Mr. UDALL of New Mexico 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 reform legislation. The time until 10 a.m. is equally divided between the two leaders or their designees. From 9 a.m. until 2 p.m. today, there will be 1-hour alternating blocks of time, with the majority controlling the first hour. The time between 2 p.m. and 2:13 p.m. will be equally divided and controlled between the two leaders, with the majority leader controlling the final half. The Senate will then proceed to a series of five or six rollcall votes in relation to the health care bill.

I note the absence of a quorum. The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, I note the absence of a quorum. No one is here.

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

The assistant 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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 ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will report.

The assistant legislative clerk read as follows:

A 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.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Reid (for CARDIN) amendment No. 2378 (to amendment No. 2786), to provide for the establishment of Offices of Minority Health.

Reid amendment No. 3292 (to amendment No. 2676), to close date.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. will be equally divided between the two leaders.

The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I just received this morning—and I am sure it is on the CBO Web site, the Congressional Budget Office Web site—an analysis of the health care bill we are considering. It is actually stark—crytcal-clear and confirms what CMS has told us; that is, the proponents of the legislation before us have been double-counting—double-counting—the savings from Medicare, and as a result, it cannot be said that this bill is going to create a surplus in the Treasury but, in fact, will put us in a deficit.

I think every Member of this body needs to read this communication before they cast their vote. I know a lot of Members of the Senate who voted for the bill did so under the belief that it would be deficit neutral. They have said so publicly. The President has repeatedly stated—and he did to the Joint Session of Congress—that not one dime will be added to the national debt, and that is not so.

I will reveal what we were told by CBO this morning in their report. This is what the CBO said to us, and it is very simple:

It is actually stunning that we have been confused about this issue when we are talking about hundreds of billions of dollars. It is absolutely an amazing event that the U.S. Congress can't get its act together when we are talking about hundreds of billions of dollars.

They say this:

The key point is that the savings to the HI trust fund—

Talking about Medicare—

under the PPACA—

That is the health care bill we are considering—

would be received by the government only once, so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.

That is exactly what this bill proposes to do.

Just 2 days ago at this press conference, the President said:

Medicare will be stronger and its solvency extended by nearly a decade.

Then he goes on to say this: The Congressional Budget Office now reports that this bill will reduce our deficit by $322 billion over the first decade.

That is counting the money twice. It cannot be done. That is wrong, and it must not be allowed to occur.

Senator GREGG, the former chairman of the Budget Committee and ranking Republican on that committee, proposed an amendment that said any savings in Medicare stay in Medicare, and our colleague who voted it down—Senator HARKIN said: You have to vote it down—our colleagues in his speech on the floor—you have to vote it down because it will kill the bill. Why would it kill the bill? Because they are planning to use the money both ways, and it cannot be done and ought not to be done.

This is very much consistent, entirely consistent with the communication from the Chief Actuary, Richard S. Foster, of the Center for Medicare and Medicaid Services. Mr. Foster laid it out. We should have seen this back on December 10. It is really what piqued my interest in this whole matter because I was wondering how this could be done. It didn't make sense to me. And I read his letter, and he says this:

The combination of lower Part A costs—

And that is Part A of Medicare, the hospital part—

and higher tax revenues results in a lower Federal deficit based on budget accounting rules.

He goes on to say:

However, trust fund accounting considers the same lower expenditures and additional revenues as extending the exhaustion date of the Part A trust fund.

They are running out of money, and if you cut the cost to Part A, you would extend, according to the trust fund accounting, the lifetime of the trust fund before it goes broke.

He adds:

In practice, the improved Part A financing cannot be simultaneously used to finance other Federal outlays.

Then he put in parentheses: such as the covered expansions under the PPACA—

Which is the health care bill—

and to extend the trust fund, despite the appearance of this result from the respective accounting conventions.

So there are two different accounting. The one from CMS says one thing. The one from CBO, which is a unified accounting, a different process of accounting for Federal expenditures—both say good things. But both can't be accurate. Both Members say, CBO says you can't count it twice, and CMS also says that.

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

Mr. SESSIONS. I thank the Chair and urge my colleagues to access this information on the CBO Web site and make it the way they like.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 2 p.m. will be controlled in alternating 1-hour blocks of time, with the majority controlling the first hour.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, it has been nearly 5 weeks since the majority
leader moved to proceed to the health care reform bill before us today. And it has been more than 2 months since the Finance Committee reported its bill, a great deal of which is reflected in the bill before us today.

It has been 6 months since the Finance Committee publicly posted the 564 amendments that Senators filed for consideration in the committee.

It has been 7 months since the Finance Committee convened three bipartisan roundtable discussions on each of the three major areas of reform: delivery system reform, insurance coverage, and options for financing reform.

It has been 7 months since the Finance Committee issued three bipartisan policy papers detailing the options from which the committee chose to craft its bill.

It has been 18 months since the Finance Committee convened a bipartisan, day-long health care summit at the Library of Congress.

It has been 19 months since the Finance Committee began holding open hearings to prepare for the bill before us today.

It has been more than 15 long years since the last time that the Senate took on this fight to enact comprehensive health care reform.

It has been 38 years since our late Colleague, Ted Kennedy, proposed a plan to extend health insurance coverage to all.

It has been 44 years since Congress created Medicare, providing health care for America’s seniors, and Medicaid, providing health care for the poorest among us.

It has been 64 years since President Harry Truman asked the Congress to enact a national insurance program “to assure the right to adequate medical care and protection from the economic fears of sickness.”

It has been 75 years since President Theodore Roosevelt ran on a platform that called for “the protection of home life against the hazards of sickness . . . through the adoption of a system of social insurance adapted to American use.”

And it is now only hours until this Senate will pass meaningful health care reform.

It will not be long now until the law will prohibit insurance companies from canceling insurance policies when people get sick.

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It will not be too long now until more than 30 million Americans will have a better chance to live longer, healthier, less pain-ridden lives.

It will not be too long now until more than 30 million Americans will be able to share their family Christmas free of the fears of medical bankruptcy.

Mr. President, it will not be long now. It has been a long time coming.

I thank God that I have lived to see this day. I thank God for sustaining us and for enabling us to reach this time. Let us now, at last, pass this historic legislation.

Mr. President, I yield 20 minutes to the Senator from Maryland.

The ACTING PRESIDENT pro tem. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, first, it will not be long now until we achieve universal health care coverage affordable care for all Americans. I thank Senator BAUCUS for making this moment possible. I know how hard he has worked for many weeks, so many months, so that we could bring very different views together but all focused on the goal of achieving affordable health care for every American.

Senator BAUCUS never lost sight of that goal. As a result, we are now just hours away from the last procedural hurdle until we will have a chance in the Senate to vote on a bill that for the 23 years I have been in Congress I have told the people of the Third Congressional District and the people of Maryland that I am going to fight to change our health care system so that every American has access to affordable, quality health care.

We are going to take a giant step forward to reaching that goal in the legislation we have before us today. Through the Chair, I thank Senator BAUCUS very much for his extraordinary patience and leadership to bring us to this moment.

Mr. President, there is a lot of discussion on the other side as to what the facts of the bill are. I am going to use the CBO because that is what we agreed to. That is the objective scorekeeper. They are not partisan. Everybody agrees to that.

The CBO tells us that for the under-65 group we are going to increase the number of insured from 83 percent to 91 percent. For all Americans, we are going to have 98 percent covered by health insurance. That is universal. We are going to have a framework so that at long last America joins every other industrialized nation in the world with a health care system where everyone is included.

As I have mentioned the case of Deamonte Driver which, to me, is representative of so many tragedies in our community that could be avoided. Deamonte Driver, a 12-year-old in Prince George’s County, MD, very close to here, had a tooth ache. His mom tried to get him to a dentist, but he had no insurance, and they couldn’t find a dentist. They went to a social worker and made dozens of calls and still couldn’t find a dentist. Deamonte was complaining of severe headaches. After weeks of not being able to get to a dentist, he went to the emergency room—the only option that was still available. They found out the tooth had become abscessed, which went into his brain. He had emergency surgery. He lost his life because our health care system didn’t provide access to affordable, quality care for all Americans.

Mr. President, that is about to change. I am proud to be a part of it. I have been asked by many in recent days as to what is in it for the people of Maryland. The people of Maryland are going to get a national health care system that makes a lot more sense, a rational system for care in America. With the current system, too many people are being left out. Small employers have a hard time finding affordable products.

I have gotten many letters from constituents that I have read. I must tell you about the letter I received from a small business owner in Montgomery...
County. She and her husband had to take out two separate policies to cover their family of four. The private insurance companies discriminated and said each has preexisting conditions, and the only way to have full coverage is to have two people with two separate deductibles—which the family cannot afford—two separate premiums that the family cannot afford.

There is not competition to provide coverage to small businesses in America. Small businesses in Maryland want to have the opportunity to cover their employees, and they know competition will work, and this bill provides for a lot more competition. This bill will help those who are losing coverage today. Many people in Maryland are losing their health care coverage every day. Hundreds lose their health insurance in my State every day. We live in the wealthiest Nation in the world, and Maryland is the wealthiest State, and we are still losing coverage today.

Our Medicare beneficiaries are finding their program under attack. They want to have the stability of knowing Medicare will be there not just this year but for decades to come. This bill starts Medicare by reforming health care so we can sustain it and fill in the prescription drug doughnut hole under which so many seniors are finding it very difficult to afford their medicine.

For the people of Maryland, this bill will provide a rational way in which they can maintain their existing coverage, find it more affordable, and certainly sustain coverage for our Medicare population and provide competition for small business owners to find affordable health care. It ought to bring down health care costs. Marylanders are very interested in that.

Again, let me use the CBO, the objective scorekeeper. They say for the overwhelming majority of Americans, their health premiums will go down because health care costs are coming down. This legislation invests in prevention and wellness. We know prevention and wellness works. We know if you can detect a disease early, you cannot only save lives, but you can save health care costs because the preventive services only cost a couple hundred dollars, and an operation you need or condition. You may have to go anywhere in the world, and they say: Before you go to an emergency room, get to that emergency room that is in network. They read the fine print of their insurance companies.

I wish to talk about protecting consumers. Senator BAUCUS talked about this. I wish to make sure people understand what is involved. Senator BAUCUS mentioned a lot of the provisions that are in the bill about preexisting conditions and pediatrics for children take effect immediately, the caps we bring in, the lifetime caps we deal with covering children under the age of 26, the reinstate private insurance companies discriminated and said each has preexisting conditions, and the only way to have full coverage is to have two people with two separate deductibles—which the family cannot afford—two separate premiums that the family cannot afford.

I wish to talk about the Patients' Bill of Rights because I think the people of this Nation would be surprised to find out we have not enacted the Patients' Bill of Rights.

It was 1997 when we started talking about a Patients' Bill of Rights, about enacting it so we had national protection against the abuses of private insurance companies. In 1998, President Clinton, by Executive order, applied the Patients' Bill of Rights to the government insurance programs. But today there is still no protection against the abuses of private insurance companies with a Patients' Bill of Rights.

I am very pleased the managers' amendment has added four very important provisions I authored by an amendment, that I have been working with Democrats and Republicans over the last decade to get into Federal law.

Access to emergency care—let me talk about that for a moment because today there are people who live in New Mexico and live in Montana and live in Maryland who go to their emergency rooms. They read the fine print of their insurance plan. It says: Before you go to an emergency room, you have to call for preauthorization or you need to go to the emergency room with the insurance network or we may second-guess whether you needed to go to that emergency room. If, in fact, your final diagnosis was you did not have an emergency need or condition. You may have some of the traditional symptoms for a heart attack. You did exactly what a prudent layperson would do: get to that emergency room as quickly as possible. Then you find out it was not a heart attack. Today the insurance companies can second-guess your coverage.

Thanks to the managers' amendment Senator BAUCUS helped us put together,
we now are going to cover access to emergency care as a requirement for every private insurance company. Prudent layperson standards, no preauthorizations, get to the closest emergency room as quickly as you can—these are important protections to get into the bill.

Then there is the ability to choose your primary care doctor. Your primary care doctor is the person you have to have confidence in. If you are a woman, your primary care doctor is the one you should have that right. Many insurance companies deny you that today. If you are a parent and you want a pediatrician for your child, you should be able to have a pediatrician as a primary physician for your child. It is not guaranteed to today. Many insurance plans deny it. This will make sure it is in law.

I am pleased, and I know the people of Maryland will be glad to know, at long last, we get the Patients’ Bill of Rights written into law.

There are a lot of groups that supported this over the years. I wish to acknowledge the long list of people, the long list of groups, bipartisan groups, that have worked on this issue, from AAARMA—Representers Union, NAACP to the SEIU, YMCA—the list goes on and on of groups that have supported the Patients’ Bill of Rights against private insurance companies. At long last, we have the ability, with the passage of this bill on the Senate floor, to move it one step closer to passage and to be the law of the land.

I wish to talk about minority health. The reasons I wish to talk about minority health are twofold. First, I know my colleagues are interested to know that the amendment that is currently pending that the leader filed, technically on my behalf, which establishes the minority health protections within the different Federal agencies—

I wish to explain that because the amendment I filed to establish the Minority Health Office at the Department of Health and Human Services and also within NIH will be in the underlying bill because of the managers’ package.

This is an important moment because there are huge disparities in our health care delivery systems in America, bringing about huge disparities among different ethnic communities. The life expectancy of African Americans, for example, is 5.3 years lower than Whites. When we look at diabetes in America, the incidence of diabetes is two times greater among minorities than the general population. That means we need to have a strategy to deal with it. We need to know how can we reach out to minority communities to deal with their special needs. Unless you have a focus within the Department of Health and Human Services, unless you have a focus within NIH and the other agencies, you will not deal with it as effectively as we should. I, again, thank Senator BAUCUS, Senator Cardin, Senator Reid, the Senator from the state of Maryland. Senator Sanders who understood this and put it into the managers’ package because we can then develop a national strategy to help deal with the issues of the minorities.

I also will mention heart disease. African Americans have a 33 percent higher death rate due to heart disease. The list goes on and on. That is why this bill codifies the Office of Minority Health in the Office of the Secretary of Health and Human Services, establishes individual Offices of Minority Health at the Centers for Disease Control and Prevention, Health Resources and Services Administration, Substance Abuse and Mental Health Services Administration, Food and Drug Administration, the Centers for Medicare & Medicaid Services, and it elevates the current Center on Minority Health and Health Disparities at the National Institutes of Health. That is good news for this nation in dealing with this issue.

I, again, thank those who helped me get this into the managers’ package—and it is now in the bill—that we will be taking up for a vote tomorrow. I also compliment Senator Sanders—I have done this before—on the community health centers. I mention that because as we deal with the disparities in health care in America, we deal with minority health care issues, yes, we have to get people health insurance, we have to get people the financial wherewithal to provide health care, but you also have to have the facilities in place if you are going to deal with the issues. It is something to say we will cover the costs, it is another thing to say we will have the doctors available.

I met with one of the leaders at Johns Hopkins University, which is located in the urban part of Baltimore city. He said: We need help. We need more community health centers. We need more primary care doctors. We need more nurses. We need help with more people seeking care through trauma centers and emergency rooms, that is great news. With them being able to afford insurance, that is great news, but let us have the facilities.

There are many underserved in Maryland and around the Nation who just need facilities. Thanks to the Sanders amendment, of which I am proud to be a cosponsor and worked with him, that is in this bill. We are going to see $10 billion to expand community health centers and 25 million more Americans will have access to emergency care through our community health centers. That is great news and that will help and we invest in creating more primary care doctors, which is a very valuable part of this bill. I applaud all those.

Let me point out this bill will help families in America. The choice is whether we pass this bill which sets up the framework for America to finally universal coverage or we maintain the status quo. Let me tell you what happens if we maintain the status quo. These are the numbers. Right now, the average cost for a family for health insurance is $13,244. If this action, by 2016—that is not too many years away—it is going to be $24,291.

The ACTING PRESIDENT pro tempore. The Senator has consumed the 20 minutes he was yielded.

Mr. CARDIN. May I have 2 more minutes, if that is possible?

Mr. BAUCUS. I yield the Senator 2 more minutes.

Mr. CARDIN. Mr. President, if people are going to be able to maintain their existing coverage, we have to act, and this bill will allow us to act. That is why the American Medical Association supports the bill. This bill will help our Medicare population because it strengthens Medicare, as I pointed out before. This bill, by 2016, pays for the Medicare population. That is why the American Medical Association supports the bill. This bill will help our Medicare population because it strengthens Medicare, as I pointed out before. This bill, by 2016, pays for the Medicare population. We will be able to provide preventive services, such as annual physicals, for our seniors. This bill is important for small business owners who no longer will be discriminated against by having to pay 20 percent more than comparable large companies pay for the same type of insurance product.

This bill is good for Marylanders. It is good for every American. It moves us toward universal coverage. The bill is not perfect. I am disappointed with some of the things in the bill and some of the things that did not make it into the bill. But this bill establishes the framework for universal, affordable, quality care for every American. It speaks to the values of our Nation. I am proud to stand with this legislation, and I know we will look back at this day as being one of the bright moments for America, where we said to the people of our Nation that, indeed, we will provide affordable, quality health care for every American.

I yield the floor.

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

Mr. BAUCUS. I yield 15 minutes to the Senator from Delaware. Mr. KAUFMAN.

Mr. KAUFMAN. The ACTING PRESIDENT pro tempore. The Senator from Delaware is recognized.

Mr. KAUFMAN. Mr. President, I thank the manager not just for this but for the many things he has done to make this bill a possibility. It is truly historic, transformational. To a large degree, it is because of his hard work. I appreciate that.

Also, I yield him 30 minutes of my postcloture time.

The ACTING PRESIDENT pro tempore. The time will be so yielded.
Mr. KAUFMAN. Mr. President, I rise, once again, to express my support for this historic health care legislation before us. After more than a year of debate and months and months of negotiations, I welcome the extraordinary opportunity finally to enact meaningful health care reform. This is not the first time we have worked on health care reform and that the need is urgent? The trajectory of our national health care expenditures is out of control.

In addition, one of the biggest—if not the biggest—forces behind our Federal deficit, which we hear so much about on this floor, are the skyrocketing costs of Medicare and Medicaid. In 1996, Medicare and Medicaid accounted for only 1 percent of all government expenditures; they now account for 20 percent. If we do nothing to start bending the cost curve down for Medicare and Medicaid, we will eventually spend more on these two programs than on all other Federal programs combined.

We cannot continue to grow the Medicare and Medicaid Programs if we are to ever get our budget situation under control. In addition to the fiscal pressures on our Federal and State governments, the current health care system is also crushing families and workers. Just look at the rise in the insurance premiums in my home State of Delaware. In 2000, the average premium for family health coverage was just over $7,500. The number had jumped to $14,900—that is, $14,900—almost doubling in just 8 years. If we fail to enact the pending health care reform legislation, the same premium for family coverage is expected in Delaware to reach $29,000 in 2016.

Let me repeat that: $29,000 for family coverage in Delaware in 2016 if we don’t pass health care reform now.

States around the country will see similar increases. If you are simply unaffordable. Too many people are going bankrupt paying for their medical care. Today, the inability to pay for skyrocketing medical bills accounts for more than 60 percent of U.S. personal bankruptcies. With no relief, insurers will also be restricted in the next year, insurers will no longer be able to place lifetime caps on health care benefits. For the next several years, insurers will also be restricted in the annual limits they can place on benefits, and then these will be eliminated altogether in 2014.

These are huge changes for people with debilitating diseases and those who experience unexpected catastrophic events costing millions of dollars in treatment.

In addition, premium subsidies for families with incomes under 400 percent of the poverty level—or $88,000 for a family of four—will be available to help them afford their premiums once the insurance exchange is up and running. There will also be annual limits on out-of-pocket costs for individuals, and dependents will be able to be covered under their parents’ insurance policies until the age of 26.

All of these are meaningful reforms that will dramatically lower the rate of bankruptcies associated with medical costs.
The bill also contains some other great consumer protections that don’t currently exist in our present health care system. I have already highlighted the problems in the current system with insurers denying coverage for people with preexisting conditions and reshuffling when people get sick. Under this bill, Americans will finally be freed from the shackles of preexisting conditions that have kept so many from obtaining much needed health insurance.

Starting next year, insurers will no longer be able to deny coverage to children with preexisting medical conditions. This ban on not covering preexisting conditions will be extended to all Americans in 2014.

The bill also forbids insurers from rescinding health insurance after Americans have already paid their premiums. Americans will no longer lose their coverage when they get sick and need it most.

In addition, the bill dramatically expands coverage of prevention and wellness services. It provides incentives for employers to implement wellness programs and offers a new annual wellness checkup for seniors enrolled in Medicare.

These are all good, positive reforms to our health care system. Now we are close to finishing this debate, the media has focused its attention on particular deals that benefit certain Senators and specific States, but I want to point out that all the benefits I have talked about—all of them—are available to every American in every State.

Most every Senator has brought something to this debate and to this bill. I am very pleased that the managers’ package includes the health care fraud enforcement amendment, which I introduced, along with Senators LEAHY, SPECTER, KLOBUCHAR, and SCHUMER as cosponsors. Again, this benefits all Americans not just Delawareans.

The National Health Care Anti-Fraud Association conservatively estimates that 3 percent of all health care spending—some $72 billion—is lost to health care fraud in both public and private health care plans. That is $72 billion lost in health care fraud in both public and private health care plans. Other estimates place the figure as high as 10 percent over $220 billion.

Fraud hurts every one of us in every corner of our Nation where we can least afford it—our health care premiums—while simultaneously driving down the quality of, and our trust in, the health care system. This amendment increases funding for fighting fraud,-screening providers, and improving the detectability of new fraud and abuse in the private insurance market.

It also strengthens criminal investigations and prosecution. Today, outdated laws and punishments insufficient to provide effective deterrence hamper prosecutors and agents. Those who commit health care fraud should feel the pinch. This bill will make it much less attractive for them to get into the health care fraud business. It gives us the tools we need—just like we did in the financial regulatory reform—to go after these folks and catch them. With these new sentencing guidelines, we can put them there for a longer time, discouraging people from getting into the health care fraud business to begin with.

In addition, the package of amendments I cosponsored with my fellow freshman Democrats will also improve the bill and benefit all Americans.

I am lucky to be a member of a dynamic freshman class, including the President, who have enjoyed working together and teaming up with them in our morning speeches and colloquies to push the health care reform effort forward. I am pleased that our amendment package was accepted by the bill’s managers and that it provides commonsense, practical solutions that help further contain costs, improve value, and increase quality.

For example, it quickens the implementation of uniform administrative standards that are so necessary to reduce the red tape and bloat that plagues the Medicare Program, extending its reach of all Americans, including those with preexisting conditions. It ensures that the American people receive high-quality care. It provides greater incentives to insurers in the exchange to reduce health care disparities affecting underserved minority communities.

For all the reasons listed above, from the original Senate Managers and added by the managers’ package, this bill should and must be passed. It brings quality, affordable health care within the reach of all Americans, including more than 30 million Americans who are currently uninsured. It strengthens the Medicare Program, extending its insolvency for 9 years. It helps restore fiscal order by reducing the deficit by approximately $1.32 trillion over 10 years and more than $1 trillion over 20 years. It offers much needed consumer protections today that provide stable coverage at an affordable cost.

In closing, I again want to acknowledge the hard work of Senators BAUCUS, REID, DODD, HARKIN, as well as their staffs—especially their staffs—because the staff has done incredible work on this piece of legislation. They have enabled us to reach this historic legislative moment.

I have ended many speeches by noting that it is time to gather our collective will and do the right thing to join this historic opportunity by passing health care reform. I think we may have finally reached that goal. We certainly can’t afford to wait any longer. We need to act much less. The American people deserve no less.

Mr. President, I yield the floor.

THE PRESIDING OFFICER (Mr. KIRK). The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I yield the remainder of the time we have in our hour to the Senator from North Dakota, Mr. CONRAD.

Mr. CONRAD. Mr. President, I rise this morning not to talk about health care but to talk about the other critical matter that faces this body before we leave this session for the holidays and that is the matter of extending the debt limit of the United States. Let me start by saying it is imperative that we raise the debt limit if we do not, the United States would default on its debt. The consequences for this country and the global economy would be nothing short of catastrophic.

If you think about the problems created in world markets by the fact that Dubai defaulted on $40 billion of debt, think of what it would mean to global markets if the United States were to default on $12 trillion of debt.

For those who say this is Obama’s fault—no. This is not Obama’s fault. He has been in office 11 months. I remind everyone that he walked into the biggest mess in 70 years—deficits and debt exploding, joblessness skyrocketing, economic growth plummeting. All that was happening before Barack Obama became President of the United States. He did not create the economic mess, he inherited it. He did not create the fiscal mess, he inherited it. Those are things he had to take on as the new President.

There were record deficits and a doubling of the national debt, there was the worst recession since the Great Depression, financial market and housing crises, ongoing wars in Iraq and Afghanistan, and an unstable long-term budget outlook with everything going in the wrong direction.

This is what was happening to deficits before President Obama took office. The deficits were skyrocketing. In fact, we have never held Presidents responsible for the fiscal affairs during the first year of their term of office because everybody here knows they inherit a budget from the previous President for the first year. That is not Barack Obama’s responsibility, that is the responsibility of the previous administration.

For those who say President Obama made things worse—no, he didn’t make...
things worse, he made things better. Yes, he added short term to the deficit, about $300 billion in 2009 because of the economic recovery package, but I remind people the difference the economic recovery package has made. We have 8 million private-sector jobs losses of 749,000 jobs a month when he came in—this is January of 2009, the month he came in. Job losses had mounted to 749,000 jobs a month. Look at the trend. Because of the recovery package and other measures that were put in place, the changes in private nonfarm payrolls have improved dramatically, from losses of over 700,000 a month in January to losses of 18,000 last month. We now believe that, in the first quarter of next year, those job losses will have become job gains.

The same thing happened on economic growth. Economic growth was sharply negative when President Obama came into office. In the last quarter, we now know the economy actually grew at a rate of 2.2 percent. That is a dramatic change. The fact is President Obama made things better. He inherited a disaster and he went to work to get America back on track.

Let me turn to the debt. This is what happened under the previous administration. The gross debt of the United States skyrocketed, more than doubling under the previous administration. So this is what the current administration inherited. He didn’t produce these deficits and debt. He inherited them.

It is true we are still on a course for long-term debt that is unsustainable. This was the cover of Newsweek on December 7, Pearl Harbor day. The Newsweek cover said this: ‘‘How great powers fall: steep debt, slow growth, and high spending kill empires—and America could be next.’’

What you went inside to the story, it said this:

This is how empires decline. It begins with a debt explosion. It ends with an inexorable demand for more taxes. It is the trendline of massively growing debt. The question is, can we face up to it? Do we have the strength, do we have the will to take on the burgeoning debt?

This is what the National Journal wrote on November 7 of this year:

The debt problem is worse than you think. Simply put, even alarmists may be underestimating the size of the (debt) problem, how quickly it will become unbearable and how poorly prepared our political system is to deal with it.

The reality we confront tomorrow morning is whether we will extend the debt limit of the United States. We have no choice. If we fail to pay the debts we have already accrued, the United States and other markets around the world would collapse. That is just the fact. We cannot permit that to happen.

How we got to this point is very clear to me. The previous administration put forward a fiscal policy that doubled the debt of the United States and put us on track to continue doubling it every 8 years. That current administration has taken action to get the economy moving and growing again. Had they not taken those steps, which add to the deficit in the short term, the long-term debt outlook would be even worse. The reality we face right now is that we have to deal with the reality that confronts us now. That reality is we are on a trendline that is absolutely unsustainable.

To those who say if you deal with the debt, you are going to have to do something about Social Security and Medicare and revenue—I say yes. That is true. We are going to have to do something about all of those. To those who say dealing with the debt means facing up to the hard reality that confronts this country and the fact that we are on a course that is unsustainable—I say yes. That is true. We are going to have to make changes in the entitlement programs. We are going to have to make changes in the revenue system.

When I say that, I don’t mean by that the first thing we do is raise taxes. The first thing we ought to do is collect the taxes that are already owed but are not being paid because of these offshore tax havens and abusive tax shelters and all the rest. We can get more revenue. We do not need to raise taxes to get more revenue. We need to collect the revenue that is currently owed and we need to get it from the people who are cheating, and we came to this conclusion in these tax schemes—offshore tax havens, abusive tax shelters. We even have companies now that are leasing sewer systems, buying them from European cities in order to depreciate them on the books in the United States to reduce their taxes here, then leasing those same sewer systems back to the European cities that built them in the first place. That is happening right now.

If you doubt we are losing money to offshore tax havens, Google ‘‘offshore tax havens’’ and see how many hits you get. You get over a million. Those sites describe a life of luxury, living offshore, tax free, on income received in this country, income on which taxes are owed in this country but not paid. That is the kind of thing that has to be stopped.

Mr. President, how much time do I have left for my closing remarks? The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. CONRAD. Let me talk for a minute about what Senator Grassley and I have proposed: a bipartisan task force to deal with this long-term debt threat. Our proposal has 35 cosponsors now. The idea is to give a group of our colleagues and members of the administration the responsibility to come up with a plan to reduce the deficits and debt. If a plan enjoyed a supermajority among the group of 18 who would be given the responsibility to come up with such a plan—if 14 of the 18 could agree on a plan—it would have to come here for a vote. It would come here for a final vote. Every Senator would retain their rights to vote up or down. Every Senator would retain their rights. And it would require 60 votes in the Senate to pass, it would require 60 percent of the House to pass and the President would be able to veto it if he didn’t like it.

I think it is clear that we have a real challenge facing our country and it is going to take some special process to deal with it. What we have outlined would put everything on the table with 18 Members, 10 Democrats, 2 from the administration, and 8 Republicans. All task force Members would need to be currently serving in Congress or the administration. If 14 of the 18 could agree, that report would have to come to the Congress for a vote. The report would be submitted after the 2010 election and there would be fast-track consideration in the Senate and the House. There would be a final vote before the 111th Congress adjourned. The idea is to give a group of those who say that is going to shred Social Security and Medicare—I say no. What threatens Social Security and Medicare is our doing nothing. Both of those programs are already cash negative. The trustees of Medicare tell us the program will be insolvent by 2017 if we do nothing. The answer can not be to do nothing. I believe this is a challenge that requires us to come together now. Republicans and Democrats, House, Senate, the administration. Every Senator would retain their rights to vote up or down. They would be able to change the fiscal crises in the past. The Social Security Commission in the 1980s, the Andrews Air Force Base Summit in the 1990s—those were special procedures to deal with a special challenge and that is what is required now. We are on a course that is absolutely and utterly unsustainable.

Let me go back to the vote tomorrow, because a group of us have said we are not going to vote to pay for any long-term increase of the debt without consideration of a special process to deal with the debt, but we are also prepared to extend the debt on a short-term basis. That is absolutely essential. That is
Mr. CORKER. I thank the Chair.

Mr. CONRAD. Perfect. Merry Christmas.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I would inquire how much time is allotted to me?

The PRESIDING OFFICER. The minority has 60 minutes.

Mr. CORKER. I have 10 minutes. I wonder if the PRESIDING OFFICER might let me know when I have 2 minutes remaining.

The PRESIDING OFFICER. The Chairman will do so.

Mr. CORKER. I thank the Chair.

Mr. President, I have watched this body over the last period we have been discussing health care. The body itself, the integrity of this body has been challenged. I have watched as individuals have challenged each other’s integrity as it relates to this bill. I choose not to do that today.

I wish to say, as I do constantly in my State, that I consider it a privilege to wake up each day and come to work in this body. Obviously, things don’t always go as one might expect, but I do consider it a privilege. I thank the folks back home for allowing me to serve and to deal with these important issues.

I don’t think I will ever quite understand why this bill was put together the way it was. I certainly understand there are differences of opinion and differences of interest, but I don’t think I will ever understand why Medicare moneys, from an insolvent program, were used to fund a new entitlement. CBO has come out this morning clearly stating what we have been saying for over 6 months. The fact is, taking Medicare savings and using them to create a new entitlement does not work. It takes away from the solvency of Medicare itself. It is kind of late, but I am glad CBO has actually come out and said today, finally, after months of debate, what we have been saying from day one, that you could not take Medicare savings and create a new entitlement without challenging the solvency of Medicare itself.

I will never understand why that building block, a flawed building block, was used to create this bill. Everybody knows it was that use of inappropriate funding that began this whole partisan divide. My guess is, we might have ended up with a bill that would stand the test of time had we not utilized that basic flawed building block in the bill.

There has been one, though, that I have found equally problematic; that is, the whole issue of creating an unfunded mandate for the State of Tennessee and for States across the country. The challenge to people’s personal integrity has been centered more around this issue than anything else, as various Senators trying to protect their States from an unfunded mandate have been challenged in that regard.

Many people in this body used to be mayors, they used to be Governors, people who had to deal with budgets in their own States. Years ago, in a bipartisan effort, a bill was passed to ensure that we in Washington didn’t pass laws that increased costs for cities. I was a mayor of a city. I was commissioner of finance for a State. In those capacities, there was nothing that was more offensive than for the Federal Government to pass a law and send a mandate to a city or a State that costs money and yet not send the money that went with it. There was nothing more infuriating. We had to actually balance our budgets. We didn’t have the ability to borrow money from overseas and to continue to operate in the red.

Back in 1995, a law was passed called the Unfunded Mandates Reform Act. It was done to do away with the arrogance that existed up until that time— and perhaps everywhere else—where the Federal Government would create laws that would increase costs on cities and States. It was passed in a bipartisan way. As a matter of fact, 15 Members from the other side of the aisle supported this law, voted for this law, and put this law in place. Many of the people who made this bill, created this bill participated. The chairman of the Finance Committee voted for this law. The majority leader voted for this law. The distinguished chairman of the Budget Committee voted for this law. The chairman of the HELP Committee who drafted a big part of this bill voted for this law. What this law said was that we could not pass legislation out of this body, out of Congress, that placed an unfunded mandate on States, on cities, and caused them to have to do things that raised expenses by laws we created without sending the money themselves. The Governor of Tennessee is a Democrat. He is on the other side of the aisle. We have worked closely on a number of economic development issues. I have talked with him all the way through this process. He actually wanted to work closely with this administration on health care and on health care legislation. He has been involved in health care all of his life. He has managed our State well. He has dealt with many challenging health care issues. Much has been documented about the travails our State has had as it relates to Medicaid and our desire to try to fix that. He has called this bill, which appears to be ready to pass this body, the mother of unfunded mandates. He has taken more than $750 million in cost this bill is going to cause the State of Tennessee to deal with at a time when they are hoping their State’s revenues will be at 2008 levels by the year 2014.

Again, I will never understand why we have raised an insolvent entitlement to create a new entitlement, weakening Medicare. I will never understand why we have done that to create this bill. We will never understand why this body chose to create such a large unfunded mandate for States through the provisions we have put in place as it relates to Medicaid, telling States they have to raise the levels at which they insure citizens across their State to 133 percent of federal poverty.

There is no question this bill violates the law put in place in 1995.

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. CORKER. I thank the Chair.

I have talked about the fact that it is a privilege to serve in this body. Generally speaking, people try to live up to the standards this body has set for all of us and that citizens across the country expect us to live up to. For that reason, I am going to raise a budget point of order. There is no question, per what CBO has said, the fact that this bill is going to cause cities and States to pay more for the health insurance of their employees—CBO has said that clearly. And my question is, this question this bill is going to cause States to have to utilize dollars that otherwise might be used for education or public safety.

I raise a point of order. Section 425(a)(2) of the Congressional Budget Act of 1974 makes it out of order to consider any legislation that contains an unfunded intergovernmental mandate in excess of the statutory limit unless the bill provides new direct spending authority or includes an authorization or appropriation equal to or exceeding the direct cost of such mandate in the Senate.
The pending bill includes an unfunded intergovernmental mandate in excess of the annual statutory limit of $89 million within the next 5 years. Therefore, I raise a point of order against the substitute amendment pursuant to section 425(a)(2) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I move to waive the point of order for consideration of the pending legislation and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays are ordered.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask my friend from Montana, Senator Baucus, to be alert because I want to raise a similar request to set aside. But before I do that, I want to explain why I am doing this. I worked for 6 years to pass the Congressional Accountability Act, which was signed into law by President Clinton in 1995. I worked so hard because I strongly believed there should only be one set of laws in this country.

Prior to 1995, there were two sets of laws—one for Capitol Hill and one for the rest of the country because Congress exempted itself. That is why, following on that practice of 1995, I offered an amendment during the Finance Committee markup to require that Members of Congress and congressional staff get their employer-based health insurance through the same exchanges as our constituents. That is something for which I also heard complaints from the grassroots of Iowa during my town meetings. I did offer that amendment, and it was adopted without objection.

But then after careful consideration and examination of the bill Senator Reid put together—and this was done by the Congressional Research Service—it was revealed that my amendment was changed under this closed-door merger process. Something cute happened. Under the bill we now have before us, this requirement would not apply to staff for committees of the Congress or leadership offices, it would apply to Members and their personal staff but not leadership. That is a real cute thing, to give exemptions for some people on Capitol Hill but not for others. I ask unanimous consent to have printed in the RECORD an analysis from the Congressional Research Service.

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


MEMORANDUM

To: Senate Finance Committee. Attention: Andrew McKechnie.

From: Ida Bruno, Analyst on the Congress, Government and Finance Division; Todd B. Tatelman, Legislative Attorney, American Law Division.


This memorandum responds to your request for a review and potential statutory interpretation of 1312(d)(2)(D)(II) of H.R. 3590, The Patient Protection and Affordable Care Act.1 Senators have asked whether the definition of the term "congressional staff" could be interpreted to exclude committee staff, leadership staff, or other employees of the Congress. The definition used by the bill covers "all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC." 2 In addition, you have asked CRS to review the language used by S. 1796, America's Healthy Future Act of 2009, which was reported from the Senate Budget Committee.3 S. 1796 used the term "congressional employee," which it defined as "an employee of the Congress whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives." 4 Finally, you have requested that CRS examine what, if any, other Legislative Branch employees might be covered should language similar to that in S. 1796 ultimately be adopted.

Based on our review of the financial practices of the Congress with respect to payment of employees, the bill language, and applicable canons of statutory construction, it appears possible to argue that the definition of "congressional staff" used by 1312(d)(2)(D)(II) excludes any staff not directly affiliated with a Member's individual or personal office. Should this interpretation be adopted by an implementing body or a court, it would appear that it would exclude professional committee staff, joint committee staff, some shared staff, as well as professional staff employed by leadership offices including, but not limited to, the Speaker of the House, Majority Leader of the Senate, Minority Leader of the House, Majority Whip, Majority Whip Office, and Sergeant at Arms.5

The Senate portion of the bill includes the following additional headings: Expense Allocations and Representation; Salaries, Officers, and Employees; Office of Legislative Counsel; Office of Legal Counsel; Expense Allowances for Secretary of Senate, Sergeant at Arms and Doorkeeper of the Senate, and Secretaries for the Majority and Minority of the Senate; and Contingent Expenses. The "Contingent Expenses" account includes funding for Inquiries and Investigations; Expenses of the United States Senate Caucus on International Narcotics Control; Secretary of the Senate; Sergeant at Arms and Doorkeeper of the Senate; Miscellaneous Items; and, Official Mail Costs.

Staff in personal offices in the House of Representatives are paid through funding provided for Members' Representation Allowances (MRA). The MRA, which was previously multiple allocated by Member, covering different categories of spending, was first established in 1996.6 The FY2010 legislative branch appropriations act provided $62 million for MRA.

The House "Salaries and Expenses" account provides funding under the following additional headings: House Leadership Offices; Committee Employees; Salaries, Officers And Employees; and Allowances And Expenses. Many of these categories include multiple line items. In FY2010, the "House Leadership Offices" heading provided funding for the: Office of the Speaker; Office of the Majority Floor Leader; Office of the Minority Floor Leader; Office of the Majority Whip; Office of the Majority Whip; Office of Legislative Floor Activities; Republican Steering Committee; Republican Conference Committee; Democratic Steering and Policy Committee; Democratic Caucus; Nine Minority employees; training and program development—majority; training and program development—minority; Cloakroom Pot—majority; Cloakroom Pot—minority. "Committee Employees" provides funding in separate headings for "Standing Committees, Special and Select," "Special Committees," and "Standing Committees." Funding for "Salaries, Officers And Employees" is divided among various financial, administrative, legal, ceremonial, and security offices, including, for example, the Office of the Clerk of the House, Chief Administrative Officer, Sergeant at Arms, Inspector General, and General Counsel.

POTENTIAL STATUTORY INTERPRETATION

When interpreting the meaning of legislative language, courts will often use methods of statutory construction commonly referred to as "canons," or general principles for drawing inferences about language. Perhaps the most common "canon of construction" is the plain meaning rule, which assumes that the legislative body meant what it said when it adopted the language in the statute. Perhaps another way, if the meaning of the statutory language is "plain," the court will simply apply that meaning and end its inquiry.7 As the United States Supreme Court stated in Connecticut National Bank v. Germain:8

"[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must construe a statute so as to give it that meaning which means in a statute what it means and means in a statute what it says there . . . ."
When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.\textsuperscript{6} Applying the plain meaning canon to the language in H.R. 3590, it appears possible to argue that, until the Member no longer serves as a Member of Congress\textsuperscript{2} as naturally refers to Member's personal offices and, therefore, excludes other employees that a Member may have hired to do other work. For example, Members who serve as committee chairman or ranking members may have staff affiliated with their service on a given committee. Thus, the Member may have control over hiring, promotion, and even termination, those staff are paid by the committee and the Member. The Member’s leadership role means the leader’s position on the committee is not commonly considered their “official office,” as committee assignments may change during a Congress and are determined by the chamber caucuses. Furthermore, it is worth noting that CRS has been unable to locate any previous use of the phrase “official office of a Member of Congress” in statute or appropriations laws.

Alternatively, applying the plain meaning canon to the language used in S. 1796, it appears possible to argue that this language includes committee staff, leadership staff and most other congressional employees. The language, unlike in H.R. 3590, turns on who is in charge of the funds, rather than who the employer is. As a result, the language in S. 1796 appears to be much broader, as most “congressional employees” have their pay disbursed from either the Secretary of the Senate or the Chief Administrative Office (CAO) of the House, regardless of whether they are employed in a Member’s personal office, a committee, leadership official, or in another capacity by the Congress. Moreover, unlike the language in H.R. 3590, similar text to that in S. 1796 has been used since 1995 to categorize congressional staff for salary and benefits purposes.\textsuperscript{3}

OTHER POTENTIAL ISSUES

The language in H.R. 3590 raises additional possible concerns in light of the way that the House and Senate conduct business. For example, one potential issue with proposing different standards for employees in Member office accounts and employees paid through other accounts is the use of the term “shared”. The term “shared employee” means an employee who is paid by more than one employing authority of the House of Representatives or the Senate.\textsuperscript{11}

Two or more employing authorities of the House or Senate may employ an individual. Such shared employees work out of the office of an employing authority, but are not required to work in the office of each employing authority. The pay from each employing authority shall reflect the duties actually performed for each employing authority.\textsuperscript{7}

Employees may not be shared between a Member or Committee office and the office of an Officer of the House if the employee, in the course of duties for an Officer, has access to official information, payroll information, equipment account information, or information systems of either Member, Committee, or Leadership offices.\textsuperscript{8}

Applying the interpretation of H.R. 3590 suggested above, it is possible that certain shared staff could be covered by the provision, while other shared staff, even in the same office, could not be covered. Because the bill does not propose a standard for determining coverage, it is potentially left to the implementing authority to establish such a standard. The implementing authority would appear to arguably have wide discretion in setting such a standard. As a result, it is not unreasonable to assume that an implementing authority could use a majority or similar standard in making coverage determinations. In other words, shared employees would need to declare whom they spent time working for. If the staffer’s declaration was the Member’s official office, they could arguably be covered. On the other hand, if the majority leader's committee or leadership work, they may arguably not be covered. It is important to note that this is but one possible standard and that unless otherwise stated in the bill, implementing authority to determine the standard.

The language of S. 1793 arguably avoids this problem by it appears to encompass all shared employees because they all receive salaries through either the CAO or Secretary of the Senate.

Another potential issue is the scope of the disbursing authority of the CAO of the House and the Secretary of the Senate. The CAO has served as the disbursing officer for the House of Representatives since 1965. The Secretary of the Senate served as the disbursing officer for the Senate until 1996, when the two branches agreed to use the CAO as the disbursing officer for the Senate. The authority of the CAO and Secretary also have disbursing authority for a number of House and Senate revolving funds.\textsuperscript{4} Thus, it appears possible to argue that, should the language of H.R. 3590 be interpreted as suggested above, these employees would be excluded from coverage. Conversely, should the language from S. 1793 be utilized, it would appear that employees of these committees would be covered as they are paid by the CAO or Secretary of the Senate.

Finally, there is the issue of what, if any, other entities or employees of the Legislative Branch the CAO and/or Secretary of the Senate may serve as the disbursing officers. Our research indicates that although the CAO and Secretary of the Senate served as the disbursing officers for the U.S. Capitol Police (USCP) prior to 2003, the Chief of the Capitol Police currently serves as the disbursing officer for the USCP.\textsuperscript{5} Moreover, it appears that other Legislative Branch agencies such as the Architect of the Capitol and the Congressional Budget Office each have their own disbursing agents and do not use either the CAO or the Secretary of the Senate. In addition, it appears that the CAO and/or Secretary of the Senate may serve as the disbursing officer, for the Architect of the Capitol and other Legislative Branch commissions. Thus, some employees of such commissions may be covered by the language used in S. 1793, however, none would appear to be covered by the language used in H.R. 3590.

\textbf{ENDNOTES}

1. Patient Protection and Affordable Care Act (P.L. 111–148, §1112(d)(2)(D)(i)(II), 111th Cong. (2009)).


3. Id.

4. In the FY2010 legislative branch appropriations act, the Joint Economic Committee, Joint Committee on Taxation, Office of the Attending Physician, Office of Congressional Accessibility Services.


14. For additional information, see the CRS Report R40939, Legislative Branch Revolving Funds, by Ida A. Brudnick and Jacob R. Straus.


Mr. GRASSLEY. This carve-out creates a double standard and is totally
unacceptable. This amendment goes beyond just going where my original amendment went to cover all people on Capitol Hill. The amendment I am asking consent for would also include the President, Vice President, political appointees, and senior-level staff of the executive branch. It is only fair that if this bill becomes law, these leaders should themselves be subject to the reforms that make our constituents go through the exchange.

I ask unanimous consent to set aside the amendment in order to offer amendment No. 3178 which is at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. GRASSLEY. Mr. President, Democratic leadership and the White House have spent months talking about accountability. With this objection, the majority will not even consider an amendment to make sure the White House and all Members employed on Capitol Hill, not just those in our personal offices, live under the same new health care system outside of health care. These excesses make it far worse than doing nothing.

At this point in our Nation's history, we are facing very challenging economic times. We have seen the auto industry go into bankruptcy. We have seen banks shutter their doors. The chart behind me shows how the Federal debt has increased by $1.4 trillion since inauguration. The chart also shows the growing amount of debt the Federal Government is taking on. The amount of increased debt added just since inauguration puts $11,000 more of debt on each household, and that total debt now exceeds $12 trillion for the first time.

At the beginning of this debate, one of the key promises of health care reform was that it would bring down health care costs. This needs to be done before health spending sinks the Federal budget, burdening taxpayers. I have a chart that illustrates the upward expenditures of health care costs by $160 billion over the next decade, and that comes from this bill. The red area on this chart is the net additional Federal spending. According to this chart, not this Senator but the Congressional Budget Office.

Americans have rightly lost faith when, in the face of the current economic crisis, this Congress tasked this $2.5 trillion restructuring of the health care system is a good idea. From rationing care to infringing on the doctor-patient relationship, this government-run system will guarantee U.S. taxpayers a staggering tax burden for generations to come.

When the debate began last year, interested legislators of both parties set forth benchmarks that were at the time no-brainers and still are. But this debate has shown that reform should lower the cost of premiums. It should reduce the deficit. Now, this bill does over the 10-year window, but if you look at when the program really starts, 4 years from now, and look ahead 10 years at that time, you will find it does not. It should bend the cost curve of health care the right way, but it does not do that. The Reid bill does not do any of these things we set out to do at the beginning of this debate.

As we end this debate, I urge my colleagues to listen to the American people. The Reid bill is the wrong direction.

The President, with widespread agreement that our health care system has serious problems, why do we have a partisan debate?

There is a column from the Financial Times by a commentator, Clive Crook, that sheds some light on the cause of the partisanship.

Mr. Crook, a Brit, is sympathetic to the goals and methods of my friends on the other side. But, as one who knows a system of the universal coverage our friends on the other side seek, he is sober about the consequences.

I ask unanimous consent that a copy of Mr. Crook's article entitled "The Honesty Case for a Bungled Healthcare Reform," be printed in the Record.

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

[From the Financial Times, Dec. 20, 2009]

The Honesty Case for a Bungled Healthcare Reform

(By Clive Crook)

The US system of government has a lot in its favour, in my view, but if you wanted to argue the opposite, the fiasco of healthcare reform has it all.

The measure being fought over in the Senate—if a bill gets passed, ordeal by House-Senate conference comes next—is detested with equal passion by left and right. A majority of the public is now opposed as well. Even its supporters do not like it all that much.

Yet if the system is to be close to something like this thing up for the president's signature, the country will be deemed ungovernable and the Obama administration will be pronounced doomed. Expect the rending of garments either way.

It does not matter that conservatives oppose the reform. Once conservatives are unmoved by the plight of the uninsured, want to block this administration's domestic initiatives regardless, and are incapable of uniting behind an alternative proposal. They have nothing to offer on the issue.

It does not matter that the loony left of the Democratic party opposes the reform either. In fact, that is a plus. Progressives who want to kill the most far-reaching US social reform in decades because it would send more customers, public subsidy in hand, to private insurance companies are as stone-hearted on this matter—and as far from understanding the concerns of most voters—as their hard-right enemies. Their opposition is an endorsement.

What matters is the failure to rally the country behind an initiative that, at the outset, voters strongly support. A telling instance of the administration's ineffective ness as a spokesman for its own project came just last week. Howard Dean, speaking for the progressive wing of the Democratic party, said the reform would do more harm than good—that this was the policy the insurance companies had dreamed of. White House spokesmen rushed to explain that, on the contrary, the insurance companies hate the bill.

Think about that. At the beginning Barack Obama promised people that if they liked their existing insurance arrangements—which are mostly private, of course—nothing would change. This was based on preserving, by popular demand, a mostly private model of insurance. And here is the administration endorsing the progressives' view that private insurers are evil, and citing the companies' opposition to the reform as an argument in its favour.

The White House cannot have it both ways. If progressives are right about the wickedness of private insurance, they are right that the whole reform is misconceived. The administration cannot appease leftist opinion and also make the strong case for this reform to the middle of the electorate. Since it cannot appease leftist opinion in any case, why even try? Make a virtue of opting from that quagmire, fill Mr. Obama's reluctance to cross that line has hobbled his administration from the start.
Be that as it may, the healthcare bill in its current form is a mess—and an unpopular mess to boot. Popular fears that the bill will drive up insurance premiums and add to public borrowing are probably justifiably based. The measure is timid about changing incentives to promote efficiency; it proposes lots of experiments, but little compulsion.

Advise is likely to be a bigger problem than the reformers say: new rules would stop insurance companies denying coverage to the sick, and the quid pro quo of mandatory insurance may be insufficient to offset this. If the insurers’ risk pools deteriorate, premiums will rise. Deep cuts in Medicare, the public insurance programme for the elderly, are needed to balance the books, but are unlikely to materialise in full. Higher taxes as well as higher premiums are the likely result of this reform.

Would it therefore be better to abandon the effort altogether and start again? One can think of simpler, better blueprints, but the politics that led the country here would still be the same—and so would the economic constraints. It is delusional to suppose that you can significantly widen access to healthcare at no net public cost. You cannot both transform and leave the basic structure unaltered. Trying to squirm around these unavoidable realities has brought the effort to its current pass. Why expect a different next time?

In the end, I think, everything depends on the weight one attaches to achieving security of coverage as quickly as possible. In my view, that is the overriding consideration. Abandoning the effort now might postpone that goal for another decade or more. The country should regard this as unacceptable. Once you have committed to its law, though, the book work begins. Getting a grip on costs will be even more urgent than it is already—especially when you recall the broader fiscal calamity that awaits the country during the next decade.

The honest case for reform along the lines of the Senate bill is not that it fixes US healthcare; still less that, as the White House blythely maintains, it alleviates the country’s fiscal distress. The truth is, it will create more problems than it solves. But the one thing it gets right—the assurance of security of coverage for all Americans—is of surpassing importance.

Enacting this reform is not the end of the health story. At the beginning, if it does pass, it may well be looked back on as a mistake once its financial implications sink in. Yet the principle of universal coverage may be accepted, and with luck there will be no going back. The price will be high, but is worth it.

Mr. GRASSLEY. I am going to try and break through the partisan wall and connect with my friends on the other side.

Costs are rising at three times the rate of inflation. Many Americans are uninsured, millions more fear losing their insurance in a weak economy or because of pre-existing conditions. Doctors are ready to close their doors over high malpractice costs and low government reimbursement rates.

Something has to be done. Everyone agrees on that much.

But tomorrow, the Senate will vote on a bill that makes a bad situation worse. Mr. Crook describes its state of play well:

[the health care bill in its current state is a mess—and an unpopular mess to boot.

It is unfortunate that we are voting on a bill that a significant majority—61 percent—of Americans oppose.

The American people, providers, and advocacy groups are simply reacting to the fact that this bill slid rapidly down the slippery slope to more and more government control of health care.

Mr. Crook states:

Popular fears that the bill will drive up insurance premiums and add to public borrowing for another decade or more are unlikely to materialise in full. Higher taxes as well as higher premiums are the likely result of this reform.

Would it therefore be better to abandon the effort altogether and start again? One can think of simpler, better blueprints, but the politics that led the country here would still be the same—and so would the economic constraints. It is delusional to suppose that you can significantly widen access to healthcare at no net public cost. You cannot both transform and leave the basic structure unaltered. Trying to squirm around these unavoidable realities has brought the effort to its current pass.

And yet, despite these cold hard facts, our Democratic friends continue to quest for the Holy Grail of expanded coverage. Mr. Cook captures that sentiment:

In the end, I think, everything depends on the weight one attaches to achieving security of coverage as quickly as possible. In my view, this is the overriding consideration. Abandoning the effort now might postpone that goal for another decade or more. The country should regard this as unacceptable.

Does anyone doubt this is where our Members on the other side are coming from? Some are explicit about it, like my friend, the majority whip. I recognize that transparency. But to them the goal for everyone—insured, businesses, Federal and State taxpayers, and Medicare patients—is secondary.

Go back and look at the many pages in the RECORD and you will see two themes prove my point. One is the Democratic theme. Most of the debate from those on the other side has been about what they want this bill to do. They want it to expand the role of the Federal Government in health care. Hence, the prideful references to past efforts, successful and unsuccessful, in that regard. They want it to solve all problems the uninsured face. They re-cite case after case of uninsured and underinsured. The stories they tell are compelling. On our side, we see the point the other side is making.

Go look at all those pages of debate again. You will see another theme. It is the Republican theme. That theme is not about what we want the bill to do for the uninsured. It is about understanding and explaining what the costs and benefits of this bill are to all Americans: Insured and uninsured, young, middle-aged, and elderly, suburban, and rural. In this regard, Republicans reflect where the vast majority of Americans are right now.

Mr. Crook, again, firmly where our friends on the other side are, captures the polarity of the debate:

Once the reform is law . . . the real work begins. Getting a grip on costs will be even more urgent than it is already—especially when you recall the broader fiscal calamity that awaits the country during the next decade.

Mr. Crook is correct. At this point in our Nation’s history, we are a Nation facing very challenging economic times. We have seen the auto industry go into bankruptcy. We have seen banks shutter their doors.

The Federal debt has increased by $1.4 trillion since inauguration. This chart shows the growing amount of debt that the Federal Government is taking on. Just the amount of increased debt added just since the inauguration is $11,535 per household.

It now exceeds $2 trillion for the first time in history.

In these perilous times, Mr. Crook notes the public is extremely sensitive to the fiscal considerations of the bill before the Senate. And that is where Republicans have focused all along. Mr. Crook describes the tension between
the goal he shares with our Democratic Members and the public's focus on the questions Republicans have asked for almost a year now. On one side of that tension are the answers to Republican inquiries:

The honest case for reform along the lines of the Senate bill is not that it fixes U.S. healthcare; still less that, as the White House blithely maintains, it alleviates the country's fiscal distress. The truth is, it will create the problems than it solves.

On the other side of that tension is the goal Democratic Members seek. Their goal of trying to achieve “universal coverage” overrides all other considerations. As Crook puts it “of surpassing importance.”

And, if the other side prevails, what does it mean for the future. From Mr. Crook, who shares my Democratic friends' goals, I quote:

Enacting this reform is not the end of the healthcare argument, but the beginning. If it does pass, it behooves be looked back on as a mistake once its financial implications sink in. Yet the principle of universal coverage will have been accepted, and with luck there will be no going back. The price will be high, but is it worth it?

What is that price, Mr. President? To a certain extent, what we do know is that it is high for everyone, but the uninsured population. To the extent we don't and cannot know, it is likely to be higher.

From rationing care to infringing on the doctor-patient relationship, this government-run system will guarantee U.S. taxpayers a staggering tax burden for generations to come.

When the debate began last year, interested legislators of both parties set forth benchmarks that were no-brainers. Health care reform should lower the cost of premiums. It should reduce the deficit. It should bend the growth curve in health care the right way.

How does the Reid bill measure up? CBO tells us premiums rise.

What about health spending? As this chart here illustrates, this bill bends the Federal spending curve upward by $160 billion over the next decade. The red area on this chart is that net additional Federal health spending according to the Congressional Budget Office.

How about deficit reduction? Americans have rightly lost faith when in the face of the current economic crisis, Congress thinks this $2.5 trillion re-structuring of the health care system is a good idea.

The Reid bill doesn't measure up on any of those things.

The unfortunate state of this partisan floor debate goes to the tension Mr. Crook identified:

I was raised by FDR Democrats. From a lifetime of public service, I know a little bit about my Democratic friends' political DNA. A big part of that political DNA is one principle. It is this. Expanding health insurance trumps everything else.

I respect and understand that view. Where we, on our side, differ, is whether it is an absolute or relative principle. Does the principle of universal coverage trump everything else? Does it trump cost containment? Does it trump the tax burden it brings with higher Federal and State taxes?

Does it trump the financial burden related premium cost increases will bring? Does it trump the negative impact it will have on the Medicare Program that our seniors count on?

For those on this side, expanding coverage is a worthy goal. But it is not an absolute goal. We prefer to expand coverage through better access and affordability. But that goal of expanded coverage must be balanced with other goals.

We view it as relative to those other goals. It is relative to whether the related Federal and State tax burden is bearable. It is relative to realistic cost containment reforms. It is relative to whether the cost burden on employers, especially small businesses, is bearable. It is relative to whether the impact on Medicare services and solvency is bearable.

The American people have tuned into this debate. They don't like the-partisanship. They agree with all of us that reform is needed. They have been telling us that expanding coverage is important, but not absolute.

I urge the other side to make the honest case for reform to the American people. That is a bipartisanship, response, process, and product. American's don't want bungled health care reform.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I want to associate myself with the comments of the Senator from Iowa. In fact, I would like to incorporate them by reference in my comments because they were so spot on the line in substance as to what this bill does not do and what it does do. In both instances, he is absolutely right. The bill does not accomplish what we set out to do, which was cover all Americans, which was to bend health care costs down, which was to let you keep your insurance if you had it and not have your premiums go up. It does just the opposite.

It is a $2.3 trillion increase in health care spending—$2.3 trillion. That is 100% new money. Medicare is being cut by billions of dollars in order to create a new entitlement, and it is going to have a massively negative effect on the fiscal health of this Nation because we know that new entitlement will not be fully funded and we know Medicare has $35 trillion of unfunded liability out there.

If you are going to cut Medicare by $3 trillion, as the other side of the aisle is proposing, if you are going to eliminate Medicare Advantage for a large number of seniors—except those who live in Southern Florida—then that money ought to be used to reduce the debt so that the Medicare system becomes more solvent. It is that simple in the
long run. It is not being done here. CBO has pulled the curtain back from this game and made it very clear that it is not going to be done. Of course, nobody is going to learn this because they are going to pass this bill through here before you can even figure that out and even listen to CBO.

It is just an outrage the way this bill was put together. We all know that. Dark of night, back rooms, deals everywhere, only a few people in the room; those people who really drafted the bill, very small crowd. Nobody else was allowed in. No cameras, no information about what was going on. And then you would bring in a Senator here and a Senator there and say: What do you need from me to get your vote, and something would appear in the bill, I guess. Then the bill arrived here.

It is not unusual around here to have earmarks in bills. If they were within the budget and the budget was reasonable, I would even ask for earmarks. But this goes way beyond the concept of earmarks—this bill. This bill fundamentally changes policy—that has never happened around here—for one part of the country versus another part of the other world. In America—all American seniors—will have to live by massive cuts in Medicare Advantage. That is a pretty good health insurance program for a lot of seniors; I think there are 11 million seniors in the program. All of America has to live by that policy except for three counties in southern Florida. All of America has to live by an insurance situation where insurance companies are taxed at a certain rate, except insurance companies in Nebraska. All of America has to live by Medicaid reimbursement rates, which are going to cost the States billions of dollars—New Hampshire, $120 million over 10 years—except for Vermont and Massachusetts. And then there is a special exemption in health care reform. All of America has to live by that policy except for three counties in southern Florida. All of America has to live by an insurance situation where insurance companies are taxed at a certain rate, except insurance companies in Nebraska.

We know well about what happened in Louisiana and now in Nebraska, but of course there were special deals for Vermont that included $600 million in the managers' package. We know that in California, the so-called "Botax" has been replaced now by another tax on tanning beds at the insistence of one of the minorities. Rather than listening to the American people, the creators of this health care bill started with the special interests first. That is where the meetings behind closed doors started—with the pharmaceutical industry, to cut a deal with them; with the insurance industry, to cut a deal with them. The insurance industry will get $476 billion worth of tax credits from this bill alone, and the hospital industry, and the list goes on and on.

Colleagues will stand up and tout the endorsement of organizations such as AARP that has backed nearly $½ trillion in cuts out of Medicare because, as it turns out, they are in the insurance business and they can sell more Medicare policies when they cut Medicare Advantage, as this bill does.

In order to get the 60 votes for cloture on the motion to proceed, we didn’t hear high-minded and idealistic debates about what is the right policy for this country when it comes to re-forming our health care system. If this bill could have passed or mastered 60 votes because it was such great policy and the American people were embracing it, you wouldn’t need to make all these sweetheart deals that were made behind closed doors to induce recalcitrant Senators to vote for cloture, not because they think it is the right policy but because their State got a special deal.

We know well about what happened in Louisiana and now in Nebraska, but of course there were special deals for Vermont that included $600 million in the managers' package. We know that in California, the so-called “Botax” has been replaced now by another tax on tanning beds at the insistence of one of the businesses named Allergan out in California which led the lobbying campaign to defeat the cosmetic surgery tax.

We have heard this is all about keeping insurance companies honest, but the fact is there were special deals here for insurance companies in Nebraska—what has been coined the “Omaha Prime Cuts,” the carve-out from new fees for Mutual of Omaha and other insurance companies doing business in Nebraska that no other insurance company in the Nation is going to benefit from.

Then there is the so-called “Gator Aid” special deal for insurance companies in Florida.

There is a $100 million hospital deal in Connecticut—something called “U Con.” And, of course, there were deals for Montana that were slipped in the bill. Although you know what, no one actually had the courage to mention the name of the State. You had to start to dig into it, like the Louisiana deal. At
least the Senator from Nebraska was brazen enough to actually have Nebraska listed by name. The rest of them you have to dig out by trying to figure out: Who benefits from this deal and who doesn’t?

I would like to know: What about the other States? My State, under this unfunded mandate in this legislation, will have to pay the State taxpayers $21 billion in unfunded Medicaid liabilities over the next 10 years. We didn’t make a sweetheart deal to vote for bad policy because my State could get some extra money, because I think that is unprincipled. I wouldn’t do it. But what about the other States that voted for the bill without getting the sweetheart money, such as Arkansas, which faces an unfunded Medicaid mandate of $335 million; Colorado, $624 million; California, $3.5 billion—a State that is already nearly bankrupt. This is going to make their situation enormously worse, as Governor Schwarzenegger has acknowledged.

I am not saying other States should somehow get the sweetheart deals that were negotiated for these other votes, but I am saying this entire bill is a bad deal and we need to kill it and start over, rip out all the earmarks, and bring the kind of transparency the President campaigned on and that I think the American people have a right to expect.

These sweetheart deals are egregious in and of themselves. What is worse—and I have been on the telephone talking to constituents back in Texas—there are some people who paint with such a broad brush, they say, Well, we think all of you are corrupt, because this verifies some of the most cynical suspicions that people have about government. I, for one, resent it. We have many honest and honorable people who serve in public life, and this taints us all with a broad brush and, simply stated, makes me furious. I resent it. I resent it. I resent it. My friends on the majority say, ‘Well, they are getting a sweetheart deal to vote for bad policy.’ The majority’s so-called reform package will restructure one-sixth of our struggling economy, drive health care costs higher, force millions off their current plan, put health care decisions in the hands of bureaucrats, cut seniors’ Medicare, raise taxes, and hurt small businesses and cost jobs.

There is nothing funny about this health care bill. Americans faced with rising premiums asked for bipartisan reform to make health care costs affordable. But the Democratic bill fails to give the American people what they want, which is why Senator Reid has written bill after bill behind closed doors with no Republicans. The majority party doesn’t want Americans to know they are getting a lump of coal for Christmas until it is too late.

But Leader Reid has outdone himself on the latest deal he cut. His is Chicago-style politics at its worst: a 2,700-page backroom deal written behind closed doors, full of political payoffs, vampire votes in the dead of night, all to pass a health care bill before Christmas that the American people don’t want, that will increase health care costs, raise taxes, and cut Medicare for seniors, operating under an arbitrary deadline which seems designed to minimize transparency, understanding, and public involvement.

But I want the American people to know what they are getting from the bill without, as I have said, I don’t want my good friend from Nevada to be known as Hurry-up-and-Reid, so let’s talk about what is in this bill.

Under the majority’s latest backroom deal, Americans are getting more taxes. This deal imposes about $500 billion in fees and taxes on individuals, families, and businesses. Under the majority’s latest backroom deal, Americans who own small businesses—the backbone of our economy—are getting more costly regulation. For small businesses who employ a large number of those currently uninsured, this bill does nothing to help make insurance more affordable or accessible.

The bill contains a costly employer mandate which destroys job creation opportunities for employers. It doesn’t take a rocket scientist or an economist to figure out that the multiple penalties small businesses will pay for full-time workers will result in these companies forcing workers from full time to part time and discouraging new hiring. Companies are going to have to think twice before hiring new full-time...
workers if it is going to cost them a pretty penny, at a time when the companies are trying to pinch pennies.

There is also a paperwork mandate which is a new administrative burden on small business which, according to the National Federation of Independent Business, will impose a direct $17 billion burden on businesses.

Unfortunately for small businesses, unlike larger businesses or unions, the news gets even worse. Unlike large businesses, small businesses cannot only find and purchase health insurance in the private insurance marketplace. That means to insure their employees, small businesses have to go to the big insurance companies on which the Reid bill is placing hefty new fees. Most folks don’t have a problem with putting more fees on insurance companies. It seems to be politically popular, but it is economics 101 that these insurance companies are not going to suck it up and swallow all of these new fees that Congress has mandated so explicitly. Instead, they will pass the fees on to small businesses that will have no choice but to purchase their services.

One of the gimmicks the majority is using to hide the cost of the bill is a weak tax credit that is supposed to help small businesses in purchasing health insurance.

The hitch is that small businesses will only get the full tax benefit if they have less than 10 employees. If they hire that 11th employee, the tax credit is reduced. At 25 employees the tax credit is no longer available.

In addition, a small business can only get full credit if it pays its employees an average of $25,000 a year or less. So no salary increase, no wage increases.

In other words, in what is already a pretty dire situation where businesses are shuttering their doors and what they are laying off, we are actually going to punish small businesses for hiring new employees and paying workers more.

This tax credit is also a case of bait and switch. If your small business happens to throw qualified qualifications, it is only temporary—after 6 years the credit goes away—but the mandates and burdens on small businesses stay.

That is why the National Federation of Independent Businesses, in their strong opposition to the majority’s plan, stated that it: will not only fail to reduce and control the constantly climbing healthcare costs small business owners face, but it will result in new and higher costs on their businesses. Reform that was supposed to be all about small business has turned out to be more about big business and other late-night dealers, the expense of our nation’s job creators.

That is not the kind of reform small businesses can afford.

Under the majority’s latest backroom deal, Americans are getting hundreds of billions of dollars in cuts to critical health care programs, such as $118 billion in cuts to Medicare Advantage, as well as cuts to hospitals, nursing homes, home health agencies, and hospices.

When government forced through massive cuts to home health in the late 1990s, the unintended consequences were costly and tragic in Missouri. A significant number of agencies closed, forcing patients into more expensive care.

One example is in one county in Missouri, the county’s only home health agency closed. 40 patients they served in homes at a cost of $400,000 a year. When those patients were cut off, 30 were forced into hospitals or nursing homes. The cost skyrocketed for these patients to a staggering $1.4 million a year, the government tab or a $1 million larger hit to tax-payers. We don’t even know what happened to the other 10 patients who lost this critical care.

This is not the kind of reform Americans can afford. Under the majority’s latest backroom deal, States are also getting hit hard. For example, the majority’s big plan is to expand Medicaid, but their big plan for paying for it is to put the burden on the States; that is, unless you were able to cut a backroom deal like Nebraska, which leaves other States holding the bag for their costs. That brings me to my next point.

Under the majority’s latest backroom deal, Americans are forced to fun a number of political payoffs. There are such a large number of political payoffs, which is why this bill is starting to be dubbed “cash for clout.”

There is a carve-out for the insurance industry in and Nebraska. There is an extra $300 million in Medicaid funding for Louisiana, now known as the “Louisiana purchase.” What was the mysterious $100 million for a “health care facility” turns out to be a hospital in Ohio.

Sadly, this isn’t even the entire list of sweetheart deals in Reid’s latest backroom deal. That is not the kind of reform Americans want.

With Chicago politics and backroom deals such as this, it is no surprise that poll after poll makes clear the American people are saying no to the Democrats’ proposals.

The latest poll released by Quinnipiac University found that American voters “mostly disapprove” of the plan—53 to 36 percent.

A recent Washington Post/ABC News poll, detailed in a Post article, found the American public generally fearful that a national system would bring higher costs while worsening the quality of their care.

The American public is absolutely right. Americans don’t want this bill. In the classic tale called “The Christmas Carol,” Scrooge was given the opportunity to see the ghosts of Christmas past, present, and future. While the Democrats are trying to paint the GOP as “Scrooge,” they would do well to look at what the Christmas future would look like if their bill were to pass.

We don’t want to wake up next Christmas and have Americans paying more for health care or being unable to get it or losing their jobs. But under the majority’s latest backroom deal, that is the future.

Next Christmas, we don’t want to see small businesses that still cannot afford health insurance for their employees or, worse, small businesses struggling to keep their doors open because of the costly new burdens in this bill. Under the majority’s latest backroom deal, that is the future. A year from now we don’t want to hear that seniors have lost access to services and care. Unfortunately, that is the Christmas future we face if the bill passes.

But I could not catch the holiday spirit myself; how far away from common sense we’ve been led, our kids and our grandkids have their futures to dread.

In the last year, my colleagues on this side of the aisle had chuckled with dislay as the wheels have come off Federal spending; a trillion dollars of taxpayer money here and a trillion dollars there. Got a problem? Throw money at it. Will historians look back and say that the 111th Congress is where the decline of American economic power began in earnest? I don’t want that on my watch. We can reform health care without spending trillions of our children’s and grandchildren’s money.

If the majority’s agenda to bring up a bill that made health insurance more affordable for small business owners to purchase for their employees, that eliminated frivolous lawsuits, that emphasized wellness and prevention programs, they could go a long way to solving the problems of the uninsured and underinsured, and they could probably get 80 or 90 truly bipartisan votes. Instead, what they want, apparently, is to take over health care, at a tremendous cost to individuals, families, and businesses, and to increase the dependency on the Federal Government. That is not a Christmas present I want, and I don’t want to give it to the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. I thank the Senator from Missouri for his comments. He has been chairman of the Small Business Committee. Small business plays a huge role, the biggest role, in the economy of the United States.

We could have, and we should have, spent the last 4 weeks talking about what needed to be done with small business. It is a big issue and it is important. I appreciate the emphasis the Senator from Missouri has put on it through the years.

I want to talk about the whole bill today, because a quote I ran into was that “absolute power corrupts—absolutely.”

The Democrats have absolute power right now. Under the biggest requirement for votes, it only takes 60 in the
Senate. The Democrats have 60 votes. In the House, they have a clear majority of the votes, and that is all that is required to pass a bill there. They are under the impression that they won the election, so they get to write the bills. Never before has that happened on a major piece of legislation.

Everyone in this country should be upset when the majority refers to bills like ending slavery and civil rights and Medicare and welfare reform and paint the Republicans as the opposition. Sometimes numbers on both sides of the aisle made those bills possible. I am pretty sure people remember that it was Lincoln, a Republican, who led the fight to abolish slavery. Leader Mansfield gives Everett Dirksen, a Republican from Illinois, credit for the leadership that made the civil rights bill possible. In every instance, until now, Republicans have had a leadership role and both sides have substantially participated in making and voting for those bills. That is how it has to work for our country to be successful.

Only one party, and especially one person, ‘gains’ from this so-called health care reform bill. The President will not come back to be lamented when he accomplished something against all odds. Why against all odds? Because the Democrats of the Senate wrote off the 40 votes of the Republicans. That is right, we were written off from the start. Only one party was allowed to participate to see if we couldn’t be persuaded to take what the Democrats wanted to write and foist on America. Anything short of buying the whole Democratic plan and we could be and would be thrown overboard because our votes aren’t needed. We were thrown overboard with the excuse of phony time deadlines, when it was needed to do just the Democratic ideas.

Senator Kennedy and I were able to work through an incredible number of bills because we recognized that both sides had good ideas and both sides had bad ideas. The trick was to take as many of the good ideas as possible and have the courage to tell some on both sides that their idea wasn’t ready for prime time. With evenhandedness and both leaders promoting the surviving ideas, many of the bills were unanimous on both ends of the building. Were there flaws in some of the bills? Yes. On the other hand, if we were allowed to pass by one party—and no all-encompassing bill has been done this way ever before—when the bills are done by one party, those inevitable flaws result in justified finger pointing.

You can’t change such a basic part of the economy—something that affects every single person—by ignoring many who have experience in the business and in the area and not expect major flaws. The American people even recognize the flaws—already. Of course, everybody has some knowledge of health care, since it affects us all. When those flaws develop, and they will, in an avalanche, everybody will point to one party and say: Why did you have to prove your power? Why didn’t you work to get it right? Why did you have to polarize the issue to show you were the only ones concerned about people?

Of course, the Republicans will be compelled to pull out the proof that we warned about the flaws but were ignored, because the Democrats are focused on proving that they won the election. Normally, there is plenty of blame to go around, but not on this one.

The Republicans were thrown overboard. That only left the 60 votes needed to pass the bill. Well, you cannot get 60 people to agree on 100 percent of any bills. But you can get 60 people to agree on a place to eat dinner. But all 60 had to agree. That is where you have to move away from legislating and into deal making. That is when you have to start playing games like ‘Let’s see how much of the way we can take.’ I don’t want to downplay how masterful the leader was. Everyone has to be in awe of his ability to give much to a few and none to many and get 100 percent to stay on what they can see from the other side. Can a person discriminate between Members, between States? Usually, we do earmarks in appropriations bills. Now we are starting to do them in policy bills. Why? To buy votes. The leader is buying votes with taxpayer money for things the majority of the taxpayers will never benefit from.

I don’t have time to go into the way the groups have made hidden deals for this bill, such as the American Medical Association and big pharmaceuticals. I don’t have time to explain to you how the Democrats are planning to spend the same money twice. That is a pretty neat trick, too.

I don’t have time to explain how the government will tell you what the minimum amount of insurance is. It is more insurance than most Americans have right now. If you don’t find a way to buy this better package, there will be fines for you to pay. If the government can force you to buy insurance and force you to buy what Washington thinks is the best, what is next? Will they be able to tell you what kind of car to buy? Remember, the government now owns a car company.

I hope I have time to remind you all that Medicare is going broke. But this bill will add more than $500 billion of Medicare money and uses it to do new programs—new programs outside of Medicare—that will go on forever and need money forever, even after Medicare is broke. They even recognize the problem and form a commission to tell us where to cut Medicare. That is so they can shift the blame to a commission. But the difficulty is they have made special deals that take away the commission’s options—except to the benefits of seniors. They are the only ones left standing. There will have to be cuts—real cuts.

They made a deal. I saw a letter from those who said they support the bill. For a while they had a whole year’s worth of change in their pay. Now they have 2 months where they will be paid what they think is less than adequate but OK to stay in business. Evidently, they think that even though the Senate turned it down, because they couldn’t afford to pay for it. $250 billion in adjustments to what they get paid because it wasn’t paid for, and we are going to come back and do that without it being paid for. It could have been used for outlays of Medicare money if they were using it for Medicare only.

I ask unanimous consent to have printed in the RECORD the Effects of the Patient Protection and Affordable Care Act on the Federal Budget and the Balance in the Hospital Insurance Trust Fund.

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

CBO has been asked for additional information about the projected Patient Protection and Affordable Care Act (PPACA), incorporating the manager’s amendment, on the Federal budget and on the balance in the Hospital Insurance (HI) trust fund, from which Medicare Part A benefits are paid. Specifically, CBO has been asked whether the reductions in projected Part A outlays and increases in projected HI revenues under the legislation can provide additional resources to pay future Medicare benefits while simultaneously providing resources to pay for new programs outside of Medicare.

**How the HI Trust Fund Works**

The HI trust fund, like other Federal trust funds, is essentially an accounting mechanism. In a given year, the sum of specified HI receipts and the interest that is credited on the previous trust fund balance, less spending for Medicare Part A benefits, represents the surplus (or deficit, if the latter is greater) in the trust fund for that year. Any cash generated when there is an excess of receipts over spending is not retained by the trust fund. Rather, it is transferred to the Treasury, which provides government bonds to the trust fund in exchange and uses the cash to finance the government’s ongoing activities. The description applies to the Social Security trust funds; those funds have run cash surpluses for many years, and those surpluses have reduced the government’s need to borrow to fund other federal activities. The HI trust fund is not currently running an annual surplus.

The HI trust fund is part of the Federal government, so transfers from the trust fund and the Treasury are intragovernmental and leave no imprint on the unified budget. From a unified budget perspective, any increase or decrease in outlays in the HI trust fund represents cash that can be used to finance...
other government activities without requiring new government borrowing from the public. Similarly, any increase in outlays or decrease in revenues in the HI trust fund in some years represents a drain on the government’s cash in that year. Thus, the resources to redeem government bonds in the HI trust fund and thereby pay for Medicare benefits the following year will have been generated from taxes, other government income, or government borrowing in that year.

Reports on HI trust fund balances from the Medicare Trust Fund Board and others show the extent of prefunding of benefits that theoretically is occurring in the trust fund. However, because the government has used the cash from the fund’s surpluses to finance other current activities rather than saving the cash by running unified budget surpluses, the government as a whole has not been truly prefunding Medicare benefits. The nature of trust fund accounting within a unified budget framework implies that trust fund balances convey little information about the government’s assets. Instead, the estimated balance in the fund’s account represents the difference between gross surpluses generated from taxes, other government income, or government borrowing in that year.

The IMPACT OF THE PPACA ON THE HI TRUST FUND AND ON THE BUDGET AS A WHOLE

Several weeks ago CBO analyzed the effect of the PPACA as originally proposed on the HI trust fund and the government as a whole. The Joint Committee on Taxation (JCT) estimated that the act would reduce Part A outlays by $246 billion and increase HI revenues by $69 billion during the 2010-2019 period. Those changes would increase the trust fund balance by $177 billion. However, since the HI trust fund is scheduled to exhaust its balances for several years beyond 2017, when the fund’s balance would have fallen to zero under the assumptions used for CBO’s March 2009 baseline projections.

The improvement in Medicare’s finances would not be matched by a corresponding improvement in the Federal government’s overall financial position. CBO and the JCT estimated that the PPACA as originally proposed would add more than $300 billion ($246 billion + $69 billion in revenues) to the balances of the HI trust fund by 2019, while reducing Federal budget deficits by a total of $130 billion by 2019. Thus, the trust fund would be recording additional savings of more than $300 billion during the next 16 years, but the government as a whole would be doing much less additional saving.

CBO has not undertaken a comparable quantitative analysis for the PPACA incorporating the manager’s amendment, but the results would be qualitatively similar. The reductions in projected Part A outlays and increases in projected HI revenues would significantly raise balances in the HI trust fund and create the appearance that significant additional savings had been set aside to pay for future Medicare benefits. However, the additional savings by the government as a whole—which represent the true increase in the ability to pay for future Medicare benefits or other programs—would be a good deal smaller.

The key point is that the savings to the HI trust fund under the PPACA would be received by the government only once, so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current outlays for other parts of the budget or on other programs. Trust fund accounting shows the magnitude of the savings within the trust fund, and those savings in deeds benefit of that payment is not clear, ever, that accounting ignores the burden that would be faced by the rest of the government later in redeeming the bonds held by the trust fund. Unified budget accounting shows that the majority of the HI trust fund savings would be used to pay for other spending. Specifically, the CBO and Joint Committee on Taxation estimates that baseline uncertainty would enhance the ability of the government to redeem the bonds credited to the trust fund to pay for future Medicare benefits. To describe the full extent of those savings and to both improving the government’s ability to pay for future Medicare benefits and financing new spending outside of Medicare would be essential. Indeed, the full extent of those savings thus overstate the improvement in the government’s fiscal position.

Mr. ENZI. Mr. President, I ask unanimous consent to have printed in the RECORD a December 22 article from the Casper Star Tribune, by nationally syndicated columnist Cal Thomas.

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

[From the Casper Star Tribune, Dec. 22, 2009]


union, which has negotiated very costly insurance benefits. The well-connected dock workers join other union interests such as miners, electrical linemen, EMTs, construction workers, fishermen, farmers, early retirees and others who are absolved from this tax.

In other words, controlling insurance costs is essential, unless your very costly insurance is provided by an important Democratic constituency.

The bill also allows a pass on the excise tax to the 17 states with the highest health costs. This provision applied to only 10 states in a prior version, but other Senators had made a fuss. So controlling health costs is enormously important, except in the places where health costs need the most control.

Naturally, the Secretary of Health and Human Services will decide how to measure “costs” and therefore which 17 states qualify. (Prediction: Swing states that voted for Mr. Obama in 2008 or have powerful Democratic Senators.)

These 11th-hour indulgences make a hash of Mr. Orszag’s cost-control theories and Mr. Obama’s cost-control claims. Their spin has been that wise men would convene and make benevolent decisions about everyone’s health care based only on evidence and the public good. Reality is, the Reid bill shows, politics will always dominate when Washington is directing a U.S. health industry that is larger than the economy of France.

Or take a separate $6.7 billion annual “fee” on insurance companies that is supposed to be divvied up by market share. This beast doesn’t claim to be anything more than a revenue grab, but at the behest of Michigan Senator CARL LEVIN Democrats chose to apply it to some insurers and not others. Select companies rated as losers will be exempt, even though nonprofits typically have net income exceeding for-profit companies because they pay no taxes.

Since this new tax will merely be passed through as higher premiums, the carve-outs mean that cost increases will be even higher for workers whose employer contracts with a nonaffiliated insurer. These gyrations to tax law are so complex that it still isn’t clear which nonprofits would qualify, but the protections are sure to apply to certain insurers in Michigan and California, where the poor saps stuck with higher premiums everywhere else can thank Mr. Levin and Senators Debbie Stabenow, Dick Durbin, Barbara Boxer, and Frank Lautenberg.

The press corps is passing this favoritism off as sausage-making necessary to “make history,” but that’s an insult to sausages. What this special-interest discrimination illustrates is how all health-care choices will soon be made as Washington expands its political control over one-seventh of the U.S. economy.

Mr. ENZI. It points out how there will be an excise tax in 17 States with the highest costs, but yet we made an exception for a number of unions, particularly the longshoremen’s union not being subject to some of the taxes in the bill.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from a number of contractors. There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE, Washington, D.C.

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 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 legislation.

In recognition of the negative impact that a mandate to provide health insurance will have on employers, H.R. 3590 exempts employers with 50 or fewer employees from the fines levied on those who cannot afford to provide their employees with the federal minimum standard of health insurance. However, that mandament singles out the construction industry by altering the exemption so that it applies to only those firms with fewer than 5 employees.

This narrowly focused provision is an unprecedented assault on our industry, and the men and women who every day make the bold decision to strike out on their own by starting a 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, this special-interest carve out is simply another bill to pay in an industry that, with an unemployment rate exceeding 18% and more than $200 billion in economic activity lost in the past 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. 3590, we strongly encourage our Congressmen to remove this provision that needlessly single out small construction industry employers.

Sincerely,

Mr. ENZI. It points out how most businesses have an exemption of 50 employees or less, but they have singled out the construction industry with an exemption of 5.

Mr. President, I ask unanimous consent to have printed in the RECORD a Wall Street Journal article that covers that same topic.

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


SENATE HEALTH BILL UNFAIR TO CONSTRUCTION INDUSTRY—NAHB

“In their rush to pass massive health care reform before Christmas, Democrats included a last-minute provision overtly targeting the construction industry, including home builders,” the National Association of Home Builders, said in an alert sent to its 200,000 members Monday. “In order to find the 60 votes needed to pass health-care reform, a provision was slipped into the health-care bill to exclude the construction industry from the small business health-care exemption contained in the bill.”

Employers with more than 50 employees would be required to offer insurance or pay a fine of up to $750 per employee if any employee obtains federal subsidies for coverage. But the builder group says the bill singles out the construction industry by “only giving construction firms an exemption from the bill’s employer mandates if a firm employs less than five people. Every other industry is granted a exemption if they have fewer than 50 employees.”

Many home builders are small, private organizations working to survive the worst economic crisis in decades. More than half of the NAHB’s members have fewer than five employees. “You might as well take an industry that has been a cornerstone of the economy and kick it while it’s down,” said Jerry Howard, the Washington-based group’s chief executive. “It makes no sense . . . and it’s a real bad public policy.”

The NAHB is urging its members to quickly contact their senators to derail the measure. The Senate, however, is marching toward a Christmas Eve vote. The Senate version needs to be reconciled with a House-passed bill, but is likely to form the core of any final legislation presented to President Barack Obama for his signature.

If the Senate bill passes and goes to a conference committee with the House, as expected, the House is likely to do most of the revising. That’s because Majority Leader Harry Reid—after batting for weeks to get the minimum number of votes needed to avert a Republican filibuster—has little room to maneuver. Mr. Reid has passed its version on Nov. 7 on a 220-215 vote.

President Obama hopes to sign a final bill before his State of the Union address after the first of the year so he can turn to other issues, in particular the economy and jobs.

Mr. ENZI. Mr. President, the Department of Labor recently reported that our Nation’s unemployment rate is 10 percent. In States such as Michigan, California, Rhode Island, and Nevada, the unemployment rate is over 12 percent.

Millions of Americans have lost their jobs and millions more go to work every day worried about keeping the job they have. Businesses of all sizes are struggling to keep their doors open and are finding it harder and harder to make ends meet.

Unfortunately, the policies in the Reid health care reform bill will only make matters worse for America’s businesses and the workers they employ.

When I am home in Wyoming, which is nearly every weekend, my constituents ask me: What does health care reform mean for me? Unfortunately I
have to tell them that if the Reid bill is passed, their jobs and their pay-checks will be in danger.

The bill being pushed through the Senate imposes $28 billion of new taxes on businesses that will eliminate jobs and reduce wages.

Many business owners cannot provide health insurance. They cannot afford insurance for their workers or for their own families. They have looked at their bottom lines and understand that they are not allowed to buy insurance and continue to stay in business—health insurance simply costs too much.

Rather than addressing the issue and enacting reforms that would lower health insurance costs, the majority’s health care bill instead increase the taxes that these businesses will have to pay.

These are the same businesses that are already barely making it. These are the same businesses that are laying off workers rather than hiring new workers.

We know what the new employer taxes in the Reid bill will do, and who will ultimately have to pay the price for this misguided policy. These taxes will eliminate jobs and be paid for on the backs of American workers.

The Congressional Budget Office has told us that the new job killing taxes in the Reid bill will lower wages across this country by $28 billion.

We have shed 3.5 million jobs since January of this year and the average workweek is now down to 33 hours for the American worker. Yet the bill before us today will actually make that situation worse.

The workers who will be the hardest hit by the job killing tax in the Reid bill are those already making the lowest wages and with the fewest job opportunities. According to the Congressional Budget Office, employer mandates like those included in the Reid bill will likely reduce the hiring of low-wage workers.

Low-income workers are already hit hard by the current economic conditions. These low-income workers typically have less formal education and find it even more difficult to find work. Workers without a high school diploma have a 50 percent higher unemployment rate than workers with higher education levels.

Harvard Professor Kate Baicker reported that even employer mandates, like the one in this bill, will mean that “workers who would lose their jobs are disproportionately likely to be high school dropouts, minority and women”.

This is in part due to the fact that many of these workers are only making minimum wage. Their employers cannot reduce their wages, so consequently they will either have to reduce the number of hours these employees work or simply get rid of them to make up for the costs of the next tax.

Employer mandates and the job killing taxes that go with them are paid on the backs of low-income workers. The job killing taxes in this bill fall disproportionately on the people who struggle the most—putting the jobs they have at risk and making it even more difficult to find a new one.

At a time when Americans across this country are looking for signs of an economic recovery, the Senate should be debating a bill that helps the situation, rather than a bill that makes it worse.

The job killing tax in the Reid bill will require employers from hiring new workers and growing their business. Any small business that currently has 50 or fewer employees will do everything they can to avoid hiring that 51st employee in order to avoid these new taxes.

I filed an amendment to the Reid bill that would protect businesses and their workers from the worst effects of the job killing tax. My amendment would simply suspend the employer mandate any time the unemployment rate goes above 6 percent.

Between 1999 and 2008, the unemployment rate was about 5 percent. But when our economy began to struggle, we saw the unemployment rate rise to a point that now we are seeing more than 10 percent.

It seems only logical to me that if our economy is struggling and people are losing their jobs, we would want to protect workers from having their wages cut and even losing their jobs because of the job killing tax in the Reid bill.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I now yield to Senator MURRAY from Washington—I suggest she be recognized to speak for 7 minutes.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, the health insurance system in our country has been broken for a very long time. For far too long, families and businesses across my home State of Washington have been forced to make some tough decisions, spending nights struggling or whispering after their kids go to bed about how to pay the bills and praying they do not get sick.

I am proud to say that is about to change. Over the course of months of work on this issue, I have noticed it is very easy for this debate to tip into the realm of abstractions, to focus on numbers and charts—to devolve into petty partisanship or ideological inflexibility. Too often real people get left out of this conversation—mothers and fathers who are scared they are going to lose their jobs; families scared they are going to lose their insurance; people with preexisting conditions who cannot get coverage and who know they are one hospital visit away from bankruptcy; small business owners who cannot pass the increase and who want to cover their employees but they cannot keep up with the rising costs; senior citizens who are forced to cut their pills in half to make them last twice as long; people who pay their premiums and like their doctors, but when they get sick they find out that some of the most personal choices in their lives are being made by their insurance company.

This is the real people who need real health insurance reform. Most Americans seem to fall into one of those categories.

Over the past few months, I have tried to ensure that the struggles of people in my home State are represented in this debate. I told my colleagues the stories that I have received in over 10,000 letters and e-mails and at roundtables and on the phone, stories told to me too often by men and women with tears in their eyes or a quiver in their voice, people who are not looking for a handout or a free ride but who are pleading for a fair system—a system that works for families or businesses like theirs.

I told the story of Janet from Seattle. She lost her job, lost her insurance, and succumbed to cancer after being forced to wait 6 weeks to see a specialist after her throat began to hurt. Janet’s story is why we need to reform the health insurance system.

I told my colleagues the story of Joseph and his wife who was denied an MRI after complaining of pain in her chest, and only after 3 years of fighting her insurance company were they able to convince her insurer to pay and begin the treatment she desperately needed. Their story is why we need real health insurance reform.

I told the story of Mark Peters from Port Townsend who owns a small technology company. He told me he is being crushed by skyrocketing premiums. He offers health insurance to his employees. He does the right thing. But he told me he just got a letter from his insurance company raising his rates from 22 percent. His small business cannot sustain increases such as that; no business can. But in our current health insurance system, small businesses are often at the mercy of the insurance companies. This company’s story is why we need to reform the health insurance system.

I told the story of Patricia Jackson from Woodinville who has private insurance but cannot keep up with the rising premiums. To provide care for her 29-year-old daughter who is allergic to dairy, she paid $840 a month in 2007. The next year it was $900 a month, and then $1,186 a month, and again her rates were raised recently to a hike of $1,400 a month. That is an increase of over 66 percent in just 3 years. Patricia and her family’s story is why we need to reform the health insurance system.

I told my colleagues the story of Marcelas Owens. Marcelas Owens is a young man I have thought about every single day since I actually met him back in June. Marcelas is only 10 years old. He has two younger siblings whom you can see in the photo with him. This is his grandmother. He and his
siblings have been through a lot. Two years ago, their mother Tiffanny lost her life because she was uninsured. She was 27 years old. Tiffanny was a single mom who worked as an assistant manager in a fast food restaurant. She had health care coverage through her job. But in September of 2006, Marcelas told me that she got sick, she lost her job, she lost her insurance, and ultimately she lost her life. Marcelas and his sisters lost their mom.

Health insurance reform is coming too late for Tiffanny. But her story and the story Marcelas tells me why we need to reform health insurance.

Real people, real stories, real needs—that is why we are here now and that is why we have to get this done. When we pass this bill, Americans will be able to shop for coverage that meets their needs. For the first time, insurance companies will have to compete for our business, for the business of the American people.

When we pass this bill, we will end discrimination based on preexisting conditions and make it illegal to drop people when they get sick.

When we pass this bill, we are going to give tax credits to small businesses and help the self-employed afford care.

When we pass this bill, we are going to make preventive services free, end lifetime coverage limits, and cap out-of-pocket fees. We are going to extend the life of Medicare without cutting guaranteed benefits while shrinking the doughnut hole gap in drug coverage for our seniors.

When we pass this bill, people such as Mark and Patricia and Joseph and his wife will be helped. The memories of people such as Janet and Tiffanny will be honored. That is why we need to reform the health insurance system.

I thank the more than 10,000 people in my home State of Washington who sent me their personal health care stories. This bill has helped guide me as I worked on this bill and served as a constant and welcome reminder about the people such as Janet and Tifanny will be helped. The memories of people such as Janet and Tiffanny will be honored. That is why we need to reform the health insurance system.

I urge my colleagues to stand with these families and with the families of the small business owners in their States and across the country who desperately need this reform.

Health insurance reform has been a long time coming. But today we stand closer than ever to making it a reality. I yield to the Leonor, Mr. BAUCUS. Mr. President, I yield 18 minutes to the Senator from Minnesota, Mr. FRANKEN.
The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, I yield 18 minutes to the Senator from Minnesota, Mr. FRANKEN.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, we have been working on this bill for a long time, and I am proud of what we are doing here. Every Senator has had his or her chance to speak up and help make this a better bill or to make their case against this bill.

Unfortunately, it has been a bit rancorous, and I think that is too bad. There have been accusations flying back and forth. Umbrage has been taken. This place has become an umbrage factory. I even took umbrage once, and I feel badly about that. My colleagues across the aisle have taken great umbrage because we have accused them of using scare tactics.

May I point out that the title of the op-ed of my friend from Oklahoma in last Wednesday’s Wall Street Journal is “The Health Bill Is Scary.” Exhibit A in our case that the other side has, indeed, used scare tactics—the op-ed entitled “The Health Bill Is Scary.”

Senator Baucus is talking about people’s health, there is more than enough fear to go around. Instead of scaring people, we should be debating the merits of the proposal in front of us. We have heard a lot of stories. We all know our health care system is screwed up. We can all agree on that.

The most important things to know about the bill are what is actually in it and will it help.

You ask, that bill is too important for us to hide it from our bosses, the American people. We have a duty to let the American people know exactly what we are doing on their behalf. That is why I have been so disappointed when my friends and colleagues have been so careless with them about what Americans are confused about what is in this bill. They would not be so confused if everyone was being honest and forthright about what is in the bill.

I have heard a lot of misinformation over the last several weeks: some on the airwaves and, unfortunately, some right here on the Senate floor. Very early Monday morning, I heard a colleague on the floor say this bill is going to add $2.5 trillion to our deficit. That is simply made up. The nonpartisan Congressional Budget Office, the official scorekeeper of Congress, said the bill reduces the debt by $1.3 trillion in the next 10 years. They estimate the bill lowers the debt by at least five times that amount in the following decade.

CBO is like a referee, and we all agree to let the referee make the call about what things will cost. It is completely possible we will disagree on different calls the referee makes during the game. I do not always agree with CBO. For example, I do not think they score prevention as saving enough. I may be wrong or I may be right, but I accept the CBO score because the CBO is the official. I walk away from a basketball game saying we won if the other team scored more points and just say: It is bad refereeing, we really won.

So why not like how CBO scores certain provisions, but it is all we can go by. These are the rules of the games to which we agreed. So if you are talking on the Senate floor, you cannot just say this bill will add $2.5 trillion to the debt when it is not at all what the CBO says.

No wonder people are confused. People who are trying to kill health reform are deliberately confusing Americans, and it is working. A recent study found that more than half of respondents to health care polls say they do not know enough about the bill to give a hard opinion. Then opponents use the fact that people are confused as a reason to draw out this process.

I yield the floor to my colleagues on the other side who are often making statements that might come under the heading of overselling, saying that for most people premiums will go down. It is true for many Americans, the out-of-pocket costs for better, more secure health insurance will go down. But it is also true that most health care premiums will continue to go up. It is just that they will go up at a slower rate than they would have if this bill were not adopted. That is a really good thing.

This bill is going to pass. So we want people to understand what is happening. We are slowing the growth and the cost of health care. I want to be crystal clear because I do not want to mislead people either. So today I am going to try to cut through all this rhetoric and tell you about what is actually in the bill and how it will affect you.

When I first spoke on this floor on health reform, I related three questions that I hear from most Minnesotans. I heard them when I was at the State fair, when I spoke with tea-partyers. I heard them in Minneapolis and St. Paul. I heard them in Willmar—all across the State—and on the Iron Range.

First, they say health care costs too much; what are we going to do about that.

Second, they ask: What am I going to do if I get sick or my spouse or one of my kids get sick and then someone in my family has a preexisting condition and then I lose my job? How am I going to get health insurance then?

Third, they ask: If something bad happens to me, do they cover everything; am I going to go bankrupt?

Well, now that we are about to pass this bill, let me take each question and tell you how this will affect you; what this bill will do and what it will not do. Remember, this legislation is an important first step but not the final word.

First, what does this bill do about health care costing so much? Let’s take a look at a point Dr. Atul Gawande, a Harvard physician, makes. He points out that almost half this bill comprises programs to try out different ways to lower costs and improve quality. Some have criticized this as a
weakness in the bill, but I think it is a strength. Gawande makes the point that when a system is as complex as ours, there is no one-time fix. There is not one simple solution. As much as I wish it were true, the whole country probably can’t be like the Mayo Clinic or HealthPartners or other insurance companies in my State or Inter-Mountain in Utah or Geisinger in Pennsylvania. So one size may not fit all.

But these projects and pilots will generate solutions to fix the biggest problems in health care, such as paying doctors fee for service, which rewards volume and not value. For example, thanks to the efforts of MARIA CANTWELL, and my colleague, AMY KLOBUCHAR, and others, for the first time ever we will include what is called the value index in the Medicare payment structure. Doctors and States that get the best results for the lowest cost will no longer be punished for that. Instead, they will be rewarded for being effective partners in their patients’ care.

The bill also calls for all health insurance companies to use a single uniform standard for claims, as we do in Minnesota now, which will save our State $60 million just this year. There are lots of ideas, and we don’t know which ones yet will work the best. But the point is, all the key elements are in this bill.

One program in the bill I am particularly proud of is the Diabetes Prevention Program at CDC. I worked on these programs with my colleague, DICK LEGRAR from Indiana, who is a hero of mine. The Diabetes Prevention Program is based on what we have learned in Minnesota and in Indiana—prediabetics can avoid becoming diabetes with the proper diet and lifestyle choices. The Diabetes prevention, minimum medical loss ratio, incentivizing value over volume—these are just a few of the innovative ways this bill will bring down costs. All the basic ingredients for success are here. Dr. John Gruber, professor of economics at MIT, agrees. He says the bill:

‘It’s really hard to figure out how to bend the cost curve, but I can’t think of a thing to try that they didn’t try. They really make the best effort anyone has ever made. Everything is in here, I can’t think of anything I’d do that they are not doing in the bill. So when two of my colleagues said 2 days ago: There is no health care reform in this bill, well, that is confounding.

The next question I hear from Minnesotans is: What if I get sick and lose my job, what will I do?

This bill reforms the insurance markets, guaranteeing that having health insurance equals security. Some of these reforms will kick in when the bill passes, others will kick in 4 years from now.

I wish we could do everything at once, but we are making a complex set of reforms and it will take time to implement these and generate the cost savings necessary to pay for the benefits you will receive.

For the Minnesotans who can’t afford the coverage they have because they are sick or have a preexisting condition, what will this bill do for them? Well, 6 months after this bill is passed, we will get rid of all preexisting condition exclusions for kids, and young adults will be able to stay on their parents’ insurance until they turn 27. That is big.

Within 90 days, families who get turned down because of preexisting conditions will have access to non-profit insurance coverage designed to cover people who can’t pay for insurance on their own. These are called high-risk pools. States, as well as Minnesota, have these plans in some form. The good thing is, this bill will invest $5 billion to help people afford premiums in the high-risk pools.

In 2014, anybody who doesn’t have an affordable plan through work or has been denied coverage will be able to go to a Web site and purchase coverage through a new insurance marketplace called the exchange. No one will be turned away or charged more because they are sick and they will happen to be a woman. It will let you compare plans and prices. What you pay will be based on your income. No one will pay more than 10.2 percent of their income toward premiums in the exchange. Lower income families will pay significantly less. If the coverage you are offered through your employer costs you more than 8 percent of your income, you can go to the exchange.

There are millions of people who have insurance and are worried about the coverage they have. For instance, if I tell Minnesotans who work for small businesses that are squeezed by growing health care costs. Beginning in 2010, this bill will give small businesses tax credits to pay up to 35 percent of their employees’ premiums.

More small businesses will be able to cover more employees more affordably. Then, in 2014, the exchanges will be up and running, small business can choose to get into the exchange so they can pool their risk with other small businesses.

These reforms will bring coverage to an additional 285,000 Minnesotans by 2019. There would be amendments that make it an even better bill and there would be amendments that make it less so. But I wish to be very clear on that. When this bill is fully implemented, it will give Americans access to affordable health care so they can avoid going bankrupt when they get very sick. That is very good.

There is more. We will start closing the Medicare prescription doughnut hole in 2010. We will invest in home visiting for new mothers, more loan forgiveness for primary care providers and for doctors who practice in rural areas, the Public Health Investment Fund, stronger antifraud laws, support for people with disabilities to stay out of nursing homes, and funding for community health centers.

I said at the beginning of this debate there would be amendments that make it an even better bill and there would be amendments that make it less so. But I wish it were true, the whole country can’t be like the Mayo Clinic or HealthPartners or other insurance companies off the hook and leave you holding the bill when you are sick and need help the most. The threat of personal bankruptcies in this country are due to a health care crisis. The good news is, within 6 months of passing this bill, new plans will not have lifetime limits on benefits and will stop companies from imposing annual limits on needed care. When the exchanges are operational, the use of annual limits will be banned entirely.

I would like to ban all limits on all plans, new and existing, right away. But that is an example of how we have had to compromise in order to keep the cost of the bill down so we are being fiscally responsible and not adding to the debt. I wish to be very clear on that. When this bill is fully implemented, it will give Americans access to affordable health care so they can avoid going bankrupt when they get very sick. That is very good.
today, to make our country healthier and more secure for generations to come.

I would like to conclude by sharing a letter I received from John Goldfine in Duluth, MN. John operates a business on the shores of Lake Superior and wrote to share the requests he had received to donate money to fellow community members facing financial crises because of health care costs.

John was asked to donate to a cancer benefit for a woman who has melanoma.

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

Mr. FRANKEN. I ask unanimous consent for 2 more minutes.

Mr. FRANKEN. John was asked to donate to a cancer benefit for a woman who has melanoma, to attend a spaghetti dinner for an 11-year-old with brain cancer, and to make a sale for a woman in need of a new kidney, and a pancake breakfast for a burn survivor. This is what John says:

As a business owner in Duluth, these are just a few of the requests that we have received in recent years. We have given a donation towards these fundraisers to help people pay for their medical expenses. As I travel the country and go into grocery stores, restaurants and convenience stores, I always take a minute to look at what is going on in the area. Rare is the time that I do not see a fundraiser to help someone with their health care bills and I expect of you to know how wrong this is, but I am left wondering what some of your fellow Congressmen and Senators are thinking. Maybe they read a letter and look at some of these community bulletin boards. Every time I look at one of these I want to cry. I know how hard this battle is. I know there will be more compromises, but please do not leave empty handed. There are so many people out there that really need some help.

I am proud I am voting for this bill to provide help for the people who need it.

I thank the President for the extra time, and I yield the floor.

The PRESIDING OFFICER. The deputy majority leader is recognized.

Mr. DURBIN. Mr. President, I wish to thank my colleague. That letter from his constituent is heartfelt and should be an inspiration to all of us to get this job done. We have sacrificed. This is the 24th day debating this bill. Some of these sessions have been early in the morning and late at night, but I think the time has been well spent. People have come to the floor and spoken at great length but no one more eloquently than your constituent who sent you that letter.

Come tomorrow morning, we will have the official vote—very early in the morning. I would like to say to my colleagues from West Virginia and Minnesota that we have a piece of news. A lot of what has been said on the floor has been said by others and said tomorrow is this is a place of worth reporting. Our bill—the health care reform bill—has been endorsed by the American Medical Association, the largest physician organization in this country; endorsed by the American Hospital Association, the largest organization representing our hospitals; it has been endorsed by the American Association of Retired Persons, the largest senior citizens organization, which focuses intensely on the future of Medicare; and today we have received the endorsement of what is regarded by most as the most highly respected medical organization in America. If you ask me what do you respect the most, it is the nurses. You know why. Because when you are in a hospital with someone you love or in the care of a doctor, it is the nurse who is with you in those moments that make a lifetime. The nurses today have issued their formal endorsement of this health care reform bill.

The nurses today have Rose Gonzalez, director of government affairs for the American Nurses Association, who wrote to share the requests he had received to donate money to fellow community members facing financial crises. As I stand here, one out of every six Americans has no health insurance. These are not lazy, shiftless people. These are people who can’t afford it, who work at a place that doesn’t offer it, or happen to be unemployed. At the end of the day, 60 percent of those people’s children, will have the protection of health insurance. That is critically important.

This bill provides protections needed by the people who have health insurance. How many times have you heard about a friend or a family member who has to fight an insurance company for the payment for critical care that the doctor has ordered, or over a prescription which the doctor believes will keep a person healthy or make that person well? Those battles are now going to tip to the side of the consumers of America. Health insurance companies will not be able to discriminate based on preexisting conditions or put caps on lifetime policies or tell kids that at age 24 they can no longer be covered by the health care plans. All of those things are changed in this bill, giving consumers across America a fighting chance when it comes to health insurance.

Last night I met with several of my colleagues. We sat over dinner about how America is going to react to this. It is hard enough to digest the contents of this bill, to expect the average American who has so many other concerns to digest it may be too much to ask. But I asked my staff to give me a list of the things that most Americans can expect to see, the changes they can expect to see on a timely basis—not the long-term changes where 94 percent of people have health insurance or would have a better standing to fight health insurance companies when they complain, but what will we be able to see. My staff came up with a convenient top 10 list which most of us are familiar with from late night television shows:

Within 6 months or a year after this bill is enacted into law, here are the top 10 things Americans will notice changing when they buy a new health plan:

1. If you own a small business or would have a better standing to fight health insurance companies when they complain, but what will we be able to see. My staff came up with a convenient top 10 list which most of us are familiar with from late night television shows:...
high blood pressure, and all of them could be denied coverage because of this so-called preexisting condition. We are going to put in place high-risk pools so these people who can’t buy health insurance today because of these preexisting conditions, have an option that will allow them to buy health insurance. That is No. 2.

No. 3, and this is good news for every family and every parent: Within 6 months after the enactment of this bill, the parents of loved ones—3.6 million and 1.7 million—will sleep better knowing that whatever health insurance they have will be required to cover their child regardless of any preexisting condition. Any child under the age of 18 with a diagnosis of diabetes or a history of cancer or asthma or whatever it may be cannot be denied coverage under the family plan, within 6 months of this bill being enacted.

No. 4, you will no longer need to fear an insurance company dropping you from your policy—or you go on your spouse’s, you get sick, you go to a hospital, you have a problem, you get discharged, and it means as soon as you need the health insurance, the health insurance companies run away and say: We are not covering you anymore. Hire a lawyer and fight us if you don’t like that. That comes to an end. With this bill, the parents of loved ones—3.6 million—and those with lifetime histories of cancer or asthma or whatever it may be cannot be denied coverage. This bill ensures access to emergency care in-network and out-of-network without additional cost sharing beginning within 6 months after the date of enactment.

No. 5, you will no longer need to worry if you get sick or get in an accident because you are out of town and out of the network of hospitals and doctors that your health insurance policy provides. This bill ensures access to emergency care in-network and out-of-network without additional cost sharing beginning within 6 months after this bill passes.

No. 6, you will have the freedom to choose your doctor, the person you think is right for you and your family. This bill protects your choice by allowing plan members to pick any participating primary care provider and prohibiting insurance companies from requiring prior authorization before a woman, for example, goes in for a gynecological examination.

No. 7, you will no longer fear losing your home or going bankrupt because of a bad car accident or a serious illness such as cancer. This bill, when it becomes law, will bar insurance companies from limiting lifetime benefits and severely restricting annual benefits under health insurance policy. No insurance company will require providing preventive services and immunizations without copay. Mr. President, 41 percent of the people in my State have not had a colorectal cancer screening; 22 percent of women in Illinois over the age of 50 have not had a mammogram in the past 2 years. Health insurance reform will ensure that people can access preventive services for free through the health care plans. It makes sense. It is an ounce of prevention and built into the law 6 months after it passes.

No. 9, senior citizens are going to notice the difference within 6 months. They will have access to dramatic discounts in the purchase of name-brand prescription drugs under Medicare Part D beginning July 1, 2010. Roughly 314,000 Medicare beneficiaries in Illinois hit the so-called doughnut hole, the gap in coverage. They are going to have protection. It is going to be provided to you. And our senior citizens and our national productivity and our national sense of self-esteem but, even more importantly, to our national soul, to our moral compass, to our conscience.

Mrs. HAGEN. The Senator from West Virginia.

Mr. ROCKETT. Madam President. I yield the floor. The PRESIDING OFFICER (Mrs. HAGEN). The Senator from West Virginia.

Mr. ROCKETT. Madam President. I thank you. I rise today to join with my colleagues, in fact, to stand very proudly with my colleagues, in support of the Senate passage of groundbreaking comprehensive health care reform. I have wanted to say that得罪 you for decades. It has taken not just the better part of a year but, in fact, the better part of a generation.

The story of health care reform over the last 50 years has been one of narrow incremental change, some quite meaningful change, and some quite sorry change. Health care reform will ensure that people can access preventive services for free through the health care plans. It makes sense. It is an ounce of prevention and built into the law 6 months after it passes.

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This is a bill which finally puts us on record as a Nation that health care is not just the privilege of the lucky and the wealthy. It is a privilege of living in this great Nation. It is a right that comes to all of us. If we have the money and the right to guarantee of life, let’s enshrine in this bill guaranteed access to quality health care.

We have had a long debate. Those on the other side have been critical of this bill. They have never offered an alternative comprehensive alternative. They just can’t do it, and they won’t. But we know we have the responsibility to do it.

With votes this afternoon, in just a couple of hours and again tomorrow morning, we are going to make this bill pass. This bill is passed by the Senate, on its way to conference with the House, and by the first of this new coming year, we will be able to offer that promise of quality care which the American people are asking for.

Madam President, I yield the floor.

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Madam President, I yield the floor.
The average hospital, 85 percent of all patients are either under Medicaid or Medicare. As my colleagues on the Finance Committee heard me say often, 50 percent of all babies born in West Virginia are born under Medicaid. That is the way it is there for the people I represent. Yes, of course I am disappointed that this bill does not do everything I had hoped for, but again, that would not just turn my back on what the bill does achieve.

Why is it that we always seek out the negative and avoid the positive? It is because the negative is easier to talk about. It is easier to criticize than to do, than to collect people together under an umbrella.

The ultimate question cannot be about reaching perfect agreements on a perfect piece of legislation. Reform is making things better for people, as much as you can for as long as you can, with as much money as you can possibly get for it.

There are real and serious differences of opinion among us, among our esteemed colleagues in the House of Representatives as well—the Senate, the House, there are differences. Within the Senate, the majority, oppose what we are doing. Reform is about making perfect agreements on a perfect piece of legislation. Reform is making things better for people, as much as you can for as long as you can, with as much money as you can possibly get for it.

Now we vote in a few short hours. It is an extraordinary moment in history. There is nothing like it that I have ever seen. We vote, I believe, to improve access to affordable and meaningful coverage; to control runaway costs—we have to do that so the Medicare trust fund doesn’t run out; and to rein in the health insurance industry’s rapacious and, to me, lugubrious practices. I don’t like them, and they don’t like taking care of us, and they don’t.

Am I disappointed that this legislation does not include a strong public option, like the one I first introduced, to keep private companies honest? Am I disappointed it does not include a sensible mandatory buy-in provision that should be a right for millions of Americans? Of course I am. Does that mean I turn my back and walk away from all of this because I didn’t get everything I wanted? Of course not. I am a public officer. I represent people. I represent their interests, even as they, maybe in the majority, oppose what we are doing here because they know not yet entirely what is in this bill. But when they do, they will feel differently. Am I disappointed that we were unable to expand Medicare buy-in for our most vulnerable Americans? Yes, of course I am. I live in a State where, in the average hospital, 85 percent of all things away. People do not know where to go to complain, and they just get referred somewhere else. This will be the very first time they are held accountable—and they will be held accountable. They will be held accountable by the law, by congressional oversight, by a multitude of attention. Health insurance has done to hurt so many people and how, now, they are going to behave in a very different manner whether they like it or whether they don’t.

Passing health care reform will mean family coverage must include dependent children up to the age of 26. That is exciting. It is also immediate. But it is exciting because young people don’t tend to get health insurance because they think nothing will happen to them. It actually doesn’t work out like that, and when they get hurt, somebody else has to pay. They should have their own health insurance, and so they are going to get it. They will not be outside the health care system; they will be inside the health care system.

Passing health care reform will mean protecting the Children’s Health Insurance Program, or CHIP, which John Chafee and I wrote back in the mid-1990s and Ted Kennedy and ORRIN HATCH first established through the HELP Committee in 1997 in a show of bipartisanship—which, frankly, I am nostalgic for these days—which will cover more than 14 million children by the year 2013. Today, CHIP covers 7 million, but you see it has run out of its 10 years, so it has to be reauthorized. Then we add on 2 more years, and the program will keep going on and on, and children will have health insurance forever.

Passing health care reform will mean guaranteed prevention and wellness benefits for seniors and children. It will mean that, and when they get hurt, somebody else has to pay. They should have their own health insurance, and so they are going to get it. They will be inside the health care system.

Passing health care reform will mean that we can get the health care they need. As soon as the exchanges are up and running, that will also apply to adults.

Passing health care reform will mean the elimination of preexisting condition exclusions right away for our children. As soon as the exchanges are up and running, that will also apply to adults.

Passing health care reform will mean it is illegal for insurance companies to impose arbitrary limits, as they did annually on Samuel, or lifetime benefits, such as the Bord family faced so courageously.

Passing health care reform will mean insurance companies are required to spend more of their money—which comes from premiums we give them—on medical care, not fancy offices and executive salaries. They will be required to achieve a medical loss ratio of 85 to 90 percent. We shall see. They will have to prove it. We already have the first Medicare buy-in program where to go to get the numbers. Nobody has done it. So they can play in their shifty darkness and deprive people of things, take

CONGRESSIONAL RECORD — SENATE

December 23, 2009
The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Texas.

Mr. BAUCUS. Madam President, I ask unanimous consent that after Senator Hutchison raises a point of order that Senate Resolution No. 2786 is a violation of the Constitution, the point of order be set aside until after all postcloture time expires.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I ask unanimous consent that after Senator Hutchison raises a point of order that Senate Resolution No. 2786 is a violation of the Constitution, the point of order be set aside until after all postcloture time expires.

The PRESIDING OFFICER. The Senate is adjourned until 10 a.m. on Thursday, December 23, 2009.

The PRESIDING OFFICER. The yeas and nays?

The Senator from Montana.

Mr. BAUCUS. That is my understanding.

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within the realm of the State. I believe it is very important, when we look at the bill before us, to see that the States now are going to be required, similar to every insurance provider, to justify with the Federal Government changes in premiums. The States are going to have to put forward all the background, what they are doing in their self-insured plans, and justify it before the States, apparently, will be able to go forward.

Of course, there is going to be a book written on the meaning of "justify." I can see it coming. What exactly does justify mean? I don’t think we have to go that far to write the book on what justify means because this is an encroachment on the rights of the States guaranteed by the 10th amendment. Not only does it walk away from the words themselves of the 10th amendment but walks away from what the Founding Fathers intended; that is, that it is the prerogative of the States to make that affect the people. Even Congress, for the last 60 years, has kept the Federal Government restrained pretty much—not completely but pretty much—from mandates and regulation of insurance plans. But it has largely been left to the States. The States have provided the infrastructure for what can be offered in a State. But here we go. In what is supposed to be the reform of our health care system, we are giving up the prerogatives of the States, and also the expertise the States have come to have put together and formed through the years. The big Federal Government takeover is going to begin.

Let me mention a 1992 case by the Supreme Court, which stated, in New York v. United States:

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Mr. ENSIGN. Madam President, I have asked the attorney general of Texas to use every resource at his disposal to investigate the provisions in this legislation and to challenge any unconstitutional attempt to limit the authority of Texas to carry out its regulatory responsibilities in the insurance market or to provide for the insurance needs of its employees and the teachers of Texas through the State health insurance plans. The attorney general of Texas has already said he is going to have to say the right thing. The judge has said the monstrosity of treating one State differently from all the other 49 and the taxation of our residents in Texas because of the exemption of the State of Nebraska from the Medicaid responsibilities that every other State is going to have to pay the right thing. The other State will pick up the tab for this Nebraska exemption. The attorney general of Texas is on it, just like the attorney general of South Carolina and probably many more by the time we will end this day.

It is important we also stand on 10th amendment grounds for the States to be able to put forward a self-insurance plan for its employees without the permission of the Federal Government, and I feel-bound duty to question the constitutionality of this bill on 10th amendment grounds.

Therefore, Madam President, I make a constitutional point of order against the substance of the grounds that it violates the 10th amendment of the Constitution, and I ask for the yeas and nays.

The PRESIDING OFFICER. Under the previous order, the vote on this question will occur after all postcloture time expires.

Mrs. HUTCHISON. Thank you, Madam President. That is my understanding. I appreciate the opportunity to bring this forward.

I think now that we are finally beginning to digest this bill, we are seeing several areas where points of order have been raised, and I hope some of these will go back to the drawing board, where it belongs, to have health care reform that will do what we intended to do when we started; that is, bring down the cost of health care, make more affordable health care possible for more people in this country. If we could do that, on a bipartisan basis, I think the people of America, as they sit down for their holiday celebrations with their families, would have been well served.

I implore my colleagues to look at the points of order that will be voted on postcloture today and think about the consequences of passing this monstrosity of legislation that is going to alter the quality of life for every individual, every family, every small business in this country.

Let’s start again and do it right. Doing it fast should not be the goal. Doing it right is what we should pursue. I hope my colleagues, before we finish this, will come up with something we can all be proud of and not something that is going to pass on a strictly partisan vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN, Madam President, I wish to first compliment the Senator from Texas on her raising a different constitutional point of order. There are several ways in which this bill violates the Constitution. I have raised a constitutional point of order, where I believe this bill violates the enumerated powers under article I, section 8 of the Constitution, as well as the fifth amendment takings clause of the Constitution.

I see the senior Senator from Utah is in the Chamber. He is going to talk about several other problematic provisions in the bill that is before us today. Congress is the Constitution of the United States, which I hold in my hand. There are several other documents in here, but that is how short the Constitution of the United States is; this short, concise document that limits the powers of the Federal Government. Our Founders were afraid of a powerful central government, so they put down on paper the powers they granted to this body, the House of Representatives, and the rest of the Federal Government.

When each one of us comes to this floor, after we are elected, we raise our right hand, put our hand on the Bible, and take an oath to defend and protect the Constitution. We do not take an oath to reform health care or to do anything else that we may think is good to do. Anything on health care or any other good provision we want to enact has to fit within the limited powers that are listed within the Constitution of the United States.

That is the oath, the solemn oath, each and every Senator takes. That is what each and every one of us needs to think about when we are voting on this constitutional point of order.

I wish to make a couple points very briefly in one area where I think, on the individual mandate, this bill violates the U.S. Constitution. Nowhere, at no time, has this government, this Federal Government, ever passed a law that requires people who do nothing to engage in economic activity. In other words, if this bill passes and then you choose not to have health insurance, this bill requires you to purchase health insurance. If you do not do that, it charges you up to 2 percent of your income. So this bill is telling you, just because you exist as a citizen of the United States, you are purchasing something.

The United States has never, in its history, ever passed something such as this. This will dramatically expand the powers of the Federal Government, if this bill is passed, and if, God forbid, the Supreme Court upholds this piece of legislation.

I have read a lot of articles—and I submitted several of them yesterday—by constitutional scholars, who believe that this bill is unconstitutional. Even folks who believe it is constitutional, some folks on the left, concede that there are legitimate arguments against the bill’s constitutionality. They also recognize that there is potential that it is unconstitutional. Even some wild-eyed radical debate. This is a legitimate debate about what this document, this Constitution of the United States, actually means.

I am not a lawyer similar to a lot of the other Members of the Senate, but I understand the importance of a pretty plain reading of the Constitution’s text.
Within the enumerated powers, and within the fifth amendment, there are limitations on what this Congress can do. The Supreme Court has held that the interstate commerce clause, for instance—gives this body certain power to regulate commercial activity. Economic activity if it is real and if that interstate in nature can be regulated if it has the potential to somehow substantially affect interstate commerce.

Unfortunately, this bill goes beyond even regulating any kind of commercial activity and goes to regulating economic inactivity. It says: If you choose not to do something, we are going to regulate you and we are going to tax you if you do not behave. This is a very dangerous precedent for the Congress to set. I made the point yesterday; others have made this point—if we could just require citizens to purchase certain things, why did we need a cash-for-clunkers bill? The reality is we lack the power to just tell people: Go over there and spend your money.

The government is allowed to provide certain incentives for people to do activity that maybe they were not going to do. But Congress does not have the power to actually tell citizens what to do, in order to achieve that goal.

There are all kinds of things this government could tell people what to do if something such as this precedent is upheld today. This is incredibly dangerous, and the people of America need to wake up and the people who are voting for this bill need to analyze the unintended consequences and the massive expansion of power this bill will provide for. If this bill passes, and if the Supreme Court does not strike it down, I am going to yield because I have listened to the senior Senator from Utah talk eloquently about the provisions that are unconstitutional. He is much more of a constitutional scholar than I would ever dream to be. I hope everybody pays close attention to what he is saying and thinks about that oath each one of us made when we raised our right hand to support and uphold the Constitution. Are we doing that if we vote for this bill?

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I thank my gracious colleague, and I am grateful for his kind words.

Each Member of this body has taken an oath to support and defend the Constitution of the United States. Not any Constitution, not their own personal Constitution, not a fake or pretend Constitution, but the real Constitution of the United States. That means that there will come times when politics says yes, but the Constitution says no. There will come times when the grand plans and good intentions of politicians meet the limits of the Constitution. I submit that this is one of those times, and this constitutional point of order raised by the Senate from Nevada presents each of us with the choice of whether politics or the Constitution will win the day. I choose the Constitution and will vote to support the point of order.

America’s founders gave us a written Constitution that delegates certain powers to the Federal Government, among the three branches, and enumerates the powers given to Congress. They did all of that writing, delegating, separating, and enumerating for one overriding reason, to set limits on Federal Government power because liberty cannot survive without such limits. As Justice Sandra Day O’Connor reaffirmed in 1991 when writing the Supreme Court’s opinion in Gregory v. Ashcroft, our system of federalism and the separation of powers “was adopted by the Framers to ensure the protection of our fundamental liberties.” Liberty requires limits on government power, it always has and it always will. The question for us today is whether liberty is still more important than power.

The Members of this body have our own, independent responsibility to ensure that the actions we take are consistent with the Constitution we have sworn to support and defend. We cannot simply assume that the Constitution’s goals only allows us to do whatever we may want to do. And we cannot ignore this question by simply putting it to the courts. Litigation is likely, to be sure, which means that the courts will be asked to decide certain legal questions, including whether this legislation is constitutional. Judges also take an oath to support and defend the Constitution and must exercise the powers it grants to them. Speculating about how courts may decide a hypothetical case in the future, however, is no substitute for Senators making a decision about an actual piece of legislation today.

The Constitution cannot limit government if government controls the Constitution. The Constitution means whatever we want it to mean, then we might as well take an oath to support and defend ourselves. Frankly, that is what it seems like we do sometimes. But we cannot take the power the Constitution provides without the limits the Constitution sets.

Turning to the legislation before us, we all want to see a higher percentage of Americans covered by health insurance. That is a desirable goal, but my question is whether the Constitution means whatever we want it to mean, then we might as well take an oath to support and defend ourselves. Frankly, that is what it seems like we do sometimes. But we cannot take the power the Constitution provides without the limits the Constitution sets.

When President Franklin D. Roosevelt chose Frances Perkins as his Secretary of Labor, they discussed social policy legislation including health insurance. As Secretary Perkins later described it, they agreed that such legislation would pose “very severe constitutional problems” including fundamentally altering Federal-State relationships. That is the Social Security Act uses the payroll tax. Even the Roosevelt administration, which oversaw the most dramatic expansion of federal power in our Nation’s history, would not go as far as the legislation before us today would go. Even they knew that the Constitution put certain means off limits.

The goal of raising the percentage of Americans with health insurance could be achieved by constitutionally permissible means. My friends on the other side of the aisle know as well as I do, however, that those means are politically impossible. And so they have chosen politics over the Constitution, and that is why I will support the constitutional point of order.

In 1995, the Supreme Court reaffirmed that there are indeed limits on the means Congress may use to achieve its goals. The Court created a version of the power to regulate interstate commerce that would make it hard to imagine any activity by individuals that Congress could not regulate. The legislation before us would authorize a similar expansion of power to actually tell citizens what to do if something such as this precedent is upheld, including constitutionally permissible means. My friends on the other side of the aisle know as well as I do, however, that those means are politically impossible. And so they have chosen politics over the Constitution, and that is why I will support the constitutional point of order.

There is a lot of talk from the majority about why passing this bill is the right thing to do for the American people. It is a decision of conscience for them. Well, let us take a closer look at these decisions of conscience. After weeks of closed-door, clandestine negotiations, the other side of the aisle would achieve that goal with a very blunt instrument, an order that Americans purchase health insurance. That is a means that the Constitution does not permit. While the Constitution gives Congress power to regulate interstate commerce, that power does not mean anything and everything we want to mean. Those words are not inherently malleable. I agree with the 75 percent of Americans who say that this mandate to purchase health insurance is inconsistent with the Constitution’s power to regulate interstate commerce does not include telling Americans what they must buy.
spending. So why would the Nation’s largest lobbying organization, avowed to protect the interests of seniors, support this legislation? To find the answer, similar to anything else in Washington, follow the money.

AARP takes more than half its $1.1 billion budget in royalty fees from health insurers and other vendors. The sale of supplementary Medicare policies, called Medigap plans, make up a major share of this $1.1 billion royalty revenue. AARP has a direct interest in selling Medigap plans. However, there is a strong competitor to Medigap policies, and that happens to be the Medicare Advantage plans.

These private plans provide comprehensive coverage, including vision and dental care, at lower premiums for nearly 11 million seniors across the country. Seniors enrolled in Medicare Advantage do not need Medigap policies. So what happens when the Reid bill slashes this program by almost $120 billion? That is a “b” is billion.

Look at the Washington Post front-page story from October 27, questioning whether AARP has a conflict of interest. I quote:

Democratic proposals to slash reimbursements to Medicare Advantage are widely expected to drive up demand for private Medigap policies like the ones offered by AARP, according to health-care experts, legislative aides and documents.

One of the most disturbing developments in the Reid bill has been the perpetuation and even the doubling of the unconstitutional mandate tax from $8 billion to $15 billion. You heard me right. This unconstitutional mandate tax is currently趴在 behind closed doors. I have long argued that forcing Americans to either buy a Washington-defined level of coverage or face a tax penalty collected through the Internal Revenue Service is highly unconstitutional.

We hear a lot of rhetoric from the other side about Republicans defending the big, evil insurance companies while they are the defenders of American families. The insurance mandate is a clear example of this partisan hypocrisy. Let me ask one simple question. Who would benefit the most from this unprecedented, unconstitutional mandate to purchase insurance or face a stiff penalty enforced by our friends at the Internal Revenue Service?

The answer is pretty simple. There are two clear winners under this draconian policy—and neither is the American family. The first winner is the Federal Government, which could easily use this authority to increase the penalty—or impose similar ones—to create new streams of revenue to fund more out-of-control spending.

Second, the insurance companies are the most direct winners under this individual insurance mandate because it would force millions of Americans who wouldn’t otherwise do so to become their customers. I cannot think of a bigger giveaway for insurance companies than the Federal Government ordering Americans to buy their insurance products. If you do not believe me, then just look at the stock prices of the insurance companies that have recently shot to their 52-week highs.

Jane Hamsher, the publisher of the very liberal blog Firedoglake, said the following in a recent posting:

Having to pay 2 percent of their income in annual fines for refusing to comply with the IRS acting as the collection agency just might wind up being the most widely hated legislation of the decade. Barack Obama just might achieve the bipartisan unity on health care reform that Bush and Republicans are coming together to say “kill this bill.”

Now that we clearly understand the huge windfalls the Reid bill provides AARP and insurance companies, let me take a moment to talk about the winners and losers in the so-called abortion compromise.

The language to prevent taxpayer dollars from being used to fund abortions is a major aspect. The new abortion provisions are significantly weaker than the amendment I introduced with Senator BEN NELSON to ensure that the Hyde amendment, which prohibits use of Federal dollars for abortion, is not applicable to any of the new Federal health programs created in this bill. The Hyde amendment has been public law since 1976.

The so-called abortion compromise does not stop there. The Reid bill creates a State opt-out charade. However, this provision does nothing about one State’s tax dollars paying for abortions in other States. Tax dollars from Nebraska can pay for abortions in California or New York.

This bill also creates a new public option run by the Office of Personnel Management that will, for the first time, create a federally funded and managed plan that will cover elective abortions.

When you have Senator BOXER, the distinguished Senator from California, and Speaker PELOSI, the distinguished Speaker of the House of Representatives—and two pro-abortion advocates in the Congress—supporting this sham so-called compromise and everyone from the U.S. Conference of Catholic Bishops to the National Right to Life Committee and the Family Research Council opposing it, there is only one clear loser, and that is the majority of Americans who believe in the sanctity of life and oppose the use of Federal dollars for elective abortions.

Last, but not least, I wish to spend a couple of minutes talking about the numerous special deals conferred on States in this $2.5 trillion spending bill.

How hefty are the price tags for decisions to provide some of these special deals? The following are some highlights: $300 million for Louisiana, $500 million for Vermont, $500 million for Massachusetts, $100 million for Nebraska, and that is just the beginning.

At a recent news conference, when the authors of this legislation were asked about the Nebraska earmark for Medicaid funding, the majority leader simply replied:

A number of States are treated differently than other States. That’s what legislation is all about. That’s compromise.

The next logical question is pretty straightforward: Who will pay for these special deals? The answer is simple: Everyone else, and those are likely to pay for these special deals, including my home State of Utah. All of these States that are collectively facing $200 billion in deficits and are cutting jobs and educational services to survive will now have to support these special deals.

According to the Congressional Budget Office, the Medicaid expansion in the Reid bill creates a $26 billion unfunded mandate on our cash-strapped States.

Coincidentally, only one State avoids this unfunded mandate; that is, the State of Nebraska.

Of course, let’s not forget about the biggest loser in this bill: the hard-working American taxpayer. This bill imposes over $3 trillion worth of new taxes, fees, and penalties on individuals, families, and businesses. The new fees begin in 2010, while the major coverage provisions do not start until 2014. Almost $57 billion in new taxes are collected before anyone sees any of the major benefits of this bill, which are largely delayed until 2014, assuming they are benefits at all.

It is also no coincidence that through the use of these budget gimmicks, the majority of the reductions will come from our national deficit when we all know these reductions will never, ever be realized.

Based on data from the Joint Committee on Taxation, the nonpartisan congressional scorekeeper, this bill would break another one of President Obama’s campaign promises by increasing taxes on 42 million individuals and families making less than $250,000 a year. At a time when we are struggling to fight a double-digit unemployment rate, the Senate increases payroll taxes by nearly $87 billion but also imposes $28 billion in new taxes on employers that do not provide government-approved health plans.

These new taxes will ultimately be paid by American workers in the form of reduced wages and lost jobs.

However, it is hard to say we didn’t see these new taxes coming. For years now, many of us have warned that the out-of-control spending in Washington has eventually have to be repaid on the backs of American families. In this bill, the repayment comes in the form of stifled economic growth, lost jobs, and new and increasing taxes—and they are just the first installment of what will be a long and painful extortion of taxpayers if Congress doesn’t stand up and stop these terrible bills. According to a recent study of similar proposals by the Heritage Foundation, these new job-killing taxes will place approximately 5.2 million low-income workers at risk of losing their jobs or having their hours reduced and an additional 10.2 million workers would see lower wages and reduced benefits.
Poll after poll tells us about the growing opposition against this tax-and-spend health care bill. The latest Rasmussen poll shows that 55 percent of Americans are now opposed to this bill. The CNN poll is an even higher 61 percent. American sentiment citizens in the group most likely to use the health care system, only 33 percent are in favor while 60 percent are opposed. Independent voters are also opposed 2 to 1. Opposition in certain state polls such as Nebraska is even higher at 67 percent.

So what is the majority doing to address these concerns? Nothing. In fact, despite the efforts by many of us here on this side of the aisle to express our substantive policy disagreements for months, one senator recently said the following:

They are desperate to break this president. They have ardent supporters who are nearly hysterical at the very election of President Barack Obama. The birthers, the tantrums, the people running around in right-wing militia and Aryan support groups, it is unbearably to them that President Barack Obama should exist.

That statement is outrageous. It was made by a very dear friend of mine, and I know he probably didn’t mean it the way it comes out, but it is outrageous.

Instead of listening to the policy concerns of a majority of Americans, the other side is simply dismissing them as ranting from the far right. If the majority refuses to listen to what Americans are telling them now, I am sure they are going to have a rude wake-up call later. It should come as no surprise that this kind of arrogance and power has led to congressional approval ratings rivaling the most hated institutions on the planet at a dismal 22 percent and falling.

One of the biggest tragedies of letting this bill move forward is that it will not address the fundamental issue of rising health care costs in this country. According to the Congressional Budget Office, CBO, this bill will actually raise our national health care costs by $2 trillion. The administration’s own Actuary at the Centers for Medicare and Medicaid Services, CMS, agrees with this assessment.

When this bill fails to work, Americans will no longer have anything in Congress to effectively address the issue of health care reform. The opportunity for real change in our Medicare and Medicaid system from their impending financial collapse will be lost for another generation.

The historic blizzard in Washington earlier this month was the perfect symbol of the anger and frustration brewing in the heart of the American people against this bill. I urge the majority once again to listen to the voices of the American people. Every vote for this bill is the 60th vote. Let me repeat that again. Every vote for this bill is the 60th vote. My Republican colleagues and I are united as one with the American people in our fight against this $2.5 trillion tax-and-spend bill. I implore my colleagues not to do this to the American people. Don’t foreclose on their futures. Don’t stick them with more government spending and more government intrusion.

We can fix health care. Many of us have been working to do just that for many months in many meetings with first the Gang of 7—I was in that and then obviously I decided I could not support what they were going to come up with and expressed to my colleagues that I would have to in good conscience leave the negotiations. He tried, but he was too restricted in what he really could do, so that in the end no Republican supported what was done. We had a total Democratic bill in the HELP Committee, a totally Democratic bill with the White House, and the Reid bill has been done in back rooms here with the White House, with very few even Democrats involved, and many of the things some of my friends worked so hard to get in the bill were no longer in it.

Let me just say there are good people in this body on both sides of the floor, but I have suggested in times past and I suggest it again: If you can’t get 70 or 80 votes for a bill that affects every American, isn’t it, one-sixth of the American economy, then you know that bill is a lousy bill.

There are many on our side of the aisle who have stood ready, willing, and able to try to do something in a bipartisan way. I have spent 33 years here, and I have participated in a bipartisan way to help bring both sides together on all kinds of health care bills that work. This one would work, too, if we would just work in a bipartisan way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, I wish to make a couple of points regarding the constitutional point of order I raised on the individual mandate.

Some folks have said that States mandate car insurance, that is require people who drive to carry car insurance; therefore, the Federal Government can mandate the purchasing of health insurance to individuals. Well, I think that should be pretty obvious that States can do things that the Federal Government cannot. The Constitution limits the Federal Government so as to what it can do and it reserves the power for the States and/or the people. Senator HUTCHISON raised this exact point in her constitutional point of order relating to the 10th amendment.

So this mandate of buying car insurance—comparing it to the mandate to buy health insurance from the Federal Government is a false comparison. The Federal Government cannot mandate you to buy car insurance, nor can it mandate you to buy health insurance. It is not within the enumerated powers given to this body and to this Federal Government in the Constitution.

This bill is a real threat to liberty because of the precedent it sets on the Federal Government being able to tell individuals what to do.

I wish to quote from a couple of articles that have been written. This one was written by David Rivkin and Lee Casey. I am quoting:

Both causes [cancer causes] to simply avoid the constitutional limits on its power. Taxation can favor one industry or course of action over another, but 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—whether to obtain health-care insurance [in this case] . . . or even to eat your vegetables.

It literally sets the precedent to dramatically expand the powers of the Federal Government far beyond anything the Founders wrote and limited this Congress to doing in the Constitution.

I see the Republican whip here, and I wish to yield to him because of his expertise on the Constitution.

I want to make a quick point reading from another article. I commend this article to our colleagues by Randy Barnett and Nathaniel Stewart and Todd Gaziano. It said:

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

There are constitutional experts out there telling us this bill is doing something the Federal Government has never done in its history. So I go back to this United States Constitution.

When we take an oath to defend the Constitution, we better take that as a solemn oath and think about whether we are violating that oath we swore to upholding and defending when we are voting on this bill.

You must uphold this constitutional point of order. It is not just up to the
Supreme Court; it is up to us. We don’t just say we will pass anything, whether it is constitutional or not, and let the Supreme Court decide. That is the oath we take. It is our responsibility to uphold and defend the Constitution. We must think about that when we are passing legislation here. That is the reason we have this authority to bring a constitutional point of order, so that this body considers whether it is constitutional. That is why we must consider the consequences of greatly expanded Federal Government in this bill, which are so dramatic that the threat to liberty is very real.

I yield the floor to the Republican whip so he can make some comments.

Mr. Kyl. Madam President, I compliment my colleague who has raised a most important constitutional point. It is true, as Senators, we have an obligation to throw questions to the Supreme Court but to use our best judgment as to whether we would be violating the Constitution by adopting them.

I think the point of order he raises with respect to the 10th amendment is a very important question and should be carefully considered by our colleagues. I think you can only come to one conclusion. I support what he is trying to do.

I also want to make another point, which is that around the country people are calling in and raising questions about other aspects of the bill, also raising similar questions—the imposition of a supermajority rule, for example. Can one Congress bind another in that regard? We are only now learning of all of these things, and our constituents are only learning of them because the most recent amendment was filed just a few days ago.

I ask you to read through it and begin to realize its implications, a lot of questions are being raised. The question I want to raise today goes right to the heart of the claim that supporters have made for this legislation; that is, that it reduces the Federal budget deficit. Many colleagues on the other side of the aisle have said: I could not vote for this legislation now. In boiling it down—and the Senator from Arizona said it very well—this is a game changer, my friends. If, now that you have this knowledge, you still go forward and vote for the legislation, those of you who have made the pledge not to do so will be violating that pledge. You can’t use the same pot of money to do two separate things, as the CBO said. They describe it this way: You can’t do both of these things. You would essentially double-count a large share of that savings and thus overstate the situation.

Mr. Sessions. Will the Senator yield for a question?

Mr. Kyl. Yes.

Mr. Sessions. The earlier statement from CBO was that the legislation would result in reducing the deficit by $132 billion, which was cited several times. Well, that was obviously before the statement that was issued today. In boiling it down—and the Senator is an accomplished lawyer—doesn’t this say there is a misimpression created by that previous statement and that this statement today clarifies it, making absolutely clear that it is not creating a surplus or reducing the debt but, in fact, increasing the debt?

Mr. Kyl. Madam President, that is exactly right. The title of the document is “Effects of the Patient Protection and Affordable Care Act on the Federal Budget and the Balance in the Hospital Insurance Trust Fund.” He starts out by saying CBO has been——

Mr. Baucus. Will the Senator yield for a question?

Mr. Kyl. Madam President, I will be happy to in a moment. I ask unanimous consent that the CBO report, dated December 10, be printed in the Record following the colloquy so that people can follow what we have done.

There being no objection, the material was ordered to be printed in the Record, as follows:
DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR MEDICARE & MEDICAID SERVICES,
Security Boulevard, Baltimore, MD.

Date: December 10, 2009.

Subject: Estimated Effects of the “Patient Protection and Affordable Care Act” on the Year of Exhaustion for the Part A Trust Fund, Part B Premiums, and Part A and Part B Coinsurance Amounts.

In addition to proposals to expand health insurance coverage, the “Patient Protection and Affordable Care Act of 2009” (PPACA) includes numerous provisions that would reduce Medicare costs and one that would increase the Medicare payroll tax rate for high-income individuals and families. This memorandum describes the estimated impacts of the PPACA, as proposed by Senate Majority Leader Harry Reid on November 18, 2009, on the date of exhaustion for the Medicare Hospital Insurance (Part A) trust fund, on Part B beneficiary premiums, and on the average benefit level of Part A and Part B beneficiary coinsurance.

We estimate that the aggregate net savings to the Part A trust fund under the PPACA would postpone the exhaustion of trust fund assets by 9 years—that is, from 2017 under current law to 2026 under the proposed legislation. The combination of lower Part A costs and higher tax revenues results in a lower Federal deficit based on budget accounting rules. However, trust fund accounting considers the same lower expenditures and additional revenues as extending the exhaustion date of the Part A trust fund. In practice, the improved Part A financing cannot be simultaneously used to finance other Federal outlays (such as the coverage expansions under the PPACA) and to extend the trust fund, despite the appearance of this result from the respective accounting conventions.

The estimated postponement of asset exhaustion in the Part A trust fund does not reflect the relatively small impact on HI payroll taxes due to economic effects of the legislation or the small increase in administrative expenses under the legislation, as noted in our December 10, 2009 memorandum on the estimated financial and other effects of the PPACA, reductions in Medicare payments to Part A providers, based on economy-wide productivity gains, are unlikely to be sustainable on a permanent annual basis. If such reductions were to prove unwieldy in the period 2010–2019, then the actual HI savings from these provisions would be less than estimated, and the postponement in the trust fund exhaustion date would be smaller.

The Medicare expenditure reductions under the PPACA would also affect the level of Part B premiums paid by enrollees and the Part A and Part B beneficiary coinsurance amounts. The following table presents these estimated impacts:

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<th>Year</th>
<th>Part B Premium Impact (change in monthly premium amount)</th>
<th>Coincidence Impact (change in years per capita amount)</th>
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</tbody>
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As indicated, Part B premiums and average coinsurance payments would initially increase, reflecting higher overall Part B costs under the PPACA in 2010 as a result of the provision to postpone the 21.3-percent reduction in physician payment rates that would otherwise be required under current law. Thereafter, there would be steadily increasing savings to Part B and associated reductions in the Part B premium and coinsurance. The average savings in Part B payments under the PPACA would result in lower beneficiary coinsurance payments for inpatient hospital and skilled nursing care. As before, all of these savings are conditional on the continued application of the productivity adjustments to the Medicare “market basket” payment increases.

Expenditure reductions under Part B translate directly to lower financing requirements from general revenues and beneficiary premiums and would be reduced annually to match program costs. Thus, in the case of Part B, the savings under the PPACA are not needed to help pay for future Part B benefit costs, and the full reduction in Federal general revenues attributable to such savings can be used to offset other Federal costs, such as those arising under the PPACA average benefit level.

Mr. BAUCUS. Will the Senator further yield?

Mr. KYL. I will not yield now. I have a unanimous consent request.


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

[From the Washington Post, Dec. 23, 2009]

FOR SALE: ONE SENATOR (D–NEB.); NO PRINCIPLES, LOW PART

Sometimes there is a fine ethical line between legislative maneuvering and bribery. At other times, that line is crossed by a speeding, honking tractor-trailer, with outlines of shapely women on mud flaps bouncing as it rumbles past.

Was that the case in the final hours of Senate Majority Leader Harry Reid’s successful attempt to get cloture on health-care reform? Not quite, the last Democratic holdout, was offered and accepted a permanent exemption from his state’s share of Medicaid expansion, amounting to $100 million over 10 years, eventually, they will. Afterward, Reid was unapologetic. “You’ll find,” he said, “a number of states that are treated differently than other states. That’s what legislating is all about.”

But legislating, presumably, is also about giving public reasons for the expenditure of public funds. Are Cornhuskers particularly rich and fragile? Is there a Malaria outbreak in Grand Island? Ebola detected in Lincoln? Reid didn’t even attempt to offer a reason why Medicaid in Nebraska should be treated differently from, say, Medicaid across the Missouri River in Iowa. The majority leader voted with a chosen one’s money. Does this conclusion sound harsh? Listen to Sen. Lindsey Graham of South Carolina, who accused the Senate leadership and the administration of “bribing” and “sleazy Chicago politics” that “personifies the worst of Washington.”

This special deal for Nebraska raises an immediate question: Why doesn’t every Democratic senator demand the same treatment for his or her home state? Will, after the Nelson deal was announced, Sen. Tom Harkin of Iowa enthused, “When you look at it, I thought well, God, it is going to be the same for all the states to stay at 100 percent (coverage by the federal government). So he might have done all of us a favor.” In a single concession, Reid undermined the entire deal—designed as a shared burden between states and the federal government—and added to future federal deficits. Unless this little sweetener is stripped from the final bill by a House-Senate conference committee in January, which would leave Nelson with his chosen one’s money. Does this conclusion sound harsh? Listen to Sen. Lindsey Graham of South Carolina, who accused the Senate leadership and the administration of “bribing” and “sleazy Chicago politics” that “personifies the worst of Washington.”

How did Nelson gain such leverage in the legislation? Many assumed that his objections to abortion coverage in the health bill were serious—not a cover, but a conviction. Even though Nelson, a rare pro-life Democrat, joked in an interview that he might be considered a “cheap date,” Republican leadership staffers in the Senate thought he might insist on language in the health-care bill preventing public funds from going to insurance plans that cover abortion on demand, as Democratic Rep. Bart Stupak had done in the House.

Instead, Nelson caved. The “compromise” he accepted allows states to prohibit the coverage of elective abortion in their insurance exchanges. Which means that Nebraska taxpayers may not be forced to subsidize insurance plans that cover abortions in Nebraska. But most states have yet to subsidize such plans in California, New York and many other states.

In the end, Nelson not only surrendered his ideological concerns, but also betrayed the principles of the Hyde Amendment, which since 1976 has prevented the coverage of elective abortion in federally funded insurance. Nelson not only violated his pro-life convictions, he may force millions of Americans to violate theirs as well.
I can respect those who are pro-life out of conviction and those who are pro-choice out of conviction. It is more difficult to respect politicians willing to use their deepest beliefs—and the deepest beliefs of others—as bargaining chips.

In a single evening, Nelson managed to undermine the logic of Medicaid, abandon three decades of work to undermine the Hyde Amendment and increase the public stock of cynicism. For what? For the sake of legislation that greatly expands a health entitlement without reforming the health system; that siphons hundreds of billions of dollars out of Medicare instead of using that money to reform Medicare; that imposes seven taxes on Americans making less than $250,000 a year, in direct violation of a presidential pledge; that employs Enron-style accounting methods to inflate future cost savings; that pretends to tame the insurance companies while making insurance companies the largest beneficiaries of reform. And, yes, for $100 million. It is the cheap date equivalent of Taco Bell.

Mr. SESSIONS. The leader’s time is up at 6 minutes after the hour; is that correct? The PRESIDING OFFICER. The Republican leader has 6 1⁄2 minutes reserved.

Mr. SESSIONS. I ask Senator KYL this: The CBO report this morning essentially says you cannot count the same money twice; correct?

Mr. KYL. Mr. President, it doesn’t say you cannot. It just says that is what would happen if you attempted to apply the money both to the trust fund and to the additional spending. It says it “would essentially double-count the trust fund.”

What I am saying is that it doesn’t say you can’t do it, but they are saying you only have one pot of money to pay for two things and, obviously, you cannot do that and be honest about the accounting. That is my interpretation of what it says.

Mr. SESSIONS. I think that is correct. The Senator may not know this. I understand that at the request of our Democratic colleagues, they have returned to CBO and gotten another statement this morning, perhaps so they can continue to make the argument that somehow this creates a surplus. But I staff having examined that, I am informed that it in no way refutes this morning’s statement that this cannot simultaneously fund a new program and strengthen Medicare at the same time. I think it is a matter, will Senator KYL not agree—I am not afraid to talk about what we need to do to slow down before we vote, so be it. First of all, is the Senator convinced, as Senator GREGG indicated this morning and CBO does, that we are, in fact, passing a bill that would, if it passes, add to the debt approximately $170 billion, as staff has calculated based on this letter, and would not reduce the debt by $132 billion?

Mr. KYL. Mr. President, I am absolutely convinced of that, yes.

Mr. SESSIONS. I do not think there is any dispute about it. I think that is the fact. It has been exposed. The President looked us in the eye in a joint session of Congress, did he not, and said this legislation would not add one dime or one dollar to the debt of the United States?

Mr. KYL. Mr. President, it is my recollection that is pretty close to what the President said. I guess maybe this is a big deal unless you are trying to do two things with the same pot of money. As long as the other side is also claiming we are actually extending the life of Medicare, which I heard one of my colleagues do on television, then you cannot make this other claim. You can claim one or the other but you cannot claim both. That is precisely what the head of CBO said:

To describe the full amount of HI trust fund savings as both improving the government’s ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count a large share of those savings and thus overstate the improvement in the government’s fiscal position.

Mr. SESSIONS. To follow up on that, is it not true—and President Obama Monday flatly stated in one press conference that Medicare would reduce our deficit over 10 years by $130 billion and extend the Medicare Program by 9 years, which is patently false, it would appear. I am not sure he understood the complexities of all this accounting, but, in fact, I think he misspoke at that point. Would the Senator from Arizona not agree?

Mr. KYL. Mr. President, I obviously cannot get into the President’s mind, but I must say that all of us had missed this point. I said before I ascribe no ill will to anybody on the other side. This is hard to understand. Accounting can be arcane. That is why this statement from the CMS was a little troubling to us when we first read it. They said:

Despite the appearance of this result from the respective accounting conventions—which is patently false, it would appear. I am not sure he understood the complexities of all this accounting, but, in fact, I think he misspoke at that point. Would the Senator from Arizona not agree?

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increases. Small employers purchasing new policies in the reformed market would experience premiums up to 20 percent higher in 2019 than they would under current law.

Oliver Wyman also estimates that, if this bill is enacted, 2.9 million fewer Americans who buy their own coverage would earn too much to get a subsidy, according to the Congressional Budget Office.

So 14 million Americans will be required, by Washington, to purchase unsubsidized insurance that is more expensive than they would get under current law. And this is being called reform?

Second, those who do receive a subsidy may find the subsidy does not begin to cover the total cost of the increase. So, those families, too, will actually be worse off.

And, finally, the heart of this debate is a basic question: What is the point of raising the price of insurance and then subsidizing a portion of the increase? You are still raising premiums and someone has to pay for subsidies.

Americans have asked us to lower healthcare costs, not raise them and then provide subsidies to those who qualify. And they certainly don’t want to pay more in taxes to subsidize their own insurance—but that is what the Democrats’ bill would have them do.

As the Wall Street Journal recently editorialized, “The [Reid] bill will increase costs, but it will then disguise those costs by transferring them to taxpayers from individuals:”

Not surprisingly, small business associations, whose members would be overwhelmingly impacted by this legislation, are disappointed.

The Coalition for Affordability Healthcare, for one, opposes this bill.

Their name says it all. This organization believes, as all of us do here in the Senate, that the status quo is not acceptable and not sustainable. But they disapprove of this legislation because, as they wrote in a letter to Congress, “it costs too much and delivers too little.”

Here are just a few of the dozens of businesses represented by this organization: The American Hotel and Lodging Association; American Bakers Association; the Independent Electrical Contractors; the National Association of Convenience Stores; the National Automobile Dealers Association; Printing Industries of America; the Society of American Florists. The list goes on and on.

These businesses wrote a letter to Congress expressing disapproval of the bill because failure to bring down premiums, among other provisions, that hurt small businesses. They believe that increased premiums have a domino effect, hurting both the employer and the employee, resulting in fewer jobs, depressed wages, and fewer choices.

I will share some excerpts from their letter, with regard to increased premiums and costs:

They write:

The bill does little to make insurance more affordable and the [small business] tax credit is so limited, few will be able to obtain affordable insurance.

They go on:

The impact on non-group premiums is . . . pervasive. Increasing premiums by an average of 10–13 percent per person. Those estimates, in addition to the financing provisions in the bill, slam the “savings” door shut.

Another organization, the National Federation of Independent Business, has also raised major objections to this bill with regard to increased premiums. Here is a telling excerpt from a letter they wrote to the Senate party leaders:

H.R. 3590 fails the small business test, and, therefore, fails small business. The most recent CBO study detailing the effect [this bill] will have on insurance premiums reinforces that, despite claims by its supporters, the bill will not deliver the widely-promised help to the small business community.

Bruce Josten of the U.S. Chamber of Commerce concurs. He recently said:

The fundamental failure of the Senate bill is its failure to address cost containment. We have a bill that raises taxes on pretty much everything that moves in the healthcare space. And successful cost containment practices that are in the marketplace, like health savings accounts or flexible spending accounts, are dramatically weakened in this . . . Healthcare cost increases are going to be a death blow to small business.

The majority leader recently disagreed with the notion that this bill increases costs, citing a prediction by the President’s Council of Economic Advisers that the bill before us would bring down costs.

This is the same council that told us unemployment would peak at 8 percent if only Congress would pass the stimulus. As Americans know, Congress passed the stimulus, and we are now at 10 percent unemployment.

Moreover, if the Council of Economic Advisors is supposed to be the Bible of economic analysis and administration officials know best, why is it that on the same day the President’s top economic advisor Larry Summers declared on This Week, “the recession is over,” the Council's chair, Christina Romer, told Meet the Press viewers that “of course” the recession is not over? So, who should we believe on costs?

I submit that small business owners and their representatives have the most intimate knowledge of which policies will benefit them and which stand to hurt them. They are telling us this bill will hurt them.

Finally, I would like to point out that this bill does not even guarantee that all Americans have insurance. This bill leaves 24 million Americans uninsured.

We are going to spend $2.5 trillion to raise the price of insurance for millions of Americans and keep affordable insurance out of reach for millions more. There are much better ways to give access to affordable healthcare to all Americans.

We should start with serious medical liability reform, which has been proven in Texas, Arizona, and Missouri to bring down costs for patients and doctors.

We need to allow Americans to buy insurance across State lines. This is one of the most commonsense reforms out there. Why should Americans be denied access to lower-cost policies just because they are being sold in other states?

We should also allow small businesses to band together to pool their risk and purchase insurance at the same rates large corporations get.

Enacting these simple reforms would cost little, if anything, and would be sure to bring down costs. That is the only kind of reform that Americans would be sure to support.

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

The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the Baucus motion to waive be set aside.

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

Mr. REID. Mr. President, I want to take a moment to talk about the motion to table the appeal by Senator CORNYN and the ruling of the Chair that no point of order lies under rule XLIV.

Senator CORNYN’s appeal is not about transparency and certainly not about disclosure. It is about delay and obstruction. That is what the whole tenor of all the Republican statements has been regarding this legislation.

The vote is whether we create a new point of order even though Senate rules at this stage do not allow a point of order. They want to rewrite the rules at a whim, not for purpose of disclosure and transparency but for the purpose of delay and obstruction.

The legislative history of the Honest Leadership and Government Act specifically addresses the issue of whether a point of order lies in this instance: If rule XLIV does not expressly provide for a point of order with respect to a provision, then no point of order shall lie under the provision.

We open a Pandora’s box if we reverse the ruling of the Chair on appeal. What would be the new rule? How
would the new rules be implemented? What happens to the health care bill? Who decides the answers to these questions?

Moreover, if we overrule the Chair, we would be setting a dangerous precedent—order lie even if not provided for in Senate rules, standing orders, or procedures.

It is clear the purpose of this is to obstruct and delay. I urge my colleagues to vote to table the Cornyn appeal of the ruling of the Chair when that comes.

Mr. CORNYN. Will the Senator yield for a question?

Mr. REID. No, I will not. The health care votes we have held this week have been procedural in nature. Each has been a party-line vote and much of this debate is focused on politics. But health reform is not about procedure or partisanship or politics. It is about people—people like the thousands who write us every day.

At my desk, we have a few of the letters we have picked up in the last day or so. Sorry, staff has had to lift that and I didn’t. This is a few we have gotten. Look at this. They are all about family—most of all, a family.

Each of these letters right here represents a story, a tragedy, a life, a death, but most of all, a person—a person, people who wake up every morning and struggle to get health care or struggle to hold on to what they have, people who lie awake every night second-guessing the agonizing decisions they have to make about what to sacrifice just to stay healthy.

Here is a letter that was written to Senator Bob Casey of Pennsylvania. Listen to what this woman said:

Dear Senator Casey. In a country like the United States, we shouldn’t need a tip jar in an ice cream shop to raise money for a kid with leukemia. Jennifer Wood.

Mr. REID. I yield back that time and ask the vote start earlier.

I withdraw that request.

I ask unanimous consent that prior to each vote today there be 2 minutes of debate equally divided and controlled in the usual form.

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

There is now 2 minutes equally divided.

The majority leader. Mr. REID. Mr. President, stop the 2 minutes from running. I do want to explain. We will shortly have a series of up to seven votes. As we noted in the last few days, if Members remain at their desks, the votes can be concluded much earlier.

ENKIN POINT OF ORDER

The ACTING PRESIDENT pro tempore. There is now 2 minutes of debate equally divided prior to a vote on the constitutional point of order offered by the Senator from Nevada, Mr. Ensign. Who yields time?

The majority leader. Mr. REID. Mr. President, the vote sequence will be as follows: Ensign constitutional point of order; Hatch constitutional point of order; I am concerned that the health reform bill violates Congress’s enumerated powers under article I, section 8 and the fifth amendment.

Each one of us takes an oath to defend the Constitution of the United States. We do not take an oath to reframe health care. We do not take an oath to do anything else here but to defend the Constitution of these United States.

Health care reform needs to fit within the Constitution. The Constitution limits the powers we have. The Constitution, the U.S. Government has never enacted anything that would regulate someone’s inactivity in the way the individual mandate in this health care bill would. Anything we have ever done, somebody actually had to have an action before we could tax or regulate it. In this case, if you choose to not do something, in other words, if you do not choose health insurance—this bill will actually tax you. It will act as an onerous tax. So for the first time in the history of the United States this bill will do something the Federal Government has never done before. This bill would do something that is beyond Congress’s powers to authorize. This bill is unconstitutional and I urge all Members to vote in support of the constitutional point of order.

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

The Senator from Montana. Mr. BAUCUS. Mr. President, our committee and the HELP Committee have given a lot of thought to the provisions in this legislation. We also gave a lot of thought to the constitutionality of the provisions—they work and the interrelationship between the power of Congress and the States and what States will be doing, particularly under the commerce clause and the tax-and-spending powers of the Constitution.

It is very strongly our considered judgment and that of many constitutional scholars who have looked at the provisions and many articles have been put in the Record—that clearly these provisions are constitutional. The commerce clause is constitutional, the tax-and-spending clause, and the provisions clearly are constitutional.

I yield back my time.

The yeas and nays have been ordered. The clerk will call the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. Bunning). Further, if present and voting, the Senator from Kentucky (Mr. Bunning) would have voted ‘yea.’

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 39, nays 60, as follows:

[Rollcall Vote No. 389 Leg.]

YEA—39
Alexander DeMint Lugar
Barrasso Risch McCain
Bennett Graham McConnell
Brownback Grassley McCain
Coburn Gregg Roberts
Chambliss Hatch Sessions
Cochran Hatch Shelby
Collins Inhofe Sessions
Corker Inhofe Sessions
Corinn Inhofe Sessions
Crapo Inhofe Sessions

NAY—60
Akaka Wicker
Baucus Voinovich
Bachus Voinovich
Bennett Wicker
Bingaman Wicker
Boxer Wicker
Brown Wicker

[End of Rollcall Vote No. 389 Leg.]
The ACTING PRESIDENT pro tempore. The point of order is not well-taken.

CORKER POINT OF ORDER

Mr. CORKER. Mr. President, thank you so much.

There is almost nothing held in lower esteem than for the Senate to pass laws in this body that cause mayors and Governors to have budgetary problems because we create unfunded mandates.

Many of you have been mayors and Governors, and for that reason, in 1995, in a bipartisan way, a law was created—15 Senators on the other side of the aisle who are now serving supported this law—to keep us from passing unfunded mandates.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee, Mr. CORKER.

Who yields time?

The Senator from Tennessee is recognized.

Mr. CORKER. Mr. President, thank you so much.

There is almost nothing held in lower esteem than for the Senate to pass laws in this body that cause mayors and Governors to have budgetary problems because we create unfunded mandates.

Many of you have been mayors and Governors, and for that reason, in 1995, in a bipartisan way, a law was created—15 Senators on the other side of the aisle who are now serving supported this law—to keep us from passing unfunded mandates. CBO has stated without a doubt that this bill violates that.

I urge Members to vote against this motion to waive that. It is important. It says everything about the way we do business here in Washington. Please, let’s not pass another huge unfunded mandate to the States at a time when they all are having budgetary problems. This speaks to the essence of who we are and the arrogance many people perceive us to have here in Washington.

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

Mr. BAUCUS. This point of order calls for legislation to impose an obligation on States to extend their coverage on Medicaid. Under existing law, on average, the Federal Government pays about 57 cents on the dollar for every dollar spent under Medicaid. Under this legislation, the Federal Government will pay 100 percent of that obligation for newly enrolled beneficiaries up through the year 2016. Afterward, the Federal Government will pay on average 90 percent of the cost of new enrollees. Therefore, I think this is a very fair deal for States, and I urge my colleagues to waive the point of order.

Mr. President, I also ask consent that this vote and all subsequent votes in this sequence be 10-minute votes.

The PRESIDING OFFICER (Mr. SANDERS). The question is on agreeing to the motion to waive the Budget Act point of order raised under section 429(a)(2).

The yeas and nays were previously announced:

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

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

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 390 Leg.]

YEA—55

Akaka  F不出

Baucus  Gillsbrand  Merkley

Begich  Hagan  Murray

Benn  HeitSta

Bingaman  Inouye  Pryor

Boxer  Johnson  Reed

Brown  Kaufman  Reid

Burris  Kerry  Rockefell

Byrd  Kirk  Sanders

Cantwell  Klobuchar  Schumer

Cardin  Kohl  Specter

Carper  Landrieu  Stabenow

Casey  Leahy  Tester

Dodd  Levin  Udall (NM)

Dorgan  Leahy  Udall (ND)

Durbin  Lincoln  Whitehouse

Feingold  McCaskill  Wyden

Feinstein  Menendez  Young

NAYS—44

Alexander  Ensign  Murkowski

Barrasso  Enzi  Nelson (NE)

Bayh  Graham  Risch

Bennett  Grassley  Roberts

Bent  Gregg  Sessions

Brownback  Risch  Snowe

Burr  Hatchson  Shelby

Chambliss  Inhofe  Snowe

Coburn  Isakson  Snowe

Cooper  Johnson  Thune

Collins  Kyl  Voinovich

Corkyn  Lugar  Warner

Capito  McCaskill  Wicker

DeMint  McConnell  Young

NOT VOTING—1

Bunning

The PRESIDING OFFICER. The motion to waive section 429(a)(2) requiring a simple majority is agreed to.

The point of order fails.

The majority leader is recognized.

Mr. REID. Mr. President, I have spoken to the Republican leader. Senators on both sides feel that it would be to their advantage if we had the vote on Christmas Eve at 7 a.m. rather than 8 a.m. That being the case, I ask unanimous consent that the vote start at 7 a.m. on Christmas Eve.

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

Mr. LEAHY. May I address a question to the distinguished majority leader.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, it will not affect my travel plans because I long ago decided—

Mr. REID. If I could interrupt my friend, quite while you are ahead.

Mr. LEAHY. You have your agreement on this. But is there any possibility that our friends on the other side, knowing that those who are trav-

eling to the Midwest are going to face horrendous problems, that we could have that vote this evening? It will not affect the Senator from Vermont one way or the other, but it will affect a lot of Senators, Republicans and Democrats alike, who have to fly through the Midwest to get where they are going.

Mr. MCCONNELL. Regular order.

The PRESIDING OFFICER. The Senator from Texas. Mr. CORNYN. Mr. President, upon passage of the Honest Leadership and Open Government Act, the majority leader said:

I believe last November Americans... asked us to make Government honest. We have done that. This is the toughest reform bill in the history of this body as it relates to ethics and lawmaking.

There is an appeal to the ruling of the Chair that that provision of rule XLIV is unenforceable. Why would anybody who voted overwhelmingly to make this the toughest reform bill in the history of the body render this rule toothless by agreeing with the attempt to set this aside and to waive its effect?

I ask my colleagues to make sure we vote for transparency, for honesty, for open government. Vote no on this motion to waive.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the plain text of the language in rule XLIV provides that no point of order lies against amendments. That is the way the draftees intended it. That is the way they wrote rule XLIV. That is why the Presiding Officer ruled that way on the advice of the Parliamentarian. We should support the Chair and the Parliamentarian and vote for the motion to table the appeal of the ruling of the Chair.

I yield back the remainder of my time.

Mr. CORNYN. Do I have time remaining?

The PRESIDING OFFICER. One second.

Mr. CORNYN. I ask my colleagues to vote no on the motion to waive.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the appeal of the ruling of the Chair that there is no point of order under rule XLIV, paragraph 4(a).

The yeas and nays were previously ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?
The result was announced—yeas 57, nays 42, as follows: 

[Rollcall Vote No. 392 Leg.]

YEAS—57

Abaca
Baucus
Begich
Bingaman
Boxer
Brown
Burr
Byrd
Cantwell
Cardin
Capito
Carper
Casey
Conrad
Dodd
Durbin
Feingold
Franken
Franks
Gillibrand
Haggen
Harkin
Inouye
Johnson
Kasich
Kerry
Kirk
Klobuchar
Kohl
Launcestun
Leahy
Leiberman
Lincoln
Messner
Merkley
Mikulski
Murray
McCain
McConnell
Markowski
Risch
Robert
Sessions
Shurtle
Stein
Tester
Thune
Vitter
Voinovich
Whitehouse
Wyden

NAYS—42

Alexander
Barasch
Bayh
Bennet
Bennett
Bond
Brownback
Burr
Chambliss
Cochran
Collins
Corker
Cornyn
Crapo

NOT VOTING—1

Bunning

The motion was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. DURBIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HUTCHISON POINT OF ORDER

The PRESIDING OFFICER. There is now 2 minutes, equally divided, prior to a vote on the constitutional point of order made by the Senator from Texas, Mrs. Hutchison.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, the 10th amendment says:

The powers not delegated to the United States by the Constitution . . . are reserved to the States . . .

In this bill, a State such as Texas and many other States that have taken full responsibility for insurance plans for their employees and teachers will have to justify any change in those terms to the Federal Government.

The majority claims the commerce clause gives them the power to do what is in this bill. But what they fail to mention is the power to regulate interstate commerce has not been the basis for a robust role in insurance regulation.

This is an encroachment of the Federal Government into a role left to the States in the Constitution. The 10th amendment is being eroded by an activist Congress, and it is time to stop it now.

I urge a vote to uphold this point of order.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the bill before us is clearly an appropriate exercise of the commerce clause. We further believe Congress has power to enact this legislation pursuant to the taxing and spending powers. This bill does not violate the 10th Amendment because it is an appropriate exercise of powers delegated to the United States, and because our bill fundamentally gives States the choice to participate in the exchanges themselves or, if they do not choose to do so, to allow the Federal Government to set up the exchanges fully within the provisions as interpreted by the Supreme Court of the 10th amendment.

I urge my colleagues to vote against the point of order.

The PRESIDING OFFICER. The question is, Is the point of order well taken?

The yeas and nays have been ordered. The clerk will call the roll.

The result was announced—yeas 57, nays 60, as follows:

[Rollcall Vote No. 393 Leg.]

YEAS—39

Alexander
Baraasch
Bennet
Bennett
Bond
Brownback
Burr
Chambliss
Cochran
Collins
Corker
Cornyn
Crapo

YEAS—39

NAYS—60

Abaka
Baucus
Begich
Bingaman
Boxer
Brown
Byrd
Cantwell
Cardin
Capito
Carper
Casey
Conrad
Dodd
Durbin
Feingold

NOT VOTING—1

Bunning

The PRESIDING OFFICER. The point of order is not agreed to.

The Senator from South Carolina.

Mr. DEMINT. Mr. President, in just a moment I will move to suspend the rules for the purpose of offering an amendment that would allow the practice of trading earmarks for votes.

While I want to be careful not to suggest wrongdoing by any Member, there has been growing public concern that earmarks were used to buy votes for legislation. It has been argued by some that this practice is acceptable because it is necessary to get things done in the Senate. I reject that argument, and I urge my colleagues to put an end to business as usual here in the Senate.

The House of Representatives has a rule prohibiting the use of earmarks to buy votes for legislation. If we were in the House considering this bill, vote trading would be a direct violation of the ethics rules. Unfortunately, a vote-trading rule does not exist in the Senate.

During the debate on the lobbying and ethics reform bill in the 111th Congress, the senior Senator from Illinois, Mr. DURBIN, and I offered an earmark reform amendment which contained the following language:

A Member may not condition the inclusion of language to provide funding for a congressional earmark . . . on any vote cast by another Member.

The Durbin-Demint amendment was written to mirror Speaker Pelosi’s earmark reforms in the House. The Durbin-Demint amendment passed the Senate by a vote of 98 to 0 and was included in S. 1, the Honest Leadership and Open Government Act, which passed the Senate by a vote of 96 to 2.

The rule against trading votes for earmarks was in the bill when it left the Senate, but then the bill moved to a closed-door negotiation. The point was, at some point in those closed-door negotiations, someone dropped the earmark-for-vote language. I have no idea who it was, and we may never know. Remember, this bill was called the Honest Leadership and Open Government Act. In any case, the vote-trading rule was dropped from the bill, which then passed the Senate and was signed by the President.

Just to confirm all of this, I wish to make a parliamentary inquiry to the Chair. Is the Chair aware of any prohibition in the Standing Rules of the Senate such as the previously referenced rule contained in the Durbin-Demint amendment or in the Rules of the House of Representatives?

The PRESIDING OFFICER. No such rule exists in the Senate.

Mr. DEMINT. No such rule exists.

I have an amendment which would correct this error. It mirrors the Durbin-Demint language which passed the Senate yesterday, and I will read the relevant parts. I quote:

It shall not be in order in the Senate to consider a congressionally directed spending...
item . . . if a Senator . . . has conditioned the inclusion of the language . . . on any vote cast by any Senator.

This language had unanimous bipartisan support in 2007, and it should be part of the rules today. This rule would provide needed buy votes for legislation and allow any Senator to raise a point of order to strike any earmark that has been used to buy votes. This point of order could be waived and the ruling of the Chair could be appealed with the support of two-thirds of Senators present and voting.

Before I make this motion and we vote on this amendment, I wish to make a few things absolutely clear. First, this rule already won a unanimous vote in the Senate in 2007, so it is not controversial. Second, this rule only applies to earmarks used to buy votes in the future. It will not, unfortunately, apply to the earmarks in this bill. Third, this vote is not a trick. The amendment is written as a “standing order” to increase the number of votes required to pass this legislation. It will not slow down the health care bill in any way.

The only reason for Senators to oppose this amendment is if they want to use empty threats to buy votes for legislation. It is that simple. If you support business as usual, then oppose this motion. But if you want to start to clean this place up and bring some integrity back to the legislative process, then please support this motion.

Mr. President, I move to suspend the amendment. It is mirrored after Speaker Peloisi’s bill. They have this rule in the House. They can make it workable. Certainly, the integrity of this body is worth considering.

I would encourage my colleagues, at this point, when the public is looking at us, asking for some trust and integrity, we can make this bill work. I ask my colleagues to support my amendment and oppose the tabling motion. Mr. BAUCUS, I move to table the motion and ask for the yeas and nays. The PRESIDING OFFICER. Is there a sufficient second? It appears there is a sufficient second.

The yeas and nays were ordered. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, this proposed new point of order may sound good in theory, but it has many flaws, in fact, when you stop and think about it. If you think the Senate is tied up in knots now, if this were in effect, the current situation would pale in comparison to what the effect of this amendment would be.

The amendment is written in a way to become an endless source of delay. Senators could make one point of order after another under this provision, pointing to different provisions or invalidating the integrity of different Senators.

The amendment provides no way for determining how to rule on a point of order raised under it. A point of order cannot be decided without solid guidance. Points of order make the most sense when they are based on objective criteria.

The proposed amendment to rule XXII would ask the Chair and the Parliamentarian to sort through purely subjective concepts such as the basis for a Senator’s vote or the intent behind inclusion of a provision. How would the Chair be able to rule on such a point of order? Would the Parliamentarian have to question the chairmen of a committee or a Senator who offers the amendment, under oath? Would the Parliamentarian have to question the vote every Senator who requested a directed spending item, under oath, to ensure they did not condition their support on inclusion of the item?

The rule may sound good in theory, but it is actually unworkable as a practical matter. I move to table the DeMINT motion and ask for the yeas and nays. The PRESIDING OFFICER. There is 1 minute left for those who favor the motion. Who yields time?

The Senator from South Carolina, 1 minute.

Mr. DeMINT. Mr. President, I would answer the questions of the Senator by suggesting that Senator DURBIN, who wrote the amendment, perhaps may wish to make a couple of comments about it because this is the mirror—Mr. DURBIN. Are you yielding time? Mr. DeMINT. Yes, I sure will.

Mr. DURBIN. I don’t understand how this amendment would work. If the Senator happens to have a hurricane in his State and needs disaster aid and we put money in the bill, then would we have to question the Senator’s motive for voting for the bill? It’s not entirely too far, and I support this effort to table.

Mr. DeMINT. This a DeMINT–Durbin amendment. It is mirrored after Speaker PELOSI’s bill. They have this rule in the House. They can make it workable. Certainly, the integrity of this body is worth considering.

I would encourage my colleagues, at this point, when the public is looking at us, asking for some trust and integrity, we can make this bill work. I ask my colleagues to support my amendment and oppose the tabling motion. Mr. BAUCUS, I move to table the motion and ask for the yeas and nays. The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion to table the motion to suspend the rules. The clerk will call the roll. The PRESIDING OFFICER (Mr. AKAKA). Are there any other Senators in the Chamber desiring to vote?

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING). Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted “nay.”

The result was announced—yeas 53, nays 46, as follows:

<table>
<thead>
<tr>
<th>Yeas</th>
<th>Nays</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>46</td>
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</table>

The motion was agreed to.

Mr. REID. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to table was agreed to. AMENDMENT NO. 2789 WITHDRAWN

Mr. REID. Mr. President, I ask unanimous consent that amendment No. 2789 be withdrawn. The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2786, AS AMENDED

Mr. REID. Mr. President, what then is the pending business? The PRESIDING OFFICER. There is now 2 minutes of debate prior to a vote on amendment No. 2786, as amended.

The Senator from Montana, Mr. BAUCUS, Mr. President, this is a vote to adopt the substitute. This is another vote on whether we wish to reform health care. I urge my colleagues to vote aye and move this process forward. I yield back my time.

Mr. REID. I ask for the yeas and nays. The PRESIDING OFFICER. The yeas and nays have been ordered. Who yields time in opposition? Mr. REID. I yield back the time on behalf of my Republican colleague. The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to amendment No. 2786, as amended.

The yeas and nays have been ordered. The clerk will call the roll. The legislative clerk called the roll. Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted “no.” The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

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

<table>
<thead>
<tr>
<th>Yeas</th>
<th>Nays</th>
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<tbody>
<tr>
<td>60</td>
<td>39</td>
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</tbody>
</table>

The motion was agreed to.

Mr. REID. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to table was agreed to. AMENDMENT NO. 2878 WITHDRAWN

Mr. REID. Mr. President, I ask unanimous consent that amendment No. 2878 be withdrawn. The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2786, AS AMENDED

Mr. REID. Mr. President, what then is the pending business? The PRESIDING OFFICER. There is now 2 minutes of debate prior to a vote on amendment No. 2786, as amended.

The Senator from Montana, Mr. BAUCUS, Mr. President, this is a vote to adopt the substitute. This is another vote on whether we wish to reform health care. I urge my colleagues to vote aye and move this process forward. I yield back my time.

Mr. REID. I ask for the yeas and nays. The PRESIDING OFFICER. The yeas and nays have been ordered. Who yields time in opposition? Mr. REID. I yield back the time on behalf of my Republican colleague. The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to amendment No. 2786, as amended.

The yeas and nays have been ordered. The clerk will call the roll. The legislative clerk called the roll. Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted “no.” The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

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

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Baucus
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Boxer
Brown
Burr
Byrd
Cantwell
Cardin
Cardin
Carper
Casey
Conrad
Corker
Cornell
Corzine
Crapo

YEAS—60
Franken
Gillibrand
Hagan
Harkin
Inouye
Johnson
Kaufman
Reid
Kerry
Rockefeller
Kirk
Koch
Shaheen
Specter
Lautenberg
Stabenow
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NAYs—39
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Mr. VITTER. Mr. President, I ask the Chair. Mr. President, I rise to talk about this important health care issue but also to talk about another vitally important issue directly connected, which is spending and debt because we will also have an enormously important vote tomorrow morning on increasing the debt limit. It is already over $12 trillion, but the proposal is to increase it further.

In starting, let me refer back to a couple comments and parts of the debate yesterday because I think it will provide some good place in this important debate. First, yesterday, as we were debating health care, my colleague from Louisiana, the distinguished senior Senator, Ms. LANDRIEU, was on C-SPAN’s ‘‘Washington Journal.’’ In discussing the health care bill, my participation came up. She said: ‘‘Senator VITTER has not lifted a finger to pass this bill.’’

I wish to say that is a very kind and positive and generous comment of the American people. I had suggested that this bill cuts Medicare by $467 billion. Although I suggested that this bill cuts Medicare by $467 billion, almost $1 trillion. Although I suggested that this bill cuts Medicare by $467 billion, almost $1 trillion over the last 24 hours, with their report. They outline very clearly and we have been talking about it earlier today that, in fact, Medicare money and other pools of money are double counted in this analysis about the health care bill. The key point is that the savings to the government only once so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.

The same Congressional Budget Office reported that debate far better than I could have. They answered that debate in the last 24 hours with their report. They provided so much to this debate. It is obvious very true, and I take it as a very positive comment.

I would go further. I fought hard against this bill. I fought hard for alternative reforms, focused reforms, reforms focused like a laser beam on real solutions in health care to real problems such as preexisting conditions. I would simply add, I don’t think this fight is over by a long shot. I will continue fighting and I will continue offering those alternatives.

With regard to the bill and this enormously important issue of spending and debt, as I was leaving the floor to go to meetings in my office after speaking yesterday, Senator BAUCUS took issue, apparently, with some of my comments—specifically, my comments about Medicare. I had suggested that this bill cuts Medicare by $467 billion, almost $1 trillion. Although I needed to go to meetings, I think Senator BAUCUS took issue with that and characterized that as actually extending the life of Medicare.

The Congressional Budget Office answered that debate far better than I could have. They answered that debate in the last 24 hours with their report. They outlined very clearly and we have been talking about it earlier today that, in fact, Medicare money and other pools of money are double counted in this analysis about the health care bill. The key point is that the savings to the government only once so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.

The same Congressional Budget Office report says ‘‘to describe the full amount of HI trust fund savings and other pools of money are double counted in this analysis about the health care bill. The key point is that the savings to the government only once so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.’’

So this answers the Senator’s comments directly. You can’t have it both ways. You can’t say we have a bill that is paid for and also a bill that strengthens Medicare and extends solvency for additional years. That is double counting. That is exactly what the CBO is saying. The American people, in a much more basic, commonsense way, know better. They know this bill isn’t paid for. They know this bill is going to expand the deficit and put us on an even worse fiscal road. They know that in their gut. They know that with their common sense. Of course, that gets us to the other big vote tomorrow extending the debt limit, yet again, well beyond $12 trillion.

These issues are connected. They are connected in the technical way I just suggested, and these issues are certainly connected in the hearts and minds of the American people. The American people have responded to this debate because health care is so vitally important and the health care issue is so personal.

There is even an overarching, larger reason the American people have responded so much to this debate. It is because they are connecting the dots. They are putting the larger pattern, and they are connecting the dots between bailing out and taking over insurance companies and financial companies and car companies, hiring and firing the CBO from the Oval Office potentially, and the U.S. economy in health care. They are connecting those dots in terms of spending and debt, as well, because that has been the dominant trend over the last 12 months at least.

We have a debt limit today. It is over $12 trillion. The motion tomorrow suggests that is not enough. We need to go higher. The American people are connecting the dots, particularly in the last year, and they are scared to death about where it leaves us. Did we get this way? How did we come to this $12 trillion-plus point? Well, in July, 2008, Fannie Mae and Freddie Mac were given an unlimited line of credit from the Treasury that, so far, has been $400 billion, and that bill increased the debt limit from $9.8 trillion to $10.6 trillion. But that wasn’t enough. Only 3 months later, in October, 2008, came the Wall Street bailouts, the $700 billion TARP that will raise the debt limit, that did not increase the debt limit; to $11.3 trillion, but we weren’t done yet. Only a few months after that, in February of this year, we passed the so-called stimulus bill. That will cost over $1 trillion before it is all over, and then the debt limit was raised to $12.1 trillion.

On December 23, 2009
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our Constitution. Congress has the power of the purse. Congress appropriates funds. So if you look at the last several years in terms of appropriations, going back to the last couple of years that the Republicans were in control, the spending in the nondefense part of the budget was a negative 1 percent in 2007, 5 percent in 2006, and 8 percent in 2005. That is nondefense discretionary spending in our annual appropriations. If you look to total growth, which includes defense, you are talking about 8 percent in 2005, 5 percent in 2006, and 2 percent in 2007—more than most people would argue we needed to be spending in annual appropriations bills.

But the Democrats took control of the Congress after the 2006 election, so they started writing the budgets. We have ownership for the 2007 budget, but the Democrats have ownership for 2008, 2009, and 2010. The 2006 budget grew at 9 percent. Nondefense discretionary spending grew at 6 percent. If you look at nondefense discretionary spending in 2009, the last fiscal year, it was 12 percent. In this fiscal year, 2010, the estimate is that we will spend 17 percent more than the previous year. So year-over-year spending in nondefense discretionary appropriations here in the Congress will have grown almost 30 percent in the last 2 years. That is not a problem that was created by the Bush administration. That is not a problem for which the Republican majority was responsible. That is the Democrats, when they took control of the Congress after the 2006 elections, beginning in 2007. They write the budgets, they approve the appropriations bills. Obviously, as you can see, the numbers have gone up dramatically—12 percent in the 2009 budget year, and the 2010 estimate for which we are now funding appropriations bills—and we have funded most of them now. There were only a couple of smaller appropriations bills, the six bills that were passed just a week or two ago—looking at 17 percent year-over-year spending in appropriations. So that is almost 30 percent in the last 2 budget years. That is not a problem the other side can hold the previous administration responsible for or attack them for.

I will also mention that the $1 trillion approved earlier this year in the stimulus, totaling growth in nondefense discretionary spending across party lines. There were a couple of Republicans who supported that, but for the most part that was something approved by the Democratic majority. It was proposed by the President of the United States. That is not spending for which the former President is responsible.

At some point around here, people have to own up and take responsibility for their own decisions. You cannot blame the previous administration for all the spending that is going on right here, right now. The last year, as I said, appropriations spending—and this year again—was by any stretch way above anything we have seen or should see at a time when we have an economy in recession and most Americans are having to tighten their budgets—12 percent nondiscretionary increase in 2009 and 17 percent increase in spending in 2010.

With that and the stimulus spending, it brings us to where we are today, which is this massive expansion of the Federal Government—$2.5 trillion in new spending for a new entitlement program. That, too, is not something for which the previous administration is responsible. That is something this administration, the majority here in the Congress, has decided they want to push through. They want to finish it before the Christmas holiday. They want to get this in the rearview mirror before the American people have an opportunity to see what is in it, particularly in the last hurried rush here over the weekend when we got the 400-page amendment that included all the special last-minute deals that were made to try to get that elusive 60th vote. What we have seen is now the $2.5 trillion in new spending is filled with all kinds of gimmicks that are going to favor individual Senators and individual States. The American people are starting to react.

The point I want to make about this is, the one thing that the President and a lot of my colleagues and individual Senators and individual States have been talking about is how this reduces the deficit. This saves $132 billion over the next 10 years. Just remember that is $132 billion over 10 years. If you look at what the deficit was for the month of October, if any of my colleagues know what the deficit was for the month of October, 1 month alone, this last October, it was $176 billion—in 1 month. They are crowing about $132 billion in savings over a 10-year period. What you would have is that $132 billion, if you take away all the gimmicks and you look at all the phony accounting that has been done to get to that number, it goes down in a real hurry.

For example, the SGR fix, the physician reimbursement issue is a $200 billion-plus item. Let's say they are saying they got $132 billion in savings over the next 10 years. But at some point you have to deal with that $200 billion SGR item. You end up with a negative $68 billion already. Then you add in this CLASS Act, which everybody who has any sense, any actuary has absolutely denounced, including even the Washington Post. But if you look at what the CLASS Act does, they are using the revenues in the first early years that come from the premiums paid in. That money will be spent. So when it comes time to pay out benefits, there is going to be any money there. But they are showing a $72 billion savings or addition to their so-called savings in that first 10 years from the CLASS Act. The chairman of the Budget Committee has called the CLASS Act a Ponzi scheme of the first order, something that Bernie Madoff would be proud of.

You take that $72 billion out, which the Congressional Budget Office says is going to add huge deficits in the out-years, you take out that $72 billion, and you are already at a $130 billion deficit. We haven't even dealt with the fact that because of the way they have set this up, by front-end loading the tax increases and back end loading spending, that understates the total cost.

In the first 10 years, if you take those first 4 years when you have $56 billion out of the coming in and only $8 billion of spending going out, that is another $47 billion that you could add to the deficit. So you have gone from $132 billion in savings to a $177 billion deficit. That is before you even get to the more important issue, which is what the CBO came out with today in response to a question by the Senator from Alabama asking: How can you count money that is going to come from these Medicare cuts that as revenue that will save and extend the life of Medicare, and still spend it for a new entitlement program on health care?

The CBO basically said that is double counting. In fact, I want to read what they said:

To describe the full amount of HI trust fund savings as both improving the government's ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count a share of those savings and thus overstate the improvement in the government's fiscal position.

Every American knows you can't spend the same money twice. That is what this does. They are going to cut $1 trillion over 10 years, when fully implemented, out of Medicare, but they will spend that money on a new entitlement program and still count the savings in Medicare. You can't have it both ways. The American people have figured out this shell game.

When you take a $177 billion deficit after you take out all these accounting gimmicks, you are already running a significant deficit. Then when you add in the fact that what the CBO now says, what most of us have believed to be true and have been arguing, that you can't spend the same money twice, you cannot double-count that revenue, the Medicare trust fund is going to take a significantly big hit. I know the Senator from Alabama is going to talk about the deficit. But you can't spend $2.5 trillion on a new entitlement program and then claim to be fiscally responsible or say that you are doing something to reduce the deficit.

Interestingly enough, the CMS Actuary said these Medicare cuts are unlikely to be sustainable on a permanent basis. We all know we are not
going to cut $1 trillion out of Medicare over the first 10 years. That just doesn’t happen here. All that money is going to get borrowed and put on the debt or they will have to raise taxes to pay for it. You can’t have it both ways. As we debate the debate about the debt limit, it is important to put some of these things into context. I want to say again that $132 billion in savings, which is what they are saying they get by this health care reform bill with all the changes in the Medicare cuts, is suspicious in the first place, given the fact that the SGR, the $200 billion is not included, the $72 billion CLASS Act, and the $47 billion that they achieve by front end loading tax increases and back end loading spending brings you to a $177 billion deficit in the first 10 years. That does not even include the funky accounting being used with regard to the Medicare trust fund. We will get into this debate about the debt limit, but nothing bears on that more directly than what we do with health care.

We need to defeat this. I hope we will still see some courage by a few of my colleagues to help us take this health care bill down, to go back to the drawing board and to actually put in place solutions that will meaningfully reduce the cost of health care for people in this country, not increase their premiums, and not add to the deficit and saddle future generations with an unsustainable debt they don’t have to bear. Remember, $176 billion was the deficit in the month of October alone. We are talking about, under their numbers, $132 billion in savings over 10 years which, when you sit down and figure it out, it just doesn’t add up.

I yield the floor.

THE PRESIDING OFFICER (Mr. NELSON of Florida). The Senator from Arizona.

Mr. KYL. Mr. President, when the recession hit last fall, many Americans had been living beyond their means and had to quickly scale back. Families all across America have been tightening their belts. They have been forgoing vacations, meals in restaurants, extra Christmas presents, cutting back wherever they can. The government needs to take a lesson from those families. It is time that Congress and the administration get serious about cutting spending in a meaningful way. Spending under Obama’s first year in office, to put it charitably, has not been what most would describe as responsible. Government spending grew by $705 billion in fiscal year 2009, an increase of 24 percent. Appropriations legislation enacted this year will increase spending by another 8 percent. By the year 2010. All of this spending, of course, has an impact on both the Federal deficit and the Federal debt.

Let me clarify the difference between those two numbers. The deficit is the amount of total spending not covered by revenues in a given year. The debt is the sum of all of the Nation’s yearly deficits. The 2009 deficit made history and not in a good way. It exceeded $1.4 trillion in the last fiscal year. That is the highest amount in history and more than three times as much as the highest deficit during the last administration. The budget President Obama submitted to Congress doubles the deficit in 5 years and triples it in 10. It also creates more debt than the combined debt under every President since George Washington. That seems almost impossible, but it is true.

The President’s budget creates more debt than all of the deficits ever combined throughout the history of the country. From George Washington all the way up through George Bush, more debt under President Obama’s budget than all of that combined.

Even Management and Budget Director Peter Orszag has said that is not sustainable. The debt has reached an almost unimaginable sum of $12 trillion. To pay the Federal Government’s bills for the next 2 months, tomorrow, unless people are willing to pay at least $300 billion increase in the allowable U.S. national debt known as the debt ceiling. That means our debt ceiling, now $12.1 trillion, will be $12.4 trillion. After those 2 months, we will need to add another $1.5 trillion to that debt ceiling to pay for the remaining spending in the year 2010.

Early next year our debt ceiling will be a whopping $13.9 trillion. Of the massive national debt, a paper by the Heritage Foundation tells us: The recession and excessive spending have caused the debt held by the public to grow sharply to 56 percent of the economy, topping the historic average of 36 percent. To make matters worse, entitlement programs will double in size over the next few decades and cause the national debt to reach 320 percent of the economy.

That is so obviously unsustainable that it has to concern us. It is like the size of a credit card being several times more than our income, such that we can never pay the debt on the credit card. That is even to ignore the interest payments. Let’s not forget about that. When we go to pick up our Social Security checks, we have to pay interest. We have only been talking about the principle. But in 2009 alone, interest payments were $209 billion. By the year 2019, interest payments are expected to reach $800 billion a year. That is just the interest on the debt.

How are we going to afford that? By the way, who do we pay that to? We pay it to all the people we borrow money from, one of which is the nation of China. China has indicated that they are very nervous about the amount of debt the United States is taking on.

In mid-March, Chinese Premier Wen Jiabao voiced concerns about U.S. Government borrowing.

We have lent huge amounts of money to the United States. Of course we are concerned about the safety of our assets. To be honest, I am a little bit worried, and I would like the United States to call on the United States to honor its word and remain a credible nation and ensure the safety of Chinese assets.

What can a lender do when he or a nation becomes concerned that the borrower is going to have trouble paying back, when the borrower keeps coming back for more and more and more lending? What do you do is you raise the interest rate to reflect the increased risk of the lender’s money. That is what is going to happen to us. That greater interest rate is going to be manifest in payments that we have to make by our productivity and the taxes we pay. That will decrease our standard of living and create an additional obligation on the American people.

President Obama has acknowledged the problem. He said: We can’t keep on just borrowing from China. We have to pay interest on that debt, and that means we are mortgaging our children’s future with more and more debt.

He is right. So why does he propose more spending and more borrowing and more debt under any credible President in the history of the world?

It is time for words and actions to match. It is time for Congress and the President to start reining in this out-of-control spending and debt. I stand with my colleagues from Alabama in support of his amendment to reinstate statutory spending caps. While this is not a panacea for solving the fiscal problems the Nation faces, it is a good way to start on the path to responsibility. I will bet that most of our colleagues on the other side of the aisle will vote against it. It is wrong for them to expect Republicans to extend the debt ceiling as long as they are unwilling to do anything to get spending under control.

Americans expect us to get this spending and debt under control. When we return to the Senate in January, our first item of business will be a long-term debt ceiling extension, including consideration of the Sessions amendment and others. After pushing the stimulus, the auto bailout, cash for clunkers, the massive $2.5 trillion health care bill, and others, I would have thought Democrats were ready to take a breather from their big spending and support a more reasonable course so that we don’t have to continue to extend the Nation’s debt ceiling.

THE PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator KYL for his consistent performance over his entire career in the Senate of trying to get financial responsibility in this body, and I respect him highly on that and many other issues.

There is so much we could say at this point on the debt limit, on which we expect the vote tomorrow. I am not ready to take a breather from their big spending, but going to vote on a debt limit increase until we accompany it with some action that will actually reduce the incredibly irresponsible path we are on. That is going to be one of my positions, and I think others will take the same view.

Saying we have to increase the debt—we have to do something
about reckless government spending. We really do. We have to do something about it. They always say: Next year. So I say: When? I believe we should condition any increase in the debt limit on the passage of legislation that would require any new years that has expired, spending cap on the discretionary spending accounts. I thank Senator KYL for supporting the legislation.

In other words, we can do that. We did it in 1990. You can see, as shown on this chart, the declining expenditures that resulted in those numbers. We passed it in 1990 as shown on this chart, those yellow lines represent the deficit—up to $300 billion, and it began to shrink. In late 2000, 2001, we had surpluses in our accounts. It is odd to show a surplus, shown below the line on this chart, but we accomplished that.

President Clinton liked to claim credit for it. I have a vague memory that Republicans shut the government down to get the President Clinton’s spending. But there were battles over containing spending, and it worked. A big key to it was the spending limits, containing spending, and it worked. A look at this chart, those yellow lines represent the deficit—over $300 billion, and it began to shrink. In late 2000, 2001, we had surpluses in our accounts. It is odd to show a surplus, shown below the line on this chart, we accomplished that.

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President KYL made reference to this. I want Senator KYL to recognize that according to the Congressional Budget Office, a nonpartisan group, but the leaders were picked by the Democratic majority. What would it do to our deficit, I ask? He has a budget for 10 years. He shows what he expects to have in revenues during those 10 years and what he expects to spend. He does not show, however, what is spent in the health care legislation because that was not in law at the time he was drafting the proposal. So in truth it will be worse than this.

But let’s look at this. In 2008, the debt was $5.8 trillion; in 2013 it doubles to $11.8 trillion; and by 2019, it triples to $17.3 trillion. That is a stunning tripling of the public debt of the United States of America. It is an unsustainable path. One of the most grim parts of the scoring of this deficit expansion is it is not getting better. In years 8, 9, 10, the deficit is going up to almost $1 trillion a year: In 2019—the 10th year—$1 trillion. They are not expecting during that 10 years any recession. In fact, they projected that we would come out of the recession we are in now faster than we are coming out of it. So the numbers probably will be worse.

This is not made up. This is the President’s budget. It is scored by this Congress’s CBO, and it is the best numbers we have. It is a stunning development. We cannot continue. That is why people say it is unsustainable.

Senator KYL made reference to this. I made a chart on it some time ago. I just could not believe it. In 2009, the total interest this government paid on the debt we owe was $170 billion. You can see, this chart shows the annual interest payments we make. We are paying more than $170 billion for the interest on the debt we owe. You can see, this chart shows the annual interest payments we make. We are paying more than $170 billion for the interest on the debt we owe. You can see, this chart shows the annual interest payments we make. We are paying more than $170 billion for the interest on the debt we owe. You can see, this chart shows the annual interest payments we make. We are paying more than $170 billion for the interest on the debt we owe. You can see, this chart shows the annual interest payments we make. We are paying more than $170 billion for the interest on the debt we owe. You can see, this chart shows the annual interest payments we make. We are paying more than $170 billion for the interest on the debt we owe.
government budget, they do not score this IOU because they seem to think it is all one government, and so what is one is not the other, and it is not debt. But it is a debt, and they said it explicitly. You cannot count the money here as adding to the life of Medicare and at the same time score this as free money to be spent over here on this program.

President Obama, Monday, at a press conference, said it is going to reduce our deficit $1.2 trillion, and it is going to extend the life of Medicare by 9 years. Well, you cannot do both, as they have explicitly stated in the letter we got from CBO, and it is just a matter of absolute fact.

They say:
To describe the full amount of HI trust fund savings—

Over here in Medicare—
as both improving the government’s ability to pay future Medicare benefits and financing new spending outside of Medicare would essentially double-count a large share of those savings.

Well, these kinds of gimmicks and manipulations have been done before, but it is time to end it. I think the American people have said: In a time of war, a time of recession, we need to get busy about the budget—by a two-thirds vote.

They are right. We are going to work our way out of this recession. This American economy will respond sooner or later, and hopefully, a sooner response for the people of the United States.

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

Mr. SESSIONS. Mr. President, is that the 10 minutes on this side? And is there time left on this side? I ask unanimous consent to have 3 additional minutes.

Mr. THUNE. Mr. President, I think our side has another 10 minutes or so, with which I would perhaps enter into a colloquy with the Senator from Alabama.

I would ask the Senator, on the point he made—and I give the Senator great credit for raising that question to the CBO—because I think it is intuitive to most people that you cannot spend it twice. You can’t have it both ways; that you cannot some-

There is no doubt about it. The debt of the United States will increase. It is a dangerous trend that happens in a lot of different ways that has put us onto this course.

I think he recognized you shouldn’t increase the debt. He recognized, if he is going to create an entirely new health care program over here, it ought to be paid for, and he promised to do that. We have Members of this body. Members of the House who supported the bill, based on the promise it would not increase the debt. But we have now, conclusive proof, in any number of different ways but particularly with the CBO score, that it will increase the debt. It is a decisive issue as far as I can see.

Mr. THUNE. If the Senator will further yield, in addition to this revelation from the CBO, which I think does change the game and the whole debate about whether this is a budget buster, which it has been described as, in spite of the fact that our colleagues on the other side have been arguing it extends the life of Medicare, I think this statement by the CBO completely ends the notion that you can have it both ways; that you can double count this money; that you can spend it twice. You can’t do that. I think the American people get that, which is why they believe it will add to the deficit as well.

But there are other things in this bill—

Mr. SESSIONS. I would just say my understanding, having looked at this at some length and given it thought, is the legislation will extend Medicare because it increases the Medicare tax, and that will bring in more money. It pretends we will slash provider pay-

What do we do with the money? Well, the money that is saved is not staying in Medicare. It is being borrowed by the U.S. Treasury to spend on a new program, and the U.S. Treasury owes it to Medicare. We can see in the trends in Medicare it will not be too many years before Medicare is going to want that money. That is going to leave us over here, and that will weigh a debt. It increases our debt, and we are going to have to pay that back—our children, our grandchildren—sooner than that. Hopefully, we will be around to pay some of that back.

There were eight Democratic Senators who wrote a letter, basically, asking that the CLASS Act not be included in this bill, recognizing what many have; that is, that CBO has recognized that while it may show some savings in the early years, when people are paying premiums, it is similar to everything else. That money, when it gets spent on other things, isn’t there to pay out benefits when the time comes to pay out benefits. So we get this artificial $72 billion infusion of cash in the early years, which is being used to, again, understate the cost of this and to demonstrate—or to make the argument that there isn’t, in fact, $1.2 trillion savings here or deficit reduc-

There is $72 billion that this CLASS Act represents in that first 10-year window which, as I described earlier, our colleague on the other side has described it as a Ponzi scheme. But it does create an entirely new program, not unlike some of the entitlement programs that already exist, where payments are coming in now that are being used to spend for other purposes that, when the chickens come home to roost, there is going to be another reckoning. Again, I think it is another example of a program of a way
in which this financial picture, with regard to this health care bill, is understating its true costs and its impact on deficits in the long run.

I would ask my colleague from Alabama, having looked at that particular program, if he would agree that too is sometimes something that is going to cost us significantly in the outyears and whether that is something that ought to be included as counted toward the whole calculation on deficit reduction in this legislation.

Mr. SESSIONS. I thank Senator THUNE for his leadership in exposing this. The way I believe this operates—and you correct me if I am wrong—but the way I believe it operates is it requires a certain number of premiums now, and the actuaries who score these things say that in the years to come, there will be claims on those policies and people will claim more and more as they get older and the years go by and it becomes actuarially unsound. But in the first few years, on paper—on paper—for the first 2 years, it looks good because you have more coming in than going out. So they are scoring this short-term surplus—correct me if I am wrong—they are scoring this as an asset, as income to the Treasury, when the contracts people have when they start paying this money in protects them for years and years to come, and in the future they will be making more claims than are paid out.

That is the flaw of an actuarially unsound and will increase the debt in the long run. Would the Senator describe it that way?

Mr. THUNE. Well, I think that is exactly how it would work. Again, it is another gimmick, if you will; another accounting tool.

Mr. SESSIONS. So it is dishonest. When you know a program is not actuarially sound and it is going to take additional Federal Government revenue over the long term that contracts in the years to come, to count that today as an asset is wrong. It is improper to do that. We ought not to propose a plan that has a Ponzi scheme-type nature to it.

Mr. THUNE. Well, I don’t disagree, and I think the American people agree with that.

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

Mr. SESSIONS. I thank the Chair and yield.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this has been an interesting discussion we have heard in the last 15, 20 minutes. One cannot do anything with figures, numbers. I am not going to cite the often-used phrase that some category of people can figure, another category of people can do something else. But anyway, one can do anything with numbers, anything whatsoever. Frankly, this is an effort to confuse by pulling different figures out from one document and then another and concocting—they can put a board up here. It is just an effort to confuse. One can do anything with numbers.

The real question is, What are the facts?

Mr. SESSIONS. Will the Senator yield?

Mr. BAUCUS. I wish to first make a point, and I will yield later to the Senator.

The Congressional Budget Office stands by its analysis. I have before me an e-mail sent today, dated today’s date, 2:56 p.m., and let me read it, from the Congressional Budget Office:

> The Congressional Budget Office has been asked whether our memo this morning discussing the effect of [this legislation] incorporating the manager’s amendment, on the federal budget and on the balance in the Hospital Insurance trust fund alters CBO’s earlier findings about the budgetary impact of the legislation. It does not. In particular, as described in our December 19 and December 20 letters to Senator Reid—

> Let me continue reading and, hopefully, Senators are listening to this because this is a letter today, actually it is an e-mail today, at 2:56 p.m. CBO says:

> CBO and the staff of the Joint Committee on Taxation estimate that the legislation would reduce federal budget deficits by $132 billion during the 2010–2019 period.

> Next:

> CBO expects that the legislation would reduce federal budget deficits during the decade beyond 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 GDP.

> Of course, we know that is about $650 billion to $1.3 trillion. That is CBO today.

> Third:

> CBO expects that the legislation would generate a reduction in the federal budgetary commitment to health care during the decade beyond 2019.

> So what everyone says—and I might say to my good friend from Alabama, part of that chart he had before us today is accurate, I mean the flow of Medicare and the IOUs and so forth. The part that is inaccurate is the increasing debt and the double accounting part. There is no double accounting here. There are separate accounting regimes and procedures that are used for all trust funds, including Medicare. The Medicare trust fund issues dollars that are in surplus in the outyears, as the Senator said, that have been held by the trust fund—by the trustees—and dollars that are used in any way the Federal Government decides to spend dollars, either pursuant to legislation or maybe the administration on its own may be spending some dollars in one place or another.

> This is not double accounting. Nobody has claimed there is double accounting. There are two different regimes and that is how—the Senator accurately described how the Medicare trust fund is accounted for. But it is also true that under our budget rules, we have a unified budget, there is one government—U.S. Government—there is Medicare and the rest of the government, and under that unified budget regime, the CBO still reaches the same conclusion it has always reached. I would like that to be on the RECORD.

> The Senator has a question.

Mr. SESSIONS. Mr. Chairman, I would agree that—

The PRESIDING OFFICER. The Senator will address the other Senator through the Chair.

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

Mr. BAUCUS. Mr. President, I yield for a question.

Mr. SESSIONS. I think that CBO’s second statement is correct. I think the statement they did earlier about the $132 billion surplus reducing the debt over 10 years is technically accurate. But I think the statement they issued early this morning that this is to count it in both places is a double count of the money, in effect.

My question to the Senator is, we are going to be talking about voting on the debt limit tomorrow.

Mr. BAUCUS. That is correct.

Mr. SESSIONS. The debt limit is the gross debt of the country.

Is it true that passage of this health care bill will increase the gross debt of the country, the gross debt being both the public debt and the intergovernmental debt?

Mr. BAUCUS. No, that is not—

Mr. SESSIONS. I am asking the difference. The question is gross debt. Does it reduce or increase the gross debt?

Mr. BAUCUS. If I might respond and answer the question—no, the exact opposite. CBO says so. CBO says it actually reduces the debt by $1 billion.

Mr. SESSIONS. I am asking the difference. The question is gross debt. Does it reduce or increase the gross debt?

Mr. BAUCUS. If I might, Mr. President, as the Senator knows, the debt is the accumulation of deficits, and by definition, if a deficit is reduced, therefore, the national debt is also reduced. That is a mathematical truism. If the deficit is reduced, automatically the debt is reduced. That is mathematics.

The next point I want to make was substantial debate today about the constitutionality of this bill. As I have discussed before, we have confidence that the health care plan we have crafted is an appropriate exercise of the commerce clause and does not violate the 10th amendment. We further believe that ample power is available under the takings and spending power, as well.

I ask unanimous consent to have printed in the RECORD two articles by Prof. Erwin Chemerinsky and Prof. Michael Dorf.

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

**HEALTH CARE REFORM IS CONSTITUTIONAL**

(By Erwin Chemerinsky)

Those opposing health care reform are increasingly relying on an argument that has
have insurance. Most states now require automobile insurance as a condition for driving.

Since the 19th century, the Supreme Court has consistently held that a tax cannot be challenged as an impermissible take of private property for public use without just compensation. All taxes are a taking of private property, and the state tax on automobile insurance has never been invalidated on that basis.

Since the late 1930s, the Supreme Court has ruled that government economic regulation—an example of an "exercise of the police power"—long as they are reasonable. Virtually all economic regulations and taxes have been found to meet this standard for more than 70 years. The basic issue is whether the mandate for health insurance would be invalidated for denying due process or equal protection.

Those who object to the health care proposals on constitutional grounds are making an argument that has no basis in the law. They are invoking the rhetorical power of the Constitution to support their opposition to health care reform, but the law is clear that Congress constitutionally has the power to do so. There is much to argue about in the debate over health care, but constitutionality is not among the hard questions to consider.

[From FindLaw Legal News, Nov. 2, 2009]

THE CONSTITUTIONALITY OF HEALTH INSURANCE REFORM, PART II: CONGRESSIONAL POWER

(By Michael C. Dorf)

Although many key details remain to be negotiated, Congress appears poised to enact some substantial reform of American health care that will build on, rather than replace, our patchwork of government, private, and non-profit insurance. The bill that the President signs will likely contain, among other things, an “individual mandate” requiring that everyone obtain health insurance or face a financial penalty. Would such a mandate be constitutional?

In my last column and an accompanying blog entry, I considered and rejected the objection that an individual mandate would be an unprecedented burden on liberty because it would affirmatively direct conduct, rather than either forbidding conduct or imposing affirmative obligations on only those who engage in conduct that the government has the power to forbid. As I explained, there are substantial precedents for such affirmative obligations, and even if there were doubt, there is no reason in principle why an affirmative duty is a greater restriction on liberty than a prohibition or condition.

In this column, I consider a different objection to the individual mandate: the claim that the federal government lacks the authority under the Constitution to impose the mandate on those who do not comply. As I explain, this objection is also unsound as a matter of constitutional law. I conclude, however, that individual members of Congress ought to decide for themselves whether regulating health care in the manner of the proposed bills is an appropriate job for the federal government, or instead should be left to state and local markets.

IS A REGULATION OF HEALTH CARE A REGULATION OF INTERSTATE COMMERCE?

Under the Tenth Amendment, Congress may only enact legislation that falls within one of its enumerated powers. Most of those powers—and all of the powers that are potentially relevant in the health insurance reform debate—are found in Article I, section 8 of the Constitution, which expressly grants Congress the power to “establish POST OFFICE AND POST ROAD.”

THAT'S THE WRONG QUESTION

Consider, for instance, that the Constitution does not expressly grant Congress the power to charter a bank. Accordingly, President George Washington asked two of his cabinet members to prepare memoranda on whether that power could nonetheless be inferred from the powers that are enumerated in the Constitution—including the powers to regulate interstate and foreign commerce, to lay and collect taxes, to spend money for the general welfare, and to enact such laws as are “necessary and proper” for carrying those powers into execution. The specific enumerated powers.

Arguing for a position that would today be called the “states’ rights” position, Thomas Jefferson said no. The enumerated powers had to be construed narrowly, he said, or else the federal government would completely overwhelm the states. That argument has long since dis- agreed, however. He explained that in order to carry out the powers it was expressly granted, Congress must have implied powers, sometimes termed mere “incidental” or “correlative” powers.

At various points in American history, politicians and judges have flirted with the Jeffersonian view, but for the most part, the Hamiltonian position has prevailed, especially in respect to the power to regulate interstate commerce. Thus, under the Supreme Court’s 1942 decision in Wickard v. Filburn, Congress could forbid the farmer growing more wheat than his quota allows on the theory that if he does not grow wheat, he will purchase it, which will affect the interstate market.

In the 2005 case of Gonzales v. Raich, the Court said that in the course of regulating the national illegal market in marijuana, Congress could forbid the intra- state, noncommercial production and consumption of medical marijuana, even if it is legal under state law. The Court explained that Congress legislated not just on illicit drugs, but on the licit market. The same (and perhaps more) could be said of marijuana. Under the Tenth Amendment, however, many young, healthy people would decline insurance until they got sick, creating a vicious cycle adverse selections. The individual mandate is closely connected with the regulation of health insurance, just as the Court said in Raich that the regulation of commercial and nonmedical uses is closely related to the regulation of the broader market for marijuana.

The question is whether Congress has the constitutional power to regulate interstate business. It therefore counts as interstate commerce, regulable by Congress. Just as, in Raich, Congress acted constitutionally by delegating to the states the power to control non-commercial intrastate marijuana possession from the Controlled Substances Act, so too Congress would act constitutionally by including an individual mandate within the ambit of its regulation of health care.

IS EXISTENCE AN “ECONOMIC ACTIVITY”? THAT’S THE WRONG QUESTION

Skeptics nonetheless point to two Supreme Court cases—the 1986 ruling in United States v. Lopez and the 2000 decision in United States v. Morrison—as grounds for the conclusion that the individual mandate would stand as a violation of the Commerce Clause. In Lopez, the Court invalidated a federal criminal law forbidding
possessed of a firearm near a schoolyard. In Morrison, the Court rejected a federal law providing victims of gender-motivated violence with a right to sue their attackers. Both cases rest on the theory that Congress improperly attempted to regulate "noneconomic" activities that occur on private property and are not intrastate commerce.

FEDERALISM IN CONGRESS: ITS MEMBERS, TOO, are constrained by the Constitution. Members of Congress represent the interests of their constituents, the states, and the nation. In all three capacities, they make fine-grained judgments about what matters most: except in extreme cases, the judicial role is a question about the proper role of the federal government and the states.

In its cases involving challenges to congressional power, the Supreme Court has sometimes said that the broad deference given to Congress does not absolve it of institutional concerns: Except in extreme cases, the Justices lack the fact-finding capacity and democratic legitimacy to make all of the fine-grained judgments that matters should be federalized and what matters should be left to the states. In the words of the late constitutional law scholar Herbert Wechsler, the "political safeguards of federalism" to do most of the work of ensuring a constitutional balance between national and state regulation. Wechsler pointed to a variety of ways in which the interests of the states are represented in Congress itself. Chief among these are the facts that each state has two representatives in the Senate and that congressional districts respect state lines. In addition, as Stanford Law School Dean Larry Kramer has noted in more recent scholarship, the national political process gives state and congressional delegation to state politicians. Taken together, these and other mechanisms ensure that Congress will not simply federalize everything, leaving no area of regulatory discretion to the states.

Wechsler's point was most directly descriptive: Congress and the states do not act in total ignorance of state interests. But we might add a normative dimension: Congress should take its constitutional role seriously in matters of federal and state laws. It is a question of deference to be highly deferential in such matters if and when federal statutes are constitutionality tested.

Accordingly, it would be perfectly appropriate for one or more members of Congress to vote against the individual mandate or otherwise challenge the ground that they think such matters should be left to state regulation or to private decision makers. But it would be equally appropriate for Congress to conclude otherwise and thereby join the ranks of the other industrialized countries—including those, like Canada and Germany, with robust commitments to federalism—that have comprehensive national health care systems. Properly understood, the constitutional case law is no obstacle.

DEBT LIMIT

Mr. BAUCUS. Mr. President, tomorrow morning, the Senate will have to vote on legislation to increase the statutory limit on the United States debt. The measure that will be before us will increase the limit by $290 billion. The right limit sets the maximum amount of money the U.S. Treasury can borrow. If we pass this bill, then the Treasury can continue to borrow money until about February 11 of next year. If we do not pass this bill, then at least two very bad things will happen:

First, the United States could default on the interest payments on this debt for the first time in the history of this country. Second, the Federal Government would be unable to borrow the money it will need to pay Social Security benefits that beneficiaries are entitled to receive.

The bottom line is we have no choice. We have to approve it. The law limits how much money the Treasury can borrow. One minute and we will reach the current limit? The answer is simple and it is, frankly—I am trying to give a very fair answer, fair to both sides of the aisle and not be political about this but just be fair and explain how we got to where we are.

The financial crisis and the deep recession the new administration inherited has resulted in record borrowing this year. Let me be specific. First, the Bush administration asked for and then used authority to spend unprecedented sums of money to help banks, auto companies, insurance firms, Fannie Mae, and Freddie Mac to weather the financial crisis. The prior administration enacted and used these authorities before the current administration even took office. That ran up a huge number, a huge addition to our deficits and debt.

Second, the new administration inherited the great recession. The recession has lowered revenues. To compensate for revenues lost as state revenues, the Treasury has had to borrow more.

In addition, the recession has increased the need for Federal spending
on things such as unemployment insurance and Medicaid costs for folks who cannot any longer afford health care. To compensate for these increased outlays, Treasury has had to borrow more as well.

Finally, to keep the recession from becoming a lot worse than it has, the Obama administration had no choice but to enact a vigorous stimulus package, and the Treasury had to borrow the money to make up for this shortfall as well.

With the enactment of this stimulus, the economy could have well descended into a depression. We would have been in far worse economic shape had we not passed the stimulus legislation.

To cover the costs of all these measures—that is those in the Bush administration and those in the Obama administration—the Treasury Department has had to borrow record amounts of money. Unfortunately as it is, we had to do it. Had we not, we would be in a far worse shape today.

As a result of this unprecedented borrowing, the Treasury is about to reach the current limit. It is clear that we have no choice but to raise the ceiling on the debt the Treasury can borrow.

We have spent the money. We have to raise the debt limit so bills can be paid. If we do not, the United States will default on its interest payments for the first time in its 220-year history. We cannot let that happen. We will not be able to pay our monthly Social Security benefits to which people are entitled. That would be unthinkable.

It is true we have to work harder to reduce these deficits—we have no choice—also, therefore, to reduce our national debt, certainly as a percent of gross domestic product. We have no choice. The point is we are beginning to reach a crisis in the accumulation of deficits and therefore debt. That is clear. We must as a country, as a Congress, and as the President, reduce those deficits in national debt. However, we have to pay our bills. If we do not pay our bills, we default. That would cause catastrophic consequences.

To prevent those catastrophic consequences—that is, other countries having less confidence in the government, less confidence in the ability of the United States to pay its debt, less confidence in the U.S. dollar—we must increase the Treasury’s borrowing limit from a short period of time, I think it is appropriate and prudent.

I urge my colleagues to vote for this legislation. There is no way around it. It is a necessity. We simply have no choice. We have to pay our debts, but in this nation’s worst order to get our deficits under control.

THE PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I am not a member of the Finance Committee, and I do not have the responsibility Senator BAUCUS does in dealing with these debt ceiling issues. But let me corroborate what he has been saying. Someone once drew the analogy that this is like going out to dinner, ordering a good meal, and then refusing to pay the bill at the end of it. We have a meal in front of us—tragically a meal that got too large because, frankly, the previous administration accumulated a debt with out borrowing money to pay for it, including the war in Iraq and other items that left us in a hole larger than created by all administrations combined over 225 years of our history—a remarkable achievement. It is not just the one administration but all 43 Presidents combined had never accumulated what one administration did in 8 years.

I commend my colleague from Montana. This is no easy task. It is a painful vote for anyone to cast, but it is obviously critical. This is more than just a vote in this Chamber. It goes to the very stability of the global economy.

We have to meet our obligations. I, for one, am certainly glad to cast a vote that is a difficult vote. It is a hard vote considering what is at stake. But the implications of refusing to support this would be catastrophic to our country.

I thank my colleague.

Mr. President, 10 minutes short of 12 hours from now, we are going to cast our final vote on the national health care proposal. I have some closing remarks on this historic debate.

Before I do so, I wish to thank once again all the staffs that have been involved in all of this. I know my dear friend and colleague from Iowa will talk about this more specifically. I have already announced the names of the majority staff who have made a contribution to this effort.

I think it is fairly clear that tomorrow morning at 7 a.m., when we cast our votes on this proposal, this is going to be a very divided Chamber. Sadly, we are going to end up on a very partisan basis. But I am very glad to be driven down along the lines of 60–40, although obviously we need less than 60 votes to pass the bill at this point. But I suspect the vote will be something like that. I regret that deeply. It saddens me we have come to that moment. But it is what it is.

While last evening I mentioned the members of the staff who are part of the majority staff who made such a contribution—and I thank them once again for their assistance—I also mention the minority staff who served their Members well and admirably in this effort, certainly during the markup of our bill in the Health, Education, Labor, and Pensions Committee that Senator Kennedy chaired for so many years, that I had the honor of taking over for him during his period of illness, and is now chaired by my friend from Iowa, Senator HARKIN.

The Senator from Wyoming, Mike ENZI, is the ranking minority member of that committee. And ultimately he had a divided, partisan vote in that committee. But as my colleagues have heard me say over and over again during these days and weeks of debate, a good part of our bill, even though it ended up with a partisan vote, included 161 amendments offered by the minority in that markup session. More than half of all the amendments considered were offered by members on that committee, on my committee at the time that were adopted almost unanimously in most cases.

I wish to mention the minority staff tonight who made that possible. They strengthened our bill, made it a stronger one. Beginning with Frank Macchiara, Chuck Clapton, Katy Barr, Todd Spangler, Hayden Rhudy, Keith Flanagan, Amy Muhlberg. They work for Senator ENZI.

Liz Wroe and Jeff Gonzales work for JUDD GREGG of New Hampshire.

Jay Kholis, Patty DeLoatsche—I may have mispronounced that last name; I apologize if I did—along with that Williams of Senator HATCH’s staff made a significant contribution to the bill.

While, again, there was division on a partisan basis, I thank them for their efforts. They put in long hours as well. On that note, let me get to the substance of my remarks. I chair the Senate Banking, Housing, and Urban Affairs Committee. We have been working diligently. In fact, today my good friend and colleague from Alabama, RICHARD SHELBY, and I spent about an hour or so together and then about five or six members, Republicans and Democrats on that committee, spent another hour together, as we have every day almost over the last several weeks trying to fashion a bill on financial services reform that we hope to present to our colleagues on our return in January and February that will deal with the catastrophe that has occurred economically in our Nation.

My hope is as a Chamber—I know my colleagues have heard me say this—I arrived in this Chamber as an employee of the Senate about 50 years ago. I sat on those steps right here. In 1959, Senator Johnson sat in the Presiding Officer chair. John Kennedy was the President of the United States. I was a Senate page and listened to the all-night debates in the early 1960s on civil rights and got to witness history. I got to watch the Members of this Chamber, some of the historic figures—Hubert Humphrey, Lyndon Johnson, Everett Dirksen—remarkable people who served here. Barry Goldwater of course.

We served together in this Chamber for a period of time when I arrived in the Senate.

Thirty-five years ago on January 3 of next month, I arrived as a 30-year-old hometown boy from Connecticut. We served together in this Chamber for a period of time when I arrived in the Senate.

Going back to the sixties, I had a lot to say about the current debate and the choices we face and the choices we will make. We are in the middle of a very significant debate. We are going to make the choices that will define our generation. And the consequences of those choices will be enormous.
takes great pride in having been part of this Chamber, as my father was before me, for more than a quarter of the life of our country, I want to see us once again return to the days when we have our partisan debates, which we should because it has built us here in 2, 3 years, who do not have an appreciation of what this Chamber means and how we work together.

While we have our differences, the ability to walk away from differences and forge those relationships over the next day is critically important. It is always the newest Members who fail to understand how the Senate has worked for more than two centuries. We need to get back to that sense of civility once again.

I hope when we return in January to deal with new issues that we will get back to that comity that is important. Not the disagreements. The disagreements, I never once in my life wants to make.

Even though we have had very strong disagreements, I never once in my life in this Chamber ever questioned the patriotic intentions of any Member. We may have strong disagreements on how to best achieve that more perfect Union, but the idea you challenge another, but the ability to deal with each other and forge the kind of proposals that serve all of our constituents and serve all of our country is going to be critically important.

I want to share that thought with my colleagues this evening as someone who now at the ripe old age of 65 has spent well more than half of my life deeply involved in this institution. It saddens me when we end up being divided, in the ad hominem arguments that I think ridicule the institution, belittle and demean the contributions that each and every Member wants to make.

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Again, I regret sometimes the newer Members who fail to understand the importance of maintaining that which our Founders envisioned when they created this institution.

This evening I rise to express once and for all and lastly in this debate my strong support for this bill, our Patient Protection and Affordable Care Act of 2009. In a little over a week, this decade, the first decade of the 21st century will come to a close, and it has been a turbulent one for our country. We have been tested by the acts of God and the acts of man in this decade. We have entered two wars and been through a profound recession, almost a depression. Our financial markets have failed. Middle-class families have lost their footing. The American dream is fading for far too many of our families in this Nation.

We wear these 10 years heavily. We have seen deep division in our country, bitter debates within the walls of this Chamber in which all of us are so proud to serve.

We do not have the luxury of tackling only those challenges that can be solved easily. But as Thomas Paine wrote:

The harder the conflict, the more glorious the triumph.

Those words come from a pamphlet called “The American Crisis.” It was published 233 years ago this very week at another very uncertain moment in American history. That pamphlet begins with these words:

These are times that try men’s souls; the summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands it now, deserves the love and thanks of man and woman.

GEN George Washington, outranked, outgunned, and sensing that morale was flagging in light of recent setbacks, distributed叶lets, and these words be read to his deeply troubled and impoverished troops. And on Christmas Eve, 1776, he gathered his officers at McConkey’s Ferry to plan the crossing of the Delaware.

This body has been in session on Christmas Eve only since 1963—and we will tomorrow—when in the wake of President Kennedy’s assassination, the Senate met to consider a bill to fund our operations in Vietnam. We will be in session tomorrow morning, unemboldened by the certainty that certainly try men’s souls. Like George Washington, we have an opportunity to meet history’s gaze, to steel ourselves to the difficult work of making our Union more perfect.

The journey we complete tomorrow has been a long and difficult one. But I, for one, would not trade it for anything. We who will have the privilege to cast our votes at 7 a.m. tomorrow morning for health care reform will never cast in another bill in our Senate careers. History will judge harshly those who have chosen to shrunk from this moment, but those of us who stand up to make this country more secure, to make our Union more perfect, we will never forget this Christmas Eve. For this Christmas Eve, we have given an incredible gift. We have been granted a rare opportunity to deliver an enormous victory for the American people for generations to come. We have a chance to alleviate tremendous burdens of anxiety and fear and suffering, to make our country stronger and healthier, to deliver the leadership our constituents have demanded—and rightfully so—and the real and meaningful change they voted for 13 months ago. So in the last week of a decade in which so much has been asked of the American people, that is what history now asks of us in this Chamber.

Over the past weeks and months, I have come to this floor to talk about what this bill will do for the citizens of my State and my country. I have talked about how reform will guarantee every American will have access to quality, affordable care when they need it, from the doctor they choose. I have talked about how reform will reduce our national deficit by finally getting health care costs under control. I have talked, as about what reform will do for small businesses—giving them access to health insurance exchanges where they can find the best deals for their workers and a tax credit to help them pay for it. And I have talked, as others have, about how reform will help our older citizens, our seniors, by strengthening Medicare and closing the so-called doughnut hole for prescription drugs and creating a new, voluntary program to pay for long-term care. I, along with others, have talked about how reform will help doctors and health care providers spend more time caring for their patients, which they want to do, and less time fighting with insurance company bureaucrats. I and so many others have talked about how reform will finally make insurance and affordable for the 350,000 residents of my State and the 31 million people across our Nation who today don’t have it, whether it is because they can’t afford it or because they have been denied coverage due to a preexisting condition. I have also talked, along with my colleagues, about how reform will finally make insurance a buyer’s market, ending a wide variety of abusive insurance industry practices and empowering consumers to make smart decisions.

As has been said so many times, this bill is far from perfect, and we all know that. It represents not the end but, as my friend and colleague from Iowa has said so many times, the beginning of our work. Long after all of us have left this Chamber, however we depart, those who come after us will work on our product. They will make it better. They will make it stronger. They will find our shortcomings in this bill, they will correct it, and subtract from it. But they can never engage in those efforts if we do not do the job I am confident we will do tomorrow morning at 7 a.m. on Christmas Eve, and that is to renew the American dream, to escape our middle class, and rebuild the foundation upon which future generations will stand.

I am very proud of this legislation, with all its shortcomings. I am proud to have had a role in bringing it to a vote—an accidental role, as all of us know. I wouldn’t be standing here talking about it in this context, other than as a Member of this Chamber, were it not for the tragic death of my great friend and colleague from Massachusetts.

President Teddy Roosevelt famously said:

It is not the critic who counts; not the man (or woman) who points out how the strong man stumbles, or whether the doer of deeds could have done better. The credit belongs to the man (or woman) who is actually in the arena, whose face is marred by dust...
and sweat and blood; who strives valiantly; who errs; who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do things new and great and honest, the great devotions; who spends himself (or herself) in a worthy cause; who at the best knows in the end the triumph of high achievements, and who, if he fails, at least fails while daring greatly, so that his [or her] place shall never be with those cold and timid souls who neither know victory nor defeat.

So we happy few, the 60 of us who stand in the arena today, who have fought and argued and compromised and organized so that we might cast this historic vote at 7 a.m. on Christmas Eve, we would not trade this opportunity for anything.

This last year has proven that progress is not easy. Tomorrow, we will prove that it is not impossible. May the next decade in our country’s history be shaped by that spirit—by the unshakable desire to rise to the challenges that fate places in our path, by the quest to make our great Nation a more perfect one.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Iowa is recognized.

Mr. HARKIN. Madam President, I ask unanimous consent that the remainder of the time used on the bill today, the Democratic amendments were accepted. Not all of them were accepted. Senator DODD and Senator BAUCUS for allowing me to go first here, in front of him.

You know, I was kind of feeling bad for myself because I didn’t know if I was going to make Christmas Eve with my wonderful wife and kids. So I wanted to thank him on the floor before he leaves to go home to be with his two great kids and his wonderful wife.

Thank you very much, Senator BURRIS. Madam President, as we approach the final vote, again I wish to thank both Senator DODD and Senator BAUCUS for a masterful job of shepherding this legislation through the Finance and HELP Committees.

There is no way we would be here today without the great work of our majority leader. To put it in Biblical terms, Leader REID has the patience of Job, the wisdom of Solomon, and the stamina of Sampson. Senator REID is on the verge of achieving what majority leaders sometimes nearly a century have failed to accomplish. Make no mistake about it, when this final vote is cast tomorrow morning, Majority Leader REID will have earned his place in the Senate’s history.

As we make this final vote, we have reached a momentous crossroad, just as Senators did in 1935 when they passed the Social Security Act and in 1965 when they created Medicare. Each of those bills marked a giant step forward for the American people. Each was stridently opposed by defenders of the status quo. But in the end, a critical mass of Senators rose to the historic occasion. They voted their hopes, not their fears. In the face of retrospective, they passed laws that transformed America in profoundly positive ways.

The Senate has now arrived at another one of those rare historic crossroads. This time, we are going to pass comprehensive health reform—a great goal that has eluded Congresses and Presidents going back to Theodore Roosevelt.

I make no bones about my enthusiasm for the reforms in this great bill. Is it perfect? Is it what I would write if I could dictate everything? No. There have been genuine compromises made, and that is the art of legislating.

There are a lot of things not in this bill for which I fought very hard, such as a public option or getting a Medicare buy-in at age 55. But I understand the art of compromise. Beyond that, this bill will be the biggest expansion of health coverage since the creation of Medicare.

It cracks down on abusive practices by health insurance companies, abuses that currently leave most Americans one serious illness away from bankruptcy. It includes an array of provisions, including wellness and prevention and public health. Our aim in this bill is to change our current sick care system to a true health care system that keeps people out of the hospital in the first place.

Madam President, I was struck by something that the distinguished minority leader, Senator MCCONNELL, said early Monday morning prior to the first critical cloture vote. Addressing Democratic Senators, the minority leader turned and faced us and said: It’s not too late, it’s not too late. All it takes is one, just one. Gesturing to this side of the aisle, he said: One can stop this bill; one can stop it, for every single one will own it.

He was talking about Democrats. I say to the minority leader, we Democrats are proud to own this bill. Just as we are proud of our ownership of Social Security and Medicare and the Elementary and Secondary Education Act and so many other reforms, progressive reforms, that have made America the great Nation we are today.

For the record, let me point out exactly what it is that Democrats will “own” by passing this bill. We will own the fact that this bill is fully paid for. In fact, this bill will reduce the Federal debt by $132 billion in the first decade and by at least $650 billion in the second decade. We will own the fact that some 30 million additional Americans will in coming years have access to quality, affordable care.

Let me mention just a few of the things in the bill that Democrats will own next year as soon as President
Obama signs this into law. We will own the fact that next year insurance companies will be required to cover the preexisting conditions of children. We will own that. Think about that. There will be a program to extend coverage to uninsured Americans with preexisting conditions. 

We will own the fact that this bill provides immediate support to health care coverage for early retirees. We will own the fact that this bill will immediately shrink the size of the doughnut hole, which will cost $500 billion by the end of the second decade. So, Madam President, this late date before the vote tomorrow morning, I say to our Republican colleagues, Democrats are proud to own this legislation and this starter home. We are proud to own the many reforms and benefits in this bill and we would be very pleased to share ownership with as many of our Republican colleagues who care to join us.

With all due respect to William F. Buckley, it is not written in stone that conservatives have to say no to history, and we will say yes. This bill has many authors. But in a very real sense this is Senator Ted Kennedy's bill. Our late beloved colleague would be so proud to see the Senate on the cusp of passing landmark health care reform. For decades, from his first days in the Senate, this was his highest priority and fondest wish. As his friends on both sides of the aisle know, his great dream was of an America where quality affordable care is a right, not a privilege for every citizen.

Today, we are on the verge of making that dream a reality. So often Senator Kennedy talked about the moral imperative of health reform. Too often in the debates of recent weeks we have lost sense of this moral imperative. We have heard speeches. We have had charts, back and forth and back and forth on some of the small stuff; who wins, who loses, because of this or that minor point.

Today, on the eve of this historic vote, we should refocus on the big stuff, the moral imperative that drove Senator Kennedy. With this bill we will get rid of the shameful dividing line that has excluded millions of Americans for too long. For too long, tens of millions of Americans have been on the wrong side of that divide, without health insurance, without regular medical care for their children, just one serious illness away from bankruptcy. With this bill we will erase that shameful divide within our American family. With this bill we say for every American, for every member of our American family, access to quality affordable care will be a right, not a privilege. It is a monumental achievement.

I urge all of our colleagues to vote yes on this bill.

Now, Madam President, a lot has been said about who or who has been the leadership on this bill: Senator REID, Senator BAUCUS, Senator DODD, myself, and so many others. It is important to etch in history in our CONGRESSIONAL RECORD the names of those individuals on our staff, who have done so much to get us to this point. I said earlier there is an old saying that Senators are a constitutional impediment to the smooth functioning of our government. We kind of hate that, but we know there is great truth to that. Were it not for the staff who spent so many hours and so much time away from their families that we would not be here.

I was talking with Senator REID's office. Kate Leone did a magnificent job. Carolyn Gluck, Jacqueline Lampert, Bruce King, David Krone, Rodell Mollineaux, and Randy DeValk. Senator DODD's staff: Jim Fenton, Tamar Magarik Haro, Monica Feit, Brian DeAngels. Senator BAUCUS's staff: Liz Fowler, Bill Dauster, Russ Sullivan, John Sulivan, Scott Mulhauser, Kelly Whitt, I wish David the best in terms of one, and David Schwartz, Neleen Eisinger, Chris Dawe.

On our HELP committee: Michael Myers, our great staff director, who for more than a decade has worked for Senator Kennedy. We are all sorry that Senator Kennedy could not be here for this. I can say honestly that Mike Myers carries on the torch as his staff director. He did a magnificent job of getting us through this. And David Bowen—David Bowen, if there is one person who knows more about what is in this bill than anyone else, it is David Bowen. I have never asked him about anything in this bill that he didn't know where it was and what it does. He has been at every meeting. I don't care how early in the morning, how late at night. I know he has been apart from his family and his children. I wish David the best in terms of one, being with his family tomorrow and over Christmas. David Bowen has done such a magnificent job of guiding and directing this bill and making sure it was all put together.

Connie Garner, who worked so hard, so hard; Portia Wu, John McDonough, Topher Spiro, Stacey Sachs, Tom Kraus, Terri Roney, Craig Martinez, Taryn Morrissey, Andrea Harris, Sara Selgrade, Dan Stevens, Caroline Fichtenberg, Lory Yudin, Events staff. 

Now I want to mention one other person who has been on my staff but now is on the HELP Committee staff, Jenelle Krishnamoorthy. I have for many, many years been told that we have to change our focus in America from a sick care society to a health care society. I mentioned that earlier. This bill contains more for wellness and prevention and public health than any bill ever passed by Congress—ever passed—and it is not talked about much, you don't hear too much debate about it. But it is significant that we are going to change this paradigm. We are going to start putting more focus on keeping people healthy in the first place.

One person who has done more than anyone else to make this happen is...
Jenelle Krishnamoorthy. I want to thank her for just focusing laser-like the last couple of years or so on this and making sure it became a big part of our health care reform bill.

On my personal staff, Jim Whitmire, Beth Wing, Greg Gutierrez, and Lee Perselay. Let me mention Lee. Lee does all my work on disability issues. As many people know, it is my name on the Americans With Disabilities Act. Nineteen years ago we passed that. Lee Perselay does all my work on the disability issue.

There is another part of the bill not too many talk about, but it is so profoundly important to people with disabilities. In this bill there is a provision that will have the Federal Government give a 6 percent increase in the amount of money that the Federal Government gives to a State for Medicaid, 6 percent increase for a State that will enact legislation to put in place the provisions of the Olmstead decision by Supreme Court over 10 years ago: that is, that every person with a disability has a right to a least restrictive environment. That means living in their own communities and their own homes with personal assistant services, support so they can live at home rather than going to a nursing home.

This has been a dream of the disability community since we passed the Americans With Disability Act in 1990. We have never been able to get it done. Now we have it in this bill. It is not talked about much, didn’t hear much about it. But this will have more of a profound effect on people with disabilities than any other single thing in this bill or anything that we have done, literally, since 1990. Now people with disabilities can live at home and live in their own communities and the State will get money from the Federal Government to enable them to do that.

Lee Perselay: thank you very much, Lee.

Kate Cyrul of my staff, Dan Goldberg, and the Senate legislative counsel. A special thanks to Bill Baird, along with Stacy Kern-Scheerer and Ruth Ernst, who was present throughout the entire HELP Committee, and they have gone above and beyond.

To all the floor staff here, too, we forget about all they have done—Mike Spahn, Beth Williams, and Tim Mitchell and Tricia Engle and Lula Davis, wonderful floor staff working with us to get us to this point, where we have a final vote on this tomorrow morning.

I wished to particularly mention these individuals. In many ways, they are the unsung heroes and heroines of what we have done. They can be content in knowing, as they go through life, they did a big thing here. They did something so important to help transform the way we provide health care.

I want to thank personally, thank each and every one of them and wish them the best of the holiday season, Christmas, New Year. We will come back next year, and we will start implementing this bill. As the chairman of the HELP Committee, we will start looking at building those additions and those expansions.

I yield the floor and thank my friend from Illinois, Mr. Burr, and the PRESIDING OFFICIAL, the Senator from Illinois is recognized.

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

The PRESIDING OFFICIAL. The Senator has all minutes.

Mr. BURRIS. Mr. President, the Senate has long been a forum for great debate. This institution is equipped to handle the most difficult questions our Nation faces.

Since we took up the issue of health care reform, the debate has been fierce, and our differences of opinion have played out in dramatic fashion on the national stage.

Over the last several months, I have said time and again that this health reform bill must accomplish the three distinct goals of a public option in order to win my support:

- It must create real competition in the health care system.
- It must provide significant cost savings to the American people.
- And it must restore accountability to the insurance industry.

For months, I have told my colleagues that I would not be able to support a final bill that fails to meet these three goals.

I believe they are the keys to comprehensive health reform in America, and without them, our legislation would be ineffective and incomplete.

I expressed my concerns about the compromise bill, and I asked tough questions.

I have reviewed the CBO score and the final legislative language as soon as it became available.

I believe the way forward is clear.

This bill is not perfect. It does not include everything I had hoped for.

But I am convinced that it can meet the three goals of a public option.

I believe it represents a monumental step forward—a strong foundation we can improve upon in the months and years to come.

This is not the end of health care reform in America—It is the beginning.

This is why we need to take the next step in this process. Although this is not the bill I had hoped I might be voting on, I am confident enough to pass this legislation on to the next step.

Let us send the Patient Protection and Affordable Care Act to a conference committee, where it will be merged with the House bill.

There, I have every hope that the conferees will have the opportunity to strengthen some of these provisions and make this legislation better.

We may not get perfect stand in the way of the good. While it is not everything I had hoped it would be, it is far more than we have now.

And while this bill will not satisfy many of us, it would be a mistake to overlook all the good it will do for tens of millions of Americans.

So let me explain exactly why I am convinced that this bill will satisfy the three goals of a public option: competition, cost savings, and accountability.

According to the nonpartisan Congressional Budget Office, the exchanges that will be created under this legislation will dramatically enhance competition in the insurance market.

This will drive premiums down, allowing consumers to shop around for the plan that is best for them, their family, or their small business.

CBO projections show that this would force providers to compete for the first time in many years, reducing costs and bringing everyone’s premiums under control.

As a result, many more people would be able to get better coverage for less money.

This bill will enhance the choices that are available for individuals and small businesses.

Everyone will have the choice to keep their current insurance coverage if they are happy with it, but if they are not, they will have real options for the first time in many years.

This bill will give consumers the tools they need to hold insurance companies accountable.

It includes strong consumer protections—many of which take effect immediately—and it contains significant insurance reforms designed to put ordinary folks back in the driver’s seat.

This bill will eliminate annual and lifetime caps on coverage, prohibit companies from dropping patients who get sick, and prevent discrimination against people who have preexisting conditions.

It will also require insurance providers to cover essential health benefits and recommended preventive care, so more people can get the treatment they need.

Based on these provisions, it is quite clear that this measure will provide immediate and lasting improvements in the health care system for everyone in this country.

It will extend quality coverage to 31 million Americans who are currently uninsured, and increase access to preventive care.

This will reduce emergency room visits, let more people to treat preventable and chronic diseases, and help to bring health care costs under control.

In fact, the Congressional Budget Office projects that this legislation will cut the deficit by more than $130 billion in just the first decade, and will save nearly $1 trillion over the next several decades.

That is why I am confident that this bill will meet the three goals of a public option: competition, cost savings, and accountability.

It may not be the legislation I would have written at the beginning of this process, but after nearly a century of debate about health care reform, under
the leadership of 11 Presidents and countless Members of Congress, this legislation represents a strong consensus.

So it is time to take the next step in this process—to send this bill to conference and keep building upon this foundation.

This is not a perfect bill, but it contains a number of fundamentally good components.

Most importantly, it will ensure that 94 percent of Americans can get the health coverage they need.

After decades of inaction, the Patient Protection and Affordable Care Act is a monumental step in the right direction.

There were many competing ideas that gave rise to this bill.

There were many voices, inside this Chamber and outside of it, shouting to be heard on these issues.

There were concessions and compromises.

But, out of a century of dissent—out of decades of discussion and debate—we have arrived at a basis for comprehensive reform.

It is time to put aside our differences and move forward as one Congress, and one Nation.

There is much work left to do on this and a host of other issues. But in the messy process of debate and compromise, along the path that has led us to this point, this body has reaffirmed the enduring truth of the motto inscribed in this Chamber, just above the Vice President’s chair: “E pluribus unum.” It is there, Madam President, right over your head. It means “Out of many, one.”

For our entire history, it has been the creed that binds us to one another and to our common identity as Americans. It is the principle that drives us to assemble in this august Chamber to debate the toughest issues we will ever face.

Although we come from every section of this country, from many States, we are one country, and together, we can create a health care system that will be worthy of the people we represent.

It is time to make good on the promise of the last century and move forward with the Patient Protection and Affordable Care Act.

Let’s take the next step, and send this bill to conference.

MEDICARE GEOGRAPHIC INEQUITIES IN REIMBURSEMENT

Mr. HARKIN. Mr. President, I am pleased to support the legislation pending before the Senate today, which will ensure that 31 million Americans will finally have access to affordable, quality health coverage, which will crack down on outrageous abuses by the insurance industry, and which will, at long last, put prevention and wellness at the heart of our health care system.

I rise today, however, to signal that there is an area of this legislation that remains of concern and that I will be working to fix as we head to conference; namely, provisions to rectify the geographic inequities in the low Medicare reimbursement rates.

Across the country, Americans pay equal premiums to support Medicare. Yet there is a substantial geographic disparity in reimbursement levels in the Medicare Part B Program. The degree of this disparity is unjustified and inherently unfair—and it is having an increasingly negative impact on the number of providers that are accepting Medicare and magnifying the workforce shortage problem—especially in rural areas. The unfairness in this disparity in reimbursement rates is compounded by the fact that the States with the lowest reimbursement rates are often those that deliver the highest quality of care. The system must change and reward the quality of service delivered instead of the volume of care served.

I see that my colleague from Oregon, Senator MERKLEY, is here on the floor. He and I discussed this issue, as his State is also one that provides outstanding care and yet suffers from unduly low reimbursement rates. I wonder if my distinguished colleague shares my view that this is something we must continue to work on before this bill is finalized?

Mr. MERKLEY. I thank my distinguished colleague for raising this issue, which has also been a concern of mine. I agree with him that any State consistently loses money to other States on Medicare reimbursement and per capita spending. I strongly believe that a fundamental way to achieve the goal of more efficiency in Medicare is to realign the Medicare payment system to reward health care providers for the quality of care they deliver, not simply the quantity of services they provide. Medicare is spending over one-third more for each Medicare beneficiary in some States compared to Oregon, to Iowa, or to the home States of many friends from Minnesota, Senators KLOBUCHAR and FRANKEN, who are also here on the floor with us today.

The simple fact is, this antiquated payment formula penalizes rural providers and penalizes medical efficiency, and I know in Oregon it has forced many physicians to stop accepting Medicare patients or limit the number of Medicare patients they serve, and that is why I feel so strongly that we must fix this in the final health reform bill. I wonder if the Senators from Minnesota have had a similar experience in their state.

Ms. KLOBUCHAR. I want to thank you, Senator MERKLEY and Senator HARKIN, for your work on this issue. I have observed the same problems with Medicare reimbursement in my home State. We represent States and regions that have demonstrated true leadership in lowering costs to Medicare while increasing the quality of care patients receive, and for the areas we represent are known for utilizing integrated health delivery systems and innovative quality measures to provide Medicare beneficiaries with better value. Research shows that these efficient delivery practices can save the Medicare Program upwards of $100 billion a year while also providing beneficiaries better access to the care they need. Unfortunately, the current Medicare payment structure penalizes those who provide efficient care while rewarding those who order unnecessary tests and services. It is critical that this is addressed in conference, and it will be a priority as we move forward through this process.

Mr. FRANKEN. Thank you, Senator HARKIN, for your leadership, and also thanks to my other colleagues for working on this issue. I agree with all that has been said, and I would like to reiterate that our States have some of the best health care in the country. And it just doesn’t make sense that under the current Medicare reimbursement system, our States gets punished and the less effective, more expensive care gets rewarded. The result is that we are not providing health care in this country; we are providing sick care. We need incentives for providers for high-value care, and the best way to do this is through Medicare payment reform.

These geographic disparities in Medicare payments are unfair, and they are not good for patient care. We are forcing excellent providers out of business because reimbursement rates are low and they just can’t make ends meet. This is counterproductive to the goal that I know we all agree we should increase access to high-quality health care for all Americans. It is a top priority for me that in conference we make some changes so high quality care that is provided at a reasonable cost will no longer be punished. Instead, we need to make sure that the bill rewards providers for being effective partners in their patients’ care. I appreciate the opportunity to share these concerns and discuss these issues with my colleagues.

Mr. HARKIN. I couldn’t agree with my colleagues more. It is long past time to take action to fix this system. I appreciate the commitment of the Senator from Oregon and the Senators from Minnesota to fixing this problem once and for all.

DEFINITION OF FULL TIME WORK

Mrs. MURRAY. Mr. President, I would like to engage my friends, the Senator from Iowa and Chairman of the Health, Education and Pensions Committee, and the Senator from Montana and Chairman of the Finance Committee, in a conversation about how “full time” is defined in the Patient Protection and Affordable Care Act. It is critical that clear definitions about how the legislation resolves the potential for exclusion of certain work group such as flight crews and rail workers due to the definition of “full time” work and the unique way their work hours are calculated.

Is it the Senators’ understanding that the Patient Protection and Affordable Care Act resolves a potential
problem of excluding from employer incentives to provide coverage for employees who work in professions that use unique calculations for hours worked, such as flight crews and rail workers? And that it does this by indicating that the Secretary of HHS, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for employees who are not compensated on an hourly basis.

Mr. HARKIN. Yes, the Senator is correct. The Patient Protection and Affordable Care Act is designed to expand access to high quality and affordable health coverage for all workers. Because of the nature of work, some industries uniquely calculate total daily and monthly working time to determine full-time schedules. That is why this legislation gives the Secretaries of Health and Human Services and Labor discretion to establish rules and regulations for the hours of service for workers outside of standard hours. This provision is meant to be construed broadly.

Mr. BAUCUS. I would concur with my friend, the Senator of Iowa, in his understanding of the act. This provision is meant to be construed broadly, and to expand access to high quality and affordable health coverage for all workers.

Mrs. MURRAY. Of particular concern to me are groups such as pilots and flight attendants, cabin crews who, under “full time” contracts, “work” on average only 70 hours per month due to the unique way their hours are calculated. For obvious safety reasons, a pilot is limited, through Federal regulations, to flying 100 hours per month, or 1,200 hours annually, even though he or she contributes many more hours of service outside of the time spent flying planes. This unusual work schedule, and the unique way their hours are calculated, raises the potential that a pilot might not be considered a full-time employee for purposes of this legislation under a rule that defined full-time employee for purposes of this legislation gives the Secretaries of Health and Human Services and Labor the authority to govern workers in these industries so they are fully entitled to the protections under this bill. It is not the intent of Congress to exclude or prevent workers with unique work schedules from the benefits under the Patient Protection and Affordable Care Act or from incentives for employers to provide these workers with quality healthcare coverage.

Mr. BAUCUS. Again, I am pleased to concur with the Senator from Iowa in his understanding. The Secretaries of Health and Human Services and Labor will establish standards to govern workers in these industries so they are fully entitled to the protections under this bill.

Mrs. MURRAY. Mr. President, I would like to thank the Senators from Iowa and Montana for their time and clarification on this issue.

Mr. DURBIN. The Patient Protection and Affordable Care Act offers community health workers some overdue recognition, and more importantly, authorizes grants to help support and expand their work.

Community health workers are from the communities they serve. From rural small towns to the urban inner city, community health workers reach out to underserved communities in ways that the current health care system cannot, providing culturally and linguistically appropriate health information in a more familiar and welcoming manner. Their work helps bridge the healthcare gap and diminish disparities.

Nowhere is this more evident than in the community-based doula program. Community-based doulas support pregnant women during the months of preg-
nancy, birth, and the immediate postpartum period. They provide parent education, logistical and emotional support. They help new mothers make better choices and deliver healthier babies. What makes these programs work is the culturally sen-
sitive mentoring within the commu-
nity. Community-based doulas have a powerful impact on outcomes including better prenatal care, breast feeding rates, better parenting and child health, and the model is effective. In communities that have employed it, outcomes include better prenatal care, higher birth weight, better breastfeeding rates, better parenting skills, fewer preterm births and ces-
section deliveries, and delays in sub-
sequent pregnancy for teenagers.

With Chicago Health Connection's success, they took on the challenge of working with other communities to build their own community-based doula program. To date, they have transformed into Health Connect One, a training organization for communities nationwide interested in starting their own community-based doula programs. The need is everywhere, and these women are working hard to make these important services available everywhere for all moms.

I am encouraged by the language in Section 3133 of the Patient Protection and Affordable Care Act, Grants to Promote the Community Health Workforce and want to ensure that the definition of community health worker includes community-based doulas. The Federal Government currently funds community-based doula programs through the Maternal and Child Health Bureau's Special Projects of Regional and National Significance. Expanding the definition of community health workers in the reform bill will give these evidence-based programs greater support to meet the needs of families in underserved communities.

Community-based doulas and programs are an example of the health outcomes that education, prevention and health literacy can bring. With grants to promote the community health
reached lifetime limits on care that are
out of their reach, or because they had
been denied health insurance. By the time
people are denied coverage for further medical
treatment.

Because of this bill, lifetime and annual
limits on coverage will be prohibited. Premiums cannot increase due to
medical needs or illness. Insurers cannot use the same insurance policy. Restricting
or denying coverage based on preexisting conditions is prohibited for all
Americans, beginning with children effec-
tive 6 months after final passage of this
bill. A recent study found that 36 percent
of currently uninsured adults were unable to get health insurance be-
cause of a preexisting condition. Pre-
existing conditions can be anything from serious, chronic diseases like dia-
betes or cancer to medical episodes like acne or even pregnancy. In nine
States, being a victim of domestic vio-
lence can be a preexisting condition.
This bill will end these consumer
abuses.

People will be guaranteed the ability to
renew their health insurance year
after year. If a claim is denied, policy
holders have a guaranteed right to ap-
peal. And group insurers are required to spend at least 85 percent of every
premium dollar on actual health care;
they are spending less, they are required to refund the dif-
fERENCE to the customer. This policy,
along with others, will require an un-
precedented level of transparency in
the way insurers operate their policies.

One of the strongest points of this
bill for me, and perhaps one of the
most underappreciated, is the commit-
ment made to realign Medicare spend-
ing to reward our doctors and hospitals
for the quality of care they provide to
their patients, rather than the quan-
tity of care. Moving to a value-based system is one of the single most effect-
ive ways to reduce health care spend-
ing and improve the quality of care. Wis-
consin is a national leader in value-
based care. What a lot of these health care providers tells us about the reality is that these individuals need
more assistance because of chronic illnesses—whether they are chronic dis-
bilities, communities, and government.

I am also pleased by the attention to
long-term care reform in this bill. Mod-
ern medicine has turned fatal diseases into chronic diseases, and enabled indi-
viduals to live much longer. These are tremendous accomplishments, but the reality is that these individuals need
more assistance because of medical
advancements—from their fami-
lies, communities, and government.
home and community-based care options. Again, Wisconsin has been a national leader in increasing access to home and community-based care, beginning with the Community Options Program almost 30 years ago. As a State Senator, I worked to help expand Wisconsin’s Community Options Program, known as COP, which provided flexible, consumer-oriented and consumer-directed long-term care services in community-based settings, enabling thousands of people needing long-term care to remain in their own homes rather than going to a nursing home. Over time, the COP program turned into Wisconsin’s FamilyCare program, which is our newest State entitlement program for low-income and disabled adults to receive necessary care, supports, and services in their homes and communities.

The progressive vision that is the driving force behind Family Care is also the driving force behind the long-term care provisions in this bill. This bill will establish the Community First Choice Option, which gives States the option to create a new Medicaid benefit through which States could offer community-based attendant services and support to Medicaid beneficiaries with disabilities who could otherwise require the level of care offered in a hospital, nursing facility, or intermediate care facility. This bill also removes barriers to expanding home and community-based care services; protects recipients of home and community-based services from spousal impoverishment; and increases appropriations by $40 million to help fund Aging and Disability Resource Centers.

And finally, as a result of Senator Reid’s amendment, the bill provides new financial incentives for States to shift Medicaid beneficiaries out of nursing homes and into home and community-based care facilities. Over 10 million Americans are currently in need of long-term care, and that number is expected to rise to 15 million in the next 10 years. These individuals struggle to remain independent with limited assistance. Policies like those included in this bill, which increase options for home and community-based care so that nursing homes are not the only choice, are smart changes that will benefit consumers of long-term care and save taxpayer money.

One of my most important priorities for this bill was that it be fiscally responsible. Based on the most current projections, the Congressional Budget Office expects this legislation to reduce the deficit by $132 billion by 2019 and roughly $1 trillion by 2029. While the bill does not go as far as I would like to rein in health care spending, the $871 billion price tag on the bill is fully offset and will not add a penny to the deficit.

Deficit reduction is achieved through a number of policies, three of which are included in legislation I introduced to bring down the deficit, the Control Spending Now Act. These policies, which make prescription drugs more affordable and require wealthy individuals to pay their fair share of Medicare premiums, generate $24.6 billion in savings.

For all the positive aspects of this bill, I am deeply disappointed by the lack of a public option. I have been fighting all year for a strong public option to compete with the insurance industry and drive down costs. I continued that fight during recent negotiations, and I refused to sign onto a deal to drop the public option from the Senate bill.

Removing the public option from the Senate bill is the wrong move. I am concerned that without a public option, there will be no true competition for the insurance industry. We have included mechanisms to protect against egregious year-to-year increases in private insurance premiums. This is a good point on, but we have no mechanism to force insurance companies to decrease premiums as they are set today. A strong public health insurance option would provide a powerful incentive for less responsible insurers to re-evaluate their benefit plans to ensure they are an attractive option for consumers.

The public option would give consumers a strong voice in the marketplace. If the private market was not already competitive, we should have an alternative. Competition is how we can reduce our health care costs, but there is no real competition in the private market. Private insurers compete to generate the most profit, and the best return on investment for their shareholders. There is at most a secondary motivation to compete to give the best value to consumers. A public option serves as an outside factor to force private insurers to consider more than just the bottom line.

The Congressional Budget Office estimated that the public option in the bill that was brought to the floor could save up to $25 billion. The CBO’s analysis of Senator Reid’s amendment, which strikes the public option and replaces it with multi-state plans, says the following about the new policy:

Whether insurers would be interested in offering such plans is unclear, and establishing a nationwide plan comprising only of non-profit insurers might be particularly difficult. Even if such plans were arranged, the insurers offering them would probably have participated in the insurance exchanges anyway, so the inclusion of this provision did not have a significant effect on the estimates of federal costs or enrollment in the exchanges.

Removing the public option gives up a huge opportunity to reduce costs for American families and the government, and I will work to try to ensure the final bill fixes this serious mistake. I also am concerned about the excise tax on high-cost health plans. Under this bill, health insurers will be taxed on the value of any health care plan sold that is valued above $8,500 for an individual and $23,000 for a family. Improvements have been made to this policy during Senate consideration, and the thresholds for the tax, along with exemptions for high-risk professions, have been expanded. But I have heard from many in my State who have had trouble paying for solid health insurance benefits in the past years. I have heard from teachers and laborers and union members who are worried they may lose the health benefits they have fought for, and can’t reclaim the money they have paid. While this policy is often referred to as the “Cadillac” health care tax, they will be the first to tell you that they hardly live the Cadillac lifestyle. I urge my colleagues in the Senate and the House to consider the real-life impact that this policy could have on working Americans and their families.

I am concerned about the cuts to home health and hospice providers under this bill. Home health and hospice providers offer a truly valuable service to our communities. But under this bill, their reimbursements will be drastically cut and I am concerned that access will decrease as a result. Improvements have been made under Senator Reid’s amendment, but we must do better for home health and hospice providers.

I am disappointed that the bill does not permit the safe importation of prescription drugs, which would reduce health care spending for consumers and the Federal Government. I will keep fighting to enact this common-sense reform.

Lastly, I oppose the sweethearts deals that some Senators and interest groups apparently cut. These deals weaken the bill by subsidizing States or interest groups at taxpayer expense. They are unjustified, and they should be eliminated.

Mr. WYDEN. Mr. President, the Patient Protection and Affordable Care Act is a fundamental first step toward providing all Americans with affordable, quality health care. The health care system is complex, and that is why this Senate and two of its committees, including the Senate Finance Committee of which I am a member, have taken the better part of this past year crafting this legislation. I believe several provisions of this bill are transformational for American health care and begin to move us toward more competition, choice, and quality.

The first provision is in the managers’ amendment, and it is called free choice vouchers. This section creates something that has never existed before in the American health care system: a concrete way for middle-income Americans who cannot afford their health care to actually push back against the insurance lobby and force insurance companies to compete for their business. In this insurance exchange, the American people will have a choice of insurance offers, and they may consider an alternative to what is today an unacceptable health system.
this new provision, there will be a different health care marketplace, with free enterprise choices that can actually drive down costs for the middle class while ensuring those choices are of good quality. And in that new marketplace, who cannot afford his employer's health plan can get a tax-free voucher for the same amount the employer contributes under the health plan and use that voucher to buy a more affordable plan in the insurance exchange. I have been an advocate for consumer empowerment and choice my entire career in public service. Exchanges are a new pathway to creating a competitive marketplace for the first time for health care in this country. Massachusetts led the way, opening the door to showing Federal legislators the potential for insurance exchanges when Massachusetts enacted its own health reform law. Many other States lead the way with health care reform, including States like Oregon and Vermont. That is why I have authored and championed in the Senate Finance Committee section 1332, the waiver for State innovation. If States think they can do health reform better than under this law, they can let the voters of the number of people with the same comprehensive coverage, they can get a waiver exempting them from the legislation and still get the Federal money that would have been provided under the bill. To the provision, if certain provisions in this bill will not work as intended in a given State, this provision will give States a way to tailor health reform to best meet the needs of their citizens. I intend to work with Senator Sanders and other colleagues to make sure that State waivers will be available even sooner than they are under the current bill.

The waiver for State innovation and free choice vouchers will improve the number of choices in the bill, for states, for employers and for employees. The Patient Protection and Affordable Care Act will also increase quality of care, particularly in the Medicare Program. I worked in the Finance Committee to increase bonus payments to high quality plans in the Medicare Advantage Program. In Oregon, Medicare Advantage is a lifeline given the low traditional Medicare reimbursement rates in Oregon. This program will reward the high quality plans that exist in Oregon, but will also encourage other plans across the country to increase the quality of the care they provide. By boosting payments to the highest quality plans—the four and five star plans—the Federal Government will be incentivizing plans that provide preventive care, manage chronic diseases well, and have high levels of consumer satisfaction.

Another provision that will add quality to the Medicare Program is Independence at Home, IAH, section 3024 of the bill, that I won approval for in the Finance Committee. This provision stems from legislation that I introduced with 11 other Members on both sides of the aisle. As the name indicates, the Independence at Home program will provide a way for seniors with chronic medical conditions to get medical treatment at home. The IAH program is a call team approach that has proven successful in reducing costs and improving the quality of care for high cost patients with multiple chronic illnesses, patients who account for 66 percent of Medicare spending. The Independence at Home program requires providers to achieve minimum savings on health care provided to the highest cost Medicare beneficiaries as a condition of participating in the program.

Providing care at home makes sense, and is the right direction for the future of health care delivery. But there is another aspect of the future of health care that I think holds much promise: personalized medicine. I won approval in the Finance Committee, along with Senator CARPER, for including section 3113 in the bill. This provision will increase access to innovative molecular diagnostic tests that provide the foundation for the application of personalized medicine in treating suffering patients from life threatening diseases such as cancer and heart disease. These tests hold the promise of getting patients the right type of chemotherapy for their specific case of cancer. Personalized medicine is something that I am thrilled that the Patient Protection and Affordable Care Act takes steps to move toward 21st century medicine.

I have spent the better part of my career trying to make the health care marketplace more competitive and trying to improve the quality of care for all Americans. I take many lessons from my home State of Oregon, and have tried to apply the innovation that Oregon is known for as an example for how other States can provide higher quality care at a lower cost. Through free choice vouchers, State waivers, Medicare Advantage bonus payments, Independence at Home, and personalized medicine, I believe this bill improves competition, choice and quality across the entire country.

Mr. INOUYE. Mr. President, I am pleased that this bill will extend basic health care to more than 30 million Americans who were previously unable to afford the best medicine available from a medical professional. Not since former President Harry S. Truman enactment of the Wakefield Pediatric-Emergency Medical Services for Children program, at the suggestion of my two colleagues from North Dakota, Senator KENT CONRAD and Senator BYRON DORGAN. This program works to ensure that our children across the country are equipped with the resources necessary to treat young children. A civilized, democratic society like ours should help maintain the health and welfare of all our citizens. No one should be denied care because of adverse coverage because they can't afford to pay to see a medical professional. Like that July afternoon in 1965 when President Lyndon Johnson signed Medicare into law I am especially pleased to see that our great Nation once again has recognized and worked to meet the basic needs of our citizens.

Mr. LEVIN. Mr. President, at a handful of moments, Members of the U.S. Senate have faced choices that could fairly be described as the difference between progress—sometimes incomplete progress—and an intolerable status quo. In our finest hours, we have overcome fear and doubt and stood for the principle that our Nation, though great, could aspire to do better. When our ambition has weakened, we have taken the timid path. That is an easier journey and less laden with fear or political peril, but it has not served our own true well or protected the best of history.

We have come to another of those times. We can vote, now, to address decades of frustration and anguish over a health care system most Americans know is broken. Or we can destroy the hopes of millions of Americans whose most ambitious is not a perfect system, but an improved one. We cannot vote to end every problem in health care; this bill will not do that. But we can make life safer, more secure, less costly, for most Americans, because we can give them a better health care system.

Briefly, here is some of what this legislation will accomplish:
People with preexisting conditions who are currently left out of the system will be able to get access to health care in the future. Within 6 months of enactment, this legislation will allow those not covered at work and who are unable to find insurance in the individual market because of preexisting conditions to buy a plan that will remain in place if they get sick. And it will offer free preventive services and immunizations.

The bill has provisions to help strengthen Medicare by giving seniors access to important preventive services that they may otherwise not be able to afford. And also for seniors, this bill reduces the Medicare doughnut hole, a gap in prescription drug coverage that I hope we are able to eventually close altogether.

After 2014, new plans will be barred from imposing annual limits on coverage, and sliding tax credits will be available to make insurance more affordable for those earning below $32,000 for a family of four, or earning below $43,000 for an individual. The credits that will be offered to make coverage more affordable will bring millions of Americans under the umbrella of health care in an important improvement for those families now without insurance and a step toward reducing burdens and inefficiencies that make health care more expensive for all of us. State-based exchanges will offer those seeking individual coverage both the purchasing power of belonging to a larger group, and a transparent marketplace in which benefits are standardized and costs are clear.

The bill also helps small businesses that are struggling to get a handle on ever-increasing health care insurance costs. Beginning in 2010, small businesses will receive a tax credit of up to 35 percent of their costs for insuring their employees and their employees’ families. In 2014 and beyond, the tax credit can be as much as 50 percent of an employer’s costs for covering employees. These credits will encourage these employers, which are the backbone of our economy, to provide health care insurance coverage.

The bill also includes some major insurance company reforms. Beginning in 2011, plans that do not spend a high percentage of their revenue for patient care—85 percent of revenue for large groups and 80 percent for the individual and small-group market—will have to provide rebates to their enrollees.

One of the benefits of this new requirement on insurance companies is reversing the troublesome trend that has seen more and more of our health care dollars spent on administration. Since 1970, the number of administrative positions in our health care system has increased by nearly 3,000 percent, far outstripping the growth in the number of physicians over the same period. It is long past time to ensure that these dollars spent on administration are spent on preventive services that are important to our health, or on our health care experts—are they all engaged in a conspiracy to engineer a socialist government takeover of medicine? I am afraid that some of our Republican colleagues have latched onto any argument at hand to justify their opposition to health care reform.

Let me ask one final question: What do opponents say to our constituents who speak to us every day of their belief that the time for health reform has come? That today is not the time? The man from Kalamazoo, MI, who went bankrupt because his health insurance would not cover $40,000 in costs for a life-saving heart transplant; did they tell him this is not the time? The woman from Jackson, Michigan, who spent months fighting to get coverage because insurance companies considered her pregnancy a preexisting condition—did they tell her that this is not the time? The worried mother who wrote my office to say, “We will lose too many bright young people—if something is not done”—will they tell her this is not the time? This is the time. Now is the time to embrace the same call of history that led our predecessors to ignore the apocalyptic rhetoric and establish Social Security and Medicare. We must pass this bill, so that generations after us do not look back on a broken health care system and say, “Here was another lost moment when it could all have changed.” We must pass this bill. Now is the time. Just as we are ploughing the roads of the road to snow to get to work, our work now is to plough through the endless filibusters to get our job done.

Mr. REID. On behalf of Senator Baucus, Senator Dodd, and myself, I submit this statement under the spirit of rule XLIV of the Standing Rules of the Senate. We hereby certify that, to the best of our knowledge and belief, the managers’ amendment to the substitute amendment to H.R. 3590 does not contain any congressionally directed spending item as defined in rule XLIV.

Rule XLIV defines a congressionally directed spending item as “a provision or report language included primarily at the request of an individual committee, subcommittee, or other expenditure with or without authorizing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other assistance to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory
Mr. REID. Mr. President, as we finish this session, there are many people who have worked to get us to this point. From the staff in the Senate to the Capitol Police, many employees have given their time to make sure that the Senate could complete its work on health care.

In particular, I would like to recognize the work of the employees of the Government Printing Office, GPO. Each day, the GPO works with the Secretary of the Senate to meet the needs of the Senate and we appreciate their efforts. Nearly 200 documents we have used for the health care debate have been printed and delivered by the employees of the GPO.

This past weekend, when the heavy snow blanketed the city and shut down most government agencies and operations, the men and women of the GPO came to work and remained at their posts. Some GPO employees spent the night to ensure that the Senate was able to get the documents we needed. Their performance throughout the health care debate was commendable and I would like to ask my colleagues to join me in thanking the GPO for a job well done.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAPO. Mr. President, as we approach the vote tomorrow morning, I know a lot of people are calling it a historic vote. In some contexts, I guess it is. However, many of us are concerned it is a historic mistake rather than a history-making opportunity.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from Senator Nelson of Nebraska dated December 21, 2009.

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list, people on their Facebook, their Facebook friends, everyone who is within their circle of influence—and ask them to also sign the petition and, if they didn’t live in Idaho, to contact their Senator and encourage their Sen-
ator to vote no on this legislation, if they agreed with me that it is not the path our Nation should follow.

Remarkably, more than half the people who have so far signed the petition did not get that information from me. They got the request or encouragement to sign the petition from the friend or relative. A huge proportion of them do not live in Idaho. In fact, we have had people from all over America, in every one of the 50 States, sign this petition.

Why is this happening? By the way, the number is growing. It is happening because the more Americans know about this bill, the more they know it is not the path they want us to take for health care reform. Health care is a personal, private, and a sensitive matter, and this bill goes the opposite direction. But the majority is moving full steam ahead in hope that they can pass it before the public can understand what it is and register their opposition. If we will take the time we have, if we drive health care reform without the tax increases, without the massive increase in the growth of gov-
ernment, without the pork barrel spending and the sweetheart deals, without the Medicare cuts and the un-
certainties in health care delivery, with the provision this bill presents.

Among the steps many of us are try-
ing to see enacted are things such as allowing insurance companies to com-
pete across State lines, allowing small businesses to band together to negoti-
te group rates for insurance, requiring pricing disclosures from health care providers to promote a competit-
itive, consumer-driven health care mar-
ket, and offering incentives for pa-
tients and the private sector to create wellness programs and other effi-
ciencies in health care delivery. In fact, when a bill similar to this was presented as a legis-
lation this decade that has come for-
motion this bill presents.

Let me go through a few of those to give more specifics. First, I don’t think most Americans, when they talk about health care reform, think that means we need to grow the size of our govern-
ment by $2.5 trillion. Although that is some smoke and mirrors in the way this bill is put together, because the first 4 years of its costs are not started until 4 years into the bill, so when you try to count the first 10 years, you only get to take the first true 10 years of spending in this bill, it increases the cost of this government’s health care expenditures by $2.5 trillion. As we can see on this chart, look at the first 4 years. The spending is basically deferred. Why would that happen? I will explain that when I talk about deficit issues. But what it does is hide the true cost of the bill. If you measure the true cost of the bill in the first full 10 years of spending, it is $2.5 trillion rather than the $1.2 trillion it would be if you counted it otherwise.

What we see is a massive growth of the Federal Government. That is not what people were asking for and, frankly, it makes them kind of do a doubletake when you explain to them that we are increasing the size of our government by such massive amounts with health care reform. Those pro-
posing that we adopt this bill often say: Our objective and what the Amer-
ican people want is to drive the cost curve down. I often ask, what cost curve are they talking about? If they are talking about the cost of health care or the cost of health care pre-
miums, they are going up. If they are talking about the size of the Federal Government and the level of Federal Government spending, that is going up.

There is one that they talk about. It is called the deficit. That is whether we are spending more than we are taxing and cutting. They argue that the def-
cit is going down. There is only one way you can argue that this bill does not increase the deficit, and that is if
you assume that we don’t have nearly $4 trillion of Medicare cuts, that we don’t have $5 trillion worth of taxes in the first year and $1.28 trillion of taxes in the first full 10 years of implementation and that we don’t have several budget gimmicks.

What are the gimmicks? The first and biggest is the one I showed on the previous chart. They don’t count the first 4 years of spending. They stop the spending and don’t let it start happening for 4 years, so that we have 10 years of taxes, 10 years of Medicare cuts, and 6 years of spending. When you balance that out, you can claim it doesn’t increase the deficit because you don’t have a full 10 years of spending.

There are other budget gimmicks. We have something called the SGR fix, the adjustments in compensation rates for physicians that we all know on both sides we must do. We must keep the physician compensation comparable and moving up with inflation. That is going to cost $245 billion, approximately, over the next 10 years. That $245 billion cost to reform and adjust the Medicare compensation system is absent from the bill. Why? Because they are going to do it in a separate bill and probably not pay for it. In other words, not have offsets. We will see whether they have offsets, but it is not in this bill. If it were, it would drive the deficit numbers by $245 billion in the wrong direction.

There are other types of gimmicks. For example, there is double counting of the Medicare cuts. The CBO came out with a report today that said that if you cut Medicare by $465 billion, claiming that you are going to use that $465 billion to help make the financial situation for Medicare more stable, you can’t then take that same $465 billion and use it to establish a massive new government program, yet a third major government health care entitlement system. Those who get their insurance from larger employers, have less liability of a harmful impact because they have that large group that can continue to negotiate to control their health care costs.

So what do we see? Even under the best scenario—there have been nine or ten studies of this and the CBO report is the one that is the most favorable toward the bill; most of the other reports have said that the rates are going to go up for everybody—but even if we take CBO’s number, 30 percent of the people will see their insurance rates go up, not down. The other 70 percent can expect basically the status quo; in other words, not any change at all, maybe a slight decrease.

Is that what the President’s plan is about? Is that what Americans were asking for robust health care reform system? No. Americans are asking for true, solid, significant control of the cost of their premiums and their health care costs.

I wish to move next to the question of taxes. This bill increases taxes by about 0.5 trillion. The President has pledged he wouldn’t sign a bill that involved tax increases on the middle class. He defined the middle class to be someone who makes less than $200,000 a year or as a family or a couple making less than $250,000 a year. Here is the President’s pledge:

I can make a firm pledge. No family making less than $250,000 will see their taxes increase.

He was pushed on this pledge and he clarified it. He said not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes. You will not see any of your taxes increase. The single dictator that is the President’s pledge. But what do we have? In the first 10 years, $493 billion in new taxes. The question is: Do those taxes all fall on the so-called wealthy, those making more than $250,000? Well, CBO and the Joint Tax Committee have analyzed it, and the answer is clearly no.

But before I get to that, let’s see what the taxes do in the first full 10 years of implementation. Remember, the first 4 years are kind of a slow start with the spending, but if you compare the taxes and the spending, count the total amount of taxes starting on the day when the spending kicks into gear, it is not $493 billion, or whatever the number was, it is $1.28 trillion in new taxes. That is not what the American people are asking for.

The next question you might ask yourself is: OK, how much of those taxes is going to be paid by people who the President pledged would not be hit? Well, the Joint Tax Committee has analyzed the bill, and by 2019—and the reason they use the year 2019 is that is the end of the first full 10 years of implementation—by the year 2019, at least 13 million American households earning below $200,000 will face a tax increase. That is not just people making $200,000, that is everybody who pays taxes who makes any kind of income less than $250,000 in America. Seventy-three million—not individuals—households will pay taxes under this bill.

One of the things that is interesting, in response to this argument, some of my colleagues on the other side have said: Wait a minute. That is not true. That is not a tax cut. Wait a minute, you have me saying this bill increases taxes and someone on the other side saying this bill cuts taxes. How could that be?

Well, there is a subsidy in this bill for those who are in lower income categories and are provided government dollars or subsidies in order to purchase insurance—the ones who are fortunate enough not to have been pushed into the Medicaid system. That subsidy is actually $400 billion or $500 billion in the bill, and it is administered by the IRS, so it is claimed to be a tax cut. If you offset that subsidy against tax increases in other parts of the bill, then you can say: Well, there is a tax cut in this bill.

First of all, that is not what the President said. The President did not say: I will not increase your taxes more than I will cut somebody else’s taxes. That is not what he said. What he said was: I will not increase your taxes more than I will cut somebody else’s taxes. That is not what he said. What he said was: I will not increase your taxes more than I will cut somebody else’s taxes. It increases the cost of health care.

What does it do to Medicare? It cuts Medicare by $465 billion in the first
year and, again, if you want to look at the first full 10 years, by $853 billion in Medicare cuts. Basically, what we have here in this part of the bill is an absolute transfer—an absolute transfer—from America’s senior citizens right over to the new government entitlement as a redistribution of that wealth to other people.

Senior citizens who have throughout their life paid the Medicare tax, the Medicare payroll tax, will now see the Medicare they thought they were going to get—tens of billions of dollars are being talked about that we may be dealing with here? The biggest one is Medicare Advantage—$120 billion of cuts.

About one in four American seniors has Medicare Advantage insurance. This is Insurance that was provided in a contract relationship with the private sector. In other words, it was an experiment to see if we could let the private sector deliver Medicare and how they would do it. They found they could do it better through the Medicare Advantage Program, increase the benefits seniors get.

This is probably the most popular part of the Medicare Program. It is growing rapidly. The reason it is growing rapidly is because it provides better coverage. Those in the Medicare Advantage Program are going to see their benefits cut.

Another pledge the President made was: If you like what you have, you can keep it. But in fact, if you have Medicare Advantage, it is also not true about a lot of people who have their insurance through their employers these days because that is going to be lost to millions of Americans too.

But in addition to the Medicare Advantage cuts, you are going to see hospital reimbursements, skilled nursing facilities, home health agencies, hospice, and others cut to the tune of $465 billion in the first 10 years. The experts have said that what that is going to do is to make impossible for many health care providers in these categories to keep their doors open, or it will cause them to reduce the amount and quality of services they provide.

So senior citizens are going to see their Medicare, particularly their Medicare Advantage, benefits cut and their access to care restricted and reduced under this bill.

In summary, there has been a lot of talk about how Americans want health care reform. But we need to do it in a smart and sensible way. Many have argued there are no alternatives being put forward by our side. As I indicated earlier in my remarks, that is simply not true. In fact, the alternative that we put forward in the House and the alternative many of us have been talking about here have been scored to actually achieve the results Americans are asking for.

We do not need to rush this bill through in a claim that we are making history but in a way that will be a huge historical mistake. The American people, in huge numbers, are asking us to slow down and stop it and start working together in ways that do not create a government takeover of health care, that do not drive up the size and reach of the Federal Government, that do not drive up taxes but instead provide the right kind of approaches to medical care that senior citizens need. Medicare benefits to our seniors, that do not put massive burdens on our States, and that do not force the neediest of our uninsured into a failing health care system, Medicaid. We are not going to have to back at this in the future if we do not get it right now. Only then will we be facing much worse fiscal circumstances and very difficult problems with sustaining the fiscal stability of the two programs we are now dealing with trying to sustain: Medicare and Medicaid. I urge my colleagues to listen to the people who signed this petition—people all across this Nation in every one of the 50 States—who are saying: Wait. Do not cut Medicare; do not cut Medicaid. We need to develop a solution that is workable, but do not make this mistake.

I encourage all my colleagues, as we are literally on the eve of the vote that will determine whether this bill makes it through the Senate, to step back and take a deep breath and ask: Is this the right reform, or will it not be better for all of America for us to move a little slower and start trying to build a bipartisan solution that can have true benefits for the American people.

With that, Mr. President, I yield the remainder of my time.

Mr. HATCH. Mr. President, there is a lot of talk from the majority about why passing this bill is the right thing to do for the American people. It is a decision of conscience for them. Well, let us take a closer look at these decisions of conscience.

After weeks of closed-door clandestine negotiations, Senator Reid finally emerged with a 383-page Christmas list. This is a clear example of everything that is wrong with Washington today. Despite all the promises of accountability and transparency, this bill is a grab bag of Chicago-style, backroom buy-offs. It is nothing more than the Democratic leadership’s own private game of “Let’s Make A Deal” with special interest groups financed by American taxpayers.

So who won and who lost in this game? Well let us take a closer look.

AARP issued a strong statement of support for this bill. The Reid bill slashes Medicare by almost $1/2 trillion to finance additional government spending. So, why would the Nation’s largest lobbyist organization, avowed to protect the interests of seniors, support this legislation? To find the answer, like anything else in Washington, just follow the money.

AARP takes in more than half of its $1.1 billion budget in royalty fees from health insurers and other vendors. The sale of supplementary Medicare policies, called Medigap plans, make up a major share of this royalty revenue. AARP has a direct interest in selling more Medigap plans. However, there is a strong competitor to Medigap policies—Medicare Advantage plans.

These private plans provide comprehensive coverage, including vision and dental care, at lower premiums for nearly 11 million seniors across the nation that Senator Reid and his colleagues believe do not need Medigap policies. So what happens when the Reid bill slashes this program by almost $120 billion? Just look at the Washington Post front-page story from October 27 questioning whether AARP has a conflict of interest?

Democratic proposals to slash reimbursements for . . . Medicare Advantage are widely expected to drive up demand for private Medigap policies like the ones offered by AARP, according to health-care experts, legislative aides and documents.

One of the most disturbing developments in the Reid bill has been the perpetuation and even doubling of the unconstitutional individual mandate tax from $6 billion to $15 billion. You heard Reid—this unconstitutional mandate tax actually doubled behind closed doors. I have long argued that forcing Americans to either buy a Washington-defined level of coverage or face a tax penalty collected through the Internal Revenue Service is highly unconstitutional.

We hear a lot of rhetoric from the other side about Republicans defending the big, evil insurance companies while Democrats are the defenders of American families. The insurance mandate is a clear example of this partisan hypocrisy. Let me ask one simple question: Who would benefit the most from this unprecedented mandate to purchase insurance or face a stiff penalty enforced by our friends at the Internal Revenue Service?

The answer is simple. There are two clear winners under this Draconian policy—and neither is the American family. The first winner is the Federal Government, which could easily use this authority to increase the penalty, or impose similar ones, to create new streams of revenue to combat out-of-control spending. Second, the insurance companies are the most direct winners under this individual insurance mandate because it would force millions of Americans who would not otherwise do so to become their custodians. I cannot think of a bigger giveaway for insurance companies than the Federal Government ordering Americans to either buy their insurance or the Government, which could easily use this authority to increase the penalty, or impose similar ones, to create new streams of revenue to combat out-of-control spending. Second, the insurance companies are the most direct winners under this individual insurance mandate because it would force millions of Americans who would not otherwise do so to become their customers. I cannot think of a bigger giveaway for insurance companies than the Federal Government ordering Americans to either buy their insurance or face a stiff penalty enforced by our friends at the Internal Revenue Service.

Jane Hamsher, the publisher of the very liberal blog Firedoglake, said the following in a recent posting: “Having to pay 2 percent of their income in annual fines for refusing to comply—with the government’s own law—might just wind up being the most widely hated legislation of the decade. Barack Obama just might achieve the
The so-called abortion compromise does not stop there. The Reid bill creates a State opt-out charade. However, this bill can do nothing other than raise one state’s tax dollars for paying for abortions in other states. Tax dollars from Nebraska can pay for abortions in California or New York. This bill also creates a new public option run by the Office of Personnel Management, OPM, that will, for the first time, create a federally funded and managed plan that will cover elective abortions.

When you have Senator BOXER and Speaker PELOSI, two of the largest pro-choice advocates in the Congress, supporting this sham so-called compromise and everyone from the U.S. Conference of Catholic Bishops to the National Right to Life Committee and the Family Research Council opposing it, there is only one clear loser—the majority of Americans who believe in the sanctity of life and oppose the use of federal dollars for elective abortions.

Last but not least, I would like to spend a couple of minutes to talk about the most real deal conferences on States in this $2.5 trillion spending bill. How hefty are the price tags for decisions of conscience? Here are some highlights: $300 million for Louisiana; $600 million for Vermont; $500 million for Massachusetts; $100 million for Nebraska.

At a recent news conference, when the authors of this legislation were asked about the Nebraska earmark for Medicaid funding, the majority leader simply replied, “A number of states are treated differently than others. That’s what legislation is all about. That’s compromise.”

The next logical question is pretty straightforward—who will pay for these special deals? The answer is simple. Every other State in the Union, including Utah, who are collectively facing $200 billion in deficits and are cutting jobs and educational services to survive, will now pay to support these special deals.

According to the Congressional Budget Office, the Medicaid expansion in the Reid bill creates a $26 billion unfunded mandate on our cash-strapped States. Coincidentally, only one state avoids this unfunded mandate—Nebraska.

Of course, let us not forget about the biggest loser in this bill—the hard-working American taxpayer. This bill imposes $28 billion in new taxes on employers that do not provide government-approved health plans. These new taxes will ultimately be paid by American workers in the form of reduced wages and job losses.

However, it is hard to say we didn’t see these new taxes coming. For years now, many of us have warned that the out-of-control spending in Washington will eventually have to be repaid on the backs of American families. In this bill, the repayment comes in the form of stifled economic growth, lost jobs, and new and increasing taxes—and they are just the first installment of what will be a long and painful extermination of taxpayers if Congress doesn’t stand up and stop these terrible bills.

According to a recent study of similar proposals by the Heritage Foundation, these new job-killing taxes will place approximately 5.2 million low-income workers at risk of losing their jobs or having their hours reduced and an additional 10.2 million workers could see lower wages and reduced benefits.

Poll after poll tells us about the growing opposition against this tax-and-spend health care bill. The latest Rasmussen poll shows that 55 percent of Americans are now opposed to this bill. The CNN poll has it even higher at 61 percent. Among senior citizens, the group most likely to use the health care system, only 33 percent are in favor while 60 percent are opposed. Independent voters are also opposed almost 2 to 1. Opposition in certain state polls, like Nebraska, is even higher at 67 percent.

So what is the majority doing to address these concerns? Nothing. In fact, despite the efforts by many of us here on this side of the aisle to express our substantive policy disagreements for months, one Senator recently said the following: “They are desperate to break this president. They have ardent supporters who are nearly hysterical at the very election of President Barack Obama. They nurture the fantasies of the people running around in right-wing militia and Aryan support groups, it is unbearable to them that President Barack Obama should exist.”

This statement is outrageous. In stead of listening to the policy concerns of a majority of Americans, the other side is simply dismissing them as rants from the far right. If the majority refuses to listen to what Americans are telling them now—I am sure they will have a rude wake-up call waiting for them later. It should come as no surprise to anyone that this kind of arrogance of power has led to congressional approval ratings rivalling the most hated institutions on the planet at dismal 22 percent and falling.

One of the biggest flaws of this bill is that while the majority is pouring billions of dollars into the budget gimmicks the majority can claim this bill reduces our national deficit when we all know these reductions will never be realized.

Based on data from the Joint Committee on Taxation—the nonpartisan congressional scorekeeper—this bill would break another one of President Obama’s campaign promises by increasing the deficit by an amount which is largely delayed until 2014. It is also no coincidence that through the use of these budget gimmicks the majority can claim this bill reduces our national deficit when we all know these reductions will never be realized.

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side of the aisle who do not believe in the Europeanization of America, who believe in doing truly bipartisan work here in the Senate, to step forward, vote against advancing this bill and work with those of us on this side of the aisle who are committed to making a difference. The public option in any form bill they can be proud to support.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, it is truly our honor to be here on this historic evening and speak in support of the bill which we will vote on early tomorrow morning, Christmas Eve morning. It is an honor because anyone who looks at this country knows the problems we have, and that two problems caused by the health care system are at the top of the list. One represents a more conservative point of view and one represents a more liberal point of view. But I am proud to say the bill we will pass tomorrow morning, God willing, will save lives.

The more conservative issue is controlling costs. The health care system costs this country a whole lot of money. By and large, we get good health care—not everybody but most people are happy with it, and that has been documented.

What does that mean? It means small businesses cannot grow and actually have less money to pay for wages. It means our large businesses are less competitive globally. We have seen that in the auto industry. It means individuals often have to pay a fortune for health care. It means our government runs deficits that are perilous to the economy. Health care costs are more the cause of our deficits than anything else.

On the other hand, we run a real problem because many people are not covered or covered adequately. The heartwrenching stories told by our fine leaders cannot give him enough kudos for the job he has done here; and I will talk about that in a minute—but the people who are not covered or covered poorly suffer in many ways. They become not only less happy citizens—that is most important—but less productive citizens. The heartwrenching stories of people who do not have coverage for them or their children we all know about. It also, by the way, increases costs because when people delay coverage, when they are ill, it evites costs.

This bill addresses both. I wish to, in my brief amount of time here—and I do not know how much time I have—address both. I wish to talk on the cost side first.

Why do health care costs go up so much more than any other product? Two main reasons. First, we do not have perfect knowledge, as the economists would say. We basically do not know what we are buying. When we go to the doctor, and the doctor says: You need this test, we do not know if we need it. Is the doctor genuinely prescribing a test we need or is there some element that he makes enough money on this test that why not? can’t hurt because we do not need it?

In my family, my relatives have all had prostate cancer, and I watch very carefully. But when I go to the doctor and he says I need this kind of test or this kind of scan, I say: Of course, if it were a car or a house, I might investigate to see if I needed it.

The second reason costs are so expensive is because fundamentally health care deals with God’s most precious gift to us, which is life. Who would not beg, borrow, or steal to find $100,000—who would not give their right arm if we were told our husband, our wife, our mother, our farther, our son, or our daughter was ill and $100,000 would give them a 25-percent greater chance of living better, of healing? We would do it. But because most of us do not have that $100,000, we buy insurance. That is the reason there is health care insurance. It is not because it is health care; it is because it is so expensive. So we are willing to pay $5,000 a year, so that, God forbid, if that time comes when we need that $100,000 to cover a loved one, it is there because we have insurance.

So when I go to the doctor and he says I need this special test, special scan, special procedure, not only do I not know whether I need it—because the training is difficult; and you can go online, but you cannot really figure these things out. I am not paying for it. You put those things together, and the costs go through the roof. We have tried in this bill to finally get a handle on the costs. Most other countries have. In America, we haven’t. We must. I believe very deeply in covering everybody, but unless we get a handle on the costs, we will not be able to afford to cover everybody. Even if we cover them today, we will run out of money in 5 years. We do it once for New York, and I am going to be very brief about them because my time is somewhat limited.

First, we deal with efficiencies. There is one form. If there is IT, as we put in the stimulus bill—information technology—we can save hundreds of billions of dollars. Just one form. You go to a doctor’s office, there is a nurse, a doctor, and there are four people filling out forms. If you had one form, you wouldn’t need that.

Second, prevention. Early intervention and prevention saves billions, and in this bill that is what we encourage, early intervention and prevention. Right now, amazingly enough, if you get diabetes in the later stages, Medicare or private insurance will pay for dialysis. God forbid. Good for them. Early intervention and prevention saves billions, and in this bill that is what we encourage, early intervention and prevention.

The third thing we try to do in this bill is provide competition in the insurance industry, and we do provide competition in the exchanges. We do put some limits on the insurance companies with the medical loss ratio provisions that Senator ROYCE, Senator FRANKEN, and Senator NELSON helped craft. If we could have had a public option, it would have created more competition. That is one of my great regrets, that we don’t. I worked hard for it, but we don’t. Nonetheless, we still get some limitation on insurance companies and create more competition.

The fourth is the hardest: fee for service. The fee-for-service system is what drives up the costs. This bill, more than any other provision ever passed in America, begins to grapple with that most difficult issue. You do those four things, and you will bring costs down.

It is no wonder that CBO has said that in the first 10 years, we save $127 billion, even though we are covering 31 million more people, and in the second decade, we will save $1 trillion. I forget the number. I think it is $1.3 trillion. We are doing whatever becomes President in 2020 a huge favor because, with the cost-control provisions in this bill, should they become law, we will get a great handle on costs. It will take a while, but it will do the job. On the other side, we don’t cover everybody, but 94 percent of all people will be covered, so it is an amazing feat to both cover many more people and reduce costs, and that is what this bill does.

I wish to say, for my home State of New York, there are lots of good things in this bill. We have 800,000 seniors who would be cut from Medicare who will not be because of provisions we were able to get in the Finance Committee. Graduate medical education, intermediate medical education—a lifeblood for jobs in New York because training doctors is probably our second biggest industry in New York City—is not cut even though it was proposed to be cut. Money for neighborhood national health services and community health centers will provide physicians in inner cities and in rural areas where they don’t have health care. They will get really good health care.

This bill is far from perfect. Had I written it, I would have written it a different way. Had Senator CANTWELL or Senator CASEY or Senator KROUCK written it, they would have written it differently from me. But if every one of us in this Senate insisted that the bill had to be written exactly our way, we would have 100 bills, each with 1 vote, and no progress. So great progress has been made, and this is a proud moment.

There are many people I wish to thank.

My staff—I do want to mention Meghan Taira, Katie Beirne, and all of the others who worked so hard; Jeff Hamond, who worked so hard and so diligently on this bill.

I thank MAX BAUCUS. He soldiered on and on when things looked bleak and
pursued his dream of a bipartisan bill, which would have been a better product. It wasn’t to be but not because of lack of his efforts.

Thanks go to Senator Dodd and Senator Harkin on the HELP Committee and my colleagues on the Finance Committee, but at the top of the list is just one person, and I was proud to be one of his lieutenants on this, and that is Harry Reid. I was up close. What an amazing job that man did, modestly, without complaining, without looking to win or complaining to him. He had a mission, a job: get us 60 votes on this very difficult, complicated proposal. And he did it. He will never get the credit he deserves because he is such a modest man, but I wanted to share that credit he deserves because he is such a talented legislator.

And he did it. He will never get the credit he deserves because he is such a modest man, but I wanted to share that credit he deserves because he is such a talented legislator.

This is a very fine day for this country, this Senate, and Leader Reid. Tomorrow will be the day that I am going to do everything I can to vote for this piece of legislation, certainly one of the most important I have ever voted on in my 35 years as a legislator.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I am proud to be out on the floor tonight with my colleagues. I thank the Senator from New York for his comments and his work in the Finance Committee. He literally did work night and day in that committee and then worked with Leader Reid on trying to get consensus within our caucus on this legislation. So I appreciate his strong, active support in making reform.

I, too, wish to add my congratulations tonight because we are here to talk about controlling health care costs and what we are going to do to help the American people. I too wish to thank my colleagues, Senator Baucus and Senator Reid, for their active leadership, as well as Senator Dodd and Senator Harkin.

I add my thanks to the whole Finance Committee staff. I don’t think people realize they have worked from January until December, many weekends as well as during the week, many late nights as well as early mornings, and they deserve a lot of credit for the details behind this legislation and making sure the ‘s are dotted and the ‘t’s are crossed.

I wish to thank my staff, all of my staff but in particular Mark Iozzi, who worked on this legislation, as did the rest of the Finance Committee members of the staff, for about the last 11½ months. I was glad to send him off on a plane today to reach his family, and hopefully he will be watching the vote tomorrow morning by television. It should be a proud moment for him.

I also wish to add a particular thanks to President Obama. I wish to say to the President that he started this year with the dedication that this was going to be a year where we got health care reform. He stated that at the beginning of his Presidency and held steady to that during the very raucous debate that happened in the early months regarding whether we would have the money to do health care reform. He remained committed as we went home over the summer and many things happened at town meetings. He came back and was determined that we would get legislation out of the Finance Committee and had to combine bills, remained active and intent about this legislation.

It reminds me of a saying my father used to make to me because he was a Navy man and always came up with nautical terms to kind of describe the direction in which he would want his children to go. The President’s actions on health care this year remind me of the saying “steady as she goes” because that is what the President has done for the last many months—steady as she goes so that we can get health care reform.

So I wish to thank all the leaders and congratulations to him and to his administration and to the many members of that administration who were down here on the Hill, including Mr. Messina, who made many frequent visits, I think, to Washington D.C. to talk about some of the details.

I am glad I am following my colleague from Idaho, from the Northwest, who spoke earlier, because I think it shows you can be from the same region of the country and have the very same interests but look at this legislation differently—not that I don’t share some of his concerns, and I am going to fight to make changes and add to the legislation and try to have it change conference and in the years after its implementation. I think the Senator has brought up some good points that we need to follow up on.

Controlling health care costs in general is what is driving us to take action tomorrow morning on Christmas Eve. We know we have already seen a 120-percent increase in insurance premiums for the last 10 years; that is, from 1999 to 2009, we have seen a 120-percent increase in insurance premiums and their premium costs. That is something the American people can’t afford. And when my colleague from Idaho talks about the increase we are going to see in the next 10 years, he is right.

Insurance premiums are going to go up again. This debate is about what we are going to do to try to control those costs, whether this legislation we are discussing today will have an impact in reducing those costs so that maybe we have another 10 percent to stay up another 120 percent in the next 10 years and make insurance even more unaffordable for the American people.

We know there are organizations that have done multiple studies. We know there is at least $700 billion in waste each year in our health care system. That is according to the Robert Wood Johnson Foundation. We know that is the kind of money that, if we were able to reform the health care system, we could reduce the costs of health care and improve the system.

Part of this is reforming Medicare and the cost of Medicare because Medicare dollars are the most expensive health care dollars today. The more expensive Medicare is, the end result is the more expensive insurance is in general. So it is very important for us to reform the Medicare system, to have provider reform, which this legislation has, and to change the system.

But we also have to deal with the cost of the uninsured because we know that Americans right now who don’t have insurance and who go to the emergency room are adding something like $43 billion a year in premium costs. That is $1,000 for each family in their premium increases.

I know we can do nothing and have these same costs on the backs of the American people or we can try to do something, and this legislation, to improve the quality of care and access and to lower the costs for Americans. That is why one of the main reforms I fought for in this legislation was about paying for value, not just paying money. That is the fee-for-service system that rewards physicians for how many procedures they do or how many patients they have seen a day but not for the value of the system. So I know that because of the change we have in this legislation, we are going to reward physicians, starting several years from now—something that has worked in my State and many States in the Pacific Northwest, that are more efficient at lowering the costs and increasing the efficiency and thereby rewarding those States with better Medicare payments.

What it actually means for individuals is that they are going to get shorter wait times, they are going to get better access to doctors, they are going to get more coordinated care, and they are going to get better outcomes. Why? Because that is what we are going to incentivize in these reforms. That is the kind of system that is working in parts of the country, and we need to be cost-effective, that yield better results for individual patients at lower cost.

I wish to thank my colleague from Minnesota, Senator Klobuchar, because it was her legislation that she introduced early this year that really catalyzed this effort to focus on many of the things done at the Mayo Clinic and things that had been done in Minnesota and things we had done in Washington State that said: Let’s change this process and save dollars for every American by getting off the fee-for-service systems and going to a system that will be more cost-effective. So I wish to thank her and her
State for that leadership and to thank those in my State who have performed the same way on efficiency to deliver this kind of health care reform.

A second cost control of this legislation that I supported that I think will do well for many people in this country is in the area of long-term care reform.

Some people may know that my colleague, Senator HARKIN, was on the floor and was talking about long-term care in the insurance sector, but part of what we are doing in this bill is also to incent States to move off of nursing home care and on to community-based care.

Home care juxtaposed to nursing home care is 70 percent cheaper and better meets the needs of individuals. I say that because my State implemented this policy to focus on long-term, community-based care decades ago. The end result is that kind of care has been more cost-effective, less expensive, personalized care, and individuals get to stay in their communities. I do not know any senior in America who would choose to go to a nursing home over staying in their home or in their community. But they have had very little choice up until now on this legislation with what States are able to do that because we continue to incentivize nursing home care.

There are some who need nursing home care because they need a higher level of delivery of care, and those people will continue to have that care. But we will save a lot in our Federal budget, as we look at our Medicare and Medicaid budgets, for the future if we simply take this one action. This bill alone would be worth passing just for that.

The Basic Health Plan. Many of my colleagues may have heard me talk about the Basic Health Plan as a basis for what I was discussing in this policy. That was added to the budget in Washington, and that is what would happen after 20 years of us putting a plan in place is that hundreds of thousands of Washingtonians got more affordable health care. It has been a plan that has worked effectively. No one has tried to dismantle the program from a political perspective. I think working together with the Federal Government we can show more cost containment for the American public.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I ask to speak for 12 minutes.

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

Ms. KLOBUCHAR. Mr. President, I come to the floor in support of the Patient Protection and Affordable Care Act. It is an honor to follow my friend from Washington, Senator CANTWELL, who has been such a leader on the Finance Committee in focusing on the very issue that is key for my State; that is, cost reform, delivery system reform, because for too long the people in cost-efficient States, such as Minnesota, that every State in the country takes the option of delivering health care through that kind of negotiated public plan that will allow them to drive down insurance costs.

I hope we can expand the Basic Health Plan in conference to an even more robust plan that would cover more people. It does not make sense to me to continue to subsidize expensive insurance by giving Federal tax credits when I know the bill to the Federal Government and to the individual tax payers would be cheaper by implementing negotiated rates.

While we have not been able to fully implement that at the Federal level, let’s not hold States back. Let States do what they have done best for the last several decades; that is, innovate—innovate more quickly, more effectively, not without a Federal partnership but in a partnership with the Federal Government and in a partnership with a public-private mechanism that I think has been cost-effective for the last 20 years.

Tomorrow, I will be voting in support of this legislation because I believe in the innovation this legislation enables. I know when we passed the Basic Health Plan in the mid-eighties people said the same thing. There were concerns about whether we were going to be able to implement the cost-effectiveness. In fact, at that time, it was said that some stakeholders believed it would be an entitlement. Others saw it as essentially a cost-containment measure that would reduce uncompensated care. Some others thought it would demonstrate the viability of government-subsidized health care. Advocates wanted to implement something quickly so they could develop constituencies.

All these things are similar arguments to what we are hearing today and what this debate has been about. But I know that what happened after 20 years of us putting a plan in place is that hundreds of thousands of Washingtonians got more affordable health care. It has been a plan that has worked effectively. No one has tried to dismantle the program from a political perspective. I think working together with the Federal Government we can show more cost containment for the American public.

I thank the Chair. I yield the floor.
Washington, and Wisconsin, have been seeing other States not quite offering that kind of quality care we would like to see all over the country.

I think it always shocks people. If you go to a hotel and you say you want to go to a room, usually if you spend more money you have a better room and you have a better view. That is not true with health care.

Time and again, we see studies across this country—academic, bipartisan studies—and I think, in fact, some of the highest quality health care comes with some of the lowest costs.

As the Senator from Washington talked about how we can save that $700 billion year that is wasted in our system, a lot of it comes not at the cost of care but actually at getting better care, because if you reduce unnecessary waste, if you stop having people running around to 20 different specialists who are giving them conflicting advice and not referring and not knowing about the patients they are taking, when you have those disorganized systems, they not only cost too much money for everyone, they also give worse care. That is why the Mayo model, an integrated care model with one specialist for working with a team of specialists is a model we would like to see all across this country.

We cannot simply keep pushing our problems to another day. Rising health care costs are unsustainable, busting the budget of families and businesses alike. If we do not act, these costs are going to break the backs of the American people.

This country spends $2.4 trillion on health care alone. That is $1 out of every $6 in the American economy. It is projected to be 20 percent of our whole economy in 2020 if we do not act. Despite spending 1½ times more per person on health care than any other country, we all know there are many problems in our health care system.

Wages simply do not keep pace with premiums. Peoples’ wages have been stagnant or maybe even gone up a little, gone down some or they lost their jobs, but health care costs continue to skyrocket.

I always tell the people in my State there are three numbers we need to remember—6, 12, and 24. Ten years ago, the average American family was spending 6% on health care. Now they are spending $12,000, with many people spending a lot more. What will they be spending in 10 years if we do not act? Mr. President, $24,000, up to $36,000 a year on their health care premiums.

When I go around my State, I hear these stories all the time. Granite Gear, a little backpack company up in Two Harbors, MN, makes backpacks for our soldiers. They have done well. They built their business. The guy in charge said he would not have started that business if he knew then what he knows now; that is, for his family of four, a small little business in Two Harbors, MN, he is spending $24,000 a year on his health care.

I have heard from doctors at Gunner-son Lutheran in La Crescent, MN. They told me the story of how at one of their hospitals in their region they had three patients in a 1-month period come into the hospital for the same stomach problems. They had ruptured appendixes. Do you know what they said as to why it got to that point? For two of them, they worked at small busi-

nesses and they were afraid it was going to go bankrupt. For the third one, they were going to put more emphasis on health care coverage for that little company. The third one could not afford the copays. They waited and waited and waited. They got a doctor and that doctor was the emergency room, one of the most expensive care in this country.

I heard from a mom in Bemidji, MN, who has a daughter named Micki. The mom’s name is Sheryl. She wrote me a letter. She said:

I just got off the phone with my daughter Micki. At first, I couldn’t understand her because she was sobbing so hard. Her husband had just been told by his boss that they wouldn’t be carrying health insurance on their employees. So he worked for a small company and it was costing them $13,000 a month. For her, this is a matter of life and death. She has cystic fibrosis. Her medical costs can run anywhere from $7,000 to $13,000 a month. Because it is a preexisting condition, the insurance companies won’t touch her unless it is under a group plan like the one her husband just lost.

She went on to say in her letter:

You need to stand and be my voice, be Micki’s voice. Micki is a fighter but she can’t keep fighting a system that is so against her. Micki has already lived longer than any of her doctors expected. We need you to be her voice.

That is why this bill is so important.

The status quo is simply not sustainable, not for families, not for small businesses, businesses that are trying to compete internationally against other companies and countries that have more efficient health care systems.

Despite claims from my friends on the other side of the aisle, we have spent months debating this issue. The C-SPAN viewers know what I am talking about. If you look at the input the Republicans have had on this bill, you can see that over 160 amendments were accepted in the HELP Committee. Dozen upon dozens of amendments and roun-

dable discussions were held in the Sen-

ate Finance Committee.

They have engaged across this coun-

try—so many people, sadly—in a cam-
paign of misinformation. I know a lot of people in Minnesota and across the coun-

country are left trying to wade through all the ads, misinformation, and scare tactics to find out what this bill is about. Well, this bill is not perfec-
t, as so many of my colleagues have said. We will work to make changes where I would like to see more cost reform in this bill. But what we do with this bill is a beginning not an end. We work to reduce cost, we work to expand coverage and increase choice and competition for American consumers.

First, and very important to me and to my mother—who is 82 years old—this bill protects Medicare and our seniors. Medicare is one of the most valuable programs our country has produced in the last half century. Yet it is also a program in dire need of re-

form if it is to survive on sound finan-
cial footing and continue to provide the fine medical care our seniors have come to depend on.

By 2011, the first baby boomers will enter the Medicare system. Without action, if we sit and put our heads in the sand, it will go in the red by 2017. So think of people such as my mom—82 years old. She wants to live well into her 90s and beyond. Think of people who are 55 and who want to be on Medi-
care when they are 65. It is going to go in the red by 2017 if we don’t do some-
ting to make sure it is on strong finan-
cial footing.

With this bill, we start to do that. We extend Medicare solvency by 10 years. I am encouraged that my legislation can create a value index, which the Senator from Washington discussed, as part of the discussion. Of course, that is not to undermine Medicare’s fee schedule. That was in-

cluded in the Senate’s bill. This index-

ing will help reduce unnecessary proce-
dures because those who produce more volume will also need to improve care or the increased volume will negatively impact fees. Doctors will have a financial incentive to maximize the quality and the value of their services instead of just the quantity.

My favorite story along these lines is not from Minnesota but from Geisinger, PA. They were trying to figure out: How do we best treat diabetes. We are not happy with the results. They realized with the routine cases, those were the people they wanted someone to see more often, to check in on them. So they had them assigned to nurses and the more difficult cases to the endocrinologists. The endocrin-

ologists would review the nurses’ work and make sure there was proper followup if there had to be adjust-

ments. At the end of year, they had much happier patients. The quality of care went way up, and they saved $200 per month per patient.

What does our system in America do now that does the Medicare system do? It punishes them for that good work. So that is what we are talking about, actually getting that higher quality. You can save money if you have the right incentives in place.

With this legislation, we also stop paying for care that doesn’t result in quality patient outcomes. Who wants to go into the hospital to be treated and get sick from something else during that hospitalization? When you have to go back again, that is called a hospital readmission. Hospital readmis-

dions cost Medicare $17.4 billion. A 2007 report by the Medicare Payment Advisory Commission found
Medicare paid an average of $7,200 per readmission that was likely preventable. This practice must stop. This isn’t good care for patients, and it is not a good investment for taxpayers.

The bill also establishes an independent Medicare Commission tasked with presenting Congress with comprehensive proposals to reduce health care costs and improve quality of care for Medicare beneficiaries. The current Medicare payment policies are not working for patients, doctors, and hospitals. We have to control costs and we have to get that high-quality care we see in Minnesota throughout the country.

In this bill, we also work to stop fraud and abuse. Law enforcement authorities estimate that Medicare fraud costs taxpayers more than $60 billion every year—$60 billion going to con men, $60 billion going to store fronts that say that they are a doctor’s office, when all that is behind it is a bunch of fraudsters setting up shop and getting checks meant to go to providers of care to our seniors—$60 billion a year. Finally, we have a bill that puts the tools in place—enhanced criminal penalties—that allows for direct access to these payments from the government to those providers, so we don’t have people ripping us off with an antiquated system of bad and false checks. With this change, we put a stop to criminals running phony businesses and dealing Medicare checks from our seniors.

We are also working to help our seniors with the cost of their prescription drugs. Millions of Americans depend on prescription drugs to help them manage chronic disease or other illnesses. But drug prices continue to skyrocket. That is why I voted for reimportation, to allow these safe drugs to come in from places such as Canada. We are not afraid of getting our medications from Canada. We like to shop abroad to vacation and to fish in Minnesota, and we go to Canada to shop and to work and to fish. We don’t have a problem with their drugs. Sadly, that proposal did not pass the Senate, but I will continue to advocate for that.

What does this bill do so far? What it does is to help fill that doughnut hole, that point where seniors who had been getting help with paying for their prescription drugs stop getting that help. That doughnut hole is now filled.

This provision provides relief for our small businesses. Right now, small businesses pay 20 percent more than large businesses for the cost of care. In a recent national survey, nearly three-quarters of small businesses that did not offer benefits cited high premiums as a reason. Beginning in 2011, with this legislation, small businesses will be eligible for tax credits worth up to 35 percent of their contribution to their employees’ health insurance plans. By 2014, these tax credits will even increase more.

This legislation, as we all know, also creates insurance exchanges known as small business health option programs—or SHOP programs—where small businesses can finally pool their numbers and do what big businesses do—negotiate for better rates for their insurance.

I believe with the passage of this bill—and this is one of my favorite parts—kids can’t be denied coverage due to preexisting conditions. If your son or daughter gets sick, an insurance company can’t look at you and say: I am sorry your kid got sick, you don’t have any insurance. Look at the story I just read with Micki, the woman whose husband lost his insurance. She has cystic fibrosis, and she is not sure if she is going to be able to get insurance. This puts an end to that and for kids it does it the minute the bill gets signed into law.

Insurance companies will be barred from limiting the total benefits Americans can use over the course of a year or over their lifetime. Affordable insurance and these benefits will also be made immediately available through a high-risk pool for Americans who have been uninsured and have been denied coverage because they have a pre-existing condition.

With the tax code change, insurance companies immediately must fully cover regular check-ups and tests that help prevent illness, such as mammograms or eye and foot exams for diabetics.

In addition, children would continue to be eligible for family coverage through the age of 26. I see my friend, the Senator from Pennsylvania, is here. Maybe he has four children who will soon be 26. I know many people are glad this bill has contained in it a provision that says you can keep your kids on your insurance until they are 26.

We know this bill isn’t perfect, no big piece of legislation ever is. There is still work that needs to be done in coming years, and I still need negotiations that will take place. There are still things that need to be fixed. We know this is only the beginning of reform, not the end, but we must keep looking to the future. For too long, health care costs have been spiraling out of control. That is why we can’t afford to hold off any longer on reforming health care.

I am going to close by reading something Vicki Kennedy—Ted Kennedy’s widow—wrote this weekend in the Post. This is what she wrote this weekend:

The bill before Congress will finally deliver what our seniors have been waiting for, what they deserve and what they expect—^quality of care. It is time for Congress to act and for the American people to decide. Tomorrow morning, Christmas Eve, will be the vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. CASEY. Mr. President, I wish to commend my colleague from Minnesota, Senator Klobuchar, for the outline of the bill and the important priorities we are here to debate. This is the last night, the last couple of hours, before we vote on the bill tomorrow morning, and I wish to do two things. One is to highlight, in very brief fashion, some of the main benefits of this bill to the American people—and especially to our families—and then to speak of one particular family from Pennsylvania who I will talk about in a moment. By way of overview, what we tried to do in this bill, and I believe we have accomplished it, is not only to meet the goals President Obama set forth in the early part of this year as he assumed the Presidency but to make health care reform a priority, but I also believe we are trying to meet the goals and the objectives of the American people. I think we have reached that point.

This legislation to reform health care will, first, not only be deficit neutral, but over the first 10 years of the bill it will save $132 billion—reduce the deficit $132 billion.

Something we haven’t talked enough about, and we have all had a lot of important debates, but in terms of covering those who don’t have any coverage today, this bill will cover 31 million Americans. We know, for example, the Medicaid Program, which is more than 40 years old, covers 61 million Americans, and Medicare covers 45 million. So in this one piece of legislation, not after 10 or 20 or 30 years but once it is fully implemented over the next couple years, it will cover 31 million Americans. That will not only be beneficial to those individuals and their families, but I would argue it is good for our economy. They will be more productive workers and our economy will be stronger because we covered them.

The bill extends Medicare solvency. That is something we hear a lot about. We have heard a lot of discussion about Medicare but what about making sure it is solvent. Our bill does that.

Prescription drugs. A lot of families have benefited from our prescription drug program, but then they fall into a time period where they are paying the whole freight. It has been referred to as the “doughnut hole,” but that doesn’t capture the gravity of the problem for many older citizens. When they fall into that so-called doughnut hole, they are in big trouble because they have to carry the
whole burden. They have to pay for those prescription drugs all by themselves. This bill addresses that, something that has gone unaddressed for a number of years.

The number of children in our country who lack health insurance and other initiatives has grown, thankfully. We will be growing from 7 million kids covered under the prior legislation to 14 million under the children's health insurance. But a lot of those children who don't have health insurance, or those who, if they do have health insurance, do not have coverage because of a preexisting condition exclusion. Their ability to have coverage will be limited because they have a preexisting condition. What our bill does is to say that upon passage of this bill, within months of the passage of this bill in 2010, children will be fully protected in this sense: Any kind of act by an insurance company to deny them coverage because of a preexisting condition exclusion with respect to existing condition exclusion with respect to any child will be illegal. And, just as important, we provide a high-risk pool for them.

We protect consumers in other ways. I was holding a copy of the first half of the bill here. Sometimes bills get real complicated, and I know our colleagues on the other side have complained about the size of the bill. But to get it right, you have to put in a lot of detail. On page 78 of the bill, it is very clear. On page 78, the bill deals directly with the preexisting condition problem. Millions of Americans have been denied coverage over the last couple of years because of this one problem—millions of Americans. Here is what it says, very simply, on page 78:

A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such a plan or coverage.

It is not long or complicated. It is one sentence—one sentence that, at long last, provides the kind of protection that insurance companies have refused to provide to adults and children, and the protection for children goes into effect within a matter of months after enactment.

Let me make two more points, and then I wish to talk about an individual and her family. The Children's Health Insurance Program, as I said, has been extended. But what happened in the earlier versions of the bill was the full funding was cut off in 2010. In the bill, we now have added to that. So now the children's health insurance funding will be extended 2 more years. So at least through the end of September 2015, the Children's Health Insurance Program is fully funded.

We have made a difference. We have to move forward, but we have extended it 2 more years.

We also have done some things in this bill that didn't get a lot of attention. When we were in the early stages of this bill way back in the summer, in the Health, Education, Labor, and PEN- sions Committee, Senator DODD and I and others included provisions in the bill long before it was amended in the original bill we put before our committee this summer.

For example, mandating prevention and screenings for children; 2, ensuring pediatric benefits as well as pediatric input into the formation of benefits; vision and oral health care for children, and, finally, in this section, strengthening the pediatric workforce. If we are going to give children the kind of expert help they have a right to expect and we have a right to expect for their care, we have got to make sure we have the workforce, the high-skilled work force, the doctors, who are, in fact, pediatricians, so all kinds of benefits for our children and for our families.

But this isn't just a debate about policy and the provisions of the bill. That is, obviously, part of what we are here to do. What we are here to do is meet the needs of all of America. I have met a number of them in Pennsylvania, and every Member here, whether they are for or against the bill, whether they are trying to kill the bill on the other side or whether they are trying to support and pass the bill on this side, could tell a story. Each of those Senators could tell a story about many families in their State.

One story is to remain an inspiration for me from one day, going way back in February when I received a letter. This woman in Pennsylvania who wrote to me remains an inspiration. Her name is Trisha Urban, from Berks County, PA, right near Reading and the eastern side of our State. She wrote this letter. I will quote major portions of the letter. She talked about herself and her husband. She said her husband had to be removed from school and complete his internship requirement to complete his doctorate in psychology. “The internship was unpaid and we could not afford COBRA.” She goes on to say that because of preexisting conditions neither her husband’s health issues nor her pregnancy—Trisha talked about her pregnancy in the letter—“nor my husband’s health issues nor my pregnancy would be covered under private insurance. I worked four part-time jobs and was not eligible for any health benefits. We ended up with a second-rate insurance plan through my husband’s university.”

“When medical bills started to add up, the health insurance company decided to drop our coverage,” stating that the internship didn’t qualify us for benefits. It didn’t stop there for a second. So within the space of two sentences, she has highlighted at least two, if not three of the major problems with the preexisting condition problem that I pointed to in the bill and we have heard about from so many others, and also dropping of coverage, arbitrary actions by an insurance company to drop coverage when they believe it is in their best interests and not in the interests of the family.

I will pick up with the letter. I am quoting here again from the letter from Trisha Urban:

We are left with close to $100,000 worth of medical bills. Concerned with the upcoming financial responsibility of the birth of our daughter and the burden of current medical expenses, my husband missed his last doctor’s appointment less than one month ago. Less than 1 month from February of 2009.

Here is her story, the tragic part of her story, in addition to all of the problems she had with her health insurance company and all of the challenges she and her husband faced getting coverage for her family, her husband’s heart condition and in her coverage, as well as her pregnancy, she talks about that night in early 2009 when she was ready to deliver her daughter. She said:

My water broke the night before. We were anxiously awaiting the birth of our first child. Half hour insurance were in my driveway. As the paramedics were assessing the health of my baby and me they paramedic from the other ambulance told me that my husband could not be revived.

Here’s Trisha Urban, having lived through all of those difficulties with her own insurance and her problems with insurance and worrying about her pregnancy and worrying about her husband’s death. She walks up to her driveway the exact day that her baby was born and she finds her husband dead in the driveway.

The chart depicts the headline from the Reading Eagle dated February of this year: “Tilden Township Woman Tends to Baby Born Hours After Her Husband’s Death.” I will cite a few facts from the story: Just after noon, Thursday, Trisha A. Urban gave birth to her second child, Cora Catherine.

Because of that tragedy and maybe only because of that tragedy I met Trisha Urban months after she wrote a letter to me, and I met her daughter. They came down to hear the President’s speech to a joint session of Congress. I held her daughter Cora. I probably never would have met that beautiful and wonderful little girl if this tragedy were not for this story.

I am not sure what I would do if I were in her case. I am not sure if I would have remained so saddened by it and so frustrated by what the insurance companies did to her or didn’t do for her. Anyone would understand that, if she or I or anyone else who suffers that tragedy would look within themselves and suffer alone with their family. Patricia Urban didn’t do that. She didn’t just tell us about the problems she had with her health insurance company; she didn’t just tell us about the tragic death of her husband; she did more than that. She wrote to me.
For those who say, well, we don’t need to do anything about this health insurance problem, I would ask them to listen to Trisha Urban. She said at the end of her letter:

I am a working class American and do not have the money or the insight to legally fight the health insurance company. We had no life insurance. I will probably lose my home, my car, and everything we worked so hard to accumulate in our life will be gone in an instant.

But then she says this:

If my story is heard, if legislation can be changed to help other uninsured Americans in a similar situation, I am willing to pay the price of losing everything. I am willing to share my story with others in Congress and I am willing to speak on behalf of my husband so that his death will not be in vain.

So says Trisha Urban in this letter. She challenged me with that letter, or at least I took it as a kind of challenge I wanted to accept. I think she challenges all of us. If Trisha Urban, who lived through those problems with the health insurance company, denied coverage because of preexisting condition, dropped coverage, medical bills going through the roof, and then the ultimate tragedy, the death of her husband, if she can endure all that and still stand up and say, I am willing to pay the price of losing everything I need, I am going to do that to try to help pass a health care bill—if she can do that, the least we can do is to do what a lot of us have tried to do over many months, which is to work on this, to debate it, and to fight hard to pass it. So tomorrow morning in the early hours of the morning, when it might still be dark out, it is my hope and prayer there will be a little light in that darkness in the early morning tomorrow when we pass this bill, and we can say that we did our best.

I know we are not done yet to get this bill out of the Senate. I know we are not done yet. We can at least say we did our best, that we tried as best we could to be responsive to, to answer the plea for help and the invocation of hope that Trisha Urban has in her letter.

I have remained ever inspired by her courage, by her willingness to speak up, and by her willingness to be a witness not just to what has been going wrong with our system and not just giving testimony about her husband’s death but the way Trisha Urban has been a witness to the hope and the promise of change that will come with this bill. I know tomorrow morning isn’t the end of the road. But tomorrow morning is at least the beginning of the end of a lot of these tragedies and a lot of these stories.

So on Trisha’s behalf as we say on behalf of so many others, we need to get this legislation passed tomorrow morning and to move forward in a positive new direction in terms of what happens to our system.

With that, Mr. President, I yield the floor.

I suggest the absence of a quorum.