to lose another 3.5 million jobs because of the doubling of health care costs in America. We are focused on creating more jobs. We need to be laser focused—certainly, I am, coming from Michigan—on creating jobs not losing jobs. According to the economic analysis of the Small Business Majority, health care insurance reform could save up to 72 percent of small business jobs otherwise lost to a continuing rise in health care costs. We need those jobs.

Again, health insurance reform is all about saving lives, saving Medicare, and it is certainly about saving jobs. That is why I am so pleased we have made small businesses a major priority in this legislation—both through $40 billion in tax cuts for small businesses, creating the new insurance pool through which small businesses can get the same kind of deal, have the same kind of clout as a large business today in being able to negotiate with private companies, and other provisions that are in the bill as well.

There are many reasons to support health insurance reform. Standing up for small businesses is certainly at the top of the list.

I yield the floor.

The PRESIDING OFFICER (Mrs. GILLBRAND). The Senator from New Mexico is recognized.

Mr. BINGAMAN. Madam President, over the past few weeks we have heard a lot of heated debate on health care reform proposal. Much of it has concentrated on a few key issues: whether there should be a public option, whether there should not be. Of course, much of that debate was on the Democratic side among Members with strongly held views on both sides of the issue.

The question of whether we should try to allow people 55 and older to buy into Medicare was also debated. There were strongly held views on both sides of the issue.

It is clear now we have a bill before us that will do neither of those things but which I think will accomplish very major health care reform for the country. I want to just concentrate
for a few minutes on some of the other policies that are contained in this legislation that we have been discussing and that clearly are very constructive proposals that will dramatically improve the health care delivery system in this country.

I will remember when we started these discussions early in the spring and summer and had many meetings and hearings and workshops in both the HELP Committee and in the Finance Committee. There were statements made that—on the Democratic and Republican side—we can agree on maybe 80, maybe 85 percent of the changes we ought to embrace in health care reform. The question is, What about the other 15 to 20 percent? I think we need to spend more time focused on that 80 to 85 percent, and let me do that for just a minute.

This Patient Protection and Affordable Care Act which Senator R EID and others have introduced and is in the House as well as both pieces of legislation do contain very important policies. Let me talk a minute about some of those.

First, this act before us includes long overdue reforms to increase the efficiency and quality of the health care system while holding down the growth in costs. For example, the legislation includes payment reforms—I have championed those for a long time; others in this body have championed them as well—to shift from a fee-for-service payments system to a bundled payments system. This will reshape our health care reimbursement system to reward better care and not simply more care as the system currently does.

The legislation also includes broad expansion of quality reporting and pay-for-performance reforms that will further incentivize quality and efficiency. The legislation also puts in place the framework for the national quality strategy and several new key Federal oversight bodies to allow both providers and consumers to have unbiased information about whether health care treatments and devices and pharmaceuticals are effective and efficient.

We have heard a lot of charges made that trying to find out what is effective and efficient is objectionable somehow because it might lead to rationing of care. There is no rationing of care contemplated in this legislation. But how anyone could come to the Senate floor and argue against providing good, scientifically based information both to providers and the consumers about which treatments, which devices, which pharmaceuticals are effective and useful is hard for me to understand.

Second, this Patient Protection and Affordable Care Act includes a broad new framework to ensure that all Americans have access to quality and affordable health insurance. It includes the creation of new health insurance exchanges which will provide Americans a centralized source of meaningful private insurance, as well as refundable tax credits to ensure that the coverage they need is affordable. These new health insurance exchanges will help improve the choices that are available to Americans by allowing families and businesses to easily compare insurance plans and the performance of those plans. This will put families rather than insurance companies or insurance bureaucrats or government bureaucrats in charge of health care. These exchanges will help people to decide which affordable insurance option is right for them.

On the issue of cost, the nonpartisan Congressional Budget Office forecasts that this legislation would not add to the Federal deficit. In fact, the latest estimates they have given us is that it would reduce the deficit by $132 billion by 2019 and well over $1 trillion in the second 10-year period; that is, the period from 2020 to 2029.

On the subject of premium costs, which is what we are talking about, all Americans care about, CBO has also found that in the individual market the amount that subsidized enrollees would pay for coverage would be roughly 56 percent to 59 percent lower, on average, than what they were expected to be charged when this law takes effect in the individual market under current law.

Among enrollees in the individual market who would not receive new subsidies, the CBO forecasts that premiums would decrease by less than 10 to 13 percent—this again, according to the Congressional Budget Office. The legislation would have smaller effects on premiums for employment-based coverage. Its greatest impact would be on smaller employers qualifying for new health insurance tax credits. For these businesses and their employees, the Congressional Budget Office predicts that premiums would decrease by somewhere between 6 and 11 percent, compared with the costs that they would have to pay under current law.

These estimates by the Congressional Budget Office are consistent with the estimates of the impact in my home State of New Mexico, where average families may see a decrease in premiums of as much as 60 percent from what they might otherwise have to pay. This is families, I am talking about, who would be eligible for these advance refundable tax credits.

I urge my colleagues to support passage of this critical and long overdue legislation. There will be chances and opportunities to improve on this legislation in the future. I hope to participate in some of those.

Nothing that is passed into law in this Congress or any Congress that I have served in is what it should be in all respects. But this legislation is extremely important and significant health care legislation. It would do a tremendous amount of good for a vast number of Americans and it will do that “good” in a very responsible way.

I urge my colleagues to support passage of this legislation so we can get on with the conference report in the House of Representatives and finally settle on a bill that could be sent to President Obama for his signature.

I yield the floor.

Mr. COBURN. Madam President, I know our leader is coming to speak,
Mr. MCCONNELL. Madam President, I thank my friend from Oklahoma. I will be very brief.

Madam President, Americans woke up yesterday stunned to read that Democrats had voted to end debate on the latest version of this massive bill while they were sleeping. They will be stunned again when they learn about this second early-morning vote to advance a bill that most of them oppose. Americans are right to be stunned because this bill is a mess. And so was the process that was used to get it over the finish line.

Americans are outraged by the last-minute, closed-door, sweetheart deals that were made to gain the slimmest margin for passage of a bill that is all about their health care. Once the Sun came up, Americans could see all the deals that were tucked inside this grab bag, and they do not like what they are finding. After all, common sense dictates that anytime Congress rushes, Congress is whether their Senator so-and-so got a sweet enough deal to sign off on it. Well, Senator so-and-so might have gotten his deal, but the American people have not signed off.

Public opinion is clear. What have we become as a body if we are not even listening to the people we serve? What have we become if we are more concerned about a political victory or some hollow call to history than we are about actually solving the problems the American people sent us here to address? This bill was supposed to make health care less expensive. It does not. Incredibly, it makes it more expensive.

Few people could have imagined that this is how this debate would end—with a couple of cheap deals hidden in the folds of this 2,700-page bill and rushed early-morning votes. But that is where we are. Americans are asking themselves: How did this happen? How did a great national debate that was supposed to lead to a major bipartisan reform bill of health care costs go up?

This legislation will reshape our Nation in ways its supporters will come to regret. But they cannot say they were not warned. The verdict of the American people has been clear for months: They do not want it.

In 2007, we passed a bill called the Honest Leadership and Open Government Act of 2007. That act requires the posting of any earmarks or direct benefits for Senators in any bill. It has to be posted. We have not seen that with this bill, though we know there are numerous and sundry specific earmarks for Members.

So my hope is that sometime during this process, we will take up the violations of the senator from Oklahoma mentioned for this Chamber in terms of ignoring it and flaunting it. What he said, when we passed it, was it was a needed change, and now we see it ignored as they bring this bill to the floor.

Mr. MCCONNELL. Madam President, I thank my friend from Oklahoma. One thing about rushing, not only is there a potential violation of the provisions the Senator from Oklahoma mentions, but we are learning more about this bill every day as we scrub it and try to understand it and figure out what all is in it. All of that, of course, is made more possible by rushing things through in sort of an expedited, hurried fashion to get it by the American people before Christmas in the hopes they will not notice.

Mr. COBURN. I thank the leader. I want to spend my time this morning kind of talking about how you control health care costs in our country. My experience, just from my qualifications— I have 9 years of experience in manufacturing medical devices. I did that as a young man, had hundreds of employees and a fairly large business. I left that business to become a physician. The care of my life was to help people directly rather than indirectly through my medical device association.

So I want to lay out the two different ways, the two different arguments for how you control health care costs because everybody in this Chamber wants to control health care costs. All the Democrats and all the Republicans do. We have 11 studies that say premiums are going to rise and one that says they are not under this bill. So that is not going to control costs.

But I want to read a story that a lady from my district wrote me because I think it is very important in us considering which way we go.

Dr. COX. I hope you don’t mind a personal story, but as I listen to the health care debate, I can’t help but think constantly of my middle-aged daughter, Chloe. She was exceptional. Chloe would have lost her chance for a normal life, had these policies—

In this new health care bill—been in effect two years ago. No government agency could possibly have understood Chloe’s unique needs or her extremely rare condition.

After a perfectly healthy childhood, my seventeen-year-old showed me that her left arm was twitching and wouldn’t stop. Within the entire body was jerking constantly, every waking moment of every day. Her MRI revealed more than one periventricular heterotopic nodule—

That is a growth around the ventricular system, the fluid system of the brain—but her first two neurologists weren’t sure there was a connection between the changes in her movement and the movement disorder symptoms and the nodules. They certainly had nothing useful to offer in terms of treatment. But I made the rash decision that was. Today, Chloe was desperate to live a normal life again, so my husband and I agreed, though perhaps you can imagine what an excruciating decision that was. Today, Chloe wiggles a little, but anyone who didn’t know her history would think she is just fidgeting. She is an honors linguistics student at OU, and she even takes dance lessons. She recently started driving again. She said once, “Mom, without the surgery, I would be strapped into a wheelchair now.”

I know that Chloe would never have had the unique care she needed, if we had been required to petition a government agency for permission. A less dedicated person than her subspecialist would have tried to classify her condition and restrict her to known treatments. But I made the rash decision that was. Today, Chloe wiggles a little, but anyone who didn’t know her history would think she is just fidgeting. She is an honors linguistics student at OU, and she even takes dance lessons. She recently started driving again. She said once, “Mom, without the surgery, I would be strapped into a wheelchair now.”

I know that Chloe would never have had the unique care she needed, if we had been required to petition a government agency for permission. A less dedicated person than her subspecialist would have tried to classify her condition and restrict her to known treatments. But I made the rash decision that was. Today, Chloe wiggles a little, but anyone who didn’t know her history would think she is just fidgeting. She is an honors linguistics student at OU, and she even takes dance lessons. She recently started driving again. She said once, “Mom, without the surgery, I would be strapped into a wheelchair now.”
What is not in the bill is a prohibition against rationing, which all of my colleagues on both the Finance Committee and the HELP Committee voted against, which means you are for rationing if you vote against, a prohibition. The leap they denied an amendment on the floor of the Senate to go forward with rationing, so we do not get to see where everybody stands. But we understand the intent. So there is no question that the way we are going to control costs is to limit your access by rationing chronic health care.

The other side of controlling costs is to incentivize the prevention of disease and incentivize payments for good outcomes when we manage chronic disease that is there in an efficient and effective way. That is not the bill. That is not anywhere in the bill. What we have to do is incentivize an insurance company to invest in the management of chronic disease rather than to pay for the consequences of the chronic disease. That is not in the bill either.

So we get two choices.

Now, what do we find in this bill? We find a Medicare advisory commission. They actually dropped the name “Medicare” from it, but we find an advisory commission that is going to tell us how much money we have to cut from Medicare, and we either have to cut that amount or make some cuts somewhere else.

We have the U.S. Preventive Services Task Force, and we have already seen during the debate on this bill when they do something that is based on cost alone—not clinical; breast cancer screening for women between the ages 40 to 50. So if you are something on the basis of cost instead of clinical, we run in and jump and say no, but we are going to pass a bill that is going to totally empower that. Seventeen times in this bill is the U.S. Preventive Services Task Force referenced in what it is going to do. I do not believe that we can ever tell us just in Medicare and Medicaid, it is going to tell us in every area what we are going to do. But because there was such a reaction to the first recommendation based on cost—and let me explain what that was. They said that if you are age 50 and over, the incidence of finding somebody with breast cancer is 1 in 1,470 people, but if you are between the ages of 40 and 50, it is only 1 in 1,910 people. They may not have breast cancer. So it does not matter if you have breast cancer between the ages of 40 and 50, we do not think the government ought to be paying for your mammogram and we do not think anybody ought to have one. Well, that is fine for all those people who do not have breast cancer. It is terrible for the people who do have breast cancer and it could be found early with a mammogram.

So we rushed in here and we offset what that task force did. But they are going to be doing it time and time again. And is the Congress going to truly—every time they make a decision based on cost-effectiveness, not clinical effectiveness, are we going to reverse it? We are not. So there is another proof that we are, in fact, going to use the rationing of care to control costs.

Mr. BURR. Madam President, will my colleague yield for a question?

Mr. COBURN. I would be happy to.

Mr. BURR. If, in fact, the Congress did reverse the decision of an advisory board, what does that do to the budget deficit? And what does it do to the claims that this current bill being considered is paid for?

Mr. COBURN. I am not sure I can answer the question. But it would make it less effective in terms of supposed claims.

Mr. BURR. So if the authors of this bill never intended to make cuts, then it blows the budget neutrality that is portrayed in this bill. But if they use all the mechanisms that are in place to make sure reimbursements are cut or the scope of coverage is affected by a decision to limit one’s care, then we could see prevention cut, wellness programs cut, or even the preventive diagnosis such as for breast cancer limited to a much smaller number.

Mr. COBURN. I think the Senator from North Carolina is really going to where I am going to get to later; that is, what is the motivation for the decision-making? I think my colleagues on the other side of the aisle are well intended, but I don’t think they are well informed about the consequences of their intentions.

So if you set up the Task Force for Preventive Health Services and say you are going to rely on it, but we know they are going to make the decisions based on cost-effectiveness, not clinical effectiveness, what we are going to see is the American Cancer Society coming again and again and again because what we are going to do is we are going to cover those where it is cost-effective but not clinically effective. For 80 percent of Americans, they are not going to notice the difference, but for Americans is going to notice the difference.

The second area, which I wish to spend some time on because we have actually modeled it after England, is cost comparative effectiveness. We ought to talk about what is comparative effectiveness research because there is nothing wrong with the research. It is health care research comparing various drugs, devices, and treatments head to head, and the whole goal of that is to find what works best and what costs the least.

The assumption in this bill is, we can have 24 or 36 people in Washington decide that. In the Framingham studies they have been running for over 50 years and they still haven’t have the answers and we have been studying it for 50 years. But we are going to be making decisions on cost, not on clinical effectiveness, which is going to limit your ability to have you and your doctor think you need.

So we are going to pull out clinical experience of individual physicians. We are going to eliminate the heart of medicine, which is the combination of vast experience, gray hair, long years of training, family history, clinical history and physical exam and we are going to say: No, it doesn’t matter. We are going to say: Here is the way you are going to do it either.

Who uses comparative effectiveness research? Well, several countries do. When I share with my colleagues the stories about how it is used, you are going to get a real visit, but what is coming with this bill—a real vision.

This bill creates a new agency called the Patient-Centered Outcomes Research Institute to perform comparative effectiveness research. I have already said the idea behind it is good. I strongly support medical research. I strongly support helping doctors and their patients choose the best research and the best treatment. The problem is, this bill doesn’t do that. On the contrary, this bill will empower the government to decide for you. It empowers the government to say you can have and which ones you cannot have. That is what this does. This removes the judgment of the doctor and replaces it with the judgment of the bureaucracy in Washington. It is not in the medical concern, it is a real-world problem.

In Britain, they control health care costs by denying or delaying access to expensive therapies. That is one of the reasons this country has one-third better survival for government-run programs than what we can imagine over Great Britain because we don’t do that. As a two-time cancer survivor I am acutely aware as a patient, not as a doctor, in that I want to make sure for my family and my patients they have the best alternatives, not the cheapest, because the cheapest alternatives are the ones that take years away from your life.

I am going to go through some examples. Nobody can dispute this is what is happening now and what will happen under our program. To Senator BAUCUS’s credit, he had a bill that wasn’t cost comparative effectiveness; he had one based on clinical comparative effectiveness. That is not in here. What is in here is cost comparative effectiveness. Senator BAUCUS knew you don’t want to use cost as the main thing; you want to use clinical outcomes as the No. 1 deciding agent in how we approach health care—not cost—because if you only look at cost nobody in this country would get a mammogram between 40 and 50. But this bill is different from what Senator BAUCUS had offered in his Finance Committee markup.

There is an agency in Great Britain called the National Institutes for Health and Clinical Excellence. It is pronounced NIHCE. Here are some of the decisions of NIHCE in the most recent years. They have a problem in England with cost, too, and they have a two-part government-run system. They have the government running it, but they still can’t control their costs, so what have they done?
They have repeatedly denied breast cancer patients breakthrough drugs. They have forced patients with multiple sclerosis to wait 2½ years to receive new innovative treatments that people in this country are getting as soon as available. They have denied early stage Alzheimer’s patients medication, requiring their condition to worsen before they give them the medicine. What do we know about the medicine? It works best when you have the slightest symptoms of Alzheimer’s. It’s not when you get worse. But that is the bureaucratic thinking: We will save money rather than practice good medicine.

They deny life-prolonging treatments to kidney cancer patients. They denied new medicine to all but a small percentage of patients with osteoporosis and then only as a last resort. In other words, you have to have about your bones breaking by standing before you get medicine for osteoporosis in Great Britain. This country, we have prevented millions of hip fractures through effective medicines to restore the calcium and bone matrix in seniors’ bones. But we have Medicare now saying you are doing too many tests to check on that, so you can only do it every 2 years. So we are going to use rationing, and we are.

They denied access to the only drugs available to treat aggressive brain tumors. They denied effective drugs to bowel cancer patients. Macular degeneration is something that affects a large number of people in this country. That is where the macula—the area that actually allows you to see and concentrate your vision—as we age, we have what is called cystoid macular degeneration or dry degeneration. That is a disease of the eye where it causes vision loss. NIHCE required patients suffering from macular degeneration to go blind in one eye before you could ever get the medicine. That is a bureaucratic committee because it was cost-effective to allow you to live with one eye. Elderly patients went to court to fight for drugs to keep them from going blind. Twenty-two thousand Britains a year get the macular degeneration, and 47-year-old woman sold her house to buy the drug the government refused to provide. They have been held as the biggest breakthroughs in treating brain tumors in the last 30 years. Finally, in April of the year before last, they finally relented and allowed brain cancer patients to have the drugs that were available on the market.

Erbitux, very effective in resistant colon cancers. In 2006, denied. Seventeen thousand Britains a year get the serious, advanced colon cancer. That is what is keeping people from Erbitux is designed for. Yet they can’t have it.

Mr. BURR. May I ask a question of my colleague? Listening to this list of products that have been denied people in Great Britain, and certainly this is true in some other countries, makes me look at the Medicare population in this country with the realization that the way Medicare was constructed, a senior can’t pay out of pocket because they are provided a payment from a senior. If for some reason this bill was passed and you took part of the arsenal of drugs away from seniors or procedures away from seniors, how can a senior get a benefit if no provider can receive an out-of-pocket payment from a senior?

Mr. COBURN. That is the problem with our system today. What we are going to hear them say is the insurance companies do this now. At first, for new medications, until they are proven effective, most insurance companies don’t cover them, but they cover them much sooner than Medicare does today. Today, Medicare is the last to approve the drugs.

We are going to hear that is not any different than the limitations from insurance. That is true. We need to change that. But the fact is, we are getting ready to put all these people into insurance programs, and then we are going to give the government, which is just as bad or worse than the insurance company, making those decisions.

I wish to finish my point on cost. We get two ways for fixing cost because that is what is keeping people from getting access. We can either ration it—and there are three methods to rationing in this bill which will be used—or we can incentivize outcomes and we can incentivize prevention and we can pay, based on the transparency of outcomes and quality. We haven’t done any of that in this bill. We have said we have, but when you look at how do you prevent it—and the model is the 200,000 employees at Safeway and what they have been able to do in using their incentive systems to pay for prevention, to use competitive purchasing to reconnect the employee with the purchase of health care.

I understand my colleague from Nebraska here and I will yield to him because I understand he was a unanimous consent request.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. JOHANNS. Madam President, I appreciate the courtesy extended by the Senator from Oklahoma. I ask unanimous consent that the pending substitute amendment be modified to delete the following special carve-outs: eliminating or reducing the Medicare unfunded mandate on Nebraska, Vermont, Massachusetts; exempting certain health insurance companies in Nebraska and Michigan from taxes and fees; providing automatic Medicare coverage for anyone in Libby, Montana; and mandating special treatment for hospitals in frontier States such as Montana, South Dakota, North Dakota, and Wyoming.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Madam President, I appreciate the Senator’s desire to want to cut the payments to his own State, but I object.

Mr. JOHANNS. Thank you. I yield to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, we are very early on this and it brings the health care reform bill obviously one step closer to final passage—at least it looks obvious that is going to happen. Regardless of whether the other side has 60 votes, my friends on the other side still have a problem they want to not have the public concentrate on; that is, that the pending bill still raises taxes on middle-income Americans. The Reid modification did nothing to reverse this fact.

I will take a few moments to illustrate the winners and losers under the bill. We start with a question: If a person is not receiving a subsidy for health insurance under the bill, then how can the person receive a tax cut? This is a relevant question because the White House and the majority leadership continue to proclaim that the bill is a “net tax cut” for middle-class Americans. For example, on Wednesday, December 16, a senior White House aide wrote:

The bill being considered represents a substantial net tax cut for middle-income families.

So I think that statement begs more questions. Who do you believe? The
White House, on the one hand, or on the other hand, the nonpartisan independent experts upon whom we on Capitol Hill rely for judgment—the people who are not political, the Joint Committee on Taxation?

This committee tells us that in 2019, a little more than 13 million individual families and single parents would receive the government subsidy for helping people under 400 percent of poverty buy insurance. The Joint committee also tells us that the number of tax filers in 2019 will be 176 million people. If people are wondering why we talk about 2019, it is the budget window from now until the end of the 10-year period, what we call a "budget window." That means out of—comparing this 13 million to the 176 million taxpayers, 13 million people receiving the subsidy and 176 million tax filers—that means out of that 176 million individuals, not only 13 million of them would receive a government subsidy for health insurance. That is only 7 percent of the tax filers. It is pretty important to understand that only 7 percent of Americans will benefit from the subsidy for health insurance.

We have a pie chart so people can see exactly what I am talking about. This says 176 million taxpayers, with 13 million receiving the subsidy and 176 million tax filers—that means out of that 176 million individuals, only 13 million of them would receive a government subsidy for health insurance. That is only 7 percent of the tax filers. It is pretty important to understand that only 7 percent of Americans will benefit from the subsidy for health insurance.

It is legitimate to ask, for these 93 percent of the people, what happened to their net tax cut? What they will see instead is a net tax increase. Based on the Joint Committee's data, in 2019 42 instead is a net tax increase. Based on the Joint Committee's data, in 2019 42 million Americans under $200,000-a-year income. Finally, when we identify those Americans who get no benefit under this bill, and those Americans who see a tax increase, we find that there are 73 million individuals, families, and single parents under the $200,000 category who will see their taxes go up. This group, however, is relatively small—8 percent of Americans, if you look at those earning less than $200,000.

There is another larger group of Americans who are seeing their taxes go up. This group is not benefiting from the government subsidy, this group on the chart. There is another group of taxpayers who are generally unaffected, this 82 million here. The Joint Committee tells us this group may be affected by tax increases that are not included in this study, like the cap on flexible savings accounts and the individual mandate tax that people are going to pay if they don't buy health insurance.

The bottom line is this: My friends on the other side of the aisle, first, cannot say that all taxpayers receive a tax cut; two, they cannot say the Reid bill does not raise taxes on middle-income Americans because we have the professionals at the White House, the Joint Committee telling us differently. No one can dispute that data.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. GRASSLEY. Madam President, my friends on the other side of the aisle continue to argue that the Reid bill eliminates the so-called hidden tax. They argue that this would reduce the cost of health care. For example, on Wednesday, December 16, a senior White House aide wrote:

Even if you believe that some of the tax on insurance companies is passed along, it would be more than outweighed by the benefits middle-class families would get from reducing the hidden tax they currently pay for the uninsured.

I don't believe the fees on health insurance companies will be passed through to the policyholders. I think it is just idiotic not to think they would not be passed through.

I want to flatout state I know they are going to be passed through. My authority for this is the Congressional Budget Office and the Joint Committee on Taxation telling us that fact. The CBO and the Joint Committee on Taxation told us that these fees will actually increase health insurance premiums. Premiums will go up because the companies are paying increased taxes under this bill. For insurance premiums to go up, under a title that encompasses health care reform bill, that is going in the wrong direction. Also, for argument's sake, let's assume my Democratic colleagues are correct and this so-called hidden tax that results from uncompensated care equals $1,000. The pending health care reform bill still leaves a large number of Americans uninsured. Specifically, the Reid bill leaves 23 million out of 54 million without health insurance at the end of this budget window. So, at best, the Democrats' reform cuts the hidden tax in half—in this case, to about $500 a family.

To add insult to injury, however, the bill adds new hidden taxes. These taxes are the fees imposed on health insurers. CBO and the Joint Committee on Taxation—say this will increase costs. If you check the report, no one can dispute that. These fees go into effect in 2011—still 3 years before any of the major reforms under the pending bill kick in.

That means this hidden tax will increase premiums in 2011, 2012, and 2013. That is before there is any government assistance for health insurance being provided to families that need it. The new hidden tax is also created as a result of the Medicaid expansion on the one hand, and Medicare cuts on the other hand, a major cost shift in health care derived from government programs—Medicare and Medicaid—which reimburses providers at rates roughly 20 percent to 40 percent lower than private providers.

President Obama understands that paying doctors below market rates leads to cost shift. This is what he said at a townhall meeting on health care reform:

If they are only collecting 80 cents on the dollar, they have to make that up somehow else and they end up shifting it from people who have private insurance.

The Medicare and Medicaid cost shift will be increased significantly under the pending health care reform bill. According to the CBO estimate, Medicare will be increased by more than 40 percent, from 35 million to 50 million people. Additionally, the bill includes almost $2 trillion in Medicare cuts that will result in lower payments to providers.

Increasing the current Medicare and Medicaid cost shift as a result of the Democrats' health reforms would add even more costs to a family's health insurance policy. The easier cost shift to be made, the easier the cost shift from defensive medicine. The Democrats do not address the cost shift from defensive medicine which former CMS Director Mark McClellan has estimated adds $1,700 in additional cost per average family.

Addressing this reform alone could save more than covering all of the uninsured in America.
So, you see, my friends on the other side say their bill will eliminate the so-called hidden tax. My friends seem to come up short on that one. Also, they add new hidden taxes that will burden middle-class Americans.

I take the present situation, the legislation before us and the language used by debaters on the other side, they should be transparent when they are talking about getting rid of the hidden tax. The pending health care reform bill makes things from these three perspectives work.

Madam President, I will be happy to yield the floor for a minute for the purpose of a colloquy with Senator BAUCUS on another subject.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I would like to address a colloquy with Senator GRASSLEY, as he said, on another subject that is not related to this bill.

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

EXPANDING TAX PROVISIONS

Mr. BAUCUS. Madam President, the Senate is wrapping up legislative business shortly, but there are a few expiring tax provisions that have unfortunately not been extended. These provisions include tax benefits for individuals and businesses. These provisions would help teachers who purchase supplies for their classrooms and families with college students.

Further, a great number of U.S. businesses rely on important tax benefits, such as the research and development tax credit and the active financing exception, both of which expire at the end of this year. The energy industry also relies on several provisions that expire on December 31. Unfortunately, this is not the first time we have allowed important tax benefits to expire. As soon as the Senate reconvenes next year, my intention is that we take up legislation to extend these important provisions.

That is why Senator GRASSLEY and I have written a letter to the Senate leadership. I ask unanimous consent to have this letter printed in the Record.

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

U.S. SENATE,
COMMITTEE ON FINANCE,

Hon. HARRY REID,
Majority Leader, U.S. Senate, Washington, DC.

Hon. MITCH MCCONNELL,
Republican Leader, U.S. Senate, Washington, DC.

Dear Majority Leader Reid and Republican Leader McConnell: We write to inform you that early in the next year, we intend to address the extension of various tax provisions expiring on or before December 31, 2009. We intend to extend the provisions without a gap in coverage, just as the House did on December 9th of this year. The legislation will extend several important tax benefits to individuals and businesses. The legislation includes a number of important tax provisions, including the biodiesel tax credit, and natural disaster relief.

These provisions are important to our economy—not only because they help create jobs, but also because they are used to address pressing national concerns. We understand that the expiration of these provisions creates uncertainty and complexity in the tax law. Taxpayers need notice of the availability of these provisions to fully and effectively utilize the intended benefits. We hope to address this issue as soon as possible to cause the fewer disruptions and administrative problems for taxpayers and also generate the greatest economic and social benefit.

Sincerely,

MAX BAUCUS,
Chairman, Senate Committee on Finance.

CHUCK GRASSLEY,
Ranking Member, Senate Committee on Finance.

Mr. BAUCUS. Madam President, the letter states our intention to work together to get the extenders done as quickly as possible in the new year.

Senator GRASSLEY and I both understand that expiration of these provisions creates uncertainty and complexity in the tax law. Taxpayers need notice of the availability of these provisions to fully and effectively utilize their intended benefits. Finally, we must act quickly to cause the least disruptions and administrative problems for the Internal Revenue Service.

I hope when the Senate convenes in 2010, we can address these expiring provisions as soon as possible. I wonder if that is also the intention of the my good friend from Iowa, Senator GRASSLEY.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I would like to add to what Senator BAUCUS said by speaking positively on this issue and to remind my colleagues who maybe have been watching in the last 3 weeks and have seen Senator BAUCUS and I on opposite sides of the issue of health care reform—it is uncharacteristic for us to have different points of view on legislation. In the 10 years he and I have been leaders of the Finance Committee, most of the issues coming out of our committee have been very bipartisan. What I just talked about and what I am going to respond to is one of those issues.

I agree with Chairman BAUCUS that we should retroactively extend the expiring tax provisions as soon as possible after Congress reconvenes in 2010. As chairman of the Finance Committee in 2005, I worked with then-Ranking Member BAUCUS, and we authored the biodiesel tax credit.

The biodiesel tax credit is a tax credit that is needed before the end of the year to prevent the U.S. biodiesel market from grinding to a halt on January 1, 2010. This tax credit differs from other tax provisions in that the price of biodiesel will be $1 higher on January 1, 2010, as a result of the tax credit not being extended before that date. That means people will simply buy petroleum diesel rather than biodiesel come January 1, 2010.

Biodiesel is a key part of our Nation’s success in biofuels. These biofuels, produced here in our own country, are helping to reverse our near-total dependence on petroleum for transportation in this country. The hard truth is that we get about 70 percent of our petroleum from other countries, and many of those countries are unstable or are unfriendly to the United States or both. So biodiesel is helping us restore national energy security.

Biodiesel is made from vegetable oils or animal fats. The biodiesel industry employed over 50,000 workers and added over 600 million gallons of biobased fuel last year to help power the diesel engines across our Nation and throughout the economy.

However, this is still a very small and struggling industry. It is absolutely dependent on continuation of...
the biodiesel tax credit. Without this credit, most of the biodiesel plants in this country will simply be forced to shut down, thus idling important domestic fuels production capacity as well as putting as many as 20,000 employees out of work. We can’t let that happen, if we are to continue to meet our energy security goals. So it was made retroactive, bank- ruptcy would in a good number of in stances be a quick result.

I do appreciate the efforts by the chairman and ranking member to move forward with the much needed legislation at the first opportunity.

Ms. STABENOW, Madam President, as we work toward economic recovery, it is imperative that we act quickly to extend critical tax provisions scheduled to expire this year that promote research and development, spur community development, support the deployment of alternative vehicles and fuels, and provide certainty for businesses and families going forward. Knewing that the tax provisions are in place allows Americans to plan for the upcoming year. The longer we wait to pass this legislation, the more uncertainty we place on businesses during a time when they are starting to recover. Many provisions encourage more investment, the development of new technologies, and business growth, which allow our companies to be competitive in a global marketplace.

Delaying the extension of the research and development tax credit, the biodiesel tax credit, and $37 million in tax revenue. We estimate that an initial average premium level of about $240 per month would be required to adequately fund CLASS program costs for this level of enrollment, anti-selection, and premium inadequacy for students and low income participants.

So who would enroll in the CLASS program? An American making 300 percent of poverty has a gross income of $32,490. If the CLASS premium is, as the Chief Actuary predicts, $240 per month—that is $2,880 per year—and an individual at 300 percent of poverty would have to commit 8.9 percent of their income to join the program. That is simply not possible, nor is it plausible for young, healthy persons will commit almost 9 percent of their income to long-term care insurance policy.

The people who will enroll then are those who have real expectations of using the long-term care benefit. People who want a CLASS program with the expectation of needing the benefit become the Bernie Madoffs of the CLASS Act Ponzi scheme.

An individual becomes eligible for the CLASS program after paying premiums for just 5 years. If a person pays premiums of $2,880 per year for 5 years, they would have paid a total of $14,400 in premiums for that program. That person can then begin collecting a benefit of $1,500 per month. In 10 months, the person will have recouped their 5 years’ worth of premiums.

This simple explanation should make it crystal clear why the CLASS Act is a fiscal disaster waiting to happen, not based on our assumptions but based on the determination of the Chief Actuary. The premium will be too expensive to entice young, healthy people to participate. The benefit payout is very enticing for people who know they will need the benefit. Healthy people do not participate; sicker people will. This adverse selection problem will send the program into the classic insurance death spiral.

The Chief Actuary concluded on page 14 of his report with this one sentence: There is a very serious risk that the problem of adverse selection would make the CLASS program unsustainable.

If the CLASS Act becomes law, the Federal taxpayers are at very serious risk of paying a price to clean up the fiscal disaster when the CLASS Act fails.

I yield the floor and suggest the absence of a quorum.

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

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

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

Mr. BAUCUS. Madam President, this chart shows very graphically—this is data put together by the Joint Committee on Tax, combining all the various provisions in the bill. Basically, it shows that in 2015—that is the bar on the left—there would be a $9 billion net tax cut for individuals—net tax cut. Two years later in 2017—that is the middle vertical bar—there is a net tax cut of $40 billion for all Americans—a net tax cut. Not for all Americans. Some will not get it, but most Americans by far will. Then, of course, 2 years later in 2019, there is a net tax cut of $40.8 billion.

I wanted to make it clear that there is a net tax cut in this bill, according to Joint Tax. This is the distribution over the course of 3 different years: 2017, 2019. That is information prepared by the Joint Committee on Tax. I want Americans to know there are tax cuts in this bill, and they are very significant.

Madam President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:30 p.m.
Thereupon, the Senate, at 12:30 p.m., recessed until 2:30 p.m. and reassembled when called to order by the Presiding Officer (Mr. Webb).

SERVICE MEMBERS HOME OWNERSHIP TAX ACT—Continued

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I have control of the Democratic block of time, and I yield 25 minutes to the good Senator from Rhode Island.

Mr. REED. Mr. President, I thank the chairman for yielding me the time and also thank him for his great effort on this legislation.

It is a profound privilege to have the opportunity to serve the people of Rhode Island and in that capacity to support the legislation before us. This effort has been decades in the making. Every year that passes without health insurance reform has made the task more difficult and, the need for reform, more essential.

Rhode Islanders have seen their health care costs double in just the last decade. In 2000, the average employer-sponsored health insurance policy cost about $4,700. In 2008, the same plan cost nearly $12,700. Without reform, by 2016, that family will pay over $24,000 in premiums, consuming 45 percent of their projected median income. Such income is unsustainable by the families of Rhode Island.

Soaring health care costs are hurting family budgets, small businesses, and the national economy. In 1980, Americans spent $253 billion on medical bills. Today, we are paying $2.5 trillion on medical bills. That pressure is pushing Medicare toward collapse and 750,000 Americans into bankruptcy each year.

This legislation will help contain health costs, extend insurance to millions, and give health consumers more protection against discriminatory insurance practices. By shifting the balance of power from insurance companies to consumers, we will make health care more affordable for individuals and businesses and provide families with greater health care access and stability.

This bill is fiscally responsible. It is fully paid for. We trimmed wasteful programmatic spending and imposed new fees on drugmakers, reined in entitlement reform, and imposed taxes on things such as tanning beds, which lead to health care costs. But we also provided every American family with greater health care stability and extended affordable health insurance to 30 million more of our fellow citizens.

The nonpartisan, independent Congressional Budget Office—the CBO—estimates this bill will reduce the deficit by $132 billion over the next decade and $1.2 trillion over the following 10 years.

We need urgent action. The delay tactics and the procedural obstacles employed by the other side are hurting our fellow citizens. Every day, 14,000 more Americans lose their health coverage, and every day we remain here delaying this measure, 14,000 more Americans will lose their coverage. We have to, I think, reverse that trend and begin to fix our broken health care system.

Since 1999, Rhode Island’s uninsured population has nearly doubled, growing from 6.1 percent to 11.8 percent in 2008, and it has soared up to about 15 percent today in the wake of unprecedented economic issues. But while some of us debate about trying to fix a broken health care system, others have made it clear their real intention was to use this issue to “break President Obama” and make health reform his “Waterloo.” Partisanship must not come before providing access to health insurance to children, families and seniors.

I also don’t understand how some party loyalists who spent the past 8 years saying how they’d give our economy into the ground and inflate the deficit to record levels are now obstructing every reasonable effort to fix these problems. How could they help George W. Bush double our national debt in just 8 years more than all 42 Presidents before him, and then turn around and claim President Obama isn’t doing enough to control it?

How could they say this $800 billion insurance reform bill—which is fully paid for and reduces costs to consumers—is too expensive, but the $1.2 trillion prescription drug bill they passed—which was financed through deficit spending and amounted, in some respects, to a giveaway to drug companies—was somehow good policy?

How can they rail against health care reform right after overseeing the largest expansion of our government in all of history? How can they change their approach when, through hard work, we do, in fact, extend coverage and reduce cost and begin to deal with the deficit that has to be dealt with in the years ahead?

Health insurance reform hasn’t always been this partisan. Indeed, many Republicans have said they support a public option. I regret that, but that by my count, this bill does not contain a public option. I regret that, but that by my count, this bill lowers cost, which Republicans said they wanted. Indeed, by my count, this bill provides coverage for those with preexisting conditions. This bill will support their efforts. And, all insurers will be prevented from denying coverage to children immediately due to a preexisting condition.

There will be no lifetime limits on coverage for all new policies. This means no one will exhaust their coverage plan, no matter how sick they become.

There will be restrictions on annual limits for all new policies. Insurance companies will have more difficulty denying care in the middle of treatment.

All new policies sold will cover children up to the age of 26. This is particularly helpful since college students go home often—particularly in this economy—have a hard time finding employment with health care benefits.

Insurers will no longer be able to rescind coverage upon illness—when treatments, checkups, screenings, and medication are absolutely critical.

Insurance companies will be required to cover—free of charge—preventive care for new policyholders.

Beginning next year, in 2011, small businesses will be eligible for a tax credit to purchase insurance for employees.

Then, in 2014, after allowing the States a time to design and develop and prepare themselves, our bill will extend affordable coverage to over 30 million uninsured Americans through a new health insurance exchange which promises to expand choice, increase competition, and rein in cost.

Rhode Islanders who lose their job will be able to purchase insurance on a newly established and government-regulated health insurance market. Many will receive Federal support for the purchase of coverage.

Rhode Islanders employed by a company that does not provide insurance—or inadequate insurance—will be able to purchase insurance on this new market exchange.

Small business owners will be able to easily compare the cost of insurance coverage offered by a multitude of plans through a new health insurance exchange, and it will allow small business owners to pick the coverage that suits their needs and budget of their employees.

Rhode Islanders on Medicare will no longer have to pay out of pocket for important preventive services and no longer spend portions of the year in the so-called “doughnut hole” without paid drug coverage.

Low-income adults, without children, will have access to Medicaid, which

Health insurance reform will offer Rhode Islanders access to stable and affordable health insurance coverage. Here are some of the changes that will happen immediately with the enactment of this bill:

Insurance coverage for the uninsured with preexisting conditions will be provided through a high-risk pool within 6 months of this bill being signed into law. In my State, one plan already acts as the insurer of last resort and provides coverage for someone with pre-existing conditions. This bill will support their efforts. And, all insurers will be prevented from denying coverage to children immediately due to a preexisting condition.

There will be no lifetime limits on coverage for all new policies. This means no one will exhaust their coverage plan, no matter how sick they become.

There will be restrictions on annual limits for all new policies. Insurance companies will have more difficulty denying care in the middle of treatment.

All new policies sold will cover children up to the age of 26. This is particularly helpful since college students go home often—particularly in this economy—have a hard time finding employment with health care benefits.

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Insurance companies will be required to cover—free of charge—preventive care for new policyholders.

Beginning next year, in 2011, small businesses will be eligible for a tax credit to purchase insurance for employees.

Then, in 2014, after allowing the States a time to design and develop and prepare themselves, our bill will extend affordable coverage to over 30 million uninsured Americans through a new health insurance exchange which promises to expand choice, increase competition, and rein in cost.

Rhode Islanders who lose their job will be able to purchase insurance on a newly established and government-regulated health insurance market. Many will receive Federal support for the purchase of coverage.

Rhode Islanders employed by a company that does not provide insurance—or inadequate insurance—will be able to purchase insurance on this new market exchange.

Small business owners will be able to easily compare the cost of insurance coverage offered by a multitude of plans through a new health insurance exchange, and it will allow small business owners to pick the coverage that suits their needs and budget of their employees.

Rhode Islanders on Medicare will no longer have to pay out of pocket for important preventive services and no longer spend portions of the year in the so-called “doughnut hole” without paid drug coverage.

Low-income adults, without children, will have access to Medicaid, which
will provide them with insurance at reasonable costs.

Having access to health insurance is important. Individuals, employers, employees, and families will have access to new insurance options after reform, which is important. However, affordability—the cost of family health insurance—is also critically important.

We have examples of States that have already enacted insurance reform that covers their entire population, and what we found is, premiums have gone down significantly since this reform was enacted. We have learned a lot from their efforts, and Federal reform will improve upon those efforts for the rest of the country.

As I suggested before, the average premium for a Rhode Island family is $12,700. If we don’t do something, experts predict this premium will double in just 6 or 7 years. Rhode Islanders will be looking at health insurance bills—just the bills of annual premiums—that many are not able to pay. That is not sustainable. It will literally bankrupt the families of Rhode Island, and they will make a very difficult choice: paying this much money—which for many, if not most, is extraordinarily difficult—thereby buying insurance or doing other things, such as limiting the access their children have for college or not saving for their retirement. We can change that today by moving forward with this legislation.

The Congressional Budget Office has also analyzed the effect of this bill on the premiums that Rhode Islanders pay, and they expect premiums to decrease anywhere from 14 to 20 percent. CBO found these decreases will result from an influx of enrollees with below-average spending for health care.

One of the problems we have in the health care system today is, healthy, young people—unless they are offered health insurance through their employer—don’t typically purchase it. They are the classic free riders. If they get hurt in an accident, they will go to the emergency room and be treated for free. They will not have paid into the system that cares for them. The whole principle of insurance is spreading risk across the largest population to reduce cost. That is precisely what we are doing. This is fundamental to any insurance program.

So this approach will actually lower the cost, as the CBO has reported. Additional legislation will provide that significant tax credits for Rhode Islanders to purchase insurance.

Depending on income, individual Rhode Islanders can expect a $500 to $3,000 break on their insurance costs because of these tax credits. Rhode Island families can expect to save much more—$1,400 to $8,500—on their insurance through these credits. Everyone should recognize the insurance reforms in this bill will mean people will get better coverage at lower costs.

The bill also mitigates the costs facing small businesses, which in my State accounts for 95 percent of all businesses. Every year, these business owners face increasing premiums of 15 to 20 percent. They do not have much choice. Two companies control 80 percent of the market in Rhode Island, and you either accept what is offered or you go without insurance. Every year, they increase the cost. Again, this is not sustainable, not only over the long term but over the next several years.

Starting a business and finding the right personnel is challenging and expensive proposition. Innovation and entrepreneurship is risky. Often startup companies have difficulty hiring qualified individuals because the business owners can’t face these increasing costs of health insurance. In Rhode Island, these kinds of pressures have led to the loss of employer-sponsored health care or reduction in premium assistance from employers.

What has happened over the last several years is, real wages have been flat because we are using all the extra money that in other times would have gone to increased wages. As a result, if you are a middle-income American and you look around through all the struggle and all the work you have done, you have this sense that you haven’t made a lot of real progress in terms of additional wealth or additional money put aside, it is no wonder. You have been paying the indirect costs of an ineffective, inefficient health care system. The money is going into health care. The money is going into—in many respects—health care that is not efficient or effective and it is not going into the paycheck of working Americans.

The reforms set forth in the Patient Protection and Affordable Care Act will strengthen the employer-sponsored health insurance market. There has been some suggestion that this is going to create no opportunities or options for employers to continue to provide health care to their workers. But, according to the CBO, 83 percent of the privately insured Americans will be insured through their employers. That is a dramatic change, nearly double the total of Americans insured through their employer today.

What we are going to see is not a decrease in employer insurance but an increase. I think this is something that will match the best aspects of our economy—individual business men and women making judgments about what’s best for their money and their businesses. It will stop the never-ending trend of increase after increase and will begin to diminish—in fact, in a large way at least begin to diminish that advantage.

While there have been many ill-founded claims about the reform package, the simple fact is that the tax credits provided by this bill is the largest health tax credit bill that has ever been considered in Congress. Over $400 billion in tax credits will be provided to Americans in order to increase affordability.

Since health insurance reform will provide Rhode Islanders access to affordable health coverage, our providers should no longer face the financial pressure from uncompensated care. Health care costs will come down, insurance premiums will be lower, and companies will be able to provide preventive measures to patients so they do not become ill. Today, it is estimated that of all the private insurance premiums we pay in Rhode Island, at least $1,000 dollars of those premiums is paid for uncompensated care in hospitals, which is paid for in our hospitals, in our clinics throughout the State. When we have a significant number—95, 94-plus percent—of Rhode Islanders covered, the uncompensated costs won’t be uncompensated. There will be an insurance program behind these individuals, so they can seek preventive care and they can pay for emergency care and pay for regular care.

The reform will have an impact. The hospitals in my state is contributing in our efforts to insure more Americans and doing so with the knowledge that they can potentially benefit from the fact that people will not be showing up in their emergency rooms without insurance, without their insurance card, and the support their card ensures, to the emergency room.
In addition, the safety net providers throughout the country, our community health centers, will find great support in this legislation.

There will be direct improvements for physicians in Rhode Island. The looming 21 percent Medicare payment reduction will be eliminated. It is impending. We will continue to look for permanent solutions, not only to this issue of Medicare payments but also a payment formula used to pay doctors in a more equitable and more appropriate way.

I am also pleased that we have taken steps to improve and enhance training of a new generation of primary care physicians who will be necessary to fill the increased demand. These improvements will help our overall efficiency.

This bill will also provide seniors with an improved Medicare Program. Nearly one-fifth of my State is on Medicare; over 180,000 Rhode Islanders rely on Medicare. Seniors have had to go into Medicare during their lifetime. They deserve a program that will provide comprehensive coverage at the lowest cost without risk of coverage being terminated. However, that is not the Medicare coverage Rhode Islanders always want and expect. Here is how Medicare does today. Medicare frequently allows the same test for the same complaint to be performed multiple times. This costs money, but it doesn’t necessarily improve patient care. We spend over $1 billion to get Rhode Islanders without prescription drug coverage for parts of the year. This costs them money. And Medicare today is on the path toward insolvency in just 8 short years, which will affect every senior in Rhode Island.

Instead of allowing Medicare to go bankrupt, the comprehensive health reform bill we are currently debating would extend Medicare solvency for at least 5 additional years. Some predict it will be extended for nearly a decade. This is important for seniors enrolled in the program today and those who will soon enroll in the program.

Solvency is extended by reforming the system. Seniors in my State will not have to make multiple trips to their doctors’ offices for the same test for the same complaint because we will eliminate unnecessary duplication and tests and services. They will not fear being readmitted to a hospital after discharge. They will have access to Medicare care coordination after discharge. And they will not put off important preventive care because the out-of-pocket costs are just too great because the cost-sharing component for preventive care will be eliminated.

Many of the seniors are on the Medicare Advantage Program, which is a privatized version of traditional Medicare. Over 65,000 seniors in my State have elected to enroll in this option, and there has been an effort to characterize the changes to this program as undermining that program. The private insurance companies have been saying that for over a month now. Why? Because they profit very handsomely from Medicare Advantage. They spent months telling seniors health reform will take away their coverage. These claims are inaccurate.

We will eliminate excessive overpayments to private insurance companies. In my State, Medicare Advantage plans are paid over 20 percent more per beneficiary than traditional Medicare fee-for-service. This overpayment is particularly astounding given the fact that the Government Accountability Office recently found that 19 percent of Medicare Advantage beneficiaries pay more than traditional Medicare for home health care and 16 percent pay more for inpatient services. Seniors should not have to pay for services that are not covered.

Our efforts will improve health care of seniors and will stabilize Medicare. Also, we should note that we will be doing significant amounts with respect to children. I particularly applaud Senator Bob Casey’s amendment to ensure that Rhode Islanders on Rite Care will not have to fear losing their safety net coverage.

Finally, it is important to note, as I mentioned before, that these reforms are paid for. This is a stark contrast to the past. We look at the Medicare prescription bill in 2003, which I opposed. It was unpaid for, and it was more costly than the amendment which was originally presented to us.

We voted on countless measures outside the normal process of budgeting to fund the wars in Iraq. We voted tax cut after tax cut for the wealthy, which has left my State not prosperous and wealthy but 13 percent of my State uninsured and 15 percent of my neighbors are uninsured. We are moving forward to reduce the deficit with this bill, to provide valuable coverage, to ensure the promise of health care in the United States is fulfilled, not denied.

I yield the floor.

Mr. BAUCUS. Mr. President, pending a potential unanimous consent request by the two leaders, I now yield such time as the Senator from Massachusetts desires.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KIRK. I ask unanimous consent to speak as in morning business, the time to be counted postcloture.

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

(Transfer of debate to the Senate)

Mr. REID. Mr. President, I suggest an unsuccessful cloture vote on the issue appearing on the list, the Economic Stabilization Act of 2008, S. 2278 as amended.

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of Beverly Martin to be a U.S. circuit judge for the Eleventh Circuit; that there be 60 minutes of debate with respect to the nomination, with the time equally divided and controlled between Senators LEAHY and SESSIONS or their designates, that upon the use or yielding back of time, the Senate then proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table, no further motions be in order, the President be immediately notified of the Senate’s action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, reserving the right to object, and I will not be objection, I wish to make sure the Senate is aware of an understanding the majority leader and I have that the substitute amendment referred to in paragraph 1 will be limited to an actual amount when it is offered.

Mr. REID. That is right. And if there are any amendments here that pass, of course, they would automatically be part of the bill.

Mr. MCCONNELL. Mr. President, reserving the right to object, I wish to inquire whether, under that consent request, under that consent request, second-ary amendments would be in order.

Mr. REID. Yes.

Mr. MCCONNELL. Mr. President, I do not object.

The PRESIDING OFFICER. Hearing no objection, without objection, it is so ordered.

The Republican leader is recognized.

THANKING SENATE PAGES MARTIN CHARBONEAU AND MIKHAILA FOGEL

Mr. MCCONNELL. Mr. President, I wish to recognize two young pages who are actually on the floor with us today. Martin Charboneau and Mikhaila Fogel are the pages who energetically volunteered to stay until the Senate adjourns and actually have sacrificed some of their Christmas vacation. Also, they both volunteered their service over the weekend before the Thanksgiving break.

We typically have seven pages at a time, even of the size, the Democratic side and the Republican side, but both Martin and Mikhaila marvelously have worked hard and dutifully, on both sides of the floor—both the Democratic side and the Republican side—to make a 14-person job work with just two people.

One can imagine how hard a task it must be for just two individuals to prepare for the numerous speeches we have had over the course of the past week. I know Senator Reid joins me in thanking them for their gracious and impeccable service to the Senate.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I wish to begin by recognizing the work on this legislation of Leader REID, Chairman BAUCUS, Chairman HARKIN, and Chairman DODD.

I believe, when we recognize what a remarkable effort of leadership Senator REID has provided, bringing together a disparate caucus across extraordinarily complex issues to accomplish something that will be seen in the future as a leap forward for America in reforming the health care system in this country.

Chairman BAUCUS—no one has made a deeper, more committed, personal sacrifice than Senator BAUCUS in advancing this legislation. His commitment to getting this bill done and getting it done right will stand the test of history.

Chairman HARKIN, who succeeded Chairman Kennedy, made major contributions on the wellness provisions.

And also Chairman DODD, who filled in for Chairman Kennedy and continued in the role of handling this legislation, even while being chairman of the Banking Committee, provided an example of legislative leadership that is unmatched.

The four of them have done a superb job in putting together the pieces of the bill that I believe will lead the way to a dramatically improved health care system in our country.

If we are going to be successful, objectively, on the package before us, it is an entirely reasonable and responsible approach. There is no government takeover of health care, no rationing, no cuts to guaranteed Medicare benefits, no benefits for illegal immigrants, and the bill sets a goal of no taxpayer funding for abortion beyond the Hyde amendment provisions in current law.

In fact, this bill does much of what Republicans said they want in a health care plan: it is fully paid for; it reduces deficits in both the short and the long term. It expands coverage and provides assistance to help families and small businesses afford health insurance. It sets new rules to stop insurance company abuses. It reforms the delivery system to control costs and improve quality. It allows for the sale of insurance across State lines. It supports medical malpractice reforms.

Those are facts. Every one of those elements are included in the health care bill. This is an approach that Senators on both sides of the aisle, who want solutions rather than slogans, should embrace.

The need to act is clear. The status quo is simply unsustainable. Health care costs are crushing families, businesses, and even the government. The premiums for individuals and families are rising three times as fast as wages. You can see where we are headed. It is as clear as it can be.

Without action, family health care premiums rise to $22,000 a family by 2019—$22,000, on average, for family health care premiums in 2019, unless we act.

It does not stop there. Premiums, as I have indicated, are skyrocketing, and national health care costs are skyrocketing right along with them. Without action, total health care spending will equal 38 percent of the gross domestic product of the country by 2050. Without action, Medicare will be bankrupt in 2017. The trustees have just told us that will happen. That is 2 years earlier than forecast just last year. Again, Medicare went cash negative already. That means more money is going out than is coming in, in the Medicare accounts, and it will be insolvent—broke—in 8 years. This legislation extends its life by 9 years.

These health care costs are hurting our competitive position in the world. We are spending far more than other countries on health care, leaving less money for research and development, investment, and higher wages for Americans. In fact, as a percentage of our gross domestic product, we spend twice as much as most other advanced countries.

Here it is, as shown on this chart. We are now even higher than 16 percent of our GDP. The latest numbers indicate we have gone to 17 percent of our GDP for health care. That is one in every six dollars. Look at other countries. Japan and the United Kingdom are half as much; Belgium, Germany, Switzerland, France, a little over half as much as we are paying.

In addition with the fact that we are spending more, we are actually performing worse on virtually every metric on health care outcomes. We are ranked 19th in preventable deaths, 22nd in infant mortality, 24th in life expectancy; and we still leave 46 million people without insurance coming in, in the Medicare accounts, and it will be insolvent.

Continuing the status quo is not an option. America can do better, and this bill proves it. The bill before us is fiscally responsible. The nonpartisan Congressional Budget Office, the official scorekeeper, relied upon by both sides of the aisle—tells us the bill reduces the deficit by $130 billion over the first 10 years.
Now, those aren’t my numbers, those aren’t the numbers of the chairman of the Finance Committee, those aren’t the Democratic leader’s numbers. Those are the numbers of the nonpartisan Congressional Budget Office. They say this bill will reduce the deficit by $120 billion over the first 10 years.

The savings in the following decade are even more impressive: between $650 billion and $1.3 trillion. The Congressional Budget Office says:

All legislation that the legislation, if enacted, would reduce Federal budget defi-
cits over the decade after 2019 relative to those projected under current law—with a total effect during that decade that is in a broad range between one-quarter percent and one-half percent of gross domestic product.

One-quarter and one-half percent of GDP for that second 10 years is $650 bil-
lion to $1.3 trillion. Shame on those who get up on the other side and say this is going to increase the deficit. Where is their evidence, other than claims, other than assertions? We are talking about the considered judgment of the Congressional Budget Office that is nonpartisan and is the official score-
keeper for the Congress of the United States.

The bill bends the cost curve for the Federal commitment to health care in the long term. In its December 19 estimate, CBO reports that the proposal would generate a reduction in the Fed-
eral budget commitment to health care during the decade following the 10-
year budget window. So, yes, it bends the cost curve for the Federal expendi-
ture during that period.

This legislation also reforms the insurance market. We have all heard the horror stories. I have loads of letters in my office from constituents telling me about what has happened to them: being dropped because they got sick, even after paying years of premiums; being denied coverage because of pre-
exisiting conditions, in many cases pre-
existing conditions that had nothing to do with the illness for which they now need assistance; and being denied even though they have paid the premiums. This is serious business.

This bill puts a stop to these abuses. It prohibits insurers from denying cov-

erage for preexisting conditions on new policies. It prohibits insurers from re-
sicinding coverage when people become sick, even after paying years of premiums; being denied coverage because of pre-
existing conditions, in many cases pre-
existing conditions that had nothing to do with the illness for which they now need assistance; and being denied even though they have paid the premiums. This is serious business.

The managers’ amendment also cre-

ates a new national plan. The Office of Per-
sonnel Management, the same agen-
cy that currently oversees health plans on Federal employees. Including members of Congress, would select pri-

cate health insurance carriers to offer plans that would be available nation-
wide. These plans would provide new competition for State-based health plans, particularly in areas where just one or two insurers currently dominate the market. At least one multistate plan would have to be a not-for-profit insurer, such as one of the newly cre-

ated co-ops. I am particularly excited by this development.

When we look around the world at the countries with the best outcomes and the lowest cost, one feature stands out: these countries rely on primarily not-for-profit insurance. Germany, France, Switzerland, Belgium, Japan, all have non-profit. They don’t have government-run health care, but they do have universal coverage. They have extremely high-quality health care outcomes and much lower costs than we do. So I believe the not-for-

profit reforms and the co-op op-
tion may, in the long run, play a key role in transforming our system into a more efficient, higher quality system.

This legislation also expands cov-

e rage. According to the Congressional Budget Office, it covers a quarter of the American people. It creates State-
based exchanges for individuals and small businesses. It provides $476 bil-

lion in tax credits to help working Americans and small businesses buy coverage. You don’t hear much from the other side about this $476 bil-

lion of tax assistance for people to af-

ford better health care coverage. It also reforms the delivery system to focus on quality and not quantity. The sad fact is, moving to a system that is based on outcomes, rather than procedures, will be the end of unnecessary and counterproductive procedures. Again, that is not a congressional estimate; that comes from a Dartmouth nation-

wide survey that concluded 30 percent of health care expenditure in this coun-

try is wasted. This bill reforms the de-

livery system in a fundamental way. It contains every delivery system reform that health care experts believe is needed to provide better care while slowing cost growth.

This proposal also extends the sol-

vency of Medicare. Medicare’s actuary says the Senate bill extends the life of Medicare by 9 years. Some on the other side say that because Medicare is head-
ing toward insolvency, we can’t have Medicare savings. What? What are they talking about?

Perhaps the oddest thing I have seen in this debate is the contrast with the last year of the Bush administration. The previous administration sent up a proposal to have nearly $500 billion in savings under Medicare, and we didn’t hear one peep from the other side, not one. In fact, they all said it was criti-

cally important to do. Now all of a sud-
en it is the death of Medicare.

Perhaps the oddest thing about their argument is that now there is an offset for the savings from Medicare providers. The offset is they are going to get 30 million new customers, 30 mil-

lion Americans who haven’t had insur-
ance who will now have it so their unin-
curred costs and then we drop it down, making it more affordable for pro-
viders to provide these savings.

Most of these savings have been ne-
gotiated with providers. Why have they been willing to agree to savings—hos-
pitals, nursing homes, and home health care? It is because they know they are going to get substantially expanded business—30 million customers with in-

surance who previously did not.

This is important legislation. These Medicare savings won’t hurt older Americans. Some on the other side have said you can’t reduce the growth in Medicare costs without taking benefits away from seniors. That is just scare tactics. The Medicare savings provisions lower cost growth without harming bene-
cficiaries.

This legislation also helps my State. I am proud to say it. Some have said the Medicare changes will hurt North Dakota providers. Clearly, they haven’t read the bill. Right now, we get paid way below the average for Medi-
care reimbursement. In fact, we are the second or third lowest State in the country in Medicare reimbursement. North Dakota providers get $5,000 a year per Medicare beneficiary.

In Miami, they get three times as much, more than $16,000 a year to take care of seniors there. Now I would be the first to say it may cost more to provide medicine in Miami than it does in North Dakota, but it is three times as much. The fact is, moving to a system that is based on outcomes rather than procedures will benefit, not hurt, a State such as North Dakota.

In addition, this legislation includes the frontier States provision that Sen-
ator DORGAN and I offered as an amend-

ment. Our provision puts a floor under payments to North Dakota providers and in other States like ours that are rural States that have not received fair levels of reimbursement. It will mean an additional $96 million a year in Medicare payments to my State.

Overall, this bill is a win for North Dakota, a win for the Nation. It re-

duces the deficit, it controls costs, it sav-
s money—only it extends its life for at least 9 years; it embraces choice for American consumers and competition and expands coverage. It re-
forms the insurance industry, and it re-
wards quality and efficiency.

This legislation is an excellent start. I urge my colleagues to allow it to con-

ference committee where we will have
a chance to write the final legislation. No doubt this bill will be further improved as it has been at every step of the process.

Again, let me conclude as I began by thanking the leadership who has made this bill a possibility: Senator Reid, who is here; Senator Dodd, who is here; Senator Enzi, who is here; Senator Enyart from Montana has 7½ minutes to rebut whatever it is, it is all hers.

Washington. I don't know how much that is, of my time to the Senator from Washington. I am going to do it, and it is a moment of which we are all very proud.

When the history of this legislation is written, those four will be recognized as producing something that was critically important for this country. We should salute them.

I yield the Chair and yield the floor. Mr. BAUCUS. Mr. President, I very much thank my good friend from North Dakota for his generous statements. As he knows, this is all teamwork. We are all in this together, all Senators, especially the one who is speaking, the one, with the President, to get health care reform finally passed for all Americans. Teddy Roosevelt started this many years ago, and many Presidents since have been unable to get health care reform passed. I think finally this time we are going to do it, and it is a moment of which we are all very proud.

Mr. President, I yield the remainder of my time to the Senator from Washington. I don't know how much that is, but whatever it is, it is all hers.

The PRESIDING OFFICER. The Senator from Montana has 7½ minutes remaining.

The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I thank my colleague from Montana, the chairman of the Finance Committee, who, I remember, months ago, with a smile on his face, said we can get this done. We are on the verge, and we owe him a huge debt of gratitude. So I thank the Senator very much.

As this debate now moves forward, it has become apparent that some of our colleagues are losing sight of what we are working on. What should be a robust and critical issue that is facing all of our families and businesses is being bogged down by distractions and political gimmicks and obstructions and a lot of delay while American families watch and wait and wonder where they exactly fit into this conversation. So I want to be clear with my colleagues and with Americans across the country today: This bill is about you. It is about your loved ones. It is about the people just like you across the country to bring down your premiums, expand your options, and increase your stability.

It is about helping our economy and creating jobs by reducing the drag that has been created by the skyrocketing premiums and unlocking the potential for new health care careers. It is about supporting the doctors and the nurses, the hospitals and the clinics that work every day to take care of you. It is about helping you or your father or your mother or your children or your grandchildren, by increasing benefits, cutting waste, and strengthening the Medicare on which you depend. And it is about Katerina.

Katerina is a 40-year-old woman from Redmond, WA, and she is one of my more than 10,000 constituents from my home State who have sent me their stories about their experiences with our broken health care system. Katerina is a single mom. She has a good education, she told me, and she has a good job and a solid middle-class lifestyle. But like a lot of Americans this year, struggling in the toughest economy since the Great Depression, she was laid off from her job, and she lost her employer-provided insurance. She was able to scrape enough money together to pay for COBRA coverage, but she told me she didn’t dare go to the doctor because she knew she wouldn’t be able to afford the copays. So though she was technically covered, right, in practice neither she nor her child have access to true health care or preventive services. She found that living that way had some real consequences.

Last month she told me she got an eye infection and eventually had to go to the doctor for treatment. She said after all of her out-of-pocket costs and still with no job and no income, she had to make some very serious and very tough choices about her family’s food and clothing budget. Who knows what would have happened if Katerina or her child got seriously ill.

Our broken health insurance system is failing Katerina, and she is not alone. Millions of people have lost jobs in this economic downturn. Millions of families have been tossed out of their employers’ plans—families who had health care, who felt secure, all of a sudden understand how broken the system really is and how few options they actually have today for affordable care. That is why we need health insurance reform for Katerina and millions of Americans in similar situations and the hundreds of millions of Americans who may switch jobs or move or start small businesses or who just want more affordable, high-quality affordable health care.

Mr. President, let me talk for a minute about how this bill will specifically help Katerina and many others. Our plan sets up a market where people can shop for and purchase insurance, where insurance companies would have to compete for your business, and where people such as Katerina would be able to choose a plan that fits her family best from among a range of options in your price range.

It would inject competition into the insurance market, it will lower costs, and it will give families, such as Katerina’s, more choices. That means instead of just having one choice when she is laid off, which was to purchase high-priced COBRA, Katerina will be able to compare the price and performance of plans and make a decision for her family with the benefit of true options.

That will increase stability and keep insurance companies accountable. Never again will insurance companies be able to drop a family’s plan simply because somebody got sick. No longer will losing your job mean losing access to affordable coverage, and no longer will people such as Katerina have to choose between food, clothing, and health care for herself and her child.

It will also keep families secure by ensuring that all insurance plans offer an adequate level of coverage, including free preventive care that will keep them healthy and ensure that minor, inexpensive medical issues can be treated before they become major, expensive medical problems.

Our plan will increase options, enhance security and stability, and it will reduce costs for people such as Katerina by providing credits and premium assistance. So families will no longer have to worry about losing coverage if they lose a job, switch jobs, move, or get sick.

Mr. President, that is what this plan is about. It is about Katerina, it is about her child, and it is about the millions of Americans in similar situations.

If the status quo wins out, things will only get worse. If some of my colleagues continue to play politics with this issue, Katerina will continue to struggle.

If we continue to have delay and distraction and obstruction, families will pay more for less, they will lose coverage, and they will be denied treatment and continue to have to fight insurance company redtape to get the care they deserve.

That is what this is all about. I am going to continue to stand up and tell the stories of families and small business owners from Washington because they are counting on us to fix this broken system. I urge my colleagues to focus on their States’ families and join with us to pass true health insurance reform.

Before I yield, I want to take this opportunity to make an additional point. As everybody knows, we have been working incredibly demanding schedules in recent weeks. Senators have seen this floor at every conceivable hour—late at night, early in the morning, in the face of a blizzard. Far too frequently, we forget that every time we are here, there are literally hundreds of staff forced to be here along with us. In fact, they are often here long before we arrive and long after we leave. This body could not function without the tireless dedication of these men and women.

Many of them are here now: the clerks, Parliamentarians, cloakroom
There being no objection, the material was ordered to be printed in the Record, as follows:

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13: FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 301(a) DEFICIT-NEUTRAL RESERVE FUND TO TRANSFORM AND MODERNIZE AMERICA’S HEALTH CARE SYSTEM

(As printed in the Record)

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Mr. LEAHY. Mr. President, the urgent need for comprehensive reform of our health care system has not stopped opponents from launching spurious attacks. I understand that the junior Senator from Nevada recently raised a constitutional point of order against the pending health care reform bill. As chairman of the Senate Judiciary Committee, I would like to respond to those who have called into question whether Congress has the authority under the Constitution to enact health insurance reform legislation. The authority of Congress to act is well-established by the text and the spirit of the Constitution, by the long-standing precedent established by our courts, by prior acts of Congress and by the history of American democracy. The legislative history of this important measure should leave no doubt with respect to the constitutionality of our actions.

The Constitution of the United States begins with a preamble that sets forth the purposes for which “We the People of the United States” ordained and established it. Among the six purposes set forth by the Founders was that the Constitution was established “to promote the general Welfare.” It is hard to imagine an issue more fundamental to the general welfare of all Americans than their health.

The authority and responsibility for taking actions to further this purpose is vested in Congress by article I of the Constitution. In particular article I, section 8, sets forth several of the core powers of Congress, including the “general welfare clause,” the “commerce clause,” and the “necessary and proper clause.” These clauses form the basis for Congress’s power, and include authority to reform health care by containing spiraling costs and ensuring its availability for all Americans. The necessary and proper clause of the Constitution provides that “The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States.”

Any serious questions about Congressional power to take comprehensive action to build and secure the social safety net have been settled over the past century. According to article I, section 8, “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.”

The clause has been very broad for actions by Congress to provide for Americans’ social and economic security by passing Social Security, Medicare and Medicaid. Those landmark laws provide the well-established foundation on which Congress builds today by seeking to provide all Americans with access to quality, affordable health care.

The Supreme Court settled the debate on the constitutionality of Social Security more than 70 years ago in the 1937 decision in Helvering v. Davis. Justice Cardozo wrote that the decision to determine whether a matter impacts the general welfare “is not confined in the courts” but falls “within the wide range of discretion permitted to the Congress.” Turning then to the “nation-wide calamity that began in 1929” of unemployment spreading from State to State throughout the Nation, leaving older Americans without jobs and savings, Justice Cardozo wrote, “United States v. Social Security Act: “The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that
such a lot awaits them when journey's end is near."

The Supreme Court reached its decision upholding Social Security after the first Justice Roberts—Justice Owen Roberts—in the exercise of good judgment, reined in the Court's reasoning and voted to uphold the key New Deal legislation. He was not alone. It was Chief Justice Hughes who wrote the Supreme Court's opinion in West Coast Hotel v. Parrish upholding minimum wage requirements as reasonable regulations. The Supreme Court also upheld a Federal farm bankruptcy law, railroad labor legislation, a regulatory tax on firearms and the Wagner Act on labor relations in National Labor Relations Board v. Jones & Laughlin Steel Corporation. The Supreme Court abandoned its judicially created veto over congressional action with which it disagreed on policy grounds and rightfully deferred to Congress's constitutional authority.

Congress has woven America's social safety net over the last three score and 12 years. Congress's authority to use its power and its judgment to promote the general welfare cannot now be in doubt. America and all Americans are the beneficiaries of growing old and means growing poor. Being older or poor no longer means being without medical care. These developments are all due to congressional action.

These Supreme Court decisions and the principles underlying them are not in question. As Dean Erwin Chemerinsky of the University of California Irvine School of Law wrote in a recent op-ed in The Los Angeles Times: "Congress has broad power to tax and spend for the general welfare. In the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress' power. The ability in particular of Congress to tax people to spend money for health coverage is long established with programs such as Medicare and Medicaid." I will ask that this article be printed in the RECORD following my remarks.

The right-wing opponents of health care reform are so intent on partisan warfare that they are even calling into question the constitutionality of America's established social safety net. They would leave American workers without the protections their lifetime of hard work earned them. They would turn back the clock to the hardships of the Great Depression, and thrust modern American back into the conditions of Dickens' novels. That is what some extremists will be urging another Justice Roberts—Chief Justice John Roberts—to do. That path should be rejected now, just as it was when another inspiring President led the effort to confront the economic challenges facing Americans. To strike down principles that have been settled for nearly three quarters of a century would be wrong and damaging to the Nation.

For months now, we have been debating whether or not to pass health care reform. We can debate whether to control costs by having all Americans be covered by health insurance. In fact, we have been having that debate for months and months in this Congress, through extensive public markups in two committees as well as in the House of Representatives, and now for weeks on the Senate floor. We have considered untold numbers of amendments in committees and several before the Senate. That is what Congress is supposed to do. We consider legislation, debate it, vote on it and act in our best collective judgment to promote the general welfare. Some Senators will agree and some will disagree, but it is a matter for the full Senate to decide. I wish we could do so by a majority but Senate Republicans abhor majority rule now that they are not in control. So it will take an extraordinary majority for the Senate's will to be done.

Tomorrow, we will vote on a point of order challenging the pending bill's constitutionality. The fact that Senate Republicans disagree with the majority's effort to help hardworking Americans obtain access to affordable health care does not make it unconstitutional. As Justice Cardozo wrote in upholding Social Security, "whether wisdom or unwise resides in the scheme of benefits set forth . . . it is not for us to say. The answer to such inquiries must be left to the courts." I agree. Justice Cardozo understood the separation of powers enshrined in the Constitution and the Supreme Court's precedent. In 1803, our greatest Chief Justice, John Marshall, upheld the constitutionality of the Judiciary Act in Stuart v. Laird noted that "there are no words in the Constitution to prohibit or restrain the exercise of legislation power." That is true here, where Congress is acting to provide for the general welfare of all Americans.

I believe that Congress can and should decide whether the problems of the lack of availability and affordability of health care, and the rising health care costs that burden the American people, is a problem, "plainly national in area and dimensions," as Justice Cardozo wrote of the widespread crisis of unemployment and insecurity during the Great Depression. I believe that it is right for this Congress to act to assure the general welfare of the Nation to ensure that all Americans have access to affordable quality health care. But whether other Senators agree or disagree with me, none should argue that we should take steps that turn back the clock to the Great Depression when conservative activist judges prevented Congress from exercising its powers to make that determination. As Chief Justice Marshall wrote in his landmark decision in McCulloch v. Maryland: "Let it be remembered that it is in the general welfare of the Nation to assure that all Americans have access to affordable quality health care. But whether other Senators agree or disagree with me, none should argue that we should take steps that turn back the clock to the Great Depression when conservative activist judges prevented Congress from exercising its powers to make that determination. As Chief Justice Marshall wrote in his landmark decision in McCulloch v. Maryland: "Let it be remembered that it is in the general welfare of the Nation to assure that all Americans have access to affordable quality health care."

In seeking to discredit health care reform, the other side relies on a resurrection of long-discredited legal doctrine, upheld by a conservative activist Court to take away Congress's hands by substituting their own views of property to strike down laws such as those guaranteeing a minimum wage and outlawing child labor. They have to rely on such cases of unbridled conservative judicial activism as Lochner v. New York, Shechter Poultry Corporation v. United States, Reagan v. Farmers Loan and Trust and the infamous Dred Scott case.

Those dark days are long gone and better left behind. The Constitution, Supreme Court precedent, our history and congressional action all stand on the side of Congress's authority to enact health care legislation including health insurance reform. Under Article I, Congress has the power "to regulate Commerce with foreign Nations, and among the several States." Since at least the time of the Great Depression and the New Deal, Congress has been understood and acknowledged by the Supreme Court to have power under the commerce clause to regulate matters with a substantial effect on interstate commerce. The Supreme Court has long since upheld laws like the Fair Labor Standards Act against commerce clause challenges. Congress had the authority to outlaw child labor. The days when women and children could not be protected, when the public could not be protected from sick chickens infecting them, when farmers could not be protected and when any regulation that did not guarantee profits to corporations are long past. The reach of Congress's commerce clause authority has been long established and well settled.

Recent decisions by a Supreme Court dominated by Republican-appointed justices have affirmed this rule of law. In 2005, the Supreme Court ruled in Gonzales v. Raich that Congress had the power under the commerce clause to prohibit the use of medical marijuana even though it was grown and consumed at home, because of its impact on the national market for marijuana. Surely if that law passes constitutional muster, so will Congress's action to regulate the health care market that makes up one-sixth of the American economy meets the test of substantially affecting commerce. Conservatives cannot have it both ways. They cannot ignore the settled meaning of the Constitution as well as the authority of the American people's elected representatives in Congress.

The regulation of health insurance clearly meets the test from Raich, whether the activities "taken in the aggregate, substantially affect interstate commerce." Addressing these problems is at the core of Congress's powers under the commerce clause. In
The claim that an insurance mandate either would be unilateral or would go beyond the scope of Congress’ powers. And second, they say that people have a right to be uninsured and that requiring them to buy health insurance violates individual liberty. Neither argument has the slightest merit from a constitutional perspective.

Congress has broad power to tax and spend for the general welfare. In the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress’ power. The ability in particular of Congress to tax people to spend money for certain purposes has been long established with programs such as Medicare and Medicaid.

Congress has every right to create either a broad new tax to pay for national healthcare programs or to impose a tax only on those who have no health insurance. The reality is that virtually everyone will, at some point, need medical care. If a person has certain kinds of communicable diseases, the government will insist that he or she be treated whether they are insured or not. A tax on the uninsured is a way of paying for the costs of their likely future medical care.

Another basis for the power of Congress to impose a health insurance mandate is that the legislation and amendment I introduced to repeal the McCarran-Ferguson was wrongheaded and would require a century of progress. The author of the draft or to pay taxes—is within the constitutional authority of the Congress just as health insurance reform is. No conservative activist court should overstep the judiciary’s role by seeking to turn back the clock and deny a century of progress. The authority of our government is established by the Constitution, judicial precedent, and our history of legislation promoting the general welfare and protecting the economic security and health of Americans.

The cumulative economic effects on the Nation of the rising costs of health care are significant, with those costs making up a large percentage of our economy and with American businesses struggling to provide benefits to their employees. As set forth in a paper by Georgetown University and the O’Neill Institute for National and Global Health Law, the requirement for individuals to purchase health insurance would address the problem of free riders, millions of Americans who refuse to buy health insurance and then rely on expensive emergency health care when faced with medical problems. This shifts the costs of their health care to people who do have insurance, which has a significant effect on the costs of insurance premiums for covered Americans and on the economy as a whole. A requirement that all Americans have health insurance—like requirements to be vaccinated or to have car insurance or to register for the draft or to pay taxes—is within congressional power if Congress determines it to be essential to controlling spiraling health care costs. Requiring that all Americans have health insurance coverage, and preventing some from obtaining emergency services in place of regular health care, can and will help reduce the cost of health insurance premiums for those who already have insurance.

Whether Senators agree or not on the necessity to reform our health care system and health insurance, I trust that all Senators, Republican, Democratic and Independent, agree that it is our responsibility to act and within Congress’s constitutional authority to legislate for the general welfare of all Americans.

Mr. President, I ask unanimous consent to have printed in the RECORD the Los Angeles Times op-ed to which I referred.

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

[From the Los Angeles Times, Oct. 6, 2009]
specious. Most states have a requirement for mandatory car insurance, and every challenge to such mandates has been rejected. More important, since 1937, the Supreme Court has expressly rejected objections to paying Social Security taxes on religious grounds. More generally, the Supreme Court has ruled that individuals do not have a right to an exemption from a general law on the ground that it burdens their religion.

There is much to debate over healthcare reform and how to achieve it. But those who object on constitutional grounds are making a faulty argument that should have no place in the debate over this important public issue.

Mrs. FEINSTEIN. Mr. President, I rise to discuss an amendment to create a medical insurance rate authority and rate review process that I filed to the Patient Care and Affordable Choice Act.

Unfortunately, because of the objections of one of my colleagues, my amendment was not included in the final bill before us today.

I am profoundly disappointed. I would like to take a few minutes to discuss why I believe this proposal is so important and why, without it, we can expect to see skyrocketing health insurance premiums.

I am very concerned that health insurance companies will seek to exploit the time between passage of the bill, and 2014, when reforms are fully in place.

Credit card companies provide a useful example. Earlier this year, Congress approved major credit card reform legislation. However, the consumer protections are not fully effective until February 2010.

Credit card companies have taken full advantage of this interim period to raise rates, with many card interest rates increasing 20 percent over the last year.

I am very worried that health insurance companies will do the same thing. And I believe the rate authority amendment is essential to stopping them.

In some States, insurance commissioners have the authority to review rates and increases and block rates that are found to be unjustified. According to a 2008 Families USA report, 33 States have some form of a prior approval process for premium increases.

The same report describes several notable successes among States that use this process, including . . . regulators in North Dakota were able to reduce 37 percent of the proposed rate increases filed by insurers. Maryland used their State laws to block a 46-percent premium increase after a company charged artificially low rates for 2 years. The decision was upheld in court. New Hampshire regulators were able to reduce a proposed 100 percent rate increase to 12.5 percent.

But in other States, including California, insurance commissioners do not have this ability.

And some States have laws like this on the books, but do not have sufficient resources to review all the rate changes that insurance companies propose.

Consumers deserve full protection from unfair rate increases, no matter where they live.

The amendment I have proposed would ensure that all Americans have some level of basic protection. The amendment will strengthen a provision included in the underlying bill, which already requires insurance companies to submit justifications and explain increases in premiums. They must submit these justifications to the Secretary of Health and Human Services, and they must make these justifications available on their Web site.

I believe we must do more.

The amendment asks the National Association of Insurance Commissioners to produce a report detailing the rate review laws and capabilities in all 50 States and the Secretary of HHS will then use these findings to determine which States have the authority and capability to undertake sufficient rate reviews to protect consumers.

In States where insurance commissioners have authority to review rates, they will continue to do so.

In States without sufficient authority or resources, the Secretary of HHS will review rates and take any appropriate action to deny unfair requests.

This could mean blocking unjustified rate increases, or requiring rebates, if an unfair increase is already in effect.

This will provide all American consumers with another layer of protection from an unfair premium increase.

The amendment would require the Secretary of Health and Human Services to establish a medical insurance rate authority as part of the process in the bill that enables her to monitor premium costs.

The rate authority would advise the Secretary on insurance rate review and would be composed of seven officials that represent the full scope of the health care system including: at least two consumers; at least one medical professional; and one representative of the medical insurance industry.

The remaining members would be experts in health economics, actuarial science, or other sectors of the health care system.

The rate authority will also issue an annual report, providing American consumers with basic information about how insurance companies are behaving in the market. It will examine premium increases, by plan and by State, as well as medical loss ratios, reserves and solvency of companies, and other relevant behaviors.

This data will give consumers better information. But more importantly, it will give the newly created insurance exchanges better information.

Under the amendment, the Secretary of Health and Human Services, and the relevant insurance commissioner, will recommend to exchanges whether a company should be permitted to participate in the exchange.

So companies should be put on notice: unfair premium increases and other unfair behaviors will come with a price. Millions of Americans will rethink the credits of a partisan coverage in the exchange beginning in 2014. Insurance companies will need to demonstrate that they are worthy of participating in this new market, and receiving Federal money to cover uninsured Americans.

This concern about premium increases stems from the fact that we are the only industrialized nation that relies heavily on a for-profit medical insurance industry to provide basic health care. I believe, fundamentally, that all medical insurance should be not for profit.

The industry is focused on profits, not patients. And it is heavily concentrated, leaving consumers with few alternatives when their premiums do increase.

As of 2007, just two carriers—WellPoint and UnitedHealth Group—had gained control of 36 percent of the national market for commercial health insurance.

Between 1996 and 2005, there has been more than 400 mergers of health insurance companies, as larger carriers have purchased, absorbed, and enveloped smaller competitors.

In 2004 and 2005 alone, this industry had 28 mergers, valued at more than $53 billion. That is more merger activity in health insurance than in the 8 previous years combined.

Today, according to a study by the American Medical Association, more than 40 percent of American health insurance markets are highly concentrated, as characterized by U.S. Department of Justice guidelines. This means these companies could raise premiums or reduce benefits with little fear that consumers will end their contracts and move to a more competitive carrier.

In my State of California just two companies, WellPoint and Kaiser Permanente, control more than 58 percent of the market. In Los Angeles, the top two carriers controlled 51 percent of the market.

Record levels of market concentration have helped generate a record level of profit increases.

Between 2007 and 2007, profits at 10 of the largest publicly traded health insurance companies soared 428 percent from—$2.4 billion in 2000 to $12.9 billion in 2007. This is Health Care for America Now, Premiums Soaring in Consolidated Health Insurance Market, May 2008.

The CEOs at these companies took in record earnings. In 2007, these 10 CEOs
made a combined $118.6 million. The CEO of CIGNA took home $25.8 million; the CEO of Aetna took home $23 million; The CEO of UnitedHealth took home $13.2 million; and the CEO of WellPoint took home $9.1 million.

I am concerned that this profit-seeking behavior will only worsen, now that insurance companies know that health reform will change their business model.

Insurers know that come 2014, they will be playing by new rules: No discriminating based on preexisting conditions. No cherry picking and choosing to cover only the healthy. No charging women or older people astronomical rates. No dropping coverage once someone gets sick.

Insurers know these changes are coming. Listen to a comment made by Michael A. Turpin, a former senior executive for UnitedHealth. He is now a top official at an insurance brokerage firm, and he said that insurers were "under so much pressure to post earnings, they're going to make hay while the sun is shining."

"Make hay while the sun is shining." That means these companies will try to make as much money as they possibly can, for as long as they can.

That is why a rate review amendment is so important.

Frankly, I wish the health reform bill before us would go further and eliminate the for-profit health insurance industry.

But since this bill chooses to maintain a for-profit industry, we must do the next best thing and ensure that it is thoroughly regulated. Insurance companies should not be able to take advantage of the fact that affordable health care is a basic life need. In effect, they have the power to increase their prices at will, knowing that people will continue to pay as long as they can afford to do so.

This amendment certainly will not fix all of the ills of a for-profit insurance industry, but I believe it makes a needed improvement in the underlying bill and will help protect consumers from unfair increases. Without it, I worry that consumers in far too many States will see major premium increases.

I will continue to work to see that this amendment is included in the final version of health reform legislation. Without it, too many Americans will still lack protection from unfair rate increases.

I ask unanimous consent that a copy of a support letter from California organizations be printed in the Record.

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

Hon. HARRY REID,
Majority Leader of the U.S. Senate, Hart Office Building, Washington, DC.

Re Support of amendment to HR. 3590 to improve rate review of increases in health insurance premiums.

Dear Senator Reid: Thank you for your leadership in advancing health reform this year. We, the undersigned organizations, support a proposed amendment by Senators Feinstein, Rockefeller and others that would provide greater specificity in terms of rate review of increases in health insurance premiums.

The proposed amendment:

- Creates a rate review authority that could delay or modify unjustified rate increases or order rebates to consumers.
- Defines potentially unjustified rate increases as increases which exceed market averages.
- Gives priority to rate increases that have a pattern of excessive premium increases, low medical loss ratios or other market conduct.
- Allows a State to conduct the rate reviews.

We support the provisions of health reform which make health insurance more affordable for individuals and businesses. This amendment is consistent with the stated intention of the "Patient Protection and Affordable Care Act," and provides greater specificity to the provisions on "ensuring that consumers get value for their dollars."

The proposed amendment prevents anticipatory price increases by health insurers in advance of full implementation of health reform. Scrutiny of rate increases will have a deterrent effect on increases in premiums that are out of line. For these reasons, we support the proposed amendment.

Sincerely,

ANGIE WEL, Legislative Director, California Labor Federation.

MASTY MARTINEZ, Policy Director, Cal-Par-Ethnic Health Network.

MICHAEL RUSSO, Health Care Advocate and Staff Attorney, California Public Interest Group (CALPIRG).

SONYA VASQUEZ, Policy Director, Community Health Councils, Inc.

GARY PARMSH, Director, Council of California Seniors.

ANTHONY WRIGHT, Executive Director, Health Access California.

BILL A. LLOYD, Executive Director, Service Employees International Union California State Council.

REV. LINDA RASMUS, Executive Director, Unitarian Universalist Legislative Ministry Action Network—California.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. WICKER. Mr. President, I ask unanimous consent that several Republican colleagues and I be allowed to engage in a colloquy for the next hour.

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

Mr. WICKER. Mr. President, I thank my friend from Washington for com-
with another $1.3 billion over the next 10 years to pay for what we are going to be required to do by Congress—in its wisdom.

How is it fair that one Senator from Nebraska goes behind closed doors with the majority leader and cuts this deal so that I don’t have to pay this extra tax, and they don’t have to do without services in other State programs to come up with the money? No one in this building—nobody within the sound of my voice—can come in here and explain why that is fair.

The fact is, the majority leader needed that vote, and that was part of the deal that was cut. Now citizens in Arizona, citizens in Wyoming, citizens in Mississippi, in Arkansas, and in Louisiana—we will have to come up with the extra Federal tax money on our part, but the Federal Government can cover all of the additional costs—State and Federal—in Nebraska.

Mr. McCAIN. If the Senator will yield, on that map, I wonder where there is a sticker for the State of Florida? According to a published report by one of my favorite columnists, Dana Milbank, of the Washington Post:

Gator Aid: Senator Bill Nelson inserted a grandfather clause that would allow Floridians to preserve their pricey Medicare Advantage program.

So maybe we should have one of those stickers for Florida there. By the way, that will cost my constituents more money because they will not have that same deal. Should there be a sticker for Montana?

Again, according to Dana Milbank:

Handout Montana: Senator Max Baucus secured Medicare coverage for anybody exposed to asbestos—as long as they worked in a mine in Libby, Montana.

Should there be a sticker here?

Continuing, Dana Milbank says:

Iowa pork and Omaha Prime Cuts: Senator Tom Harkin won more Medicare money for low-volume hospitals of the sort commonly found in Iowa.

Maybe there should be a sticker for that. I don’t know if you have North Dakota in there. Dana Milbank says:

Meanwhile, Senators Byron Dorgan and Kent Conrad, both North Dakota Democrats, would enjoy a provision that would bring higher Medicaid payments to hospitals and doctors in “frontier counties” of states such as—let’s see here—North Dakota!

Should there be one for Hawaii? Mr. Milbank goes on to say:

Hawaii, with two Democratic senators, would get richer payments to hospitals that treat many uninsured people.

Should there be a sticker there for Michigan? Mr. Milbank says:

Michigan, home of two other Democrats, would earn higher Medicare payments for some reduced fees for Blue Cross/Blue Shield. Vermont’s Senator Bernie Sanders held out for larger Medicaid payments for his state. (neighboring Massachusetts would get one, too).

I guess there are a number of States that maybe should have stickers on them so that the American people can see where these special deals were cut out, and the majority of the population of this country can see where they were not. They are going to pay while those States pay less because of not just their location but because they happen to have been behind closed doors and cut special deals.

Mr. MCCAIN. I ask the Senator to consider if the Senator would yield briefly.

Mr. BAUCUS. I am pointing out, as the Senator well knows, different States receive different Federal contributions to Medicaid. It varies according to States. The average is about 57 percent Federal. The average for all States on average is 57 percent of the cost of Medicaid is paid for—

Mr. MCCAIN. If that is the case—

Mr. BAUCUS. Let me finish.

Mr. MCCAIN. If that is the case, we will be glad to have the same provision that was inserted for the State of Florida. You don’t have a problem with that, do you?

Mr. BAUCUS. Let me answer the question.

Mr. MCCAIN. Do you have a problem with that?

Mr. BAUCUS. I can answer only one question at a time. The first question is from the Senator from Mississippi. Then, after 2017, all States get 90 percent—

Mr. WICKER. The Senator yielded to me the other day, and I appreciate that. We have a number of Republicans who want to speak during our hour.

Mr. MCCAIN. My question to the Senator from Montana is this: Would the Senator from Montana be willing to have the same provision that Senator Nelson, according to these reports, inserted, a grandfather clause that would allow Floridians to reserve their price in the Medicare Advantage Program?

Would he accept an unanimous consent request right now that same provision again?

I ask unanimous consent that the same provision that was put in for the State of Florida by Senator Nelson would apply to every State in America.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Reserving the right to object, I think it would be highly imprudent for me not to object, so I will object to that request. I also point out that on average, Uncle Sam pays 90 percent of the Medicaid payments for this expansion of population after the year 2016.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCAIN. I think the fact that an objection was heard resolves the case. Those are comforting words on the part of the Senator from Montana, whom I appreciate, but the fact is, there are special deals for special people. It is well known. It is very well known.

I mention to you—sort of a personal privilege here—the Senator from Louisiana came to the floor this morning and said:

I, John McCain, prior to this hearing, had numerous reports that the President is carrying out the will of the majority of the people to try to provide them hope and opportunity.

I say in response to that, I really did not need to be reminded. I had not forgotten. Sometimes I would very much like to remand that. I appreciate that, but I appreciate the reminder.

The fact is that the Senator from Louisiana and other Senators should know that poll after poll, public opinion, partially because of what the Senator from Mississippi is pointing out—the latest being “U.S. Voters Oppose Health Care Plan by Wide Margin.” A Quinnipiac poll finds 3 to 1 that the plan should not pay for abortion. And it says American voters mostly disapprove of the plan 53-36 and disapprove 56-39 percent President Obama’s handling of the health care issue.

If I can remind my friend and colleague from Louisiana, I did carry her State.

Mr. BAUCUS. The Senator carried my State too.

Mr. McCAIN. And the State of the Senator from Montana.

Mr. JOHNSON. If I may jump in here, probably like every Senator here, I read the newspapers every day. It happened to be as I started my day. There was an editorial in the Lincoln Journal Star on December 21 that speaks to this issue of special deals. I thought it
was excellent. The Lincoln Journal Star has covered me for a long time. Sometimes I agree with them, sometimes I do not. Sometimes they agree with me, sometimes they do not. But I have always respected the work they do.

Here is what they said in their editorial:

Since when has Nebraska become synonymous for cynical “what’s in it for me”-type politics?

The form “Cornhusker kickback” is already a favorite of television’s talking heads.

They go on to say:

That’s how the rest of the country sees [this] deal.

The editorial continues:

Under its provisions, the federal government would pay all additional Medicaid costs for Nebraska “in perpetuity.” The Congressional Budget Office has estimated the deal may be to the benefit of the people of my State. But is a U.S. Senator’s job to go out and do something which is at the expense of the people of another State simply by virtue of the fact that he represents this State? But is a U.S. Senator, Arizona. So of Arizona, Nebraska, Mississippi, et cetera?

Mr. MCCAIN. If the Senator will——

Mr. JOHANNS. If I may finish, I say to Senator MCCAIN, and then you can ask me.

They say this:

It’s time to push the reset button on health care reform.

The effort has gone awry.

Mr. MCCAIN. But also, doesn’t this bring up a larger issue—I ask all my colleagues to comment on this—whether our job here is to do whatever we can to just simply help our State, even if it is at the expense of other States, as the Senator from Mississippi pointed out, or is our title U.S. Senator, Arizona, Mississippi, et cetera? My title is not Arizona Senator. U.S. it is U.S. Senator, Arizona. So of course I am here to represent the people of my State. But is a U.S. Senator’s job to go out and do something which would then be at the expense of the citizens of another State simply by virtue of their clout and influence? Is that what we were sent here by our constituents to do?

Is it true what the majority leader said yesterday:

“I don’t know if there is a Senator that doesn’t have something in this bill that was important to them.” Senate Majority Leader HARRY REID reasoned when asked at a news conference Monday about the cash-for-clout accusation. “And if they don’t have something important in it to them, then it doesn’t speak well of them.”

Does it speak well of us when we do something like the Senator from Mississippi pointed out, that favors Libby, MT, and not the rest of the country, that helps the seniors in Medicare Advantage in Florida and not in Arizona?

Is that what we were sent here to do? That has never been my view of what our obligations to our citizens are, but also to the citizens of this country.

I ask my colleagues to comment.

Mr. RISCH. Mr. President, here is what this has come to. In the next 48 hours, this 2,400-page bill is going to pass the Senate. But how did we get there? Was it done the way things are usually done in this body? Not at all. One party has been able to gather 60 votes for this. Not one person from the other party is going to vote for it. How can they afford a $10 billion over 10 years?

They go on to say by arguing this out? They did not do that. They have bluntly, boldly, and on the front of virtually every newspaper in this country bought the votes to pass this bill, to get to the 60. They bought it with their money, they bought it with the American people’s money. Now, that is wrong.

The explanation I heard from the majority leader the other day is: Well, that is the way this is done. That may be the way this is done in banana republics, that may be the way this is done in Third World countries, but this is America. The American people are outraged over this. The other party ought to be outraged.

I heard one Member quoted as saying: Well, I was too stupid to get any money for my State in there. I heard the other side say: You are not doing your job if you don’t have something in there for you. Where is the outrage from the other side, not only about the process but how they are getting snookered by some other members of our party? Where is the outrage?

I watched the debate on the other side and have seen Members come down and say: The American people want this. Are they living in a cave? Sure, there are a handful of American people that want to do what the other side does. Do they want to do what the American people want?

I have listened to anecdote after anecdote from the other side. There are some very touching stories, and everybody over here is empathetic with them. But you don’t legislate using anecdotes because you are only hearing one side of the story; you are not hearing all the facts dealing with the anecdotes, and to then pat this 2,400-page bill and say this will solve that, that is not the way you legislate, and it is certainly not the way you argue a point.

Stop coming out here saying the American people want this bill. The American people do not want it. You want it, but the American people do not want it. Leaders in your own party do not want it. The labor unions do not want it. Nobody wants this thing, and most of all small business does not want this bill. I have listened to anecdote after anecdote from the other side. There are some very touching stories, and everybody over here is empathetic with them. But you don’t legislate using anecdotes because you are only hearing one side of the story; you are not hearing all the facts dealing with the anecdotes, and to then pat this 2,400-page bill and say this will solve that, that is not the way you legislate, and it is certainly not the way you argue a point.

Don’t tax our health care benefits. We should not be taxing health care benefits. Even the labor unions have said: Don’t tax our health care benefits. We agree with them. We are on the side of the labor unions. We should not be taxing health care benefits.

Association Builders and Contractors is against it. The National Association of Manufacturers is against it, the Independent Electrical Contractors, the International Franchise Association. Even the labor unions have said: Don’t tax our health care benefits. We agree with them. We are on the side of the labor unions. We should not be taxing health care benefits.

But set all that stuff aside. These are all people who have an ax to grind. The American people do not want this bill.

These people who are coming out here saying the American people want this bill, I don’t know whether they are not reading the newspapers, whether they are not reading their own e-mails at the side of the story, you are not hearing all the facts dealing with the anecdotes, and to then pat this 2,400-page bill and say this will solve that, that is not the way you legislate, and it is certainly not the way you argue a point. Stop coming out here saying the American people want this bill. The American people do not want it. You want it, but the American people do not want it. Leaders in your own party do not want it. The labor unions do not want it. Nobody wants this thing, and most of all small business does not want this bill.

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The Small Business Entrepreneurship Council says:

Small business group say Reid health bill more of the same—more taxes, mandates, big spending, and nothing to help lower insurance costs.

They devote a paragraph to the many special deals cut, and the Senator’s chart illustrates one.

Mr. MCCAIN. If the Senator will——

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They say this:

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Mr. MCCAIN. But also, doesn’t this bring up a larger issue—I ask all my colleagues to comment on this—whether our job here is to do whatever we can to just simply help our State, even if it is at the expense of other States, as the Senator from Mississippi pointed out, or is our title U.S. Senator, Arizona, Mississippi, et cetera? My title is not Arizona Senator. U.S. it is U.S. Senator, Arizona. So of course I am here to represent the people of my State. But is a U.S. Senator’s job to go out and do something which would then be at the expense of the citizens of another State simply by virtue of their clout and influence? Is that what we were sent here by our constituents to do?

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Does it speak well of us when we do something like the Senator from Mississippi pointed out, that favors Libby, MT, and not the rest of the country, that helps the seniors in Medicare Advantage in Florida and not in Arizona?
until later is plain gimmicky. They say: Oh, look how wonderful this is. It is not going to add to the national deficits because we are going to collect taxes for 4 years, and only then are we going to start the benefits.

What have we done? When all is said and done and you strip it away, you have $2.5 trillion and 2,400 pages that most people do not understand, higher taxes, and higher insurance premiums.

I will give you one fact that is the best reason to vote against this bill; that is, it cuts 5% trillion out of Medicare benefits. If you are a senior watching, 5% trillion of Medicare benefits is going to disappear. I heard the President say and I heard my friends on the other side say: Look, if you like your program, if you like your insurance plan, you are going to be able to keep it. Try to tell that to the people who are on Medicare Advantage. It is being stripped. It is being eliminated under this bill. And you read the rule and regulations under this bill, the plan you have will not even exist when it is done.

You know, I have heard the other side say: Oh, you Republicans are just playacting. The American people are frightened. Let me tell you something. The American people are frightened. They are afraid. It isn’t just this health care bill, they have sat here for the last year, and they have watched stimulus packages worth $1 trillion. They have watched multibillion-dollar bailouts. They have seen buyouts. They have seen trillion-dollar deficits running up. They have seen the national debt now running into the trillions. And, yes, they are afraid.

But it isn’t us that is doing it to them, it is you that have done it to them. It is you that have committed the actions that have put the fear into the hearts of the American people. Don’t you think for one moment you have the opportunity still to stop this. You can do it. The American people don’t want this. Stop the insanity. I yield the floor.

Mr. WICKER. I will say to my friend, I am afraid. I am afraid for my country. We are going to have a vote sometime between now and Christmas Eve on raising the debt limit. It will just be a short-term thing. I doubt if a single Republican will vote for that. Then we will have to come back again in February and do it all over again.

The debt that is piling up on our country is something to be frightened about. It is something we need to fight against and be resolute about. We are not shedding crocodile tears, but I am frightened by this debt, and we should be, if we want our economy to stay strong. The fact we are adding $2.5 trillion in an entitlement program, which apparently the majority has the votes for, is simply going to add to this enormous debt.

So it is no wonder, when you add the Medicare cuts, the taxes that most States are going to have to pay—all unless they cut a special deal—on top of the tremendous national debt that we are facing, the American people are frightened. They have a right to be frightened and worried.

Mr. BARRASSO. I don’t know how many of my colleagues have seen the editorial in today’s Investors Business Daily.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I am going to refer.

There is another objection, the material was ordered to be printed in the Record, as follows:

LOUISIANA PURCHASE AND OHMA STAKES

Politics: Mary Landrieu’s payoff was the new “Louisiana Purchase.” Ben Nelson got Uncle Sam to pick up Nebraska’s future Medicaid tab. Maybe we should just put Senate votes up on eBay.

Nelson, the 60th vote in the middle-of-the-night Senate party line vote on health care reform, will go down in American political history as the inventor of the permanent earmark. His seemingly principled stand against subsidies for abortion evaporation like the morning dew as he decided to take what was behind door No. 1. The deal for special Medicaid funding for Nebraska, along with Vermont and Massachusetts, which has a special election to fill the seat of the late Sen. Ted Kennedy, came in January.

Under the Senate bill every state is equal, but some are more equal than others. The other states and their taxpayers—that means you, Medicaid—won a permanent exemption from the state share of Medicaid expansion for Nebraska forever. That is what this Senate vote is all about. It goes on saying this is not what legislating is about; that this is not compromise, rather, it is about bribing.

Mr. President, this is horrible for us as a nation to have these things written about this institution, when we should be way above any of these sorts of claims.

I look at that map that my colleague from Mississippi has up, with just Nebraska on there as the special deal, and I do not believe that is the way legislation should be written. We should be looking at ways to improve health care for all Americans, improve the quality, make it more affordable, make it more available to people, and give them the access they need.

I brought four amendments the other day, after Senator Reid brought his massive amendment to the floor, and each was rejected. They were things that would actually improve this bill and make it better for Americans.

So I stand here, looking at this, and reading headline after headline and editorial after editorial about just how very bad is the way this is being pushed forward. We certainly wouldn’t want any young child to know how this is happening in their country, as we try to get them involved in this process and learn and study and feel that maybe they should become involved in this. This isn’t what legislating in America is all about. We are better than this.

If you have to do these sorts of things to get a 60th vote, then the bill isn’t good enough to pass. If the ideas aren’t good enough to get the votes, then it shouldn’t pass. In this country, we look for bipartisan solutions to the big issues of the day. That is what we did.
in the Wyoming Legislature. Major issues passed with overwhelming numbers. That is what has happened in this country throughout the course of history. The big bills have come forth with large numbers of supporters, and that is how you get the country in the United States personally and affect one-sixth of our economy. That is not the way to do it.

It has not been the way, it shouldn’t be the way, and it should never be the way again. I am looking for some Democrat to stand up and say: This isn’t the way, and I am going to not vote for this bill.

Mr. MCCAIN. A Senator from Colorado came to the floor and proudly stated that he had not asked for anything or gotten anything, and I will ask the Senator from Nebraska a question because his State seems to be at the center of attention. I have never seen anything in that little booklet that is put out by the Government Printing Office that talks about how our laws are made. We give it to our constituents and send it to schools all over America. I have never seen anything in that little booklet—it is a very interesting booklet—that says you get behind closed doors and you cut deals.

I know we are all a little cynical about politics and campaign promises, but the negotiating behind closed doors is especially so, particularly after your President says during the campaign, time after time: I am going to have all the negotiations around a big table. We will have doctors and nurses, hospital administrators, insurance companies, drug companies, they will get a seat at the table. They just would not be able to buy every chair. But what we will do, we will have negotiations televised on C-SPAN. People can see who is making arguments on behalf of their constituents and who is making arguments on behalf of the drug companies.

Of all people he recognized, the drug companies—who got the best deal of all? PhRMA. Who has spent the most money lobbying? Who has spent the most money on advertising? PhRMA. Who is going to cost the American consumer $100 billion, that could have been saved by the consumer if we had been able to reimport prescription drugs?

But I would ask my friend from Nebraska because along with the “Louisiana purchase” and probably the Florida deal for this Nebraska, we probably gotten the most publicity and visibility. Maybe because it was the 60th vote. I don’t know if it is the biggest or not, in terms of money, because we will be finding deals in this 2,700-page bill for months. For months, we will be finding provisions, even though our staffs have carefully read it. It is not 2,700 pages for nothing.

So I would ask the Senator from Nebraska: How does this go over in the heartland of America? How do the people in Nebraska, who see that they have gotten some kind of special deal, a special provision—certainly reported as so in the media—that would come at the expense of taxpayers in America? I am curious about the reaction the Senator from Nebraska gets.

Mr. JOHANNS. It doesn’t go over. It just simply doesn’t. In every way possible, over the last 4 or 5 days, I have been asked: Do you support this special deal for Nebraska? I don’t. I think it is wrong.

I could read through all the special deals because we have all got the list—it is Florida, Louisiana, and Montana, and on and on and on. But I came to the floor this morning and I asked unanimous consent that all the special deals be taken out, and I listed a long list of them. Of course, there was an objection to that request for unanimous consent. We could want to try to pass legislation with all of this? It makes no sense to me.

But let me take a step back. We all remember a few months ago there was a big story that Nevada was going to get a special deal. It was a right about that time that we took a few days off. I went back home, and I did townhall meetings, as I have done for years and years and years. But we really invested time and effort, and we identified six principles of health care which are on my Web site for people to look at. I literally had a PowerPoint presentation. I did four townhall meetings—Carnie, Grand Island, Lexington, and Lincoln. I put up these principles.

One of the principles was no carve-out. No backroom deals. No special deals. I presented that to the people who were at those townhall meetings. I did tons of interviews. I explained why I felt the way I did. People were so sensitive at that time that Nevada was going to get this special deal.

Since then, I think that has fallen by the wayside, but all these other things have come along. That is why I read the Lincoln Journal Star editorial. This is an editorial page that sometimes likes what I am doing and sometimes it does not. Over the years, they have not hesitated to take me to task. They looked at this and they said:

Since when has Nebraska become synonymous for cynical “what’s in it for me” type politics?

They said it is time to hit the reset button. We are not getting this right at all. We simply aren’t getting it right. They talked about the issues of cost containment, they talked about the Actuary’s report, which I had spent a little time talking to them about, and other folks around the State. After looking at all of that, they just said: Look, this isn’t going the way it needs to go for the American people.

Here is a question to all of my colleagues in the Senate. I love my State. I love the people there. They are such honest, decent people. In many parts of our State, people believe you seal a contract not by putting things in writing but by shaking hands and giving your word. They don’t want this kind of attention. They don’t want to be on the evening news every night with the talking heads talking about the “cornhusker kickback” or whatever the latest terminology is. They just want to be treated fairly.

They asked me to come here and represent them as fervently as I can, to try to do all I can to get fair treatment for them. But not a single person at any townhall I have ever had stood up and said: MIKE, I disagree with that principle. I want you to go back there and give me a special deal or get our State a special deal.

So I appreciate Senator MCCAIN asking me the question. I feel very strongly about this. I wish the other side of the American congress, and the American people, this an unanimous consent agreement that just says: Time out, everybody. Let’s pull out the special deals, whether it is Nebraska or Montana or whatever. It doesn’t matter to me. Let’s pull those deals out and let’s take a step back and let’s work for what Senator Risch talks about and the rest of us have talked about. We can get 80 votes on a health care reform bill. I guarantee you. But not on this bill.

Mr. WICKER. I would echo what the Senator from Nebraska has just said. I know my friend from Arizona has been one of the most outspoken critics of special deals and special earmarks. This is not some catchall appropriations bill to get us through the end of the year. This is one of the most major pieces of legislation on which any Member of this Senate currently serving will ever vote. This is one-sixth of the American economy, and the American people are learning about these special carve-outs where the citizens of one State will be treated differently not because of a formula, not because of the poverty level, but because of political power.

It would just seem to me that one Member of the majority party, in these next 2 days, might step forward and say: You are right, and I will not be a part to this.

Mr. MCCAIN. Let me make one additional comment. I have seen reform go through the Congress of the United States. The first one I saw was when we saved Social Security—a major reform of Social Security. There was no backroom dealing. It was a straightforward proposal as to how to fix Social Security. We fixed welfare, it was welfare reform—again, open, honest, bipartisan negotiations and bipartisan agreement. We do reform, not reform. We reform, the efforts we made at tobacco reform, at campaign finance reform, at immigration reform and many others—the Patients’ Bill of Rights. Every reform I have ever been involved in has had major and minor components: No. 1, it is bipartisan; No. 2, there were no special favors or deals cut, provisions in thousands of pages of legislation.
Again, we know where the train is headed. We know what is going to happen a short time from now, but they will make history. You will make history. You will have rammed through “reform” on a strictly partisan basis, without the participation of the other party's senators. These decisions of the American people, done in closed negotiations, with results that are announced to the American people without debate or discussion and to this side without debate or discussion.

The American people do not like it. They do not like for us to do business that way. I am sure this peaceful revolution that is going on out there already—because as the Senator from Idaho pointed out, because of the involvement of the car companies, the stimulus, the bonus, the generational theft we are committing, this, all on top of that, is going to give great fuel to the fire that is already burning out there, where they want real change, real health care. They were promised in the last Presidential campaign and certainly did not get.

Mr. RISCH. I say to Senator McCaIN, probably one of the great ironies of all this is going to be at 8 o'clock on December 22nd when this bill passe the Senate. If you have the 60 votes, all Democrats—immediately following that vote is going to be a vote, again all 60 Democrats and only Democrats, raising the national debt. What an irony, to put $2.5 trillion in spending, a new social entitlement program, adding it to the three already in the process of bankrupting America, adding this to it and then turning right around and increasing the debt ceiling. When they increase it, it is going to be—nobody knows exactly how much it is going to be, hundreds of billions. But that is only in the last 2 months. They are going to have to come back again in February and increase the national debt ceiling again. What irony.

Mr. BARRASSO. It is not. There have been any number of conferences to our friend and colleague, the late Senator Ted Kennedy. Let’s take a look at the book his brother, John Kennedy, wrote, “Profiles in Courage.” As we have seen all this, it is time for one courageous Democrat to stand and say: This is about our country. This is about our country, not about a kickoff. This is about health care, not about a hand in the cookie jar.

That is what we need. We need one courageous Democrat to stand and say: I don’t want to be part of this editorial that talks about the Louisiana Purchase and Omaha Stakes. I don’t want to be a part of this that says this, the world’s greatest deliberative body, has now become corrupt. I don’t want to be a part of this that says this is about bribery.

It needs one courageous Democrat, 1 out of 60, to stand and say: I am going to vote no; we need to back up; we need to think about this. We have 100 Members of the Senate who want to reform health care in this country, who want to get the costs under control, who want to improve quality, who want to improve access—100 Senators want to do that. That is the goal of each and every one of us here.

We need one courageous Senator to say it is time, time now, to take a step back, let us go home over Christmas, let us think about this, let us talk to our constituents, let us hear what they have to say about this looking out for No. 1—$100 million. Dana Milbank’s column in the Washington Post today, that is what we need now in the Senate. We need the kind of courage John Kennedy wrote about in “Profiles in Courage.”

Mr. RISCH. I say to Senator BARRASSO, you know there are already some courageous Democrats stepping up. I hope every Democrat on the other side calls their Governor and says: Governor, what do you think about this? Help me out here. I am in caucus, they bought enough votes to get to the 60. But I have to tell you I don’t like the way they did it. No. 1; and No. 2, without the reset button, they didn’t get the $300 million. We didn’t get the X number of million. Help me out, Governor. They say they are going to shift $25 billion to the States that you are going to have to come up with. What are they going to do with that $25 billion? Do you want to vote for this—or maybe if one of us steps forward and says I am going to vote no and I want to set the reset button and I want to put people back to the table and say let’s do this right, we can do this right.

We are Americans. We know how to do this. We are the most innovative people in the world. All we have to do is get together and do it. But to jam this down the throats of the American people—and make no doubt about it, this is being jammed down the throats of the American people on the eve of Christmas, in the middle of the night, in the face of poll after poll that says don’t do this to us.

What is happening. There are courageous Democrats out there. Not one of them is sitting here.

Mr. WICKER. Let me tell my friend from Idaho about some courageous Democrats. When the House version of this was being considered at the other end of this building, a number of Democrats stepped forward and said: I can’t vote for this. It was very close. They have a huge majority, 40 votes over there. As a matter of fact, one Member of the House today basically said: I can’t take any more. He switched parties. A Member from Alabama is now joining the Republican conference. But there are a number of loyal Democrats who have no intention of switching parties and they have stepped forward and said: I can’t vote for it. Don’t count me in on this.

BART STUPAK is a Representative, a courageous pro-life Representative from Michigan. He did vote for the bill. I do not impugn his motives. He did what he thought was right. But us here he voted for it, he made sure legislation was included in the House version to make sure the Hyde version, which
has been the law of the land for almost two decades, was included.

Here is what Representative STUPAK said yesterday or the day before yesterday about this so-called pro-life compromise that was included in the version of the legislation to which the Senate went. He said it is "not acceptable... a dramatic shift in Federal policy that would allow the Federal Government to subsidize insurance policies with abortion coverage."

That is a release actually on December 19. I appreciate the courage of someone from a Democratic State, from a district that has long been Democratic, who is a member—chairman of a committee and a member of the leadership over there—stepping forward and saying: I can't go this far. Unless this language is changed—and we are told by Members of the Senate there better not be much of a conference. What we vote on, on Christmas Eve, it better sort of hold together. It better sort of hold together. It will not be modified by the Senate when it comes out of conference.

BART STUPAK is stepping forward and saying, if that is the case, then I am switching from a yes to a no. I appreciate that kind of courageous Democrat.

Mr. MCCAIN. Can I say, I appreciate the Senator from Mississippi bringing this important aspect to this issue and continuing to do so

I would like to pick up on what Dr. BARRASSO mentioned about the Kennedy family. It is well known I had a very close relationship, developed over the years, with Senator Ted Kennedy and that we worked together on a variety of issues. So there is a great irony in the constant, over there on the other side, references to Senator Kennedy, who always began legislation by getting bipartisan, by getting Members of the other side of the aisle committed and working together—whether it be on immigration reform, whether it be on health care reform, whether it be on one of the great achievements of President Bush 2, No Child Left Behind.

In other words, every dealing I ever had with Senator Kennedy was to reach out, establish a fundamental base for agreement, and then move forward with legislation in a bipartisan fashion, which I think was one of the major reasons why he had such an impressive legislative record.

How did the other side do it? Without a bit of serious negotiation, without bringing anyone on board before moving forward—no one—which ends up, now, with a 60-to-40 vote, which is a pure partisan vote and outcome when there has never been, in history, a single reform that was not bipartisan. That is why the American people are rejecting this. That is why the American people are seeing through it. To hear the continued refrain that the American people want this: Read any poll. It is just a matter of difference because the American people have figured this out. It is going to be one of the great historic mistakes—not historic—but historic mistakes made by the Congress of the United States.

Mr. MCCONNELL. If I may say to my friend from Arizona, he is absolutely right. I have had an opportunity to observe Senator Kennedy over the years. That is exactly the way he operated. If I may, just to make a point with regard to the observation of the Senator from Mississippi, about Congressman STUPAK, as I understand it, Congressman STUPAK was not asking for some special deal for Michigan in return for his vote. He was, rather, trying to establish a principle that would apply to all Americans. Is that not the case?

Mr. WICKER. That is exactly correct. I commend my former House colleague for taking that principled stand.

Mr. MCCONNELL. Could not be same thing as said for Thad, Congressman LIEBERMAN from Connecticut? I am sorry he ended up voting for this 2,700-page monstrosity, but you have to stay, as I understood his position—and Senator MCCAIN certainly knows him very well—but if the government goes into the insurance business, I can't support this bill, not: I am open for business and what you can you do for Connecticut.

Mr. MCCAIN? There may be on the floor a unanimous consent request to remove the Nebraska Medicaid deal. I would hope, if there is any unanimous consent agreement at any time, that the whole bill will be fixed, which means every special provision would be removed, whether it be from Nebraska or any other State. We still have the Louisiana Purchase of $300 million. We still have the Florida Medicare grandfather clause, $25 to $30 billion. The list goes on and on. The Connecticut hospital. It is always in legislation, so you have to do research to see who qualifies. I would hope we could have, again, agreement that all these special provisions that add up. I have no objection to the Connecticut hospital. It is always in legislation, so you have to do research to see who qualifies. I would hope we could have, again, agreement that all these special provisions that add up. I have no objection to the Connecticut hospital. It is always in legislation, so you have to do research to see who qualifies.

Mr. BARRASSO. It is time for a new chapter in 'Profiles in Courage.' One of the Members of this body can be that profile. All they have to do is stand up and say: No, I will not vote for what has happened in the Senate. I will not be part of what has been called, in the editorials, bribery in the Senate. I will be that courageous person and vote no. It is time for a new chapter in 'Profiles in Courage.'

I yield the floor.

The PRESIDING OFFICER. It is the understanding of the Chair that the Senator from Mississippi had the floor.

Mr. WICKER. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I have several points to make. First, as a matter of personal privilege, on behalf of the people of Libby, MT, the Senator from Arizona made it sound as if the folks in Libby were getting some kind of a sweetheart deal. I wish the Senator from Arizona would agree with me that he would not want his constituents to suffer an environmental calamity. He would not want his constituents to get some redress because of a declaration of public emergency due to contamination of asbestos. I assume the Senator from Arizona would very much stand up for his constituents.

Let me explain. Congress passed a law in 1980 called CERCLA. That legislation said that whenever there was a declaration of public emergency because of contamination at a Superfund site, the government has the opportunity to declare a public emergency and help those people get medical care because of contamination of asbestos. I assume the Senator from Arizona would very much stand up for his constituents.

We advise you not to vote for this legislation.
get some help from contamination from asbestos.

Mr. MCCAIN. May I respond?

Mr. BAUCUS. Absolutely.

Mr. McCaIN. All the Senator had to do was have it authorized, bring it up on the floor as an appropriation, and I am sure the Senator's arguments would have been far more cogent than jamming it into a bill which has to do with health care reform, the policy of health care reform.

The legislation and this cause of the Senator from Montana has been turned back several times on other grounds.

Mr. BAUCUS. This is health care. Reclaiming my right to the floor.

Mr. MCCAIN. I am responding.

Mr. BAUCUS. I reclaim my right to the floor because he doesn't want to deal in good faith with this issue.

My second point. It is disrespectful, it is unseemly for Senators in this body to invoke the names of Ted Kennedy and John Kennedy in opposition to this bill. It is disrespectful and unseemly. I, frankly, am very much surprised that Senators would go to that level and invoke the names of Ted Kennedy and Jack Kennedy in opposition to this legislation. It is out of order, in my view.

I hear Senators on the other side say: Where is the courage of one Senator to stand up and vote against health care reform? That is what I keep hearing. Where is the courage? Where is the courage of one Senator on the Democratic side to stand up and vote against health care reform?

Mr. President, I want to turn that around. “Profiles in Courage”—Jack Kennedy and Ted Kennedy were Senators who worked to try to find resolutions to agreements. They wanted to compromise. They wanted to work together to get just results.

I ask, where is the Senator on that side of the aisle who has the courage to break from their leadership, break from their party, actually do what they are exercising on their side of the aisle to work together to pass health care reform? I ask, where is the courage? Where are the Senators who have the courage on that side of the aisle to stand up and work together on a bipartisan basis to get health care reform passed? Where?

We on this side reached out our hands for bipartisan agreement on health care reform, probably to a fault. I say to a ‘fault’ because for months and months Senator, upon occasion, extended the hand to work with other Senators on a bipartisan basis. I know the current occupant of the chair knows that. He watched this. He saw it happen in the Finance Committee.

Senator GRASSLEY and I worked very hard to get Senators on both sides of the aisle to work to pass health care reform, very hard. Then after a while we had to work toward another approach. The Group of 6—3 Republicans, 3 Democrats—worked for months on a bipartisan health care reform. Do you know what happened? I watched it happen. Those Senators in the room were acting in good faith. They were in good faith. They wanted to mutually work together to pass health care reform. They asked good questions. Senator ENZI from Wyoming, for example, asked very good questions. Senator SNOWE asked very good questions. Senator GRASSLEY asked very good questions. We worked to get health care reform.

But do you know what happened? I could feel it happening. One by one by one, they started to drift away. They wanted to pass health care reform. They wanted a bipartisan basis. But they were pressured—pressed from their political party not to do it, not to do it, not to do it. Why were they pressured not to do it? Unfortunately, they gave in to the pressure because their leadership wanted to make a political statement. One of the Senators on the floor here said: Let’s make health care Obama’s Waterloo. They did not want to work with us, that side of the aisle. They did not want to work with us because they thought it was better to make a political statement: Attack the bill, attack the bill, attack the bill in order to make political points for the 2010 election. That is what they were trying to do.

I ask, where is the courage? Where is the courage? Where is the courage of one Senator who will stand up and say: Boy, let’s work together to pass health care reform. My friends on the other side of the aisle started without work to pass health care reform. That Senator tried mightily to get bipartisan support. Ask Senator GRASSLEY from Iowa, with whom I have been working for a long, long time. They were pulled away. Senator GRASSLEY— I don’t want to speak for him, but I know he wanted to get health care reform passed on a bipartisan basis. I know that is the case. Frankly, he got pressured, pressured, and he just couldn’t do it. I have the highest respect and regard for him, but he just couldn’t do it.

Mr. WICKER. Will the Senator yield briefly?

Mr. BAUCUS. Absolutely.

Mr. WICKER. I thank the Senator for yielding.

Mr. BAUCUS. I think the Senator has really answered his own question. As a matter of fact, Senator GRASSLEY and Senator ENZI met for hours and hours, weeks upon weeks with my friend from Montana in good faith, hoping to come up with a program that could get that 60-vote support we usually get on matters of—

Mr. BAUCUS. That is how they started out, that is true.

Mr. WICKER. And then eventually, it dawned on them that my friends on the other side of the aisle wanted to Europeanize the health care system of the United States of America.

Mr. BAUCUS. Reclaiming my time.

Mr. WICKER. The PRESIDING OFFICER. The Senator from Montana has the floor. Mr. WICKER. I thank the Senator for yielding.

Mr. BAUCUS. That is not what happened. I was in the room constantly. I talked to those Senators many times. That is not what happened. Your leadership pressured them, pressured them, pressured them not to work together. There was no European-style effort in that room. That is a totally untruthful—to totally untruthful statement. None whatsoever. We are passing a bill here that is a uniquely American solution. It provides competition. It helps the doctor-patient relationship. That assertion of working toward a European solution is entirely untrue. It is entirely false.

The fact is, those Senators did not want to work with us. It is regrettable. One of the biggest travesties here is there was not a good-faith effort on that side of the aisle to come up with a constructive, comprehensive alternative to the Democratic version of health care reform. If there had been a constructive, honest, alternative health care reform, we could have had a really good debate. What is the better approach to solving the health care problem? That did not ever happen. It did not ever happen at all. Rather, they didn’t have anything. They didn’t have a health care bill. None whatsoever.

The only one that came up a little bit was over in the House. Because of all the criticism about Republicans not having an alternative, finally the Republicans in the House came up with an alternative. It was very small. That has not much to do. The honest, the CBO said it would hardly increase any coverage whatsoever. It was not really a comprehensive health care reform bill. And there has been none in the U.S. Senate on the Republican side, no alternative for a comprehensive health care reform bill.

I want the public to know we worked very hard to get a bipartisan bill. That side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work that side of the aisle started without working with us, but gradually they began to really work
the floor to hear this. I take issue with one of the premier businesses in the State of Nebraska used in a manner of derision to outline something that is factually incorrect on the basis of how they are presenting it.

You can twist and you can turn and you can try to distort what happens, but it does not change the underlying facts. The underlying facts are, this was pursued initially as an opt-in or opt-out for all States. It was impossible to do that at the present time, and so as a matter of fact, there was, in fact, the extension of the Federal dollars from the year 2017 on, well into the future, as a marker to lay down so that every State could object to this manner of unfunded mandates.

As a Governor—and my colleague is a former Governor—we fought against Federal unfunded mandates. As a Senator back here, I have also fought against unfunded and underfunded Federal mandates. This was, in fact, exactly what we were not able to get in this legislation an actual opt-out or opt-in for a State-based decision, what we did get is at least a line, if you will, so that in the future other States are going to be able to come forward and say: Hey, either the Federal Government pays for that into the future or the State will have the opportunity to decide not to continue that so that we do not have an unfunded Federal mandate.

So I was surprised. I am shocked. Well, actually, I am not shocked. I am disappointed this would be used and misused in this fashion, not only derivatively against a great company in Nebraska by bringing it to my attention. The State of Nebraska cannot afford an unfunded mandate. If Nebraska prefers not to opt in to a proposal, if Nebraska prefers not to opt in to a reformed health care system, it would have that right.

My colleague and others know this is the case. They know it is the case, but they choose to ignore it. They choose to ignore the facts.

On December 20, I again wrote to the Governor and shared with him my concern about this unfunded mandate, and I pointed out that:

Within hours after the amendment was filed, [my colleague from Nebraska] objected to the inclusion of these funds. As a result, I am prepared to ask that this provision be removed from the bill. In conference if it is [the Governor’s] desire.

I got a letter back on the day after, on December 21, talking about this as a special deal. It is not a special deal for Nebraska. It is, in fact, an opportunity to get rid of an unfunded Federal mandate for all the States. Let me repeat that: for all the States. There is no special about it, and it is fair.

What we have done is we have drawn a line in the sand and said: This is unacceptable, and it is unacceptable for all States as well. I cannot believe that this sort of legislation would continue. There is no misunderstanding here. I think it is just an opportunity to mislead, distort, and, unfortunately, confuse the American public all the more, and to use the State of Nebraska and the name of a great company for partisan political purposes on the other side of the aisle.

My colleagues know I am not a deep partisan person and that I rarely come to the floor to speak, and that when I come to the floor, it is for something like this, to take exception with the misuse of information for partisan purposes. That is exactly what has been done with this situation.

I am prepared to fight for the State of Nebraska, and I hope my colleague is as well. Obviously, the Governor was prepared to fight for the State of Nebraska by bringing it to my attention. But I am not prepared to fight to get a special deal for the State of Nebraska. I did not, and I refuse to accept that kind of responsibility or that kind of a suggestion from anyone on that side of the aisle or anyone else.

Then, as it relates to abortion, I think my colleagues know that we introduced legislation that is comparable to the Saint Louis, Missouri, House bill, dealing with the barring the use of Federal funds for elective abortions. We introduced it over here, and it was bipartisan. It was Nelson-Hatch-Cashey, and it did not pass. So I began the process of trying to find other solutions that I thought equally walled off the use of Federal funds and made it clear that no Federal funds would be used.

Now, apparently I did not say “mother may I” in the process of writing that language because others took issue, but it, even though it did not constructively point out how it does not prohibit the use of Federal funds or wall off those funds or keep them to tally segregated. They just did not like the language.

Well, if in the conference the Stupak-Nelson-Hatch-Cashey language passes, I will be happy, and so will Congressman Stupak, and so would I, imagine, those who signed on to that legislation. It is unfortunate to continue to distort and misrepresent what happens in the body of the Senate. It is difficult enough to have comity. It is difficult enough to have collegiality. When politics are put above policy and productivity, this is what we get.

Mr. President, I am very disappointed, somewhat disillusioned, by the use of this method and this approach that would undermine the good name of a great company in Nebraska, as well as the name of the State of Nebraska, by associating it with something that has not been done, was not intended, and did not result.

Mr. President, with that, I yield the floor.

Mr. CARPER. Mr. President, I yield 15 minutes to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, let me just express my thanks for those 17 minutes.

I will ask the Chair to please advise me when I have used 15 of those minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. CARPER. Mr. President, listening to the debate today in Nebraska, and, among others, a famous quotation from Winston Churchill, who, I believe, said: “The worst system devised by wit of man”—he was talking about democracy. He said it was the worst form of government devised by wit of man, and he added “except for all the rest.”

We like to sort of lecture the Iraqis and Afghans on how to run a democracy, and we still struggle with it after more than 200 years. In the 8 or 9 years I have been here, I have never seen us struggle as much as we have on the Senate side. It is just confusing. It is just confusing.

As to the people who are following the debate, if you listen to folks on the political left, the right, and the political center, you will hear what you hear is: No public option, no Medicare buy-in, we are not doing enough to make health care affordable. What you hear from the right, mostly on the other side of the aisle, is, this is what it takes to run, this is government funded, this is a government takeover. So you have the two extremes out here trying to take shots at one another. Those of us in the middle are sort of collateral damage or road kill. But at the end of the day, a lot of times, actually, that is the only thing the left and the right are entirely pleased with the outcome, sometimes that suggests that the outcome is not all that bad.
I am not saying this is a perfect balance, but it is not a bad balance. For those, especially in our party, who feel as though we should have done more, I am sure in 1965, when Lyndon Johnson signed into law the Medicare legislation, they probably some of them did not vote for it—and I am told it was mostly Democrats who voted for it, not so much our Republican friends—but I am not sure how many Democrats who voted for Medicare at the time said: It does not provide enough for our senior citizens. It does not provide for hospice care. It does not provide for home health care. It does not provide for disability benefits for those who are under the age of 65. There is no prescription drug program. There is nothing for outpatient surgery. None of those things were in the original Medicare legislation. Over time, they have been added, and I think the Medicare legislation, the Medicare law, has been improved to make it a better program.

Now we face a day when the Medicare Program is literally running out of money. One of the less-told secrets in the legislation is that before us is that the Medicare trust fund—life that has been down to about 7 or 8 years—I understand, thanks to the reforms that are in this legislation, should be pretty much doubled. That is not good enough, but we are going to stretch it by about 100 percent the useful remaining life of the Medicare Program.

Another fact that is sort of lost in all the debate, all the tumult, is what this does with respect to our budget deficits. Whether it be Democrats or Republicans—the neutral Congressional Budget Office, which is neither Democratic nor Republican—nonpartisan—that the legislation, if we adopt it in its current form, will reduce the deficit in the next 10 years by about $130 billion, and by as much as maybe $1 trillion, $1.3 trillion in the second 10 years beyond that.

In terms of what is going to happen as to premiums, we are told, again, by the nonpartisan Congressional Budget Office that rather than spiking premiums, we are actually going to see people get somewhat better coverage for, frankly, not more money in terms of their premiums.

In terms of those of us who just love the health insurance we have—we have been delighted with the coverage and the amount we pay for it—I would just remind all of us of a couple things: One, we have spent more money by far than any nation on Earth for health care—about 1 1/2 times more than the next closest country. We do not get better results. In many cases, we get worse results.

We have about 14,000 people who woke up with health care coverage who will wake up tomorrow morning and they will not have it; they will have lost it. Over 40 million people in our country have no health care coverage at all.

Finally, we have big companies such as GM and Chrysler that have gone bankrupt because they cannot compete with foreign competitors because of the price of our health care; and that is true with a lot of smaller companies as well.

The idea of doing nothing is, to my mind, the smart thing to do. We have to do a number of things to accomplish three goals: No. 1, rein in the growth of health care costs. This idea of two, three times the rate of inflation in the growth of health care costs is not sustainable. Frankly, if we do not rein in the growth of health care costs, neither will be sustainable the coverage we extend to people who do not have it today.

The third thing we try to work on in this legislation, to the extent we can—a lot of interesting things are going on in the private sector, very interesting things going on in the private sector, regarding how to instill personal responsibility in employees, and how to get better transparency and better outcomes through a delivery system. That is going to be a part of this as well. But we have to figure out a way to get better outcomes, and there are a lot of good examples for doing that.

I want to take the remaining time I have today to just mention some things that are in the legislation that I think make sense because they are based and founded on what works. And as an old Governor—and Senator NELSON has already spoken from Nebraska—we are used to focusing on what works and trying to replicate what works, steal ideas from other States and try to work them in our own State. I want to mention a couple things we have taken that work. We are trying to grow them and, in some cases, on a national level.

One of things Senator BAUCUS and his staff in the Finance Committee focused on, I think, is maybe the best idea in the health care legislation, something called an exchange.

When I was a naval flight officer, we used to go to the exchange on the base which was a place to buy stuff. It was like a little department store. The exchange in health care delivery, which will open in January 2014—I hope we can actually stand up the exchanges and open the exchanges sooner—but that is going to be a place for people to go and buy health care coverage. When they go there, they will become part of a purchasing pool in their State or maybe in a couple of States to sort of band together and form a regional purchasing pool.

Why is a purchasing pool important? Well, because we are part of one, and we know that with 8 million people in our purchasing pool—Federal employees, Federal retirees, all of our dependents—we get a lot of competition. A lot of private sector companies want to offer us products to choose from. We don’t have to pay for it, we get pretty good prices. With 8 million people in a purchasing pool, we really drive down administrative costs to about 3 percent for every premium dollar. That is a lot lower than folks who try to go out and buy it on their own in the open market. They may pay 33 percent of their premium dollar for their administrative costs. They are not paying 3 percent. We are going to try to replicate that. We do it in the exchange.

There may be 50 exchanges throughout the country, some regional exchanges as well. So we do exchanges as well. When States create interstate compacts across State lines, such as Delaware with New Jersey or maybe Delaware and Maryland or Delaware and Pennsylvania, maybe all four of us, insurance sold in any of those four States can be sold across State lines and introduce new competition, additional competition for business and for the folks looking for coverage for those two or three or four States.

Another thing that works is the delivery system, delivery of health care in such places as Cleveland Clinic and the Mayo Clinic, Geisinger in Pennsylvania, not far from where we are in Delaware, Intermountain Health out in Utah, and Kaiser Permanente in California. I actually went with Rachael Russell, a member of my staff, to the Cleveland Clinic about 3 months ago. What we found was the Cleveland Clinic and the Mayo Clinic and Geisinger and all these others pretty much all have the same template. They focus on primary care. They focus on prevention and wellness. They coordinate the care of folks who are receiving treatment. All of their patients have electronic health records.

Medical malpractice coverage is provided by the entity itself, the Mayo Clinic, Cleveland Clinic, and all the docs are on salary. They have gone after what we call not just defensive medicine but fee-for-service, and they have done a very good job reducing the problems that flow out of fee-for-service which lead to more utilization and unnecessary utilization of time, tests, technology. They get better outcomes and they spend less money.

What we are trying to do with this legislation is to take those health care delivery ideas from those nonprofits and instill them into the delivery of health care, particularly through Medicare but also in other ways too.

When we shop for groceries, we have a bunch of good grocery stores in Delaware. One of the places I shop for groceries occasionally when I am in my State is a place called Safeway, in Dover. A guy named Steve Burd is the CEO of the company, and they have really helped inform our decision-making in this debate in ways that are pretty remarkable by virtue of the way they provide coverage to their employees. It is not just Safeway. It is not just Pitney Bowes. There are a number of folks who are assisting us in how to get better results for less money, and we are borrowing some of their ideas.
One of the ways we are borrowing is to say, how does Safeway provide—literally flattening out for the last 4 or 5 years—health care coverage for their employees? They haven’t reduced their benefits. One of the things they have done to lower their employee’s cost and the individual pays 25 percent of the cost. But once a person’s prescription costs reach $2,500 up to about $5,500, for most people Medicare doesn’t pay anything and the individual pays it all. That $2,500 to $5,500 gap is called the doughnut hole. It has nothing to do with doughnuts, but that is the name we have given it.

In the legislation that is before us—again, I give a lot of credit to our chairwoman and others who have negotiated this—we are going to fill the doughnut hole. We are going to basically cover people who are in that gap of the $2,500 to $5,500 so that people will be able to continue to take the medicine they need to take. They won’t stop. They will have the availability to medicine.

They will also have access to something called primary care. I am at the tender age of 62, and I think my President, also from Delaware, is just about the same age as I. When people in this country end up being old and find that they get a one-time-only Medicare physical. That is it—one time. If they live to be 105, they never get another one, at least not paid for by Medicare.

In terms of borrowing good ideas from the nonprofits, the Cleveland Clinics and the Mayo Clinics, we are going to say you get more than just one physical. You get it when you are 65 and 66 and 67 and 68, and if you live to be 105, God bless you, you will get it. If you are living out the rest of your life, what is right with people, what is wrong with people, and what they need to do more of or less of. That is a smart idea, and it is part of the reforms in the legislation.

In terms of going back to medicine, we want to make sure people have good access to primary care, annual physicals if they are on Medicare, so their doctor can find out what is wrong with them, if they need to exercise, if they are overweight, whatever that might be, but also to learn if there are some medicines they ought to be taking, and second, to make sure they can afford them. Third, our legislation actually improves their lives in terms of if medicines are prescribed, they will actually be taken and used the way they are prescribed.

There is a little piece in this legislation that Senator Ron Wyden deserves a lot of credit for called personalized medicine. We call it the Lean Act. The idea is to try to provide personal information so people can assume personal responsibility.

Speaking of what we should eat or not eat, I wish to mention doughnuts, and I will do it in the context of something called the doughnut hole. Folks who are Medicare eligible have probably heard this term before because under the Medicare prescription drug program, when people’s out-of-pocket costs reach about—when their cost for medicines reach $2,500, the first $2,500, Medicare pays 75 percent of the cost and the individual pays 25 percent
totally confused by all this, for the people who are scared that we are doing something really foolish and it is going to be a disaster for our country, let me just say that when all the negative ads sort of stop being funded, when folks have actually had a chance to understand the things I have talked about here today and a lot of the aspects of the bill that really will improve outcomes, that really will rein in the growth of cost, that really will extend coverage, I think they really will be pleasantly surprised.

In closing, I am the guy who came here always believing that Democrats and Republicans should work together. I know our chairman tried mightily in the Finance Committee to do that, and I commend him and others for their effort. When we come back, we can’t have another 12 months of this or 12 years of this. Our country is in trouble if this is the way we are going to be doing business in the future. Our country is in trouble.

My hope is that we will get this done, we will get it behind us, we will improve the bill in conference, and the President will provide a signature for us, and we will go back to work on implementing this. Just like Medicare. Just like Medicare. The key isn’t just to stop; the key is to make it better and to build on this as a foundation. I am committed to doing that. I know my colleagues on this side of the aisle have asserted the penalty that is proposed under the bill before us for failing to maintain health coverage is unconstitutional. One Senator has raised a point of order—Senator Ensign—on that subject, and that is now pending.

Those of us who voted to proceed to the health reform bill and who voted for cloture on the substitute amendment take seriously our oath to defend the Constitution. Every Senator here takes that oath of office very seriously. We have seriously looked at this question, as well and have concluded that the penalty in the bill is constitutional.

Those who study constitutional law as a line of work have drawn that same conclusion. Most legal scholars who have considered the question of a requirement for individuals to purchase health care coverage argue forcefully that the requirement is within Congress’s power to regulate interstate commerce.

Take Professor Erin Chemerinsky, a renowned constitutional law scholar, author of four popular treatises and casebooks on constitutional law and the dean of the University of California Irvine School of Law. Professor Chemerinsky has gone so far as to say that those arguing on the other side of the issue do not have “the slightest merit from a constitutional perspective.”

In arguing that a requirement to have health care coverage falls within Congress’s power to regulate interstate commerce, Professor Chemerinsky compares health care reform to the case of Gonzales v. Raich—often cited by the other side. In that case, the Supreme Court held that the Federal Government’s commerce clause powers extend to the cultivation and possession of small amounts of marijuana for personal use. Professor Chemerinsky notes that the relationship between health care coverage and the national economy is even clearer than the cultivation and possession involved in Gonzales v. Raich.

Mr. President, I ask unanimous consent that Professor Chemerinsky’s Los Angeles Times article be printed in the RECORD.

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

[From the LOS ANGELES TIMES, OCT. 6, 2009]

THE CONSTITUTIONALITY OF HEALTHCARE

(By Erwin Chemerinsky)

Are the healthcare bills pending in the House and Senate unconstitutional?

That’s what some of the bills’ critics have alleged. Their argument is that the fact that most of the major proposals would require all Americans to obtain healthcare coverage or pay a tax if they don’t. Those who vote to afford insurance would have their health coverage provided by the state.

Although the desirability of this approach can be debated, it unquestionably would be constitutional.

Those who claim otherwise make two arguments. First, they say the requirement is beyond the scope of Congress’ power. And second, they say that people have a right not to be uninsured and that requiring them to buy health insurance violates individual liberty. Neither argument has the slightest merit from a constitutional perspective.

Congress has broad power to tax and spend for the general welfare. In the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress’ power. The ability in particular of Congress to tax people to spend money for healthcare coverage has been established with programs such as Medicare and Medicaid.

Congress has every right to create either a broad new tax to fund a national healthcare program or to impose a tax only on those who have no health insurance.

The reality is that virtually everyone will, at some point, need medical care. And, if a person has certain kinds of communicable diseases, the government will insist that he or she be treated whether they are insured or not. The government is already paying for the costs of their likely future medical care.

Another basis for the power of Congress to impose a health insurance mandate is that the legislation is charged with regulating commerce among the states. The Supreme Court has held that this means Congress has the ability to regulate activities that have a substantial effect on interstate commerce. A few years ago, for example, the court held that Congress could prohibit individuals from cultivating small amounts of marijuana for personal medicinal use because marijuana is bought and sold in interstate commerce.

The relationship between healthcare coverage and the national economy is even clearer. In 2007, healthcare expenditures amounted to $2.2 trillion, or $7,521 a person, and accounted for 16.2% of the gross domestic product.

The claim that individuals have a constitutional “right” to not have health insurance is no stronger than the objection that this would exceed Congress’ powers. It is hard to even articulate the constitutional right that would be violated by requiring individuals to have health insurance or pay a tax.

Since the 19th century, the Supreme Court has consistently held that a tax cannot be changed as an improper use of private property for public use without just compensation. All taxes, of course, are a taking of property for public use, and a tax that forces healthcare insurance imposed on all Americans or just the uninsured—is certainly something Congress could impose.

The claim that an insurance mandate would violate the due process clause is also specious. Most states have a requirement for mandatory car insurance, and every challenge to such mandates has failed. More important, since 1937, the Supreme Court has consistently held that government...
Mr. BAUCUS. Mr. President, as a second example, I refer my colleagues to an article by Mark Hall, a law professor at Wake Forest University. His article is a comprehensive peer-reviewed analysis of the constitutionality of a Federal individual responsibility to maintain health coverage.

Professor Hall notes further that health care and health insurance both affect and are distributed through interstate commerce, and that gives Congress the power to legislate a coverage requirement using its commerce clause powers.

Professor Hall notes that the Supreme Court indicated in its decision in U.S. v. Morrison and U.S. v. Lopez—two other cases relied on by the other side—that the noneconomic, criminal nature of the conduct in those cases were central to the Court’s decisions in those cases that the government had not the constitutionally exercised power under the commerce clause.

Health insurance, on the other hand, does not deal with criminal conduct. Health insurance is commercial and economic in nature and, to reiterate, substantially affects interstate commerce.

Health insurance and health care services are a significant part of the national economy. National health spending is 17.6 percent of the economy, and it is projected to increase from $2.5 trillion in 2009 to $4.7 trillion in 2019.

Private health insurance spending is projected to be $854 billion in 2009. It covers things such as medical supplies, drugs, and equipment that are shipped in interstate commerce.

Health insurance is sold by national or regional health insurance carriers. Thus, health insurance is sold in interstate commerce. As well, claims payments flow through interstate commerce.

The individual responsibility requirements, together with other provisions in the act, will add millions of new consumers to the health insurance market, increasing the supply and demand for health care services.

Under existing health and labor laws, the Federal Government has a significant role in regulating health insurance.

Other prominent legal scholars have also said that Congress has the constitutional authority to impose a requirement on individuals to maintain health insurance.

Jonathan Adler, a professor of law at Case Western Reserve University School of Law, stated:

In this case, the overall scheme would involve the regulation of “commerce” as the Supreme Court has defined it for several decades, as it would involve the regulation of health care markets. And the success of such a regulatory scheme would depend upon requiring all to participate.

Doug Kendall of the Constitutional Accountability Center similarly concluded:

The fundamental point behind pushing people into the private insurance market is to make sure that uninsured individuals who can pay for health insurance don’t impose costs on other taxpayers.

Professor Michael Dorf of the Cornell University Law School also noted:

The individual mandate is “plainly adapted” to the undoubtedly legitimate end of regulating the enormous and enormously important health care sector of the national economy. It is therefore constitutional.

Robert Shapiro, a professor of law at Emory University School of Law, stated:

When everyone thinks of the wisdom of an individual mandate, or of health care reform generally, it would be surprising if the Constitution prohibited a democratic resolution of the issue. Happily, it does not.

Thus, Mr. President, the weight of authority is that health care and insurance represent interstate commerce.

The individual responsibility requirement to maintain coverage would be within Congress’s power to regulate interstate commerce.

Mr. President, in the last hour, several Senators on the other side listed all the groups that claim oppose the bill before us. I will indicate many organizations that favor the health care reform bill.

I will begin with the American Medical Association. This is the major doctors association that supports this legislation. In fact, the incoming president, the president-elect of AMA, at a press conference yesterday, made that statement very clear.

In addition, the American Heart Association supports the legislation. They believe the many patient-centered provisions are a significant step toward meaningful health care.

The American Hospital Association supports passage of this legislation.

The American Cancer Society Action Network supports it.

The Federation of American Hospitals also supports it.

The National Puerto Rican Coalition supports this legislation.

Mr. President, it would be unfair to say that these are all totally 100 percent endorsements. Rather, these are statements of support from these organizations. Some totally support it, and some say there are very good features in it. As far as I know, none of these groups totally oppose this legislation. Some would like to see some changes, but none of them want to vote against it.

The American Association of Retired People supports this legislation. That is the largest seniors group. They think this is good—I am sure for a lot of reasons, but it extends the solvency to the Medicare trust fund for another 5 years.

The Business Roundtable supports this legislation. They say:

On behalf of the members of Business Roundtable, I want to commend you for your efforts to improve the health care reform legislation currently being considered by the United States Senate. The proposed legislation is a step toward our shared goal of providing high quality, affordable health care for all Americans . . . . As we understand it, the proposed legislation now will include provisions to accelerate and enhance the process for delivery reform for the Medicare system . . . . It strengthens the match between the insurance reforms and the individual legislation . . . . We will continue to work with you, the Congress and the Administration to ensure we achieve the goals we all set when this process began.

The American Diabetes Association also supports this bill. They say it is "long overdue improvements to our broken health care system."

The Small Business Majority also believes the managers’ amendment “includes new provisions essential for small business protection and survival.”

Doctors for America supports passage of this bill.

The National Hospice and Palliative Care Organization strongly supports this legislation. There has been confusion as to whether they did. But they strongly support it, saying:

On behalf of hospice and palliative care providers and the more than 1.5 million patients, and their families . . . . would like to express our strong support of the national effort to enact health care reform. We acknowledge the enormity and complexity . . . . and we applaud your recognition of the importance of various provisions . . . .

Families USA supports this legislation. I already mentioned AARP, which also supports it. Community Catalyst is another organization that supports it. U.S. PIRG supports it. The Center for American Progress supports it. The American Health Insurance Companies in the United States, makes a strong statement approving the measure we are considering here.

Many organizations support this legislation. I am sure there are more, but this is an example of a few.

How much time remains on our side? The ACTING PRESIDENT pro tempore. There is 10 minutes remaining.

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.
Mr. CASEY. Mr. President, I commend the work of our Finance Committee chairman, MAX BAUCUS, for so many things in this debate. First, for helping us get health care legislation moving in 2009 and now at the point of getting it to passing the bill. I am grateful for his leadership. There are some highlights of the bill I want to note in the remaining moments of our time.

First, there has been a lot of debate over the last couple of days and weeks about preexisting conditions—about cost and care. Fortunately, we are able to report that with this bill coming out of the Senate, we will have more care and less costs. The deficit will be cut by $1.3 trillion over 10 years as a result of this bill; $132 billion over 10 years as a result of this legislation.

It will provide coverage for 94 percent of the American people. This has not been talked about much, but the bill is a net tax cut for the American people. We are going to crack down on insurers’ practices that have gone on too long, were allowed to go on for too many years: ending preexisting condition discrimination, and discrimination based upon gender, protecting transparency, and access to improving care for seniors not to impose further on our health care system, to protect children, and for our economy and for our health care system, to protect children in a very substantial way. Whether or not the immediate benefits in 2010? It reduces costs for small businesses through tax credits.

Fourth, it extends coverage for young adults—young adults under 26 years old, who may be living under difficult circumstances and don’t have insurance coverage. Preventive care—we preach about that for years, and we point to studies and good practices, but we have never made it part of our overall health care bill.

We eliminate lifetime limits on the amount of coverage a person may receive—a terrible problem for families. The message from our system has been that we can cure you, but we have to limit the kind of care we are going to provide for you.

Three more points in this area: What are the immediate benefits in 2010? It provides for all patients—that for children, there will be no more denying them coverage due to a preexisting condition. The immediate benefits in 2010?

That has moved up in the bill, so to speak, to an immediate benefit for children. So at least in the short term for children, there will be no more denying them coverage due to a preexisting condition—a tremendous breakthrough for a child, even for her or his family, and for our economy and for our health care system, to protect children in a very substantial way. Whether or not it is cutting the deficit, providing better quality of care, providing opportunities for great prevention which will lead to a healthier outcome, protecting people so they do not have to go bankrupt to get the care they need, and especially for protecting older citizens and children, this bill moves forward in a way we have never had an opportunity to move our system forward in a very positive way.

I again commend Chairman BAUCUS on his work and our majority leader, HARRY REID, and all those who made it possible to move this bill forward and to have it passed through the Senate and move it to enactment.

I yield the floor to the ACTING PRESIDENT pro tempore, The Senator from Montana.

Mr. BAUCUS. Mr. President, I see no Senator seeking recognition. I ask unanimous consent that the next block of time begin immediately.

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

The Senator from Florida.

Mr. LE MI EUX. Mr. President, I appreciate the opportunity to be here. I understand, Mr. President, I have a certain allotment of time. If I can be notified when I have 2 minutes remaining, I would appreciate that.

The ACTING PRESIDENT pro tempore. The Chair is unaware of any restrictions. There is 1 hour for the Senator’s side.

Mr. LE MI EUX. OK. If I can be notified when I have spoken for 20 minutes.

The ACTING PRESIDENT pro tempore. The Chair will so notify the Senator.

Mr. LE MI EUX. Mr. President, I rise today to talk about this health care bill. I have spoken about it before. I feel obligated on behalf of my State of Florida to explain why I, unfortunately, will not be able to support this bill and I believe in doing so, it is important to talk about why we are here and how we got here. I am sure the American people think that in this process of debating health care over the past weeks and months, this has been a process where both sides, Republicans and Democrats, have worked together, sat in an open room and gave ideas back and forth; that there has been give-and-take and compromise so that we move to the plan that is before us today. I am sure the American people believe that amendments were offered, that each Senator could come to the floor and offer amendments and that his and her colleagues were allowed to hear about those amendments and vote them up or down. I also believe the American people think we do not just come to this Chamber and give monologues. They probably think this room is not empty and that there are my distinguished colleagues here but that we all sit here and listen to each others’ arguments and decide what is best for the American people.

Unfortunately, that is not the case with this bill. This bill was designed and crafted by the Democratic leadership, without the input of the colleagues from this side of the aisle. There was no give-and-take. There was no second-reading vote. There was no conference with C-SPAN in the room, as the President told us he would ensure when he ran for the Office of the Presidency. And we did not have the opportunity to offer amendments to make this bill better.

I know that seems hard to believe, that we would not have the ability to offer amendments to make this bill better, but I can prove it to you.

I have an amendment at the desk. It is an amendment that is of great importance to public health. It is an amendment that fundamentally changes the way we finance health care. What this amendment does is it takes a piece of legislation I filed shortly after coming to the Senate in September of this year—the legislation is called the Prevent Health Care Fraud Act of 2009. That legislation has 11 cosponsors. It has bipartisan support.

What the bill does is basically three things:

First, it creates the chief health care fraud prevention office of the United States. It would be the No. 2 person at Health and Human Services. Their only job would be to ferret out health care fraud.
Second, it would use and take a page from the private sector to go after fraud. There is an industry out there right now that does an excellent job of stopping fraud. That industry is about the same size as the health care industry. It is the credit card card business. It is about a $2 trillion business. Health care is about a $2 trillion business. In health care and in Medicare alone, estimates are that $1 out of every $7 in Medicare is fraud. In the credit card business, it is pennies on the hundreds of dollars.

How does the credit card business do it? We have all had this experience. You go to purchase something in a store, and when you leave, you get an e-mail or a phone call and your credit card company says to you: Did you really mean to purchase that good or service? Guess what. If you say no, they don’t pay. The way we do things in Medicare and Medicaid is we do pay-and-chase. We pay, and then when we think there is fraud, we try to go after it.

This model stops the fraud before it starts. A group here in Washington, DC, has evaluated this legislation and says that it might save as much as $20 billion in fraudulent Medicare claims alone. We think there is $60 billion in fraud in Medicare—$1 out of every $7.

This proposal that we put forward also would require background checks for every health care provider in America to make sure they are not a viable criminal. Florida, my State, unfortunately is ground zero for health care fraud. We have the worst health care fraud in America. Just this past weekend, and I sent this letter around to my colleagues—a $61 million Medicare fraud scheme out of Florida and some other States.

My bill, this proposal which has bipartisan support, could save $20 billion a year. We have fashioned this bill into an amendment, because it is not the way American families work. It is not the way we do business. It works. It is not the way American families work. It is not the way even State legislators work, which I have experience with in Florida.

I wish we could have talked about that amendment and offered it. I wish my colleagues were here to debate it up or down. Let’s talk about where we are instead. Let’s talk about what this bill does and why I cannot, unfortunately, support it as a Senator from Florida.

We know this bill cuts Medicare by nearly $½ trillion. We know this bill raises taxes by nearly $½ trillion. And we know it does not accomplish the fundamental goal the President put forward when he embarked on this debate about health care reform.

The American people are beginning to realize and if they have not realized yet will be shocked to hear that this bill does not cut the cost of health care for people who have insurance already. That is the very reason this debate was embarked upon, not just access for people who do not have health care insurance but to bring the costs down. Health care has gone up 130 percent in the past 10 years. This bill will not address that. In fact, estimates show that for some folks, the cost of health care will go up.

There are basically five reasons why I cannot support this measure as a Senator from Florida.

I am concerned, first of all, about access and quality of care for our seniors. When you take $½ trillion out of Medicare, my fear is that it is going to diminish the quality of care for seniors in Florida.

It is said on the other side that we are not going to take away benefits, that we are just going to take money away from providers on the other side that the new insurance will take care of uncompensated care, so that the cuts to hospitals and to other providers will not really hurt seniors in the end. I think that is a tremendously risky experiment.

I cannot believe, at the end of the day, when we pay providers less, it is not going to affect benefits. Right now, studies show that 24 percent of seniors on Medicare trying to find primary care physicians cannot find one. I get letters from seniors in Florida who say they cannot find a doctor who will take their Medicare. We know in Medicaid it is worse. We know in Medicaid if you are just going into the program, you are going to find something. It is almost 40 percent of the physicians will not take you. In metropolitan areas for specialists, it is up to 50 percent who will not take Medicaid.

I fear that if we were to cut nearly $½ trillion off a program that is already in financial trouble, a program that in the next 7 years is going to be in serious financial trouble and not be able to
meet its obligations, that it is going to hurt seniors.

I have heard this discussion about how we are prolonging the life of Medi-
care. The distinguished chairman just spoke about it. But when you look at what the Actuary at HHS has said about the trust fund, the assumption
is that we are not going to restore the 21-percent decrease in physician pay-
ments which, of course, as soon as we get back in the new year, we are going
to have to deal with.

You are taking money out of Medi-
care and pay for a new program and
shore up Medicare. You do not need an
actuary or an evaluation or an analyst
to tell you that. It is common sense.
You cannot get blood from a stone. If
the doctor is not in, it is not health
care reform.

I have received a letter, as many of
my colleagues have, from an organiza-
tion called 60 Plus which represents 5.5
million seniors. James Martin, the
president of 60 Plus, writes:

Cutting half a trillion dollars from Medi-
care while adding 31 million more to the
health care rolls is an outrage.
60 Plus strongly supports health care re-
form and do no harm. But the system
serving so many so well . . . Make in-
cremental changes that do not bankrupt
a system already teetering on insolven-
y.

I want to talk a minute about Medi-
care Advantage. There are more Florid-
ians in Medicare Advantage than any
other State. A lot has been said about
this program. We have had amend-
ments to try to stop the cuts. Mr. Presi-
dent, 950,000 Floridians—Medicare
Advantage is a great program, and peo-
ple in Florida enjoy it. Seniors enjoy it
because they get more than regular
care; they get eye care, hearing care,
wellness, diabetic supplies, and other
things that add to the quality of life
of seniors and help their entire health
care. These Medicare Advantage pro-
viders are actually working hard to
make sure their senior customers are
happy, not a concept you hear a lot
about when the government is in
charge.

There is a fix for Florida, as has been
talked about, but I wish to talk about
what that fix is, as I understand it. It
is an off-ramp. For the rest of the
country, it is going to be somewhat of
an exit. For Florida, it is an off-ramp.

First of all, we don’t know what will
happen in conference. The Senate cuts
$120 billion; the House cuts $170 billion.
I don’t know if the Florida fix will still
be there. But in talking to experts and
reading the bill myself—specifically
around page 895 through about 901 of
the Reid Bill—there is this grand-
fathering in for folks in Florida,
and other areas, but part of Florida is
covered. Of the 950,000 people, the
experts think 150,000 to maybe as
many as 250,000 will not get this grand-
fathering in. They are going to get the
cuts, but Florida is in the Chamber.
So this is not good for them. Then, for the
others, say, 700,000 people or so, every
year, starting in 2013, their benefits—or
the payments to the providers for bene-
fits—are going to decline 5 percent a
year. That is on pages 895 through 897.
So it is an off-ramp. Every year, less
payments. Every year, less benefits.

I talked to one provider down in
Miami, the Florida Chamber of Com-
merce in this Chamber have visited. He runs a very
successful Medicare Advantage Pro-
gram. He said these cuts would be devast-
ating. So while it might not be an exit for Florida right away, it is cer-
tainly going to be an off-ramp that one
day ends up being an exit.

Let’s remember that many of the
folks on the other side of the aisle who
are proposing these cuts to Medicare
Advantage didn’t vote for Medicare Ad-
vantage to start with. They don’t like it.
They don’t like the private sector
being involved. They don’t like these
extra benefits being provided. It goes
against what they philosophically be-
lieve. But I know Floridians like it. Be-
cause this bill cuts it, I can’t be for it.
So one thing is that in any case this
next 10 years Medicare Advantage in
Florida will be as robust as it is today.

I am concerned also about the home
health care payments. I am concerned
about what it is going to do to the
home health care providers in Florida. I talked to the larg-
est provider of home health care serv-
ices in Florida, and he said: We will be
fine, but the small businesses—the
mom and pops who do this—will go out of
business. That is disconcerting in a
State with 11½ percent unemployment.

The second reason I can’t support
this bill is this is going to have a dev-
astating effect on our State budget in
Florida. We talked today to the head of
the Florida health care system, the
Agency for Health Care Administra-
tion, and these increases in Medicaid,
raising Medicaid from 100 percent of
poverty to 133 percent, are going to
cost Florida an estimated $3½ billion
over the next 5 years. That is $9½ bil-
lion Florida can’t afford to pay.

Our budget has gone from $73 billion
to $66 billion in a short period of time
with the economic decline. Unlike this
Chamber, which spends money it
doesn’t have, Florida has to balance its
budget. So what happens when you
have less money? You have to cut pro-
grams. But when you have a Federal
mandate, you can’t cut that. So what do
you cut? You cut education and
teachers—government—government
is not good for Florida. This is a burden
Florida can’t afford to pay. That is why
all the Governors in the country—
virtually Republican and Democratic
alike—including our Governor, Charlie
Crist, are against this unfunded man-
date.

The third reason I can’t support this
bill is because it raises taxes—$518 bil-
lion. What happens when the drug com-
pany that makes your medicine or the
medical device company that makes the
lifesaving implant for you, the one you
gets taxed? They are going to pass it along
to you. They are going to put it right
in the bill. That is the way it is going
to work. That is why health care costs
aren’t going down for the 170 million
Americans who have health insurance.
In fact, for some, they are going to go
up. That is not health care reform.

Fourth, this is a budget-busting bill.
It is not just sort of the things financial
here in Washington. You send
them a proposal and they give you an
answer. But it is not a thinking an-
swer; it is an analytical answer, and it
gets gamed. What you send them deter-
mines what you get back. They only
look at a 10-year period—what it is
going to cost in the next 10 years. If
you bring in more money than you
spend in the next 10 years, then it will
cut the budget. It will cut the deficit.
That is what they say back to you.

So what was done in this bill in order
to get something that would fulfill the
President’s promise to be a budget cut
or at least deficit neutral? We have 10
years of taxes and 6 years of benefits.
That is what they say back to you.
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gonna go down for 170 million
Americans who have health insurance.
In fact, for some, they are going to
go up. That is not health care reform.

So it is an off-ramp. Every year, less
payments. Every year, less benefits.
I am going to conclude by saying
this, and this will probably be the final
time I will speak before we have final
passage on this bill. I long for what
could have been. What could have
worked better. We could have had an ans-
swert bill. We could have had a bill that
would say insurance companies can’t
drop you if you are sick, insurance
at 7 o'clock in the morning, and I have an amount of time in our offices waiting to provide for access to quality health care. When you can't get in to see a provider, when that insurance card is all we have given you, then we haven't done anything to provide for a level of care to improve the situation for the residents of Florida and the residents of Alaska are doing today—as we move toward final passage on legislation that I would concur with the Senator from Florida does not fix the problem—we are not dealing with the Senator from Florida's bill, the more they realize the negative impacts, the consequences to them and their families and their businesses and they are no longer silent. I have had so many calls and letters coming from people saying: I have never weighed in with you before, I never weighed in with my delegation, but this is something I can't keep silent on.

When you look at some of the ones that have come in, these are just to the point actually. There is a gentleman in Fairbanks who writes in: I am very skeptical about this mandatory health insurance that apparently everyone will have to buy in.

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

Ms. MURKOWSKI. Mr. President, I wish to acknowledge the very eloquent and articulate comments of my friend from Florida. We recognize that his time in the Senate has been relatively short, but in terms of an individual jump to the drum. In just the past 24 hours, we have gotten probably close to about 500 health care e-mails that have come in. Overwhelmingly these are e-mails from constituents saying: No, this is not good. You must do what you can to prevent this reform package, as you call it, from moving forward. It seems the longer the people from Alaska, the longer the people from around this country have to look at what is contained in this 2,000-plus page mandate, the more they realize the negative impacts, the consequences to them and their families and their businesses and they are no longer silent. I have had so many calls and letters coming from people saying: I have never weighed in with you before, I never weighed in with my delegation, but this is something I can't keep silent on.

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the increased costs of these new benefits simply because Congress mandates that they do so.

They go on to conclude in the letter:

We are unaware of any data or evidence that suggests that the needs and struggles of a construction contractor with fewer than 50 employees are so different from those of small business owners in other industries, and absent such convincing evidence, we are left to assume that this specific provision is merely a political payoff to satisfy the desires of a small constituency.

Those are some pretty strong words there. But it does cause you to wonder why, in this legislation, we are going to require that businesses—only businesses in excess of 50 employees are going to be subject to this mandate. Why this unprecedented assault on the homebuilders? I don't get it.

But what it does cause me to get is that there is a heck of a lot more out there that, the more we read it, the more we sit down and we connect the dots, the more we realize this fish we have set out on the front porch is going to continue to stink.

It stuns me. We have the homebuilders up in Alaska who are beside themselves, saying: Can you take a look at this and let me know how the Senators feel. What are you going to do about this, Lisa, is the question I have received.

This is something we all have to reckon with.

Madam President, at the conclusion of my remarks, I ask unanimous consent that a copy of the letter be printed in the RECORD.

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

(Sec. But unanimous consent.)

Ms. MURKOWSKI. I am going to speak a little bit about how aspects of this legislation have impact specifically on my State. As a rural State, sometimes the impacts we see are different than you have in more urban States. Our geography is different, our lack of providers, our high senior population, our extremely expensive costs, there are a lot of dynamics at play that cause real issues and real concerns.

There have been many words that have been exchanged on this floor about what this bill doesn't do or what it does do. I find it helpful to go to the experts, the think tank in my State, the university they call the Institute of Social Economic Research. I take what they have to say about the Federal health care expenses, the taxes on small businesses for the individuals, the families, the health benefits of the police, the firefighters, other public protective service people who put their lives on the line for so many. These are the things about which, unfortunately, I might not be getting the full picture.

Our colleagues on the other side have claimed that health care coverage will be expanded. Again, let's go to our non-partisan entities—the CBO and the Joint Committee on Taxation. The average premium per person, if you purchase in the individual market, is going to be 10 to 13 percent higher in 2016 than the average premium under current law. That tells you if these Federal scorekeepers are correct, your premiums are going to go up under this health bill if you buy insurance yourself.

In Alaska, according to ISER—again, the Institute for Social and Economic Research—there are 28,000 Alaskans who would pay 12 percent more for their premiums. It is going to cost an individual in my State an extra $1,100 per year and a family in my State nearly $3,000 more per year for the coverage.

Again, you have to ask the question: Is health care expanding? This bill forces you to purchase federally approved health care; otherwise, you have to pay the penalty of $750 or 2 percent of your income if you earn more than $37,500.

If you look at Alaska's population, this is going to bring in more than 50 percent of Alaska's population who are going to be penalized if they fail to have health insurance. Again, you ask the question: Is health care coverage going to be expanded?

Since the law we are advancing is going to require that you buy federally approved health insurance, and then we are going to penalize you if you do not buy it, then what you have is the heavy hand of the Federal Government that forces you to buy health insurance, which is going to cost about 12 percent more once this bill is enacted—12 percent more than it would today.

The Democrats will also talk about the hidden tax on families—how that will go away because once this bill passes, under this bill, everyone is going to have coverage, Alaskans and Alaskans who do not get federally approved health insurance that the Federal Government is going to require that you have, they are going to be fined $750, 2 percent of your taxable income, and what the Democrats will not tell you when they say health care coverage is going to be expanded or the hidden tax is going to go away is, those with income greater than $37,500—again, affecting over 50 percent of the people in my State—are going to be taxed a full 2 percent of their household income. When that bill is fully phased in, if they do not get health insurance. It is this penalty that is going to raise $15 billion to help pay for this bill. This is how we are paying for the bill.

CBO and CMS told us the taxes on medical devices—whether they are tongue depressors or x-rays or blood sugar meters—these are going to be passed down to the individuals so you are going to be taxed for vital medications and other health products. The question you then have to ask yourself: OK, so do these hidden costs actually go away?

I suppose they do because they are no longer hidden. What we will have done is we will have raised your premiums, we will have increased the penalties on those earning more than $37,500 who did not buy into health insurance, and we will have taxed your tongue depressors and x-rays to pay for the bill.

In addition, the smallest of the small businesses are going to be taxed if they do not provide insurance for their employees, and individuals and couples earning over $250,000, they are going to be penalized because they are the higher income earners.

The Democrats are also telling you that as Medicare patients, they are going to get some good, positive things. They will get free preventive services. This is absolutely great. We should be encouraging preventive services.

But as my colleague from Florida was explaining, as I mentioned, after this bill passes, anybody over the age of 13—I think we are going down to only 12 now—primary care doctors in Alaska, in the Anchorage area anyway, accepting new Medicare patients? We are saying we are going to provide this service to you at no cost. But, again, if you can't get anybody who will take you as a patient, how are we helping you? We have heard from a doctor in Anchorage. In fact, I have an opinion piece that was published just this week in the Anchorage Daily News. She indicates she is dropping out of Medicare and she is doing it because of this legislation.

I ask unanimous consent that be printed in the RECORD.

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

(From the Anchorage Daily News, Dec. 18, 2009)

OPINION: DOCTORS AND PATIENTS, NOT FEDS, KNOW BEST

(By Ilona Farr, M.D.)

I have made the heart-wrenching decision as a physician to opt out of Medicare. I do so after working with Sen. Stevens, Sen. Murkowski and Rep. Young for a decade in hopes we could ensure seniors would be able to continue to receive medical care in Alaska.

On a visit costing $115, Medicare pays $40, secondary insurance pays $7, and the rest—$68—is a loss, not a tax write-off. It takes six insurance paying patient visits to offset losses from one Medicare or Medicaid patient.

The House health care bills, HR3900/HR3962, increase the number of people not paying their share of the costs and will lead doctors to opt out of Medicare or retire early.

Anchorage has 75 family physicians, down from 180. Physician shortages like these are
caused by government interference in the free market. Government artificially keeps reimbursement rates low, forcing other patients and insurance companies to pick up the slack. Family practice residencies are filled with foreign medical graduates because of high costs (more than $200,000) associated with medical school. Low physician reimbursement rates make it difficult to repay loans.

Medicare and Medicaid auditors are paid on commission, can fine us $2,000 to $50,000 for one honest mistake or billing error, and then extrapolate this over the practice and drive us out of business. . . all for one minor mistake. There is fraud, but this system that penalizes us severely for simple errors is untenable.

In these bills malpractice reform is restricted, health savings accounts (which help reduce costs and fraud) are essentially eliminated, and taxes and fees on insurance and medical services are increased. There are no Medicare/Medicaid rate, rule, or audit reforms, or tax write-offs for business losses.

One section in Sen. Harry Reid's bill says Medicare will no longer pay for home health services provided by 134 firms that own labs, X-rays, prescriptions or other services written by providers who have opted out of Medicare. Many talented physicians have had to opt out of Medicare (and by this law must opt out of Medicaid and the military's Tricare also) to stay in business. People will no longer be able to see these physicians because of financial restrictions or will be forced to pay all medical bills associated with these visits themselves.

Bills under consideration cut Medicare spending by $809 billion, raise fees on medical services, increase physicians' administrative burdens, promote electronic medical records with mandated reporting of outcomes, and impose new business restrictions that will be impossible for small practices to survive.

My decision to withdraw from Medicare was also precipitated by U.S. Preventive Services Task Force's recommendation that breast cancer screening mammograms should only be done on women between age 50 and 74. Approximately 48 percent of my patients with breast cancer developed it before age 50. Up to 1.2 percent of my practice, mostly Medicare patients, could have died if this was a national guideline.

The Senate bill has this task force and other committees determining what tests will be covered for patients. I am concerned that penalties may be imposed on insurance companies, and maybe providers, for going against these guidelines. The Hippocratic Oath compels us to protect the health of all humans throughout life, and many provisions in these health care bills would cause us to violate that oath.

Physician payments (not government) should decide the best, most cost-effective medical treatment for patients. Government should not dictate to insurance companies or providers what care can or cannot be covered. Medicine is changing too rapidly for guidelines to be made at a national level.

I have worked in government medical facilities and in private practice for the last 26 years. Physicians provide timelier, less costly and more patient-oriented care if not overtime, but high non-producing government administrators.

I am in favor of reform, but current bills before Congress will collapse our health care system and we are guaranteed under the Constitution. Government should not be allowed to force people to purchase health insurance, mandate what health plans must cover, or in any way increase our taxes astronomically to support a huge government health care bureaucracy that will bankrupt us as individuals and as a nation.

Ms. MURKOWSKI. It is no secret, in my State of Alaska and in far too many States around this country, we do not have enough providers that will take these individuals. ISER has said the penalties imposed on Medicare and States will be forced to wait in line. Alaska is one of two States—we are, I think, second to last in terms of Medicare payments and where we stack up in relation to the reimbursement. ISER goes on to state:

Independent of the doc fix, in Alaska the remainder of seniors are at risk of long lines to see a primary care doctor and overflowing to community health center and hospital emergency rooms where existing capacity is highly likely to be quickly overwhelmed and long wait times become increasingly common.

ISER has also said that additional new insured patients are going to hurt Medicare beneficiaries, and they state:

Federal healthcare reform applied to Alaskans will likely exacerbate an already challenging situation for Alaska's seniors as those who are Medicare-eligible begin to arrive in large numbers. ISER has said that 40% of the excess benefit will be subject to this 40% excise tax.

Ms. MURKOWSKI. It is no secret, in my State will be subject to this 40% excise tax.

I ask unanimous consent to have printed in the RECORD, as follows:

The Reid bill reduces payments to health care providers which tests can or cannot be covered, which services, durable medical goods, and possibly providers could find it difficult to remain profitable and absent legislative intervention, might end their participation in the Medicare program.

It is happening. Doctors, providers, physicians are making those decisions as we speak. They are opting out. So this is not some theoretical approach made up to make this happen. This is happening.

MADAM PROTECTOR. How much time do we have on our side?

The PRESIDING OFFICER. The Senator has 17 minutes.

Ms. MURKOWSKI. If I may ask my colleague from Kansas, do I understand the Senator is seeking about 10 minutes?

Mr. BROWNBACK. Yes.

Ms. MURKOWSKI. Madam President, I want to speak about small businesses because we have all been talking about the impact to small businesses. Under this bill, as we know, small businesses are going to be penalized $750 per employee if even one of their employees seeks governmental health care through Medicaid or through Federal subsidies. So if you have 50 or more employees, you can be expected to pay fines in an amount of $750 per employee, which amounts to over $37,000 or $35,000 for that individual employee.

I think we need to put it into perspective in terms of who these businesses are. These are the solo-practitioners, like the one-lawyer office or the small doctor's office. If these individuals purchase health care in the individual market, they are going to see their premiums go up an extra $1,160 per year for a family—nearly $3,000 more in 2016.

Alaska is defined as a high-cost State. If you are a small business that cannot afford to pay good health and dental benefits for your employees and those benefits amount to $8,500 per individual or $23,000 per family, in a high-cost State such as Alaska, you look to be hit with a 40-percent excise tax because you basically cannot provide your employees with good benefits.

Again, according to ISER:

Alaska is a high cost state and thus, roughly 50 percent of health plans in Alaska will be subject to the tax by 2016, compared to only 19 percent average in the Lower 48.

Again, by 2016, 50 percent of the plans in my State will be subject to this 40-percent excise tax.

I ask unanimous consent to have printed in the RECORD, as follows:

MUNICIPALITY OF ANCHORAGE, POLICE & FIRE RETIREE MEDICAL TRUST.

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

At the November 24, 2009 PFRMT board meeting I brought to your attention a health care bill, HR 3590a—Patient Protection and Affordable Care Act, being considered in the United States House of Representatives. If this implement into law would require that the Municipality of Anchorage (MOA) and the Trust to make changes to their current business practices. S 1796—America’s Healthy Future Act of 2009 also contains changes and could become effective January 1, 2010.

Three provisions in the bill that are of particular concern are:

1. Inclusion of health care benefits as taxable income to employees. Not only will this increase the employee’s taxable income but the MOA’s payroll taxes will also increase.

2. 40% percent excise tax.

There is an aggregation rule for the value of employee coverage with multiple employers at one location, that if implement into law would require that the Municipality of Anchorage (MOA) and the Trust to make changes to their current business practices. S 1796—America’s Healthy Future Act of 2009 also contains changes and could become effective January 1, 2010.

2. Taxation of MOA health care plans. This tax will be imposed on the employer. The current MOA health plan design is apt to be considered to have an “excess benefit”. This would make it subject to a 40% excise tax. There is also an aggregation rule for the value of employee coverage with multiple employers at one location, that if implement into law would require that the Municipality of Anchorage (MOA) and the Trust to make changes to their current business practices. S 1796—America’s Healthy Future Act of 2009 also contains changes and could become effective January 1, 2010.

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that the Trust is an integral part of the Municipality, it is not required by law to make an annual federal income tax return. (p. 53)

3. Current Municipal employees are able to be reimbursed tax free from money that they have placed in their flexible spending account for over the counter (OTC) medicine. Retired police officers and firefighters also currently are allowed reimbursement as part of their medical benefit. Under the rules of this bill, these reimbursements would no longer be allowed. It is also likely to encourage an increase in the utilization of more expensive non-OTC prescriptions, as they are a covered expense. (p. 53)

SEC. 9003. DISTRIBUTIONS FOR MEDICINE QUALIFIED ONLY IF FOR PRESCRIBED DRUG OR INSULIN. (p. 53)

This bill contains expenses that should be considered and planned for accordingly. A December 2009 press release from Mercer, an HR consulting stated.

Nearly two-thirds (63 percent) of employers in a recent survey by Mercer say they would cut health benefits to avoid paying an excise tax included in the Senate’s Patient Protection and Affordable Care Act, unveiled November 18. Mercer estimates that one in five employers would be forced to drop health care insurance altogether. They are deemed “too generous” and thus be subject to the Act’s 40 percent non-deductible tax on those expenses. (p. 53)

Two letters have been sent to the MOA informing them of these matters. The dates of these letters were November 25 and December 5, 2009. Since then, Larry Baker, Senior Policy Advisor, in the Mayor’s Office informed me that the MOA’s benefit consultant, The Wilson Agency, affirmed that the MOA’s benefit consult

I recommend two points of action. Bring the PFRMT membership up to date of this

I recommend two points of action. Bring the PFRMT membership up to date of this situation. And contact Senator Begich to inform him of the negative impact that these bills will have on our retired police officers’ and fire fighters’ medical benefit.

Sincerely,

Ms. MURKOWSKI. The city of Anchorage is the largest city in Alaska. We received this letter from the MOA. In the letter, they cite specifically three provisions in the bill that are of particular concern—No. 1, inclusion of health care benefits as taxable income to employees.

It states:

Not only will this increase the employee’s taxable income but the [Municipality of Anchorage’s] payroll tax will also increase.

The second point is the reimbursement of the municipality’s health care plans.

This tax will be imposed on the employer. The current [municipality] health plan design is apt to be considered to have “an excess benefit” and this would make it subject to a 40% excise tax.

They go on to say:

There is also an aggregation rule for the value of employee coverage with multiple employers or retiree medical. If a retiree would purchase [the municipality’s] Health Insurance that is considered excessive, the 40% excise tax would be incurred.

One may argue that the tax is a tax to the employer. The argument can also be made that the Trust is an integral part of the Municipality. Thus the tax would be payable from the Trust general fund assets.

Their third point is:

Current municipal employees are able to be reimbursed tax free from money that they have placed in their flexible spending account for over the counter medicine. Retired police officers and firefighters also currently are allowed reimbursement as part of their medical benefit. Under the rules of this bill, these reimbursements would no longer be allowed. This is a reduction in employee benefits. It is also likely to encourage an increase in the utilization of more expensive non-OTC prescriptions, as they are a covered expense.

There are about 400 members that are part of the Police and Fire Retiree Medical Trust. When they find out, as I am sure they will, that essentially they are going to be taxed on their plan—I think most of these firefighters and police officers don’t view them selves as having access to a Cadillac plan. They are just firefighters and police officers. But this is coming from their trust fund, expressing great concern over what we have in front of us.

I have received a copy of an opinion piece from a primary care provider in Anchorage who has outlined why she is opting out of the trust in Alaska.

I ask unanimous consent to have her letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD.

From the Anchorage Daily News, Dec. 18, 2009

OPINION: DOCTORS AND PATIENTS, NOT FEDS, KNOW BEST

(By Jona Parr, M.D.)

I have made the heart-wrenching decision as a physician to opt out of Medicare. I do so after working with Sen. Stevens, Sen. Murkowski and Sen. Young; for a decade I hope we could ensure seniors would be able to continue to receive medical services in Alaska. On a visit costing $115, Medicare pays $40, secondary insurance pays $55, and the rest, $68—a loss, not a tax write-off. It takes six insurance paying patient visits to offset losses from one Medicare or Medicaid patient.

The House health care bills, HR3590/ HC2692 very specifically kept reimbursement rates low, forcing other patients, and insurance companies, to pick up the additional costs. Family practice residency aids are funded with foreign medical graduates because of high costs (more than $200,000) associated with medical school. Low physician reimbursement rates make it difficult to repay loans. Medicare and Medicaid auditors are paid on commission, can fine us $2,000 to $50,000 for one charting mistake or billing error, and then extrapolate this over the practice and drive us out of business . . . all for one minor mistake. There is fraud, but this system that penalizes us severely for simple errors is untenable.

In these bills, enactment of core reforms is re strictive and will distort health care markets (which reduce costs and fraud) are essentially eliminated, and taxes and fees on insurance and medical services are increased. There are no Medicare/Medicaid rate, rule, or audit reforms, or tax write-offs for business losses.

One section in Sen. Harry Reid’s bill says Medicare will no longer pay for home health care, durable medical equipment, ambulances, lab, X-rays, prescriptions or other services written by providers who have opted out of Medicare. People who have had to opt out of Medicare (and by this law must opt out of Medicaid and the military’s Tricare also) to stay in business. People will not be able to opt out because of government financial restrictions or will be forced to pay all medical bills associated with these visits themselves.

Bills under consideration to cut Medicare spending by $60 billion, raise fees on medical services, increase physicians’ administrative burdens, promote electronic medical records’ treatment for patients, give government outcomes data, and increase business costs so it will be impossible for small practices to survive.

My decision to withdraw from Medicare was also precipitated by U.S. Preventive Services Task Force’s recommendation that many preventive services be deemed “too generous” and thus be subject to the 40% excise tax. They are concerned over what we have in front of us.

Nearly two-thirds (63 percent) of employers in a recent survey by Mercer say they would cut health benefits to avoid paying an excise tax included in the Senate’s Patient Protection and Affordable Care Act, unveiled November 18. Mercer estimates that one in five employers would be forced to drop health care insurance altogether.

I am concerned that penalties may be imposed on insurance companies, and maybe providers going against these guidelines. The Hippocratic Oath compels us to protect the health of all humans throughout life, and many provisions in these health care bills would cause us to violate that oath.

Physicians and patients (not government) should decide the best, most cost-effective treatment for patients. The government should not dictate to insurance companies or providers what services can or cannot be covered. Medicine is changing too rapidly for guidelines to be made at a national level.

I have worked in government medical facilities and in private practice for the last 26 years. Physicians provide timelier, less costly and more patient-oriented care if not over seen by hordes of non-producing government administrators.

In favor of reform, but current bills before Congress will collapse our health care system and work against the freedoms we are guaranteed under the Constitution. Government single payer should not be allowed to force people to purchase health insurance, mandate what health care services you are allowed, or increase our taxes astronomically to support a huge government health bureaucracy that will bankrupt us as individuals and as a nation.

Ms. MURKOWSKI. One of the things we don’t have in this legislation is a provision that relates to medical malpractice. It has been stated that, in Alaska, you tried medical malpractice reform and we haven’t seen the positive impacts.

I ask unanimous consent to have printed in the RECORD a statement from the Alaska State Medical Association, along with an article that was published in Alaska Medicine in September of 2009 entitled “Med实务 Practice Relief, Lower Premiums, ‘ ‘ Tort Reform Add to Alaska’s Appeal.”

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

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There being no objection, the material was ordered to be printed in the RECORD, as follows:
ANCHORAGE, ALASKA (Dec. 21, 2009)—The Alaska State Medical Association (ASMA), which represents physicians throughout Alaska and is concerned with the health of all Alaskans, is taking issue with Sen. Mark Begich’s stance on medical liability reform.

In an interview with Fox News on Dec. 7, 2009, Alaska’s junior senator opined that tort reform in his home state has not worked. ASMA, which did not necessarily portray the facts in that nationally broadcast interview and that medical liability reform in Alaska serves as a shining example for the rest of the nation.

“Alaska’s physicians have worked hard for at least the last 35 years to achieve meaningful and equitable liability reform measures,” ASMA President Brion J. Beerle, MD, wrote today in a letter to Sen. Begich. “Those efforts have resulted in a stable marketplace for insurers that provide medical professional liability coverage to Alaska’s physicians at rates that are competitive.”

More than 90% of medical liability coverage in Alaska is provided by two, not-for-profit, mutual companies—MIEC and NORCAL—rates that are owned by their policyholders (mutual insureds) and overseen by boards of governors, all of whom are physicians, with representation of both the medical specialty and Alaska physicians.

“The cumulative result of the Alaska physicians’ advocacy has been a success for physicians and their patients,” Beerle wrote. “For example, according to the Medical Liability Monitor Survey, 2008 premiums paid by Alaska’s internists average just 24% of those paid by the interests in the five most expensive states; general surgeons pay about 25%; and obstetricians/gynecologists pay about 31%. According to that same 2008 survey, the premiums for those same specialties are in the bottom quartile of all states plus the District of Columbia.

“MIEC also has returned excess earnings to its policyholders in 16 of the last 19 years; and NORCAL policyholders received dividends in 12 of the last 18 years. MIEC has, in addition, reduced its rates by 5% in 2009 and also for 2010,” the ASMA president added.

Writing on behalf of the association he leads, Beerle noted that because of tort reform, premiums Alaska’s physicians pay for liability coverage is generally not significant in the cost of operating a medical practice.

“The factor that does have a material effect is the cost of practicing defensive medicine,” he wrote.

The American Medical Association has estimated that the annual cost of the practice of defensive medicine in the United States ranges from $96 billion to $179 billion.

“Until medical liability reforms similar to those enacted in Alaska are adopted nationally, the addition of the practice of defensive medicine will continue to be a driver in the cost of health care in Alaska and throughout the country,” Beerle concluded.

[From Alaska Medicine, Sept. 2009]  
MALPRACTICE RELIEF

(By Andrew Firth and Roger Holmes)

It is a universal truth that wherever one practices in the United States, malpractice insurance costs too much. But in Alaska, the average medical malpractice premium pay to less than 35 other states, a national survey shows.

Physicians in Alaska pay much less than their colleagues in the nation’s five most expensive states. In 2008, Alaska’s internists average 24 percent of those paid by internists in the five highest states; surgeons here pay roughly 25 percent, and obstetrician/gynecologists pay about 31 percent. (The top five states vary by specialty, as the cost in some states may be societal, but part of it has to do with the tort reforms that have passed, or not passed, in each state.)

In Alaska, the pain is similar to many states where the costs are lower. It’s a state with an active medical society (the Alaska State Medical Association), an engaged membership, a broad coalition of providers and an enlightened legislative body that recognizes the connection between malpractice costs and access to care.

In 1975, Alaskan physicians suddenly were confronted with a disappearing market for medical malpractice insurance. The Legislature stepped in and created the Medical Indemnity Corporation (MICF), a quasi-state agency funded with state money but run by a private board of directors appointed by the governor. At the same time, the Legislature modified the law governing medical malpractice claims. Among the key changes:

The burden of proof was codified, making it clear that a practitioner could only be judged against those in the same field or specialty. Re ipso loquitur, a legal doctrine that switched the burden of proof to the healthcare provider in certain instances, was abolished.

The law required that juries be told that injury alone does not raise a presumption of negligence or misconduct.

Plaintiffs were prohibited from filing in inflammatory pleadings asking for millions of dollars. The law of informed consent was codified. The law prohibited claims that a health care provider had orally agreed to achieve a specific medical result.

Plaintiffs were prohibited from obtaining a recovery for sums that had been paid by a lateral sources, except for a select few federal programs that must, by law, seek reimbursement.

During the 1970s and 1980s physicians encountered rising and falling malpractice costs as the insurance cycle reacted to changing claim experience in Alaska and elsewhere. The current structure of several medical professional liability (MPL) insurers in the late 1990s. In the mid-1990s, the Alaska State Medical Association and several MPL insurers joined with the Alaska State Hospital and Nursing Home Association, Providence Hospital and the business community to press for additional tort reform. The result was the 1997 Tort Reform Act. Among its achievements was a cap on non-economic damage, except in cases of severe disfigurement or severe permanent impairment, in which the cap rises to $1 million. Punitive damages were limited, and the standards for awarding them were tightened. Prejudgment interest was tied to the federal discount rate—Alaska’s current rate is 3.25 percent. Joint and several liability was abolished in favor of comparative fault, in which each party is responsible only for its percentage share of the total fault. And parties were prohibited from using experts in medical malpractice cases unless the expert is licensed, trained and experienced in the same discipline or school of practice as the physician and has a medical degree.

A coalition called Alaskans for Access to Health Care—comprising ASMA, Alaska Physicians & Surgeons, the hospital association, and the Medical Indemnity Corporation—was formed in 2005 and argued for an even lower non-economic damage cap for health-care providers. The result was a limit of $250,000 in all cases except when damages are awarded for wrongful death or a severe permanent physical impairment that is more than 70 percent disabling. For those, the limit is $400,000.

Since then, Alaska has enjoyed a stable malpractice climate, with both its major carriers reducing rates and/or returning profits through dividend distributions. The reforms make a big difference. For example, NRCAL Mutua1, which writes policies in Alaska and California, also does business in Rhode Island, which does not limit non-economic damages in malpractice cases.

Most rates for policies with at least three years’ practice experience (mature rates) in Rhode Island are at least double the mature rates for physicians in Alaska.” NRCAL Marketing and Communications Manager Brent Samodurov wrote in an e-mail to Alaska Medicine. “For several medical specialties NRCAL’s rate for Rhode Island are nearly triple those for Alask.

MP CARRIERS

There are two major MPL insurers in Alask: MIEC and NRCAL. Both companies are owned by their policyholders (mutual insurers) and are overseen by a board of governors consisting of physicians. ASMA President Brion J. Beerle wrote in 1978 and is sponsored by ASMA. NORCAL became active in 1991 after it purchased MICA.

According to data published by the National Association of Insurance Commissioners, MIEC wrote 69.7 percent of all medical malpractice premiums for physicians in the state during 2008 and NRCAL wrote 23.4 percent. Ten other carriers shared the remaining 6.9 percent of the market.

Typical of these types of policyholder-owned companies, both MIEC and NRCAL have long histories as a result of tort reforms and/or malpractice climate, with both of its major carriers reducing rates and/or returning profits through dividend distributions: NRCAL’s Alaska clients have received dividends in 12 of the past 18 years, the most recent amounting to 12 percent of each eligible policyholder’s premium as of Sept. 30, 2008, according to Samodurov. He noted: “Dividends declared are directly related to the company’s loss experience in each state.”

MIEC has a similar record of returning profits to its Alaska members. MIEC policyholders have received dividends in 16 of the past 19 years in amounts that average 28.8 percent of basic premiums (for $1 million/$3 million limits) in each one of the past 19 years.

Ms. MURKOWSKI. The bottom line is from the Alaska State Medical Association: The cumulative result of Alaska physicians’ advocacy has been a success for physicians and their patients.

Again, we have seen the positive impact in Alaska because of the laws we have passed. It is unfortunate that we didn’t take that opportunity as we dealt with health care reform these past many months.

1. yince the floor.

EXHIBIT 1

December 22, 2009

U.S. Senate, Washington, DC.

DEAR SENATOR: We are writing to express our strong opposition to language contained in the Manager’s Amendment to H.R. 3590, which excludes the construction industry from the small business exemption contained in the bill. We regret that this is our first opportunity to address this issue, though the

S13775

CONGRESSIONAL RECORD — SENATE
fact that the Manager’s Amendment was made public less than two days before the first vote on the matter has increased the difficulty of playing a constructive role in the legislative process.

In recognition of the negative impact that a mandate to provide health insurance will have on a firm’s payroll, this Manager’s Amendment singles out the construction industry by altering the exemption so that it applies to only those firms with fewer than 50 employees.

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

In the real world, where the rhetoric surrounding this legislation will meet the stark reality of the employer struggling to make payroll, the interest carve out is simply another bill to pay in an industry that, with an unemployment rate exceeding 10% and more than $800 billion in economic activity lost in the last year, already is struggling to survive.

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

As Congress moves forward in the legislative process for H.R. 3990, we strongly encourage you to address this onerous provision that needlessly singles out small construction industry employers.


The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I am glad to join my colleagues in talking about life, and I believe if you looked in the New York Times today, there was a full-page ad describing the bill. I am putting it up here, the same thing that was in the New York Times today. It starts with the question, I want to receive care from my doctor. The page, 2,600 pages in kind of what you are going to see with this bill. It is convoluted. It is difficult. It is expensive.

This is what you are going to get. This was in the New York Times today. This is where I sit or this is what is going to happen to me in this overall system. It is no wonder the American public doesn’t want this. They are not excited about this. Let’s talk about what it is going to do to the budget—$2.5 trillion. That is about $700 million a day, if you are counting in millions a day as one way to look at it.

There are some interesting things hidden with this bill. One of the things I want to point out is the transfer of wealth from young people to old. One of the things that has really buggered me about what we have done in so many of the government systems is that suggests that the needs and struggles of a construction contractor with fewer than 50 employees are so different from those of small business owners in other industries, and absent such convincing evidence, we are left to assume that this specific provision is merely a political payoff to satisfy the desires of a small constituency.

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S13777

We have the bill to be able to look at. If people of good faith on the other side want to get these addressed, there are ways, and we have the language on how to address it. It is called the Stupak language. It has already passed the House. There is the House-Stupak, the House-Nelson amendment that was debated here, although it was not passed. We can do that. It is important that it get done.

This bill is not supported by the American public, and particularly this funding piece that is so offensive to so many Americans. We can debate about abortion, but the government should not be funding it, and that is agreed to by over 70 percent of the American public.

I just ask my colleagues on the other side, as you move on forward with this—if this bill passes here—take this piece out. We know what language is agreed to and works. This piece can be handled by those of good faith, and I think we can unwind the entire bill based upon the overwhelming rejection of that language.

It is still not too late. There is still time to address these issues, now that we have the bill to be able to look at. If people of good faith on the other side want to get these addressed, there are ways, and we have the language on how to address it. It is called the Stupak language. It has already passed the House. There is the House-Stupak, the House-Nelson amendment that was debated here, although it was not passed. We can do that. It is important that it get done.

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My amendment is simple. If adopted, it would ensure that the implementation of the Democrat’s health care bill shall be conditioned on the Secretary of Health and Human Services certifying to Congress that this legislation would not cause more than 1,000,000 Americans to see higher premiums as compared to projections under current law. This amendment would ensure that this $2.5 trillion tax-and-spend bill would not go into effect if the Secretary of Health and Human Services finds that it would actually raise health insurance premiums for more than 1 million Americans compared to projected current law cost savings.

One of the major reasons for enacting health care reform is to ensure that we control rising health care costs that continue to put increasing pressure on American families and small businesses. According to the bipartisan Congressional Budget Office, the premiums under this bill would actually rise for Americans purchasing insurance on their own by as much as 13 percent and will continue to rise at double the rate of inflation for both the small group and large group markets.

Spending $2.5 trillion of hard-earned taxpayer dollars on a system that already spends almost $2.2 trillion a year without any impact on controlling health care premiums should be unacceptable to every American.

Madam President, I also wish to speak to my amendment No. 3296 to H.R. 3590, the health care reform legislation. This amendment isn’t complicated. It would prevent the provisions of the bill from taking effect in the event that it imposes unfunded mandates on the States. As we all know, this legislation imposes significant new burdens on the States and the proposed funding for this program is, in some cases, likely to fall short. Simply put, the Congress should not impose upon States new Federal policy requirements without ensuring they are adequately reimbursed. In the event that Congress does not provide full funding for these programs, my amendment would ensure that none of the new mandates will be binding on the States.

Medicaid Pharmacy Reimbursement

Mrs. LINCOLN. I would like to engage my colleague, the distinguished Senator Finance Committee chairman, in a short colloquy regarding the Medicaid pharmacy reimbursement provisions in the Senate health care reform bill.

Mr. BAUCUS. I would be happy to engage Senator LINCOLN in a colloquy. I commend her for all her leadership over the years on this issue, because she recognizes that it is important to reimburse pharmacies adequately for the generic medications they dispense to Medicaid patients. In rural States like ours, Medicaid patients need access to their community pharmacies to obtain their medications. Sometimes community pharmacies are the only health care providers for many miles. So, it is important that we permanently fix in this health care reform bill the problems for pharmacies caused by the severe reimbursement cuts from the Deficit Reduction Act of 2005.

Mrs. LINCOLN. I thank my colleague and agree with him. That is why I asked him the purpose behind the language in the bill that would establish the Federal upper limit for generics at no less than 175 percent of the weighted-average average manufacturer price. I know this is less than the chairman originally proposed in the Medicaid Fair Drug Payment Act from last Congress, which I cosponsored. However, in what cases would it be the intent of the intent of the chairman that the Federal upper limit would be set at more than 175 percent? I am particularly concerned about my small independent pharmacies in Arkansas and substantial Med-icaid prescriptions. Would it be the intent to set a higher rate for these pharmacies? Would it be the intent to set a higher rate for generics that might be in short supply or for which there are availability issues to encourage more manufacturers to make them?

Mr. BAUCUS. I would say to my colleague that the language indicating that the Secretary could set the Federal upper limit at no less than 175 percent the weighted average average manufacturer price could be used in those types of circumstances. It would give the Secretary flexibility to set the Federal upper limits in cases where there is a need to provide states with a higher match in order to assure that appropriate payment is made to pharmacies to encourage the use of generic drugs.

Mrs. LINCOLN. I thank the chairman for his insights into this provision and his work on behalf of our Nation’s community pharmacies.

Wisconsin’s Medicaid Program

Mr. KOHL. Madam President, I rise to discuss language in the Reid substitute amendment to H.R. 3590 that would have a dramatic effect on Wis-consin’s Medicaid Program. I would like to converse about this with two of my distinguished colleagues—the other Senator from my home State of Wis-consin, Senator FEINGOLD, and Senator BAUCUS, chairman of the Senate Finance Committee. I commend Senator BAUCUS’s long and hard work in crafting this historical piece of legislation, and today, I seek clarification of one piece of this bill.

Mr. FEINGOLD. I also seek clarification of this piece of the Patient Protec-tion and Affordable Care Act, specifically in section 2001, regarding the definition of individuals that would be considered newly eligible under Medicaid.

Mr. BAUCUS. I thank the Senator. I would be pleased to enter into a colloquy with the Senators from Wis-consin on this subject.

Mr. KOHL. I thank the Senator. Sec-tion 2001 of the legislation describes which individuals in each State will be deemed “newly eligible” for Medicaid. It is my understanding that the Federal Government will provide 100 percent of the funds to cover this group of newly eligible individuals from 2014 to 2016 and that this funding will be provided with their current law FMAP rates, which are below 100 percent, for individuals already covered. Is this correct?

Mr. BAUCUS. I thank the Senator for the question. Yes, that is correct, and it is my understanding of the legislation as well.

Mr. FEINGOLD. I thank the Senator. As the Senator knows, to be considered newly eligible under this bill, individuals must not be eligible under the State plan or under a waiver of the plan for full benefits or for benchmark coverage as described in section 1937 of the Social Security Act. Two of the benefits that must be incorporated into benchmark coverage under section 1937 of the Social Security Act are mental health and substance disorder services, and prescription drug coverage. If these two benefits are not offered at all, then the coverage will not count as benchmark coverage.

Mr. KOHL. As my two colleagues are aware, Wisconsin currently provides coverage for a number of individuals under a Medicaid waiver, but this coverage does not meet the requirements for benchmark or benchmark-equiva-lent coverage under the Social Secu-rity Act. The Centers for Medicare & Medicaid Services, the Federal agency that oversees Medicaid, has confirmed this for us. Senator FEINGOLD and I un-derstand that, because of this, the indi-viduals in Wisconsin who do not re-ceive benchmark or benchmark-equiva-lent coverage will be considered newly eligible, and therefore Wisconsin will receive 100 percent Federal funds for those individuals in 2014, 2015, and 2016. Is this the Senator’s understanding of the legislation as well?

Mr. BAUCUS. Yes, I thank the Senator.

Religious Conscience Exemption

Mr. CASEY. May I ask the Senator from Wisconsin to give some information about the managers’ amendment, amendment 3276, to amendment 2786 to H.R. 3590?

Mr. HARKIN. Of course.

Mr. CASEY. Chairman HARKIN, the managers’ amendment includes a reli-gious conscience exemption from the individual requirement to maintain minimum essential coverage in section 1501. Is it the intent of the managers that this exemption apply to an individual who is a member of recognized religious sect described in Internal Revenue Code section 1402(g) regardless of employment status?

Mr. HARKIN. Yes, the intent of the religious exemption is to focus on an individual who is a member of a religi-
sect described in 1402(g) and who is an adherent of the teachings of that sect notwithstanding his or her employment status.

Mr. CASEY. I thank the chairman. So, for example, an Amish person working in a factory or store for a non-Amish employer, or an Amish employer, or an Amish person working for a non-Amish employer.

Mr. CASEY. I thank the Senator for that clarification.

The PRESIDING OFFICER. The majority leader is recognized.

ORDERS FOR WEDNESDAY
DECEMBER 23, 2009

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today it adjourn until 9:45 a.m., Wednesday, December 23; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 3590, the health care reform legislation, with the time following any senator remarks and until 10 a.m. equally divided and controlled between the two leaders or their designees; that at 10 a.m. and until 2 p.m. the time be controlled in alternating 1-hour blocks of time, with the majority controlling the first hour; further that the remaining time until 2:15 p.m. be equally divided and controlled between the two leaders, with the majority leader controlling the final half.

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

PROGRAM

Mr. REID. Madam President, Senators should expect a series of rollcall votes, maybe as many as five, to begin at approximately 2:13 tomorrow afternoon.

ORDER FOR ADJOURNMENT

Mr. REID. Madam President, if there is no objection, it is ordered that when the Senate adjourns before the Senate, I ask unanimous consent that it adjourn under the previous order, following the remarks of Senator Dodd of Connecticut.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

HEALTH CARE REFORM

Mr. DODD. Madam President, I want to take a few minutes, if I may, this evening to speak about what this health care bill means to my constituents in Connecticut. I say to the Presiding Officer, the benefits to our States are very similar in many ways, but, obviously, we like to point out what this particularly means in our own respective jurisdictions that we represent.

But before doing so, I want to take a few minutes, if I could, because, again, tomorrow will be a short day, and then there are, obviously, that we are going to have Thursday, and then we will be leaving the Senate for a number of weeks before we return in mid-January, and it might not be possible tomorrow or in the very early hours of Christmas Eve to say a special thank you to those who work with our offices in this Chamber, both on the minority side and the majority side, who rarely get the kind of recognition they deserve.

I have tried periodically over the years to make sure that as to the consideration of every major bill we talk about the staff and what they have done. So I want to take a couple minutes and identify people with whom I have worked. This not an inclusive list. There are many more people who work for individual Senators who have done outstanding work. Our floor staff here, both on the majority side and the minority side, do a remarkable job and have great patience with all of us. I am very grateful to them, as well as for the jobs they perform.

I want to take a few minutes and recognize the people I have worked very closely with over the last—well, intensely—over the last almost year now on this issue.

Certainly in Senator Reid's office, the majority leader's office, Kate Leone, Carolyn Gluck, Jacqueline Lampert and Randy Devalk deserve a great deal of credit. All of us know them and how involved they have been involved in this issue.

And for those of us who serve in our caucus, we have listened to Kate Leone on numerous occasions go over the details of these bills, answer the questions Members have raised about the implications of the legislation. So to the members of Senator Reid's staff—and, obviously, there are a lot more people in his office who deserve recognition—but I want to particularly recognize these four individuals with whom we have worked so closely.

Senator Kennedy, as we all know, was such a lion of this institution and cared so deeply about this issue. Over the years, he attracted some wonderful people to work with him, as he fought year in and year out to bring us to the moment we are about to enjoy; and that is, to see some national health care legislation adopted for the very first time.

Michael Myers had worked on this issue for a number of years for Senator Kennedy, and still is here working with Senator Harkin now as part of the Health, Education, Labor, and Pensions Committee.

Mark Childress, again, worked for the majority leader, worked for Tom Daschle, has worked for others in this body, and has just done a fantastic job. He stayed on at my request and the request of Leader Reid to help us work on this issue. He was involved with the White House as well, and really understood the substance of this bill as well as the political navigation that was necessary to bring us to this moment.

I thank Pam Smith as well for her fine work for Senator Harkin. Jemelle Krishnamoorthy made a wonderful contribution. She worked closely with Senator Harkin, and I want to thank her. Connie Garner was responsible, for many years, working on the CLASS Act, which is a part of our bill. Toria Wu and David Bowen did a remarkable job. John McDonough and Topher Spiro, as well, are individuals who certainly made a significant contribution to our product her.

To Senator Reid's staff: Liz Fowler, Bill Dauster, Russ Sullivan, Cathy Koch, Yvette Fontenot, David Schwartz, Neleen Eisinger, Chris Dawe, Shawn Bishop, and Kelly Whitener—I want to thank them for their efforts as well.

Again, we could give separate remarks about each of these individuals and their contributions.

In my office, again, like others, I have been blessed with some wonderful individuals. Jim Pentelides, my legislative director and has done a terrific job. Tamar Magarik Haro, who is sitting with me on the floor this evening—I know we are not supposed to recognize people other than Members—along with Jeremy Sharp, they have just done a wonderful, wonderful job, and I know all of my colleagues have gotten to know both of them because of their work.

Monica Peit, Joe Caldwell, Bryan DeAngelis, Andy Barr, Lia Lopez, Daniel Barlava, and Rachael Holt all have made wonderful contributions as well.

Senate legislative counsel, with special thanks to Bill Baird, who was present throughout the entire HELP Committee consideration, has gone way above and beyond. And legislative counsel never gets the kind of recognition they deserve.

They do a tremendous job in drafting the actual legislation. Once these ideas are developed, then they require legislative language to be written.

From the administration, Nancy Ann DeParle, whom all of us have gotten to know very well; Jeanne Lambrew—
want to give a special thanks to Jeanne. She has been just incredible in terms of her encyclopedic knowledge of the issues, working very closely with our staffs. Again, individuals who may not be well known to the public, but when this bill becomes law, these are the people we will be able to give a special credit for their tremendous work.

Mike Hash, Lauren Aronson, Secretary Sebelius, Kathleen Sebelius, who left the governorship of Kansas to come here to be head of the Health and Human Services agency and has done a magnificent job in her new capacity; Jim Messina, who worked with MAX BAUCUS for years up here and has been the Deputy Chief of Staff at the White House and has done a tremendous job. Phil Schiller and Shawna Maher both worked to represent the administration and their Legislative Affairs Office and they do a great job; Dana Singiser as well, for her work.

We will make this list available for the Record. I wanted to thank these individuals again for their fine work.

I wish to speak, if I can today, not in my capacity as a senior member of the Health, Education, Labor, and Pensions Committee nor in my capacity as one of the coauthors of the underlying legislation, but rather in my capacity, as I said at the outset, as a Senator representing 3.5 million residents of the State of Connecticut. Our neighboring State, my good friend and colleague, the Senator from New Hampshire, the Presiding Officer, represents New England.

If you travel my State, you will meet some of the world’s most talented and dedicated health care professionals. You will tour some of the nation’s finest hospitals where patients get world-class treatment. But you will also hear some heartbreaking stories from people in my State who come from middle-class families who have lost everything with their life’s savings, their hope for the future—just because someone in their family got sick. They needed special care. You will meet hard-working men and women who have seen their insurance premiums skyrocket over the last decade from around $6,000 for a family of four to over $12,000 annually for that same family, and they wonder how much longer they will be able to continue to afford the coverage they have. You will meet these business owners facing an impossible choice between cutting off health care benefits to their employees or laying off those workers.

I have talked specifically about constituents of mine, small businesspeople who literally have been faced with that choice or who have had employees who dreaded having to leave the job they had because there were no health care benefits. They took reductions in pay because they just couldn’t stay given the benefits. They took reductions in pay choice or who have had employees who literally have been faced with that choice or who have had employees who were faced with it.

Having to leave a job they had for 20 years because they just couldn’t stay given the benefits. They took reductions in pay choice or who have had employees who literally have been faced with the responsibility of leaving those workers.

Health care benefits to their employees. It is an impossible choice between cutting off health care benefits or laying off those workers.

In recent years—and this is true across the country, but certainly true in my State—it is not uncommon for small business owners to be told they have to pay 20 percent or more for the same insurance they had the previous year.

What I have described is not an irrational fear they have that someone in their family will lose their job that provides the coverage as I just described, worry about that child who may develop an illness not covered by their policies, or worrying about no matter how much they pay in premiums their insurance doesn’t allow them to be sure of anything at all.

The residents of my State understand the status quo is no longer sustainable because the so-called status quo threatens the basic economic security of every family in my State, as it does across this country. They and their fellow Americans in all 50 States sent us here to be responsible, and it is action that we shall take.

When this bill becomes law, the people of my State will begin to reap the benefits right away. One in four of my constituents have high blood pressure. One in four Americans have diabetes in Connecticut. Today, insurance companies can use these preexisting conditions, along with many others, as an excuse to deny these people coverage.

When this bill becomes law, every uninsured resident of my State who has been denied coverage because of a preexisting condition will be able to afford the coverage they need. Beginning 90 days after this bill becomes law, every uninsured resident of my State who has been denied coverage because of a preexisting condition will be able to find the affordable care they need to treat that condition.

Small businesses make up more than three and four businesses in the State of Connecticut. About one-half of them are able to offer health benefits to their workers. Beginning in 2010, next year, some 37,000 small businesses in my State, as well as others across the nation, will be eligible for tax credits to make those benefits more affordable. A 50-percent tax break, $40 billion in this bill, is provided specifically for that purpose: to assist the 37,000 small businesses in Connecticut, and others across the country, to get a tax credit, as much as 50 percent, to allow them to defer or reduce the cost of health insurance for their employees.

Small business owners throughout Connecticut have experienced persistent annual increases in premiums. In recent years—and this is true across the country, but certainly true in my State—it is not uncommon for small business owners to be told they have to pay 20 percent or more for the same insurance they had the previous year.

So the bill we are about to pass will empower the State insurance exchanges such as the one we will have in Connecticut in 2014 to deny insurers access to the exchange if they engage in consumer price gouging in the next few years. That is going to be critically important. For the more than half million seniors in Connecticut, this bill protects Medicare, keeping it solid into the future. Nearly 100,000 seniors in my State hit what is called the doughnut hole. Connecticut seniors should know that I and Chairman BAUCUS, along with majority leader HARRY REID, have committed to completing that job in conference, and we will do so.

Meanwhile, in Connecticut, seniors will see their Medicare premiums go down. They will see major improvements in the quality of care they receive, resulting in as many as 29,000 hospital readmissions being prevented. In my State of Connecticut, 3 in 10 Medicare recipients are not meeting a colorectal cancer screening.

One in six women over the age of 50 have not had a mammogram in the past 2 years. These are important screenings. They and other wellness screenings that must be provided at no cost to people in my State as well as others across the country. Beginning in 2011, seniors will be able to get a free annual checkup so they can stay well instead of simply receiving care when they get sick. I think that can make such a difference. I am a living example of that where—because under our health care plan, I can have a free medical checkup once a year. As a result of that, I discovered that I had prostate cancer, and what a difference that made to be able to discover that, to get through the surgery, and to know that I have a bright future ahead of me, not one that I would discover later on when the kind of surgery I received might have been worthless and pointless.

So these are the kinds of annual physicals Members of Congress get under our health care plans, and our fellow citizens ought to be able to as well, particularly our seniors.

In addition, there are some 255,000 Connecticut residents between the ages of 55 and 64 who will need home health services after they turn 65 because of an illness or an injury. These services, which they involve a handicap shower or hiring a home health care aide, will help these older Americans live in their homes in dignity and with independence. But today these services are not always covered by Medicare or private insurance. Rather than having to impoverish themselves so they can qualify for Medicaid by transferring all of their wealth and assets to a family member or rely on the full-time help of loved ones, these seniors will be able to take advantage of a new voluntary program called the CLASS Act—authorized by Senator Kennedy years ago and which is now a part of this bill—that will provide a cash

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benefit to be used on these services and supports, totally paid for by the individual themselves. Not a nickel, not a penny of Federal money is in that program. It is totally based on the contribution that people make to that program.

So when I hear people talk about this as if it was some great robbery from the Federal Treasury, it doesn’t involve the Federal Treasury at all. As the bill takes effect, the health insurance industry will be forced to spend more of your premium dollars on your health care, not on bureaucrats hired to come up with reasons to deny you the care you need. This is called the so-called medical loss ratios which require that resources be spent on patient care and needs of the policyholder rather than on profits or administrative costs.

The industry will also be required to offer an appeal if your claim is denied, and each State will set up its own independent appeals process to keep the industry honest. Next year the industry will be forced to provide more details about their policies so that you can choose from. Nearly a quarter of a million people in my State would be eligible for premium credits to help take care of the cost of insurance. That doesn’t go into effect until 2014, but in 2010, next year, insurance companies will be prohibited from imposing lifetime caps on the amount of care you can receive.

Insurance companies will be prohibited next year from taking away your coverage, and they will be prohibited from discriminating based on gender or income in 2014. The insurance industry will be forced to spend more of your premium dollars on your health care, not on bureaucrats hired to come up with reasons to deny you the care you need. This is called the so-called medical loss ratios which require that resources be spent on patient care and needs of the policyholder rather than on profits or administrative costs.

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Sebellius, Jim Messina, Phil Schiliro, Shawn Maher, and Dana Singletary.

Mr. DODD. Mr. President, let me say this to the minority staff as well. While we have disagreed, and while they didn't vote for the bill, there are people I admire immensely on the minority staff. You and I have reported back in whenever Senator Kennedy was here in Washington, she spilled a glass of Coca Cola on Senator Kennedy's desk, and politics are our passion. And Barb's loyalty, integrity and commitment are legendary. She is the true noble public servant, the tireless and compassionate friend, the unassuming aid to all around her.

If public service is Barb's vocation, sports is her avocation. There is no more avid fan of the Boston Red Sox, the Boston Bruins, the Boston Celtics, and the New England Patriots than Barbara Souliotis.

And she's also an outstanding golfer who plays without a handicap and who has at least one hole-in-one on her score card. In Massachusetts, sports and politics are our passion. And Barb has scored literally thousands of holes-in-one for the constituents of Massachusetts. After Senator Kennedy's own ''Barbara Souliotis'' passed away in August, Barbara continued her rewarding career after 47 years of impressive service to the citizens of Massachusetts.

Barbara Souliotis worked on Senator Edward M. Kennedy's first campaign for the Senate in 1962. She was the first employee in Senator Kennedy's office in November of that year. And from the moment he joined this body until the end of his life, Barbara served as a most indispensable assistant. To be his most indispensable assistant.

She was the only member to run the career—the only member to run the Senate in 1962. She was the first employee of the HELP Committee—offered amendments that were included. While they may not want to admit it or acknowledge it, they made a contribution to this bill that makes it stronger and a better piece of legislation. I add their names as well for their efforts.

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

TRIBUTE TO BARBARA A. SOULIOTIS

Mr. KIRK. Mr. President, I know all my colleagues share an indebtedness to the many staff members who work so (skillfully and) tirelessly behind the scenes each day. They assist us in serving the public and responding to the needs of our constituents. Today, I am honored to pay particular tribute to the contributions of one truly outstanding member of the Senate staff. She will retire at the end of this session of Congress after 47 years of impressive service to the citizens of Massachusetts.

Barbara Souliotis worked on Senator Edward M. Kennedy's first campaign for the Senate in 1962. She was the first employee in Senator Kennedy's office in November of that year. And from the moment he joined this body until the end of his life, Barbara served as a member of his staff and for the 23 years, she was the State director of his Boston office.

"Barbs" recalls that on her first day at work here in Washington, she spilled a glass of Coca Cola on Senator Kennedy. When she started to apologize, he smiled his iconic smile and said "Barbara, you and I are going to get along just fine."

And they did. She served him brilliantly throughout his entire Senate career—the only member to run the full race as a "staffer", though many of us have reported back in whenever Senator Kennedy went out the call.

Senator Kennedy considered "Barbs" to be his most indispensable assistant. If anyone ever had a question relating to the Massachusetts people whom he loved, he would inevitably ask: "Have you checked with Barb?" I know how proud Ted would be that this tribute honoring Barbara's extraordinary example of public service to our Senate, our Commonwealth and our country is taking place this afternoon.

I first met Barbara Souliotis when I joined Senator Kennedy's staff in 1969-40 years ago. I could see right away that behind Barbara's modest demeanor was a remarkable woman who would never let Senator Kennedy down.

Why? Because she had learned that his values and his commitment to making a positive difference in people's lives was the very reason she wanted to work for him in the first place. As I have thought about public service through the years, it has become clear that the best of our Nation was built on the labors of loyalty and love of unsung public heroes like Barbara Souliotis.

It was once said that "Loyalty means nothing unless it has at its heart—the absolute principle of self sacrifice". If that is the standard of loyalty, I can tell you there was no more loyal United States Senate staffer than Senator Kennedy's own "Barbara Souliotis".

She embodies the admirable quality of loyalty. She's a role model after the circumstances. Barb planned to retire years ago, but her loyalty to Senator Kennedy and her leadership position on his staff kept her with him to the end. Just as she had throughout his storied career, she worked for Senator Kennedy through the difficult months of his illness and during his final days.

After Senator Kennedy passed away, Barbara continued her rewarding career after 47 years of impressive service to the citizens of Massachusetts. For 47 years of service to the people of our Commonwealth.

In acknowledging Barbara's years of All-Star service to Senator Kennedy for 47 years and to me for these few important and historic months, I add my own personal heartfelt thanks to her, especially for the blessings of her friendship, support, and counsel over the many decades. Barbara Souliotis has earned a well-deserved happy and healthy retirement in the many years to come. Thank you, Barb. We love you. Hit 'em long and hit 'em straight!

NOMINATION OF ERROLL SOUTHERS

Mr. DURBIN. Mr. President, it is only fitting that during this travel-heavy holiday season, we urge our colleagues on the other side of the aisle to work with us in confirming the nomination of Erroll Southers as Assistant Secretary for the Transportation Security Administration.

The Transportation Security Administration is tasked with ensuring the security and safety of travelers using our transportation network. Most associated with security at airports, TSA responsibilities include highway, rail, port, bus, and mass transit security. The agency grew out of the aftermath of 9/11, a somber reminder of the need for vigilant attention to transportation security.

Erroll Southers is the chief of homeland security and intelligence for the Los Angeles International Airport police force. He is ready for this job. He has nearly three decades working in public safety, homeland security, and intelligence. Chief Southers has worked as a Santa Monica police officer, special agent for the Federal Bureau of Investigation, and as a top officer with the Los Angeles International Airport, assisting in the management of the largest U.S. airport police force.

Unfortunately, without Chief Southers in the position he has been nominated to, TSA is without the leadership necessary to move forward. The President nominated Chief Southers in September, and the nomination has been reported favorably to the Senate by both the Homeland Security and Commerce Committees, it is being held up by Senate Republicans.

At the same time Senate Republicans are insisting on expanding the role and possibility of TSA by requiring guns to be allowed on Amtrak, they block and delay the permanent leadership necessary to implement these new policies.

And what is the justification for delaying Chief Southers' confirmation? It is not his qualifications, his past actions or experience. These are generally accepted to be outstanding. No, it is instead an unreasonable demand that he predetermine if TSA employees should be allowed to form unions. Instead of bending to partisan pressure, Chief Southers has taken the stance that this decision should be made with the input of all stakeholders, using

Chief Southers has taken the stance that this decision should be made with the input of all stakeholders, using...
good information, to find the best solution that does not jeopardize safety and security.

The Senate must move past these disagreements and provide the administration with the leadership agencies need to implement congressionally mandated duties. Chief Southerners is an excellent candidate to lead the Transportation Security Administration, and he should be in place at the agency today. In the midst of the heaviest travel period of the year, it is irresponsible that the Senate has left this post unfilled. I urge my colleagues to support the confirmation of Chief Southerners.

**Biodiesel Tax Credit**

Mr. GRASSLEY. Mr. President, the biodiesel tax credit will expire on December 31, 2009. I am speaking today to set the record straight about why the biodiesel tax credit will not be extended before the end of the year.

Some have suggested that Republicans are to blame for not getting the biodiesel tax credit extended before the end of the year. This is simply inaccurate.

The bottom line is that the Senate Democratic leadership decided they were going to attach the tax extender package to a controversial estate tax bill in an attempt to get moderate Democrats and Republicans to vote for an estate tax bill that does not provide sufficient estate tax relief.

If the Senate Democratic leadership had not chosen to hold the tax extender package hostage in an attempt to force moderate Democrats and Republicans to vote for an estate tax bill that lacks support, the tax extender package would have easily passed separately.

The tax extenders bill could have passed as a stand-alone bill easily at any time during this whole year. In fact, the Senate Democratic leadership could simply bring up a noncontroversial version of the tax extenders bill and pass it by unanimous consent like we have done in the past. We wouldn’t even need to be talking about the tax extenders package in relation to the Department of Defense funding bill.

However, because the Senate Democratic leadership failed to act on the tax extenders package this entire year, one of the only legislative vehicles left to pass the tax extenders package was the Department of Defense funding bill.

Instead of just adding to the Defense bill a noncontroversial tax extenders package that both Republicans and Democrats could agree on, the Senate Democratic leadership instead decided that they would extend to try to attach the controversial estate tax bill and a controversial increase in the debt limit.

They could have instead just included a noncontroversial tax extenders package with the Defense bill, and it would have easily passed. Again, they did not do this because they wanted to use the tax extenders package as leverage to get moderate Democrats and Republicans to vote for an estate tax bill that lacks support.

It is also worth noting that there are 60 Senators that caucus with the Democrats, so they can pass anything if they vote together. It rings hollow to place the blame on Republicans for failing to enact the tax extenders package before the end of the year when the Democratic majority of 60 Senators, an overwhelming majority in the House, and the Presidency.

The House, waiting until the last month of the year, finally passed a tax extenders bill. However, the House usually passes an extenders bill prior to the last month of the year.

For example, in 2008 the House passed a tax extenders bill on September 26, 2008, and in 2007 the House passed a tax extenders bill on November 9, 2007. This year, the House passed an extenders bill that the Senate would not accept. And then they left town for the year. This is called a dump and run.

The House dumped a tax extenders bill that they knew the Senate would not agree to, and left town before the Senate could have any chance to negotiate a tax extenders bill that both the House and Senate could agree to.

The House also had a choice to make regarding whether they wanted to pass a tax extenders bill this year by simply attaching a noncontroversial version of the tax extenders bill, which both the House and Senate could agree on, to the House Department of Defense bill without attaching either the controversial estate tax bill or the increase of the debt limit on the Defense bill. However, the House chose not to do so.

Therefore, this should set the record straight. The Democratic leadership in the House and the Senate, and not Republicans, are responsible for the failure to pass a tax extenders bill before the end of this year.

This failure has very serious consequences to the U.S. biodiesel industry, which will grind to a halt as of January 1, 2010. I remind my colleagues of the economic challenges faced by this industry. In 2008, the biodiesel industry supported more than 52,000 jobs across the country.

Because of the downturn in the economy, the biodiesel industry has already lost 29,000 green jobs in 2009. The industry is poised to lose another 23,000 jobs if nothing is done on the tax incentive or regulatory delays at the Environmental Protection Agency.

So where are these jobs? Some might think they are all in the Midwest, but they are not. These green jobs are in 44 of the 50 States. I would like to list the 13 largest biodiesel-producing States in the country.

There are 24 facilities in Texas. There are 15 facilities in Iowa. There are 6 facilities in Illinois and 6 in Missouri. There are 4 facilities in Washington. Ohio has 11 facilities. There are 5 facilities in Indiana. There are 3 facilities each in Mississippi and South Carolina. There are 7 facilities in Pennsylvania and 4 in Arkansas. New Jersey has 2 facilities. There is 1 facility in New Mexico.

Only 6 of the 50 States do not have some biodiesel production. They are Alaska, Delaware, Maine, New Hampshire, Vermont, and Wyoming. The other 44 States have some biodiesel presence.

So workers in 44 States will be negatively affected by the inaction of this Congress to extend the tax credit.

You don’t have to take my word for it. On November 25, I received a letter from the Iowa Renewable Fuels Association.

The letter outlined the economic and job ramifications of allowing the tax credit to expire, even if it is a short-term expiration. I would like to read directly from that letter.

**It states in part:**

Simply put, if the biodiesel tax incentive is allowed to expire—eventually for a brief period of time—the Iowa biodiesel industry will cease production and many plants will likely not reopen under current ownership.

If the biodiesel tax incentive expires, biodiesel blends will be priced out of the marketplace and our customers—the oil companies—will stop purchasing biodiesel. In reality, we already cannot book any first quarter sales for next year.

No retroactive action on the tax credit sometime next year will undo the harm caused by the lost sales and shuttered plants over the holidays.

Quite frankly, the biodiesel industry is facing shutdowns that would certainly lead to a much longer—and unpaid—Christmas break than anticipated for the hundreds of workers at Iowa biodiesel plants.

But there are long-term impacts potentially even more far-reaching. After more than a year of maintaining even or negative margins, most of Iowa’s biodiesel plants simply do not have the cash reserves to withstand even a two or three month shutdown.

So, even if the biodiesel blenders’ tax credit is retroactively enacted, several of Iowa’s biodiesel plants are unlikely to reopen under the current local-ownership. Please do not let the Iowa-owned biodiesel industry disappear on your watch.

I would ask unanimous consent that the entire letter from the Iowa Renewable Fuels Association to which I referred be printed in the Record.

The dire situation reflected in this letter applies to all 173 biodiesel plants around the country. The expiration of this tax credit on December 31, 2009, will affect all 23,000 workers in this green energy sector.

It is unfortunate that we have to be faced with the loss of 23,000 green jobs because of inaction on the extension of the biodiesel tax credit. I hope this example makes as clear who is responsible for this terrible situation.

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

Mr. NELSON of Nebraska. Mr. President, I want to take a few minutes in the midst of this debate to acknowledge some individuals who work for us here in the Senate. As chairman of the Legislative Branch Appropriations subcommittee that funds these agencies, I have had the opportunity to get to know these staffs and have a good understanding of the work they do for us here in the Senate. These folks work tirelessly behind the scenes all the time to keep this institution running safe and sound under any circumstances.

We have been in session every weekend since Thanksgiving, including during the largest December snowstorm in years. Quite frankly, we have worked uninterrupted thanks to the dedication and hard work of these individuals. It is easy to take for granted the hard work they perform on a daily basis—and we often do, but today, on behalf of the entire Senate I would like to say a heartfelt thank you to all of them.

I want to start by thanking the U.S. Capitol Police Force, led by Chief Philip Miller and Assistant Chief Dan Nicholson. These officers put their lives on the line every day to protect us and this institution, and they have all worked a tremendous amount of overtime lately. I want to particularly mention the terrific work of Inspector Sandra Coffman and her staff in the Capitol Division for all the extra hours they have worked in securing and protecting the Capitol and the Chamber. They have gone above and beyond their normal duty, and we are extremely grateful for their dedication to our safety and protection.

Next I want to thank the staff of the Senate Sergeant at Arms, led by Sergeant at Arms Terry Gainer and Deputy Sergeant at Arms Drew Willison.

The Senate Sergeant at Arms staff includes the doorkeepers who have worked nonstop through the last month keeping access to the Senate available for staff and visitors who have traveled to Washington to witness this historic debate firsthand. They have kept our systems and overstocked telephone systems running, kept the mail moving, and the recording studio functioning, not to mention the facilities staff who have kept the Capitol Building clean and warm, replenishing wood for the fireplaces nonstop.

I want to thank the staff of the Architect of the Capitol, led by Acting Architect Stephen Ayers, and the many who have kept the Senate buildings clean and warm throughout these long, long weeks. I truly appreciate the extra hours of work provided by these individuals.

I want to thank the Secretary of the Senate, Nancy Erickson, and her staff, including the legislative clerks, the bill clerks, the enrolling clerks, the executive clerks, Parliamentarians, official reporters of debates, captioning services, journal clerks, and the staff of the Daily Digest. These folk have been here around the clock, under some very trying circumstances, to deliver the services that are needed to keep this institution running.

Last but not least, I want to thank Lula Davis and David Schiappa, our floor leaders, for their real and genuine guidance in keeping us—the Members—where we need to be when we need to be there. We are in your debt.

Mr. President, I have undoubtedly left out many people in the Senate who deserve to be thanked, and I hope they know who they are and how much we appreciate them.

ADDITIONAL STATEMENTS

100TH ANNIVERSARY OF THE HOUSE OF JACOB

• Mr. VOINOVIICH. Mr. President, today I am pleased to extend my warmest congratulations to the Supreme Council of the House of Jacob of the United States of America as it celebrates its 100th anniversary with delegates from 41 locations from around the United States, and its travelling guidance in keeping us—the Members—where we need to be when we need to be there. We are in your debt.

For 100 years, the Supreme Council of the House of Jacob of the United States of America has invited men and women of diverse backgrounds to worship God according to the teachings of Jesus Christ, advocating strong family ties, a high standard of moral values and civic participation.

I would like to recognize Supreme Bishop, Father J. Daniel Israel, J.O.G., and the Board of Directors of the House of Jacob of the United States of America, which make up the leadership of this church. I commend the ministries and the good works under their supervision within Ohio, and across our Nation.

I encourage my fellow Ohioans, my colleagues in the Senate and the entire
Nation to recognize this memorable anniversary celebration and to congratulate the Supreme Council of the House of Jacob of the United States of America on its 100-year anniversary on the 1st day in January 2010. Also, may God continue to bless this Church, its leaders and its faithful members.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–4146. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Extension of Notice 2008–55” (Notice No. 2010–3) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

EC–4148. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Guidance Under Section 409A(a) Regarding Complying with Options Issued By the Special Master Under the EESA” (Notice No. 2009–92) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, without amendment:
H.R. 3619. A bill to extend the commercial space transportation liability regime.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. HATCH:
S. 2922. A bill to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to extend the Rural Community Hospital Demonstration Program; to the Committee on Finance.

By Mrs. MURRAY:
S. 2923. A bill to provide funding for summer and year-round youth jobs and training programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEAHY (for himself, Mr. HATCH, Mr. KOHL, and Mr. SESSIONS):
S. 2924. A bill to reauthorize the Boys & Girls Clubs of America, in the wake of its and California’s growth in the renewable energy businesses, and to support their activities; to the Committee on the Judiciary.

By Mr. WYDEN (for himself and Mr. CORNYN):
S. 2925. A bill to establish a grant program to benefit victims of sex trafficking, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BURR (for himself and Mrs. HAGAN):
S. Res. 384. A resolution honoring United States Army Special Operations Command on their 50th anniversary; to the Committee on Armed Services.

By Mr. LUGAR:
S. Res. 385. A resolution recognizing the great patriotic work done by the people of Ukraine in the establishment of democratic institutions, and supporting a free and transparent presidential election on January 17, 2010; to the Committee on Foreign Relations.

By Mr. KAUFMAN (for himself, Mr. LIEBERMAN, Mr. MCCAIN, Mr. DODD, Mr. KYL, Mr. CASEY, Mr. GRAHAM, Mr. LEVIN, Mr. BROWNBACK, and Mr. HATCH):
S. Res. 386. A resolution condemning the Government of Iran for restricting and suppressing freedom of the press, freedom of expression, and freedom of assembly, and for its human rights abuses, and for other purposes; considered and agreed to.

ADDITIONAL COSPONSORS

S. 639
At the request of Mr. SPECTER, his name was added as a cosponsor of S. 619, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 987
At the request of Mr. DURBIN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 891, a bill to require annual disclosure to the Securities and Exchange Commission of activities involving Columbia-tantalum, columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes.

S. 1297
At the request of Mr. DURBIN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 987, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1298
At the request of Mr. CONRAD, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1299
At the request of Mr. DODD, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1927, a bill to establish a moratorium on credit card interest rate increases, and for other purposes.

S. 1338
At the request of Mrs. GILLIBRAND, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1339
At the request of Mr. DURBIN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 393, a bill to amend title 38, United States Code, to clarify certain veterans who served in the vicinity of the Republic of Vietnam, and for other purposes.

S. 2781
At the request of Ms. MIKULSKI, the names of the Senator from New Jersey

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At the request of Mr. Lautenberg and the Senator from Massachusetts (Mr. Kirk) were added as cosponsors of S. 2761, a bill to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an individual with an intellectual disability.

S. 2767

At the request of Mr. Thune, the name of the Senator from Florida (Mr. LeMieux) was added as a cosponsor of S. 2767, a bill to repeal the authority of the Secretary of the Treasury to extend the Troubled Asset Relief Program.

S. 2847

At the request of Mr. Nelson of Florida, his name was added as a cosponsor of S. 2847, a bill to regulate the volume of audio on commercials.

At the request of Ms. Snowe, the name of the Senator from Maryland (Mr. Cardin) was added as a cosponsor of S. 2862, a bill to amend the Small Business Act to improve the Office of International Trade, and for other purposes.

S. 2923

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Youth Jobs Act of 2010’’.

SEC. 2. SUMMER AND YEAR-ROUND YOUTH JOBS.

(a) FINDINGS.—Congress finds that—

(1) a $1,500,000,000 investment in summer and year-round employment for youth, through the program supported under this section, can create up to 450,000 temporary jobs and meaningful work experiences for economically disadvantaged youth and stimulate local economies;

(2) there is a serious and growing need for employment opportunities for economically disadvantaged youth (including young adults), as certified by statistics from the Bureau of Labor Statistics stating that, in November 2009—

(A) the unemployment rate increased to 10 percent, as compared to 6.8 percent in November 2008;

(B) the unemployment rate for 16- to 19-year-olds rose to 26.7 percent, as compared to 20.4 percent in November 2008; and

(C) the unemployment rate for African-American 16- to 19-year-olds increased to 49.4 percent, as compared to 32.2 percent in November 2008;

(3) research from Northwestern University has shown that every $1 a youth earns has an accelerator effect of $3 on the local economy; (4) summer jobs and jobs for youth help supplement the income of families living in poverty;

(5) summer and year-round jobs for youth provide valuable work experience for economically disadvantaged youth;

(6) often, a summer or year-round job provided under the Workforce Investment Act of 1998 is an economically disadvantaged youth’s introduction to the world of work;

(7) according to the Center for Labor Market Studies at Northeastern University, the likelihood of a young adult’s return to, or completion of, a program of study leading to a recognized secondary or postsecondary degree, certificate, or credential, increases the likelihood of linkage to academic and occupational learning, so that the experiences and learning provide opportunities for youth to earn a short-term certificate or credential that has value in the labor market; and

(8) work experiences combined with learning that are designed to encourage and maximize the likelihood of a youth’s return to, or completion of, a program of study leading to a recognized secondary or postsecondary degree, certificate, or credential.

(b) REFERENCES.—

(C) communities benefit when youth are engaged productively, providing much-needed services that meet real community needs.

(9) Youth jobs programs benefit both youth and communities when designed around principles that promote mutually beneficial programs; youth benefit from jobs that provide them with work readiness skills and that help them make the connection between responsibility on the job and success in adulthood;

(10) communities benefit when youth are engaged productively, providing much-needed services that meet real community needs.

(c) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to the Secretary of Labor from the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), $1,500,000,000, which shall be available for the period of January 1, 2010 through June 30, 2011, under the conditions described in subsection (d).

(d) CONDITIONS.—

(1) USE OF FUNDS.—The funds made available under subsection (c) shall be used for summer and year-round youth jobs and training programs, to provide opportunities referred to in subparagraphs (A), (D), (E), and (F) of section 129(c)(2) of such Act (29 U.S.C. 2854(c)(2)) and, as appropriate, opportunities referred to in subparagraphs (A) and (G) of such section, except that no such funds shall be spent on unpaid work experiences and the opportunities may include learning described in paragraph (3)(B).

(2) LIMITATION.—Such funds shall be distributed in accordance with sections 127 and 128 of such Act (29 U.S.C. 2853 and 2853a), except that no portion of such funds shall be reserved to carry out 128(a) or 169 of such Act (29 U.S.C. 2853a(a), 2014).

(c) Priority.—In using funds made available under subsection (c), a local area (as defined in section 101 of such Act (29 U.S.C. 2801))—

(A) shall give priority to providing—

(i) work experiences in viable, emerging, or demand industries, or work experiences in the public or nonprofit sector that fulfill a community need; and

(ii) job referral services for youth to work experiences described in clause (i) in the private sector, for which the employer involved agrees to pay the wages consistent with Federal and State child labor laws; and

(B) may give priority to providing—

(i) work experiences linked with linkages to academic and occupational learning, so that the experiences and learning provide opportunities for youth to earn a short-term certificate or credential that has value in the labor market; and

(ii) work experiences combined with learning that are designed to encourage and maximize the likelihood of a youth’s return to, or completion of, a program of study leading to a recognized secondary or postsecondary degree, certificate, or credential.
By Mr. LEAHY (for himself, Mr. HATCH, Mr. KOHL, and Mr. SESSIONS):

S. 2924. A bill to reauthorize the Boys & Girls Clubs of America, in the wake of its Centennial, and its programs and activities; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am pleased today to introduce legislation to reauthorize the Department of Justice grant program for Boys & Girls Clubs. I thank Senator HATCH, Senator KONI, and Senator SESSIONS for joining me in this effort.

I have partnered with Senator HATCH for many years on issues concerning the Boys & Girls Clubs, and this bipartisan bill shows the commitment of both Republicans and Democrats to the good work done by Boys & Girls Clubs across the Nation.

Children are the future of our country, and we have a responsibility to make sure they are safe and secure. I know well how well Boys & Girls Clubs work, and the real impact they have in our communities. In my home State of Vermont, we are fortunate to have 6 Boys & Girls Clubs operating in 25 locations. These clubs serve more than 14,000 youth in the State. I often hear from parents, educators, law enforcement officers and others in Vermont about just how successful these Clubs are, and how they inspire youth to reach their full potential.

As a senior member of the Senate Appropriations Committee, I have pushed for more Federal funding for Boys & Girls Clubs. This year, I recommended additional funding for youth mentoring programs, so that youth-serving organizations like the Boys & Girls Clubs of America are able to continue making a substantial and real difference in the lives of vulnerable children. I was pleased that Congress included $100 million for competitive youth mentoring grants in the recently passed consolidated appropriations bill.

The current recession has hit many organizations around the country, threatening their financial health, and the Boys & Girls Clubs are no different. At the same time that the Boys & Girls Clubs of America have been able to continue making a substantial and real difference in the lives of vulnerable children, I was pleased that Congress included $100 million for competitive youth mentoring grants in the recently passed consolidated appropriations bill.

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Boys & Girls Clubs facilities with special emphasis on reducing high school drop out rates’’; 
(3) in subsection (c)(2)—  
(A) by striking subparagraphs (A) and (B); and 
(B) by redesigning subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively; and 
(4) by amending subsection (e) to read as follows: 

(e) AUTHORIZATION OF APPROPRIATIONS.— 
(1) In general—there are authorized to be appropriated carrying out this section—  
(A) $85,000,000 for fiscal year 2013;
(B) $85,000,000 for fiscal year 2012;  
(C) $85,000,000 for fiscal year 2013; and 
(D) $85,000,000 for fiscal year 2014; and  
(E) $85,000,000 for fiscal year 2015.‘’

By Mr. WYDEN (for himself and Mr. CORNYN):  
S. 2925. A bill to establish a grant program to benefit victims of sex trafficking, and for other purposes; to the Committee on the Judiciary.  

Mr. WYDEN. Mr. President, I am pleased to join today with my colleague from Texas, Senator CORNYN, to introduce the Trafficking Deterrence and Victims Support Act of 2009.  

This bill addresses a serious problem that is less recognized, pure and simple—human sex trafficking. You could almost call it a war, where all too often, children are the casualties.  
The statistics on minors involved in sex trafficking are shocking. Experts estimate that over 100,000 children in the U.S. are at risk for prostitution.  
The average age of entry into prostitution is 12. The children at greatest risk of becoming involved in sex trafficking are what they call “repeat runaways”—kids who have run away over and over again. They need help right away if they are going to avoid being caught by pimps. One third of runaway children are lured into prostitution within 48 hours of leaving home and two thirds of minors caught in this web of prostitution have a pimp.  

This problem is on the rise because criminal gang members are increasingly turning to pimping. Gang members have discovered that they are less likely to get prosecuted for trafficking a person than trafficking drugs. While drugs can only be sold once, a pimp can sell a person over and over. It is just as lucrative. A pimp can make $200,000 a year on one trafficking victim.  

This situation is horrifying and totally unacceptable. The bill I am introducing today will bring a smart strategy that will give some teeth to the efforts law enforcement across the country have made to combat sex trafficking. It will give them additional resources they need to lock up pimps and sex traffickers. It will also help victims break away from their abusers and get the treatment and services they need to take their lives back.  

Let us be absolutely clear about this—the pimps who prey upon vulnerable young girls and sometimes boys who are trafficked are not criminals—they are victims of crime. They don’t need to be prosecuted. They need all the help they can get to escape the clutches of pimps.  

Unfortunately, until now, the government has been a step behind. Right now, if its law enforcement officers and prosecutors to build criminal cases and crack down on pimps. The Trafficking Deterrence and Victims Support Act would change that.  

Here is how it would work: The bill would establish a pilot project of 6 block grants in locations in different regions of the country with significant sex trafficking activity. The block grants would be awarded by the Department of Justice to State or local government applicants that have developed a workable, comprehensive plan to combat sex trafficking. The grants would require a comprehensive, multi-disciplinary approach to addressing trafficking problems. Applicants for the grants would have to demonstrate they can work together with local, State, and Federal law enforcement agencies, prosecutors, and social service providers to achieve the goals the bill would set out for them.  

Government that get the grants would be required to create shelters where trafficking victims would be safe from their pimps, and where they could start getting treatment for the trauma they have suffered. The shelters would provide counseling, legal services, and mental and physical health services, including treatment for substance abuse, sexual abuse, and trauma-informed care. The shelters would also provide food, clothing, and other necessities, as well as education and training to help victims get their lives on track.  

It is going to take this kind of comprehensive plan to finally turn the tables on pimps who, right now, just wait for the victims to be arrested from jail so they can put them back out on the streets to make money for them. Once those girls are out, they don’t come back to testify against their pimps—they’re just gone.  

This bill fixes that problem by giving the young victims a safe haven. It is only by addressing the needs of these victims that law enforcement officers will be able to work with them to build criminal cases against their pimps. The bill will also provide for specialized training for law enforcement officers and prosecutors to help them learn how to handle trafficking victims and build trafficking cases.  

This bill would also strengthen reporting requirements for runaway or missing children, and authorize funding to the FBI to enhance the National Crime Information Center, NCIC, database, which is where missing child reports are filed. This would give law enforcement officers better information on their victims to be more able to prevent the worst risk of being lured in to sex trafficking by being able to show a tally of how many times a child has run away, and can flag them as ‘‘repeat runaways’’ who are at high risk of being lured into prostitution.  

Sex trafficking is a complex issue that requires the comprehensive, wrap-around approach that this bill would deliver. Right now, its daunting to many of us there are bright examples of how to address the challenge, such as the achievements of Sergeant Byron Fassett of the Dallas Police Department. Just listening to Sergeant Fassett who spoke at a recent congressional briefing that I hosted, is an education in how to do this right. The lessons he has learned in over 20 years of combating sex trafficking are a primer for how to get victims out of the hands of pimps and build cases to put pimps away. Sergeant Fassett is not the only officer out there who’s attacking this challenge the right way.  

In my home town of Portland, the officers on the human trafficking task force are doing excellent work. But right now, they simply don’t have the resources to crack this problem. The Trafficking Deterrence and Victims Support Act would deliver the training and resources they need to also thank the many individuals and organizations who attended the briefing and participated in efforts to craft this legislation. I particularly want to acknowledge the Polaris Project and the National Center for Missing & Exploited Children, for their instrumental roles in this effort.  

I look forward to working with Senator CORNYN and other colleagues to move this important legislation forward. There are criminal pimps and gang members on the streets tonight who shouldn’t have to wait for the help this bill can give. Let us end this appalling war on those kids. Let us give them the help they need by passing this piece of legislation with all the speed possible.  

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2925

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Trafficking Deterrence and Victims Support Act of 2009”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Human trafficking is modern day slavery. It is the fastest-growing, and second largest, criminal enterprise in the world. Human trafficking generates an estimated profit of $32,000,000,000 per year, world wide.

(2) In the United States, human trafficking is an increasing problem. This criminal enterprise includes citizens of the United States, many of them children, who are forced into prostitution, and foreigners brought into the country on false pretenses, who are coerced into forced labor or commercial sexual exploitation.

(3) Sex trafficking is one of the most lucrative areas of human trafficking. Criminal gang members in the United States are increasingly involved in recruiting young
women and girls into sex trafficking. Interviews with gang members indicate that the gang members regard working as an individual who solicits customers for a prostitute service as being as lucrative as trafficking in drugs, but with a much lower chance of being criminally convicted.

(4) Victims in the United States are highly vulnerable for sexual exploitation and sex trafficking. As many as 2,800,000 children live on the streets. Of the estimated 1,800,000 children each year, 77 percent return home within 1 week. However, 33 percent of children who run away are lured into prostitution. Seventy-five percent of children are below the age of consent. Because trafficking victims have been forced to engage in prostitution, they are at a high risk of becoming involved in sex trafficking. Children who have run away multiple times are at much higher risk of not returning home and of engaging in prostitution.

(5) The vast majority of children involved in sex trafficking are victims of non-family abduction or abuse, live in poverty, or have no stable home or family life. These children require a comprehensive framework of specialized treatment and mental health counseling that addresses post-traumatic stress, depression, and sexual exploitation.

(6) The average age of entry into prostitution is 12. Seventy-five percent of minors engaged in prostitution have a pimp. A pimp can earn $200,000 per year prostituting 1 trafficking victim.

(7) Experts estimate that over 100,000 children in the United States are at risk for sex trafficking.

(8) Children who have run away from home are at a high risk of becoming involved in sex trafficking. Children who have run away multiple times face a higher risk of not returning home and of engaging in prostitution.

(9) Sex trafficking is a complex and varied criminal problem that requires a multi-disciplinary, cooperative solution. Reducing trafficking requires the cooperation of law enforcement, government, to address victims, pimps, and Johns, and to provide training specific to sex trafficking for law enforcement officers and prosecutors, and other social service providers. A good model for this type of approach is the Internet Crimes Against Children task force program.

(10) Human trafficking is a criminal enterprise that imposes significant costs on the economy of the United States. Government and non-profit resources used to address trafficking include those of law enforcement, the judicial and penal systems, and social service providers. Without a range of appropriate treatments to help trafficking victims overcome the trauma they have experienced, victims will continue to be involved in crime, unable to support themselves, and continue to require government resources rather than being trafficked to contribute to the legitimate economy.

(11) Many domestic minor sex trafficking victims are younger than 15 years old and are below the age of consent. Because trafficking victims have been forced to engage in prostitution rather than willfully committing a crime, these victims should not be charged with solicitation or prostitution. As a result of the child's being unable to support themselves, these victims of trafficking should have access to treatment and services to help them escape and overcome being sexually exploited, and should also be allowed to seek appropriate remuneration from crime victims' compensation funds.

(12) New York has adopted a safe harbor law that establishes a presumption a minor charged with a prostitution offense is a severely trafficked person. This law allows the child to avoid criminal charges of prostitution and instead be considered a "person in need of supervision." The statute also provides support and services to youth who are under the age of 18 years old. These services include safe houses, crisis intervention programs, community-based programs, and law enforcement to help officers identify sexually exploited youth.

(13) Sex trafficking is not a problem that occurs only in urban settings. This crime exists also in rural areas and on Indian reservations. Efforts to address sex trafficking should include partnerships with organizations that seek to address the needs of such under-served communities.

SEC. 3. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the Attorney General should implement changes to the National Information Center database in order to ensure that—

(A) a child entered into the database will be automatically designated as an endangered juvenile in order to assist law enforcement officers in recognizing the child and providing the child with appropriate care and services; and

(B) the database be programmed to include a visual cue on the record of a child designated as an endangered juvenile in order to assist law enforcement officers in recognizing the child.

(2) children engaged in prostitution have a pimp. A pimp can earn $200,000 per year prostituting 1 trafficking victim.

(3) the term "eligible entity" means an entity which—

(A) has significant sex trafficking activity;

(B) has demonstrated cooperation between State and local law enforcement agencies, public health, and child welfare, public health, and other social service providers. A good model for a visual cue on the record of a child designated as an endangered juvenile in order to assist law enforcement officers in recognizing the child.

(C) has developed a workable, multi-disciplinary, cooperative solution. Reducing trafficking requires the cooperation of law enforcement, government, to address victims, pimps, and Johns, and to provide training specific to sex trafficking for law enforcement officers and prosecutors, and other social service providers. A good model for this type of approach is the Internet Crimes Against Children task force program.

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SENIOR RESOLUTION 384—HONORING UNITED STATES ARMY SPECIAL OPERATIONS COMMAND ON THEIR 20TH ANNIVERSARY

Mr. BURR (for himself and Mrs. HAGAN) submitted the following resolution; which was referred to the Committee on Armed Services:

S. Res. 384

Whereas since the establishment of United States Army Special Operations Command (USASOC) on its inception in 1983, it has operated in some of the most remote and hostile regions of the world;

Whereas the 7 components of USASOC consist of the John F. Kennedy Special Warfare Center and School, the United States Army Special Forces Command, the 75th Ranger Regiment, the 160th Special Operations Aviation Regiment, the 4th Psychological Operations Group, the 95th Civil Affairs Brigade, and the 528th Sustainment Brigade;

Whereas USASOC provides 70 percent of special operations personnel in Central Command’s theater and approximately 63 percent of the total overseas military commitments of the United States;

Whereas in the 8 years since the start of Operation Enduring Freedom and Operation Iraqi Freedom, 240 USASOC soldiers have made the ultimate sacrifice; and

Whereas Master Sergeant Brendan O’Connor, Chief Warrant Officer David Cooper, Colonel Mark Mitchell, Master Sergeant Donald Honeybough, and Master Sergeant Daniel Briggs, all of whom have served this nation as soldiers assigned to USASOC, received the Distinguished Service Cross for actions in support of the Global War on Terrorism;

Resolved, That the Senate—

(1) commends the United States Army Special Operations Command for more than 20 years of dedicated service to our Nation;

(2) honors the more than 27,000 personnel who serve in the United States Army Special Operations Command;

(3) pledges its continued support for the men and women of the United States Armed Forces.

SENIOR RESOLUTION 385—RECOGNIZING THE GREAT PROGRESS MADE BY THE PEOPLE OF UKRAINE IN THE ESTABLISHMENT OF DEMOCRATIC INSTITUTIONS, AND SUPPORTING A FREE AND TRANSPARENT PRESIDENTIAL ELECTION ON JANUARY 17, 2010

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 385

Whereas adherence by Ukraine to democratic, transparent, and fair election standards has been necessary for full integration into the community of democracies;

Whereas the Government of Ukraine in recent years, including reform of election laws and regulations, the development of a free and independent press, and the establishment of public institutions that respect human rights and the rule of law, have enhanced Ukraine’s progress toward democracy and enhanced prosperity;

Whereas public opinion in Ukraine in 2004, 2006, and 2007 were determined by the Organization for Security and Cooperation in Europe (OSCE) to have been consistent with international election standards;

Whereas the United States has closely supported the people of Ukraine in their bold efforts to pursue a free and democratic future following the declaration of their independence in 1991;

Whereas the NATO Freedom Consolidation Act (Public Law 108-17; 22 U.S.C. 224 note), signed into law by President George W. Bush on April 9, 2007, recognized the progress made by Ukraine toward meeting the responsibilities and obligations for membership in the North Atlantic Treaty Organization (NATO) and designated Ukraine as eligible to receive assistance under the NATO Participation Act of 1994 (title II of Public Law 103-147; 22 U.S.C. 2218 note);

Whereas Ukraine has made steps toward integration within European institutions through a joint European Union-Ukraine Action Plan, as part of the European Neighbourhood Policy; and

Whereas the United States-Ukraine Strategic Partnership Commission was inaugurated by Secretary of State Hillary Clinton and Ukrainian Foreign Minister Petro Poroshenko on December 9, 2009; Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the great progress made by the people of Ukraine in establishing democratic institutions and carrying out peaceful election processes in 2004, 2006, and 2007;

(2) supports a free and transparent election process in the presidential election in Ukraine on January 17, 2010, that complies with the international election standards of the Organization for Security and Cooperation in Europe; and

(3) encourages all parties to respect the independence and territorial integrity of Ukraine, as well as the full integration of Ukraine into the international community of democracies; and

(4) pledges support for the creation of a prosperous free market economy and the strengthening of a free and open democratic system in Ukraine.

SENIOR RESOLUTION 386—CONDEMNING THE GOVERNMENT OF IRAN FOR RESTRICTING AND SUPPRESSING FREEDOM OF THE PRESS, FREEDOM OF SPEECH, FREEDOM OF ASSEMBLY, AND FREEDOM OF RELIGION, AND FOR ITS HUMAN RIGHTS ABUSES, AND FOR OTHER PURPOSES

Mr. KAUFMAN (for himself, Mr. LIEBERMAN, Mr. MCCAIN, Mr. DODD, Mr. KYL, Mr. CASEY, Mr. GRAHAM, Mr. LEVIN, Mr. BROWNBACK, Mr. HATCH) submitted the following resolution; which was considered and agreed to:

S. Res. 386

Whereas hundreds of thousands of Iranian citizens have engaged in peaceful protests since the June 12, 2009, presidential election in Iran;

Whereas the Government of Iran has responded to these protests with a concerted campaign of intimidation, repression, and violence, including human rights abuses against Iranian citizens;

Whereas there have been numerous allegations of torture, rape, imprisonment, and violence perpetrated against Iranian citizens by the Government of Iran since the June 12 elections;

Resolved, That the Senate—

(1) condemns the government of the Islamic Republic of Iran for denying the citizens of Iran freedom of religion and freedom of speech and for using the military and security forces and other agencies of the Iranian government to violently suppress and intimidate the citizens of Iran;

(2) expresses deep concern for the safety and well-being of all citizens of Iran and for the establishment of a democratic government in Iran;

(3) urges the governments of NATO and the EU to work with the Iranian government to establish democracy in Iran; and

(4) urges the United Nations Security Council to impose sanctions that would bring about a change in the Iranian government’s behavior.
December 22, 2009

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freedom of speech, freedom of expression, freedom of assembly, and freedom of the press;

Whereas the Government of Iran has monitored, censored, and censored access to the Internet, and has conducted a campaign of harassment and intimidation through the electronic media;

Whereas, Mr. Baucus assesses Internet and digital media in Iran as ‘‘Not Free,’’ and characterizes the Government of Iran as wielding ‘‘one of the world’s most sophisticated apparatus for controlling the Internet and other digital technologies’’;

Whereas the Government of Iran is engaged in a range of activities that interfere with, undermine, or infringe upon, the right of the people of Iran to access accurate, independent news and information;

Whereas, according to Amnesty International, the Government of Iran has banned several newspapers, including Farhang-e Ashti, Arman-e Ravabet-e Omoni, Tahlil-e Rooy, and Sarmaye;

Whereas the Government of Iran has harassed, arrested, detained, imprisoned, and assaulting numerous Iranian and foreign journalists, publishers, editors, photographers, cameramen, and bloggers;

Whereas the Government of Iran has prohibited Iranian and non-Iranian news services from distributing reports in Farsi;

Whereas the government of Iran revoked and temporarily suspended the accreditation of foreign journalists to report on current events and news developments in Iran;

Whereas the Government of Iran has interrupted short message service (SMS), preventing text message communications and blocking Internet sites that utilize such services;

Whereas the Government of Iran has partially jammed shortwave and medium wave transmissions of Radio Farda, the Persian language service of Radio Free Europe/Radio Liberty;

Whereas the Government of Iran has intermittently jammed satellite broadcasts by Radio Farda, the Voice of America’s Persian News Network (PNN), the British Broadcasting Corporation (BBC), and other non-Iranian news services;

Whereas the Government of Iran has blocked Web sites and blogs, including social networking, content-sharing, and blogging sites, such as Twitter, YouTube, Orkut, Blogger, and Persianblog;

Whereas the Government of Iran has targeted, blocked, and limited Internet connections and mobile network access to thwart communication in advance of planned demonstrations, and has seized mobile phones that were used to film or document the demonstrations;

Whereas the Government of Iran has monitored online activities of Iranians and threatened them and their families with punitive action, including citizens of Iran and Iranian-Americans living in the United States and elsewhere overseas;

Whereas, in November 2009, the police forces of Iran formed a special unit to monitor websites and ‘‘Internet crimes,’’ including political offenses;

Whereas the Victims of Iranian Censorship Act (Subtitle A of Title XII of Public Law 111-84), which was signed into law on October 28, 2009, stipulates that ‘‘it shall be the policy of the United States to encourage the development of technologies, including Internet sites, that facilitate the efforts of the Iranian people to gain access to and share accurate information and exercise freedom of speech, freedom of assembly, and freedom of the press, through the Internet or other electronic media’’;

Whereas on December 10, 2009, President Barack Obama affirmed in his statement accepting the Nobel Peace Prize, ‘‘We will bear witness to the quiet dignity of reformers...to the hundreds of thousands who have marched silently through the streets of Iran. It is telling that the leaders of these governments fear the aspirations of their own people more than they do the people they rule. And it is the responsibility of all free people and free nations to make clear to these movements that hope and history are on their side.’’

Whereas, on December 18, 2009, the Department of State issued a statement welcoming the passage of the United Nations resolution which stated, ‘‘The resolution, first adopted by the UN December 10, 2009, expresses deep concern over the brutal response of Iranian authorities to peaceful demonstrations in the wake of the June 12 elections. Those in Iran who are trying to exercise their universal rights should know that their voices are being heard.’’

Whereas, on December 18, 2009, the Department of State issued a statement welcoming the passage of the United Nations resolution which stated, ‘‘The resolution, first adopted by the UN December 10, 2009, expresses deep concern over the brutal response of Iranian authorities to peaceful demonstrations in the wake of the June 12 elections. Those in Iran who are trying to exercise their universal rights should know that their voices are being heard.’’

Resolved, That the Senate—

(1) supports the right of the people of Iran to peacefully express their voices, opinions, and aspirations despite intimidation, repression, and violence;

(2) condemns the human rights abuses committed by the Government of Iran against Iranian citizens;

(3) condemns the efforts of the Government of Iran to restrict and suppress freedom of the press, freedom of speech, freedom of expression, and freedom of the Internet;

(4) condemns online censorship, monitoring, intimidation, and harassment conducted by the Government of Iran, including threats against citizens of Iran and Iranian-Americans living in the United States;

(5) condemns an atmosphere of impunity in Iran, whereby the very censors, intimidation, harassment, or violence to restrict and suppress freedom of speech, freedom of expression, freedom of assembly, and freedom of the press;

(6) condemns the Government of Iran for violating the International Covenant on Civil and Political Rights, done at New York, December 16, 1966, and entered into force for Iran on March 23, 1976, which has been ratified by Iran and states, ‘‘Everyone shall have the right to freedom of expression; this right shall include freedom to hold opinions without interference and to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;’’

(7) welcomes the decision made by the Department of State on December 15, 2009, to foster and support the free flow of information to Iran in accordance with the recommendation to the Department of the Treasury’s Office of Foreign Assets Control (OFAC) issue a general license that would authorize downloads of free mass market software to Iran necessary for the exchange of personal communications or sharing of information or both over the Internet as deemed essential to the national interest of the United States; and

(8) urges the implementation of the Victims of Iranian Censorship Act (Subtitle D of Title XII of Public Law 111-84), to foster and support the free flow of information to Iran in accordance with the recommendation to the Department of the Treasury’s Office of Foreign Assets Control (OFAC) issue a general license that would authorize downloads of free mass market software to Iran necessary for the exchange of personal communications or sharing of information or both over the Internet as deemed essential to the national interest of the United States; and

AMENDMENTS SUBMITTED AND PROPOSED

SA 294. Mr. Hatch submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. Reid (for himself, Mr. Baucus, Mr. Dodd, and Mr. Harkin) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 295. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. Reid (for himself, Mr. Baucus, Mr. Dodd, and Mr. Harkin) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 294. Amendment SA 294 substituted amendment SA 294. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. Reid (for himself, Mr. Baucus, Mr. Dodd, and Mr. Harkin) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 295. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. Reid (for himself, Mr. Baucus, Mr. Dodd, and Mr. Harkin) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SEC. 1. ENSURING THE AFFORDABILITY OF COVERAGE.

Notwithstanding any other provision of this Act, this Act (and the amendment made by this Act) shall not take effect until after the date on which the Secretary of Health and Human Services certifies to Congress that the implementation of this Act (and amendments in it not resulting in a greater increase in health insurance premiums than the increase that is otherwise projected under current law for more than 1,000,000 Americans.

SA 295. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. Reid (for himself, Mr. Baucus, Mr. Dodd, and Mr. Harkin) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

At the appropriate place, insert the following:

SEC. 2. . CIVIL ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.

(a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or amendment adopted by this Act, the following rules shall apply:

(1) The action shall be filed in any United States District Court and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.
Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title I, insert the following:

SEC. ___ suppression on unfunded mandates.

Notwithstanding any other provision of this title (or an amendment made by this title), no State or locality shall be required to comply with a requirement of this title (or amendment) prior to the date on which funds are appropriated at the full authorized level for in this Act (or an amendment made by this Act).

Mr. DODD. Mr. President, I ask unanimous consent that the bill be read the third time, passed, the motion to reconsider be laid upon the table, and that any statements on the bill be printed in the Record, with no intervening action.

COMMENDING THE SOLDIERS AND CIVILIAN PERSONNEL AT FORT GORDON

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Armed Services be discharged from further consideration of the bill (H.R. 4284) and its role as a pivotal communications training installation.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The concurrent resolution was agreed to.

CONDEMNING THE GOVERNMENT OF IRAN

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution (S. Res. 386).

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

The resolution was agreed to.

The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 386) condemning the Government of Iran for restricting and suppressing freedom of the press, freedom of speech, freedom of expression, and freedom of assembly, and for its human rights abuses, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill (H.R. 3428) was ordered to a third reading, read the third time, and passed.
The resolution (S. Res. 386) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas hundreds of thousands of Iranian citizens have engaged in peaceful protest since the June 12, 2009, presidential election in Iran;

Whereas the Government of Iran has responded to these protests with a concerted campaign of intimidation, repression, and violence, including human rights abuses against Iranian citizens;

Whereas there have been numerous allegations of torture, rape, imprisonment, and violence perpetrated against Iranian citizens by the Government of Iran since the June 12 election;

Whereas the Government of Iran has sought to restrict and suppress the legitimate right of the people of Iran to exercise freedom of speech, freedom of expression, freedom of assembly, and freedom of the press;

Whereas the Government of Iran has monitored, controlled, and censored access to the Internet and has conducted a campaign of harassment and intimidation through the electronic media;

Whereas Freedom House assesses Internet and digital media in Iran as "Not Free," and characterizes the Government of Iran as wielding "one of the world's most sophisticated apparatuses for controlling the Internet and other digital technologies";

Whereas the Government of Iran is engaged in a range of activities that interfere with, or infringe upon, the right of the people of Iran to access accurate, independent news and information;

Whereas, according to Amnesty International, the Government of Iran has banned several newspapers, including Farhang-e Ashti, Arman-e Ravabet-e Omomi, Tahlib-e Roz, and Sarmayeh;

Whereas the Government of Iran has harassed, arrested, detained, imprisoned, and assaulted numerous Iranian and foreign journalists, publishers, editors, photographers, cameramen, and bloggers;

Whereas the Government of Iran has prohibited Iranian and non-Iranian news services from distributing reports in Farsi;

Whereas the Government of Iran has revoked and temporarily suspended the accreditation of foreign journalists to report on current events and news developments in Iran;

Whereas the Government of Iran has interrupted short message service (SMS), prevents text message communications and blocking Internet sites that utilize such services;

Whereas the Government of Iran has partially jammed shortwave and medium wave transmitters for Radio Farda, the Persian language service of Radio Free Europe/Radio Liberty;

Whereas the Government of Iran has interrupted jammed satellite broadcasts by Radio Farda, the Voice of America's Persian News Network (PNN), the British Broadcasting Corporation (BBC), and other non-Iranian government news services;

Whereas the Government of Iran has blocked Web sites and blogs, including social networking, content-sharing, and blogging sites, such as Facebook, Twitter, YouTube, Orkut, Blogger, and Persianblog;

Whereas the Government of Iran has targeted, blocked, and limited Internet connections that allow access to the worldwide communication in advance of planned demonstrations, and has seized mobile phones that were used to film or document the demonstrations;

Whereas the Government of Iran has monitored online activities of Iranians and threatened their families with punitive action, including citizens of Iran and Iranian-Americans living in the United States and elsewhere overseas;

Whereas, in October 2009, the police forces of the Government of Iran formed a special unit to monitor websites and "Internet crimes," including political offenses;

Whereas the Iranian Censorship Act (subtitle D of title XII of Public Law 111–84), which was signed into law on October 28, 2009, stipulates the policy of the United States to encourage the development of technologies, including Internet Web sites, that facilitate the efforts of the Iranian people to gain access to and share accurate information and exercise freedom of speech, freedom of expressions, freedom of assembly, and freedom of the press, through the Internet or other electronic media; and

Whereas on December 10, 2009, President Barack Obama affirmed in his statement accepting the Nobel Peace Prize, "We will bear witness to the quiet dignity of reformers...to the courage of journalists...to the resolve of students...to the spirit of Iran's people...and to the fact that the people of Iran have engaged in peaceful protest...to the responsibility of all free people and free nations to make clear to these movements in Iran and states, ‘Everyone shall have the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and, for the expression of these opinions, freedom to freely receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’";

Whereas the resolution (S. Res. 386) was adopted by the Senate, by a roll call vote of 98-0, on December 23, 2009, pursuant to S. Con. Res. 91, as amended.

Resolved, that the Senate—

(1) proclaims that the Government of Iran has violated the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the 2009 Human Rights Watch World Report and called on the Government of Iran to respect fundamental human rights and the rule of law;

(2) calls on the United Nations Human Rights Council to make clear to the Government of Iran that its human rights abuses are in violation of the rights of all people, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;

(3) condemns the efforts of the Government of Iran to restrict and suppress freedom of the press, freedom of speech, freedom of assembly, and freedom of the press;

(4) condemns online censorship, monitoring, intimidation, and harassment conducted by the Government of Iran, to include threats against citizens of Iran and Iranian-Americans living in the United States;

(5) condemns an atmosphere of impunity in Iran for those who employ censorship, intimidation, harassment, or violence to restrict and suppress freedom of speech, freedom of expression, freedom of assembly, and freedom of the press;

(6) condemns the Government of Iran for violating the International Covenant on Civil and Political Rights, done at New York December 16, 1966, and entered into force March 23, 1976, which has been ratified by Iran and states, “Everyone shall have the right to freedom of opinion and expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print...”;

(7) urges the implementation of the Victims of Iranian Censorship Act (subtitle D of title XII of Public Law 111–84);

(8) urges the implementation of the Victims of Iranian Censorship Act (subtitle D of title XII of Public Law 111–84).

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appoints the following Senator as a delegate of the U.S.-China Interparliamentary Group conference during the 111th Congress: The Honorable Michael Enzi of Wyoming.

The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appoints the following Senator as a delegate of the U.S.-China Interparliamentary Group conference during the 111th Congress: The Honorable Roland Burris of Illinois.

Mr. DODD. Mr. President, I yield the floor.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:45 a.m. tomorrow.

NOMINATIONS

Executive nominations received by the Senate:

THE JUDICIARY

J. MICHELLE CHILDs, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA. VICE GEORGE ROSS ANDERSON, JR., RETIRED.

RICHARD MARK GRIEHL, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA. VICE HENRY M. HERLONG, JR., RETIRED.

WILLIAM N. NETTLES, OF SOUTH CAROLINA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF SOUTH CAROLINA. VICE ROBERT J. PAPP, JR., RETIRED.

WILLIAM WALTER WILKINS, III, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, VICE EMILY C. ELDRIDGE, RETIRED.

J. MICHELLE CHILDS, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, VICE RICHARD MARK GRIEHL, RETIRED.

RICHARD SOLOMON, JR., OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, VICE RICHARD MARK GRIEHL, RETIRED.

WILLIAM WALTER WILKINS, III, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, VICE ROBERT J. PAPP, JR., RETIRED.

UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, VICE RICHARD MARK GRIEHL, RETIRED.

To be admiral

VICE ADM. ROBERT J. FAPP, JR.
**Daily Digest**

**Senate**

**Chamber Action**

**Routine Proceedings, pages S13713–S13793**

**Measures Introduced:** Four bills and three resolutions were introduced, as follows: S. 2922–2925, and S. Res. 384–386.

**Page S13785**

**Measures Reported:**

H.R. 3819, to extend the commercial space transportation liability regime.

**Page S13785**

**Measures Passed:**


**Page S13792**

Commending the Soldiers, Civilian Personnel, and Families at Fort Gordon: Committee on Armed Services was discharged from further consideration of H. Con. Res. 206, commending the soldiers and civilian personnel stationed at Fort Gordon and their families for their service and dedication to the United States and recognizing the contributions of Fort Gordon to Operation Iraqi Freedom and Operation Enduring Freedom and its role as a pivotal communications training installation, and the resolution was then agreed to.

**Page S13792**

Condemning the Government of Iran: Senate agreed to S. Res. 386, condemning the Government of Iran for restricting and suppressing freedom of the press, freedom of speech, freedom of expression, and freedom of assembly, and for its human rights abuses.

**Pages S13792–93**

**Measures Considered:**

Service Members Home Ownership Tax Act—Agreement: Senate continued consideration of H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, taking action on the following amendments proposed thereto:

Adopted:

By 60 yeas to 39 nays (Vote No. 388), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the Reid Amendment No. 2786, in the nature of a substitute.

**Page S13747**

A unanimous-consent agreement was reached providing for further consideration of the bill at approximately 9:45 a.m., on Wednesday, December 23, 2009, if cloture is invoked, and immediately the bill, as amended, be read a third time, and Senate vote on passage of the bill.

A unanimous-consent-time agreement was reached providing for further consideration of the bill at approximately 9:45 a.m., on Wednesday, December 23, 2009, with the time following any Leader remarks and until 10 a.m. equally divided and controlled between the two Leaders, or their designees; that at 10 a.m. and until 2 p.m. the time be controlled in alternating one hour blocks of time, with the Majority controlling the first hour; provided further, that the remaining time until 2:13 p.m. be equally divided and controlled between the two Leaders, with the Majority controlling the final half.

**Page S13779**

Withdrawn:

Reid Amendment No. 3277 (to Amendment No. 3276), to change the enactment date.

**Pages S13714, S13715–16**

Pending:

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

**Pages S13714–44, S13745–51**

Reid (for Cardin) Amendment No. 2878 (to Amendment No. 2786), to provide for the establishment of Offices of Minority Health.

**Pages S13714, S13716**

Reid Amendment No. 3292 (to Amendment No. 2786), to change the effective date.

During consideration of this measure today, Senate also took the following action:

Reid Amendment No. 3279 (to Amendment No. 3278), to change the enactment date, fell when Reid Amendment No. 3278 (to the language proposed to be stricken by Amendment No. 2786) (listed above), was tabled.

By 60 yeas to 39 nays (Vote No. 388), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the Reid Amendment No. 2786, in the nature of a substitute.

**Page S137714**

A unanimous-consent agreement was reached providing that all post-cloture time be considered expired on the bill at 8 a.m., Thursday, December 24, 2009, if cloture is invoked, and immediately the bill, as amended, be read a third time, and Senate vote on passage of the bill.

A unanimous-consent-time agreement was reached providing for further consideration of the bill at approximately 9:45 a.m., on Wednesday, December 23, 2009, with the time following any Leader remarks and until 10 a.m. equally divided and controlled between the two Leaders, or their designees; that at 10 a.m. and until 2 p.m. the time be controlled in alternating one hour blocks of time, with the Majority controlling the first hour; provided further, that the remaining time until 2:13 p.m. be equally divided and controlled between the two Leaders, with the Majority controlling the final half.

**Page S13779**
Appointments:

U.S.-China Interparliamentary Group Conference: The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appointed the following Senator as a delegate of the U.S.-China Interparliamentary Group conference during the 111th Congress: Senator Burris.

U.S.-China Interparliamentary Group Conference: The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appointed the following Senator as a delegate of the U.S.-China Interparliamentary Group conference during the 111th Congress: Senator Enzi.

Continued Financing of Government Operations—Agreement: A unanimous-consent agreement was reached providing that on Thursday, December 24, 2009, after passage of H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, as amended, Senate immediately begin consideration of H.R. 4314, an act to permit continued financing of Government operations; that no amendments be in order; Senate vote on passage of the bill; that passage require a 60 affirmative vote threshold.

Increasing the Statutory Limit on the Public Debt—Agreement: A unanimous-consent agreement was reached providing that on Wednesday, January 20, 2010, at a time to be determined by the Majority Leader, following consultation with the Republican Leader, the Committee on Finance be discharged of H.J. Res. 45, increasing the statutory limit on the public debt; Senate proceed to the measure; that immediately after the joint resolution is reported, the Majority Leader, or his designee, be recognized to offer a substitute amendment; and that the following be the only first-degree amendments in order to the joint resolution: Thune Amendment relative to TARP; Murkowski Amendment relative to Endangerment EPA regulations; Coburn Amendment relative to Rescissions package; Sessions Amendment relative to Spending caps; McConnell Amendment relative to any on list; Reid Amendment relative to any on list; Reid Amendment relative to pay go; three Baucus Amendments relative to any on list; and Conrad/Gregg Amendment relative to fiscal taskforce; that each of the listed amendments be subject to an affirmative 60 vote threshold; and that Senate vote on passage of the joint resolution, as amended, that passage also be subject to an affirmative 60 vote threshold.

Martin Nomination—Agreement: A unanimous-consent-time agreement was reached providing that on Wednesday, January 20, 2010, after a period of morning business, Senate begin consideration of the nomination of Beverly Baldwin Martin, of Georgia, to be United States Circuit Judge for the Eleventh Circuit; that there be 60 minutes of debate with respect to the nomination, with time equally divided and controlled between Senators Leahy and Sessions, or their designees; that upon the use or yielding back of time, Senate vote on confirmation of the nomination.

Nominations Received: Senate received the following nominations:

J. Michelle Childs, of South Carolina, to be United States District Judge for the District of South Carolina.
Richard Mark Gergel, of South Carolina, to be United States District Judge for the District of South Carolina.
William N. Nettles, of South Carolina, to be United States Attorney for the District of South Carolina for the term of four years.
Kelvin Corneilius Washington, of South Carolina, to be United States Marshal for the District of South Carolina for the term of four years.
1 Coast Guard nomination in the rank of admiral.

Executive Communications:

Additional Cosponsors:

Statements on Introduced Bills/Resolutions:

Additional Statements:

Amendments Submitted:

Notices of Intent:

Record Votes: Three record votes were taken today. (Total—388)

Adjournment: Senate convened at 7:01 a.m. and adjourned at 7:06 p.m., until 9:45 a.m. on Wednesday, December 23, 2009. (For Senate’s program, see the remarks of the Majority Leader in today’s Record on page S13779.)

Committee Meetings

(Committees not listed did not meet)

No committee meetings were held.
House of Representatives

Chamber Action
The House currently stands in recess. The House is scheduled to meet at 11:30 a.m. on Wednesday, December 23, 2009.

Committee Meetings
No committee meetings were held.

Joint Meetings
No joint committee meetings were held.

NEW PUBLIC LAWS
(For last listing of Public Laws, see DAILY DIGEST, p. D1507)


COMMITTEE MEETINGS FOR WEDNESDAY,
DECEMBER 23, 2009
(Committee meetings are open unless otherwise indicated)

Senate
Committee on Finance: business meeting to consider the nominations of Lael Brainard, of the District of Columbia, to be Under Secretary, Michael F. Mundaca, of New York, and Mary John Miller, of Maryland, both to be Assistant Secretary, and Charles Collyns, of Maryland, to be a Deputy Under Secretary, all of the Department of the Treasury, Michael W. Punke, of Montana, to be a Deputy United States Trade Representative, with the rank of Ambassador, Islam A. Siddiqui, of Virginia, to be Chief Agricultural Negotiator, Office of the United States Trade Representative, with the rank of Ambassador, and Jim R. Esquea, of New York, and Ellen Gloninger Murray, of Virginia, both to be Assistant Secretary, and Bryan Hayes Samuels, of Illinois, to be Commissioner on Children, Youth, and Families, all of the Department of Health and Human Services, Time to be announced, S–216, Capitol.

House
No committee meetings are scheduled.
Next Meeting of the SENATE
9:45 a.m., Wednesday, December 23

Senate Chamber
Program for Wednesday: Senate will continue consideration of H.R. 3590, Service Members Home Ownership Tax Act, with a series of up to five roll call votes to begin at approximately 2:13 p.m.

Next Meeting of the HOUSE OF REPRESENTATIVES
11:30 a.m., Wednesday, December 23

House Chamber
Program for Wednesday: to be announced.