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

Reid amendment No. 3292 (to amendment No. 2786), to change the 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—

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 to me. And I read his letter, and he says that this bill is going to create a surplus in the Treasury but, in fact, will put us in a deficit.

The combination of lower Part A costs—

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 we 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 7 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 for 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 97 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.

It will not be long now until people with preexisting conditions will have access to health care.

It will not be long now until the law will prohibit insurance companies from imposing lifetime or annual limits on benefits.

It will not be long now until parents will be able to include their children up to age 26 on their insurance policies.

It will not be long now until the law will require insurance companies to report on the share of premium dollars that goes to pay medical care, and the share that doesn’t.

It will not be long now until consumers will be able to shop for quality insurance in new Internet Web sites, where insurance companies will compete for their business.

It will not be too long now until millions of uninsured Americans will be able to buy health care on new exchanges with tax credits to help make it affordable.

It will not be too long now until the law will prohibit insurance companies from discriminating against women in setting premiums.

It will not be too long now until the law will limit insurance companies in how much more they can charge when people get older.

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 long last, pass this historic legislation.

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

The ACTING PRESIDENT pro tempore. 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 Senate 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 94 percent. For all Americans, we are going to increase the number of insured 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.

This is a moral issue. It is an issue of whether health care is a privilege or a right. I believe the values of America teach us that health care should be a right for all Americans.

The bill we will be voting on will take us very much in the direction of achieving that goal. Today in America too many people fall through the cracks. Too many families are literally destroyed because they cannot afford access to health care. Therefore, they don’t get the tests they need; perhaps a disease that could have been caught early or prevented is lost, and a person has to go through tremendous health care treatment; perhaps even losing their life.

There are too many families going through bankruptcy because they cannot afford the health care they need. We see too many literally cutting their prescription pills in half in the hopes of being able to keep their medicine for a longer period of time because they cannot afford it, knowing full well they are compromising their health.

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 could not 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.
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 policies with two separate deductibles—which the family cannot afford—two separate premiums that the family cannot afford.

There is no 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 will work to reduce the costs 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 can only do with early detection works. Management of diseases works.

Most of our health care costs in America are spent on the leading diseases such as cardiac care and diabetes. We know we spend a lot of money, but we can manage those diseases more effectively, and this bill takes us down that path. We can save money by investing in health information technology. Think about that—about how much paper we receive every year from our health care system. Think about our medical claims and how that could be used to help us each manage our own health care and take more responsibility. We are not doing that today. We know that we can use a card to go anywhere in the world, and they can track our financial records. But for health care, that is not true today.

By investing in health information technology, we can reduce a significant amount of costs in health care, and better manage each of our own health care needs. That is what this bill does.

This bill will cover 31 million more Americans. That is not what I am saying as a Democratic Senator from Maryland; that is what the CBO is saying this bill will achieve. 31 million more Americans will not have to go to an emergency room to get their primary care needs met.

Think about how much it costs each one of us when that person whose only option is to go to an emergency room, how much that costs us. You see, many of those individuals cannot afford those hospital charges; so it becomes uncompensated care. It is added to the rates in the health care system, and I pay hospital bills, and I pay those of you who have health insurance.

The people in Maryland who have health insurance have a hidden tax of $1,100 every year. It is not only a waste of money that we have to pay. It is an inefficient way to work that is inefficient. There should be facilities available so that everybody can get care in a much more cost-effective way. This bill moves us toward those goals. It provides competition so we can bring down the cost of health insurance through the local exchanges.

Another provision in the bill that I am very excited about is that we can cross State lines for competition, so if you are an employer in Maryland and you hire workers in Maryland and Virginia and Pennsylvania, you are able to get the regional and national competition so you have more choice on the health insurance companies. That will also bring down costs but also increase quality, which is what we are trying to do.

For Marylanders, this bill is important. This bill will help reduce the Federal deficit. How many of us have talked about that? I know that people who watch us say: Gee, I hear a Republican Senator and then a Democratic Senator; is this the same bill they are talking about?

Let’s talk about the Congressional Budget Office, the objective scorekeeper. The Congressional Budget Office says this bill will reduce the Federal deficit by $132 billion—$132 billion, that is a B, billion. That is quite an accomplishment when you realize that to get everyone covered, the Federal Government is providing subsidies which will cost us some additional investments. To make sure small businesses can afford it, we provide tax credits. That costs revenues—people insured, they have tax preferences. Yet the Congressional Budget Office has confirmed that this bill brings down the deficit by $132 billion in the first 10 years.

Let’s look at the second 10 years because a lot of us want to look at the long-term impact. The Congressional Budget Office, the objective scorekeepers, tell us it will reduce the deficit by one-half of 1 percent of the GDP or about $1.3 trillion. It is quite an accomplishment to get everybody covered and have the taxes that is confirmed by the Congressional Budget Office. That helps the people of Maryland, and that is why the people of Maryland benefit from this bill, as do the citizens of every State in the Nation.

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 under the age of 26, the health care is a way by which so many seniors are finding their program under attack. They have tax preferences. Yet the Congressional Budget Office, the objective scorekeepers, tell us it will reduce the Federal deficit and have the accomplishment to get everybody covered.

I am very pleased the managers’ amendment has added four very important provisions I authored by an amendment. That I have been working with the Democrats and the 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 and pay the bill, and if you have no emergency insurance, we will bill you because emergency insurance companies crossed State lines for competition, so if you are an employer in Maryland and you hire workers in Maryland and Virginia and Pennsylvania, you are able to get the regional and national competition so you have more choice on the health insurance companies. That will also bring down costs but also increase quality, which is what we are trying to do.

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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—there are important protections to get into this.

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, if you have kids, if it is to be OB/GYN, 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 companies 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 in the Senate.

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 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 talk about colleagues that is in the underlying bill. It is in the package. It is in the managers' package which has been adopted.

I am going to suggest to the body that we withdraw the amendment because we do not need it to pass; it is already in the underlying bill. This was the original amendment I submitted. I wished to explain that because the amendment I filed to establish the Minority Health Office at the Department of Health and Human Services, within NIH, is 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 NIAMKE, Senator HARKIN, Senator DODD, Senator MENENDEZ, Senator MURkowski, Senator HAYAKAWA, Senator JOHNNESON, Senator BROWNER, all of whom 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, Health Care Research and Quality, Food and Drug Administration, the Centers for Medicare & Medicaid Services, and it elevates the current Center on Minority Health and Health Disparities at NIH to an Institute. 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 disparities. It is one thing 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 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 through using 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 the access to care through our community health centers. That is good 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 have a situation that provides 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 we continue 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 to the Members here, we have to act. 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 paying 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 Delaware is recognized.

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

Mr. KAUFMAN. Mr. President, 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. In years and months, since this reform effort has been a long and deliberative process, not the rush job opponents of this effort have been claiming.

I must admit, however, there were times during this debate when I was not sure if we were ever going to reach this point. In fact, I was convinced we were not. But I found in my life that when you think things are never going to happen, as with every important thing I have ever done, you reach a point when you say this is never going to happen, and this is another example. There are many times I never thought this would happen.

From the bogus charge of death panels—just named Politifact.com’s “Lie of the Year”—to the tension over whether the bill will contain a public option, which I supported, there were some long days where it was hard to see how we were going to get to point.

But thanks to the hard work of the majority leader, as well as Senators BAUCUS, DODD and HARKIN and their staffs, we are finally here.

As many of you know, I have worked in and around the Congress for more than 36 years. I have learned quite a bit about how things operate in the Senate.

The Senate is commonly referred to as the most deliberative body in the world. But such deliberations are not always pretty. Sometimes tempers flare, sometimes debate does not reach the level we aspire to or the American people deserve. Sometimes the most important legislation actually fails to get that necessary airing.

We all know what happened to health care reform the last time we attempted a major overhaul 15 years ago when President Clinton tried to pass his version of health care reform. The debate was just as passionate with charges and countercharges on both sides of the aisle. Because of the coarseness of that debate, because of the seemingly intractable opposition to health care reform, Congress has been wary in the intervening 15 years to take up this cause again, and it is understandable.

But over the past 15 years, our health care system has gotten more expensive. Rising medical costs, skyrocketing premiums, increasing numbers of the uninsured and the strain on both business and providers have brought the critical need for health care reform back to the Senate this year.

Make no mistake, we need health care reform now. The status quo—what I call the current health care system—is simply unsustainable.

Medical costs account for one-sixth of domestic spending and are headed upward. In 1979, we spent approximately $220 billion as a nation on health care. In 1992, we spent close to $850 billion. In 2009, we will spend $2.5 trillion on health care. Listen to this: $220 billion in 1979, $850 billion in 1992, and $2.5 trillion in 2009. How can any one of us deal with this health care reform and that 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.

Second, the bill helps stabilize Medicare and Medicaid Programs if we are to ever get our budget situation under control.

In addition to the fiscal pressures crushing our Federal and State governments and our 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. By 2006, 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. But for many of you here, that may be 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, a rate of 1/2 times what it was just 6 years ago.

Keep this in mind: More than 75 percent of families entering bankruptcy are due to health care costs actually have health insurance.

Let me repeat this because it is a critical point: Three-quarters of all Americans filing for bankruptcy because of medical bills already have insurance. We also need reform to stop the worst abuses in the health insurance industry. In my year as serving as the Senator from Delaware, I have heard from far too many constituents who have been refused an insurance policy because they have a preexisting condition.

I have heard from fathers who were denied family insurance coverage because they were told their children had preexisting conditions too expensive to cover. Much to my shock—and I have talked about this on the Senate floor—I have received letters from women who have been turned down for coverage because their pregnancy was considered a preexisting condition. Pregnancy a preexisting condition? That is simply intolerable. Even worse, however, is the fact that it is illegal to force the practice of rescission, where insurance companies drop coverage for individuals the moment they get sick and need their insurance the most. Being denied coverage after you have paid your premiums is just plain cruel.

For all those reasons and more, we must reform the present health care system. Thankfully, we now have the opportunity to bring about meaningful health care reform through the Patient Protection and Affordable Care Act, and I would like to take just a couple more minutes to discuss why this legislation has earned my support.

First of all, it is fiscally responsible. President Obama laid down a marker that any health care reform legislation that landed on his desk could not add to our Nation’s debt. I am happy to say this legislation passes that test.

Second, the bill helps stabilize Medicare and Medicaid Programs. In the absence of this legislation, the Medicare trust fund is expected to go bankrupt in 2017. According to the head actuary at the Centers for Medicare and Medicaid Services, passing this bill would extend the solvency of the trust fund for an additional 9 years—9 years. Medicare is a sacred trust with Americans, and this bill ensures this trust is preserved.

In addition to reducing the deficit and shoring up the Medicare Program, this bill contains numerous provisions that will help Americans afford their premiums and prevent them from filing for bankruptcy protection. Starting next year, insurers will 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 rescinding when people get sick. Under this bill, Americans will finally be freed from the shackles of preexisting clauses 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 that 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 hits 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 and abuse programs.

It improves screening of providers and suppliers and requires implementation of meaningful compliance programs. This section tightens requirements for claims submissions and provides incentives to deter 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. This may seem incredible, but many criminals have told law enforcement officers that they switched to health care fraud from the drug trade because the risk was much higher. Can you imagine that? There is actually an incentive for crooks in the present health care system to commit health care fraud.

This health care fraud enforcement amendment can begin to reverse this trend. Significantly reducing costs attributable to fraud will go a long way toward bending the cost curve down. What this bill does is it increases the sentencing requirements for people who commit health care fraud to make it much less attractive for them to get into the health care fraud business. It gives us the prosecutors and the agents 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 of the Senate, and I have enjoyed 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, which is so much needed in the exchange of information among patients, doctors, and insurers. It provides more flexibility in establishing accountable care organizations that realign financial incentives and help ensure that Americans 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 debate to 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 $132 billion over 10 years and more than $1 trillion over 20 years. It offers much needed consumer protections 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 not mentioning 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 want 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 extend 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 unsustainable 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 5 million private sector job 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 us 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 did not create. He wasn’t the architect of it. 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 reduction in the resources available for the Army, Navy, and the Air Force. . . . If the Army, Navy, and the Air Force stood on a course that is unsustainable—I say yes. That is true. We 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, because we came together to do something about Social Security and Medicare and revenue—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. 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? I have 9 minutes.

The PRESIDING OFFICER. The Senator has 5½ minutes.

Mr. CONRAD. Let me talk for a minute about what Senator Gregg 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 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 work on this 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.

Let me go back to the vote tomorrow, because a group of us have said we are not going to vote to any long-term extension 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. CORKER. 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 members of the House and Senators, their 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 say they serve 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 for good reason. There existed a place 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. 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 returned to work on the 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 raided an insolvent entitlement to create a new entitlement, weakening Medicare. I will never understand why we have done that to create this bill. I 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.

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
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)(3) 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 Bruner, 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)(II) of H.R. 3590, The Patient Protection and Affordable Care Act.1 Senator Reid has 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. 1796.3 America’s Healthy Future Act of 2009, which was reported from the Senate Finance Committee; and 1312(d)(2)(D)(ii)(II) of H.R. 3590, The Patient Protection and Affordable Care Act.4 Senator Reid has asked whether the definition of the term “congressional employee,” which it defined as “an employee directly affiliated with a Member’s individual office. It consists of an administrative office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.”5 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 Finance Committee.3 S. 1796 used the term “congressional employee,” which it defined as “an employee employed by an implementing body or a court, it would appear that it would exclude professional congressional staff, joint committee staff, some shared staff, as well as po- liti-cially appointed officers and employees of leadership offices including, but not limited to, the Speaker of the House, Majority Leader of the Senate, Minority Leader of the House, Majority Whip of the House, or Majority Leader of the Senate.”7 As the United States Supreme Court has stated, “Canons of construction are rules or principles governing the construction of statutes.”8

In interpreting a statute a court should simply apply that meaning and end its inquiry.7 As the United States Supreme Court has stated, “Canons of construction are rules or principles governing the construction of statutes.”8

Based on our review of the financial practices of the Congress with respect to pay- ment of employees, the bill language, and applicable canons of statutory construction, it appears possible to argue that the defini- tion of “congressional staff” used by 1312(d)(2)(D)(ii)(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 congressional staff, joint committee staff, some shared staff, as well as politically appointed officers and employees of leadership offices including, but not limited to, the Speaker of the House, Majority Leader of the Senate, Minority Leader of the House, Majority Whip of the House, or Majority Leader of the Senate. 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; 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; Secret- ary of the Senate; Sergeant at Arms and Doorkeeper of the Senate; and Miscellaneous Items; and, Official Mail Costs.

Staff in personal offices in the House of Representatives are paid through funding provided for Members’ Representational Allowances. The MRA, which was pre- viously multiple allowances for Members covering different categories of spending, was first established in 1996.4 The FY2010 legis- lative branch appropriations act provided $660.0 million for MRA funding.

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 which funds the Office of the Speaker of the House, Office of the Majority Floor Leader; Office of the Majority Whip; Office of the Minority Whip; Office of Legislative Floor Activities; Republican Steering Committee; Republican Conference Committee; Democratic Steering and Policy Committee; Democratic Caucus; Majority Floor Leader; and Minority Floor Leader.

The “Committee Employees” provides funding in separate headings for “Standing Committees, Special and Select,” “Conference Committees,” “Democratic Caucus,” “Republican Caucus,” and “Joint Legislation and Policy Committee.” The “Salaries, Officers And Employees” is divided among various financial, administra- tive, legal, ceremonial, and security offices, including, for example, the offices of the Clerk of the House, Chief Administrative Office, Sergeant at Arms, Inspector General, and General Counsel.

POTENTIAL STATUTORY INTERPRETATION

When interpreting the meaning of legisla- tive 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. Put 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. Ger- main:

[In 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 legislative statute 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. Applying the plain meaning canon to the language in H.R. 3590, it appears possible to argue that this language includes committee staff, leadership staff and most other congressional employees. The language, unlike that in H.R. 3590, turns on who controls the use 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 by either the Senate Committee of the House, the Chief Administrative Office (CAO) of the House, 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 by congressional appropriations legislation for salary and benefits purposes.

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” employee. Although the House and Senate have different rules regarding shared staff, both chambers allow types of shared staff, including clerical staff and personnel that do not result in an employee being both on the payroll of a Member office and another type of office.

In the Senate, 2 U.S.C. 61-la authorizes limited sharing of staff. Notwithstanding any other provision of law, appropriated funds are available for payment to an individual of pay from more than one position, each of which is either in the office of a Senator and the pay of which is disbursed by the Secretary of the Senate or in another office and the pay of which is disbursed by the Secretary of the Senate out of an appropriation under the heading “Salaries, Officers, and Employees”. If the aggregate gross pay from those positions does not exceed the maximum rate specified in section 61-la(2) of this title.

The Senate Handbook summarizes these laws, stating: An employee may be on the payroll of more than one Senator’s office or on the payroll of a Senator’s office and a leadership or administrative office, providing the aggregate pay received does not exceed the maximum rate specified in section 61-la(2) of this title. An employee can only be shared between offices which are funded through the appropriations, “Salaries, Officers’ Personnel and Office Expense Account” (Senator’s personal staff), and “Salaries, Officers, and Employees”.

The House Member’s Handbook, as compiled by the House Administration, states the following about shared employees: The term shared employee means an employee who is paid by more than one employing authority of the House of Representatives. Two or more employing authorities of the House 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. The name, title, and pay of such an individual will appear on each employing authority’s Pay Certification. Such employees may not receive pay totaling more than the highest rate of basic pay in the Speaker’s Pay Order applicable to the position they occupy.

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 confidential information, payroll information, equipment account information, or information systems of either Member, Committee, or Leadership offices.

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 or account, would 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 could appear to 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 spend their time working for. If the staff member’s declaration is false, it could arguably be covered. On the other hand, if the majority of a staff member’s committee work 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, an implementing authority would appear to be covered by the language used in H.R. 3590.

ENDNOTES

2 Id.
4 Id.
5 In the FY2010 legislative branch appropriation act, the Joint Committee on Taxation, Office of the Attending Physician, Office of Congressional Accessibility Services.
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 no-heath-care-insurance, outside of the law. All of the country lives under. That sure doesn’t sound like accountability to me.

There is widespread agreement that the health care system in this country has serious problems. 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 lower government reimbursements, and we do not do anything in this bill about high malpractice costs.

Something has to be done, everyone seems to agree. But tomorrow the Senate will vote on a bill that makes a bad situation worse. It is unfortunate that we are voting on a bill that a significant majority—61 percent—of Americans oppose. The American people, providers, advocacy groups as well, are simply reacting to the fact that this bill slid rapidly down the slippery slope to more and more government control of health care.

It contains the biggest expansion of Medicaid since 1965. It creates a long-term care program called the CLASS Act that the CMS Actuary says runs a significant risk of being unsustainable, and one of the most significant Members of this body referred to it as a Ponzi scheme similar to what Madoff did. It imposes an unprecedented Federal mandate for coverage backed by the enforcement authority of the Internal Revenue Service. It increases the size of government by $2.5 trillion when fully implemented. It creates dozens of new Federal bureaucracies, and programs to increase the scope of the Federal role in health care. That is a lot of power over people’s lives concentrated in the Federal Government, and there are 1,697 delegations of authority to the Secretary of HHS to do things beyond authorities specifically given in this legislation.

The excesses of this bill appear willfully ignorant of what is going on in the real world. 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 in history.

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 and纳税payer dollars. 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 health care run according to this. It is not this Senator but the Congressional Budget Office.

Americans have rightly lost faith when, in the face of the current economic crisis, this country is asking 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 non-negotiable and still are. But this dollar figure on health care 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.

Mr. 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 Honest Case for a Humbled Health Care 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 HONEST CASE FOR A HUMBLED 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 this thing up for the president’s signature, the country will be deemed ungovernable and the Obama administration will be pronounced dead. Expect the rending of garments either way.

It does not matter that conservatives oppose reform. Of course 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 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 form 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 opin-ion from that quarter. 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 justified. The measure is timid about changing incentives to promote efficiency; it proposes lots of experiments, but little compulsion.

Adverse selection 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, balance the funding 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 subsidise those who leave the private structure unaltered. Trying to squirm around these unavoidable realities has brought the effort to its current pass. Why expect 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 the political tidal wave 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 blithely maintains, it alleviates the country’s fiscal distress. The truth is, it will create more problems than it solves. But the one bond that gets us right—the assurance of affordable health insurance for all Americans—is of surpassing importance.

Enacting this reform is not the end of the health care debate. But 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 remains intact. We are little compulsion.

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 already 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 and his friends state its case 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 unfounded. Republicans have focused on the elements of the policy and asked tough questions about the cost of the change.

Mr. Clive captures that sobering reality:

Adverse selection is likely to be a bigger problem than 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. . . . Higher taxes as well as higher premiums are the likely result of this reform.

Members on this side of the aisle, at each stage of the process, have focused on this reality. While recognizing the worthy goal of expanding coverage, we have been concerned about the effect on the currently insured.

This bill contains the biggest expansion of Medicaid since it was created in 1965.

It cuts Medicare by a staggering half a trillion dollars over the next decade.

It creates a long-term care insurance program called the CLASS Act that the CMS Actuary says runs a significant risk of being unsustainable.

It imposes an unprecedented Federal mandate for coverage backed by the enforcement authority of the Internal Revenue Service.

It increases the size of the government by $2.5 trillion when fully implemented.

It creates dozens of new Federal bureaucracies and programs to increase the scope of the Federal role in health care.

That is a lot of power over people’s lives concentrated in the Federal Government.

And the excesses of this bill appear willfully ignorant of what is going on in the rest of the economy outside of health care.

The cost of these excesses make this bill slipperier slope to come.

This summer, official scorekeepers fleshed out the size of this cost of achieving the other side’s noble, but costly goal of expanded coverage. As on who agrees with the goal of universal coverage, Mr. Crook acknowledges it:

It is delusional to suppose that you can significantly widen access to healthcare at no net public cost. You cannot both transform a system and leave its basic structure unaltered. To try to do so—that is, to address 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 the 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 it is about expanding the role of the Federal Government in health care.

Once the reform is law, though, 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, 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 $12 trillion for the first time in history.

In these perilous times, Mr. Crook notes that the public is extremely sensitive to the fiscal consequences 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 more 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 prove to 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 non-negotiable. Health care reform should lower the cost of premiums. It should expand 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 parsimony. 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 would be a bipartisan response, process, and product. Americans 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 cogent, so pointed, so 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 to 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 how much this bill costs. Health care costs go up by over $230 billion in the first 10 years. We know premiums are going up.

Now we have this interesting issue involving Medicare. We have heard a lot of talk from the other side of the aisle about how Medicare is not being cut, and if it is being cut, it is just being used to help a new entitlement, and therefore it should be counted as part of the basic effort to bring fiscal responsibility to this bill. Well, that is hokum. Medicare is being cut by $500 billion the next 10 years, $1 trillion over the first 10 years of full implementation, and $3 trillion over the first 20 years. And then the money is being spent not to make Medicare more solvent, not to make Medicare stronger so it does not have a huge unfunded liability, it is being spent to create this brand new entitlement—an entitlement that now could add 30 to 40 percent to the size of government by $2.3 trillion.

The American people understand this does not work. Common sense kicks in with the American people. They know— they know from common sense that you cannot add Medicare by $3 trillion, spend it on a new entitlement, and have fiscal responsibility around here and claim Medicare is better off for it. And they do not have to know it through common sense; all they have to do is listen to the CBO, which has now written us a letter. Let me quote from this letter because it is a devastating letter. I just wish this bill was going to be on the floor long enough for it to actually be open to public view and have some sunshine on it. It is being rushed through here just before Christmas so nobody can see what is actually in it. But here is what CBO says:

The key point is that the savings to the HI trust fund—
That is the Medicare trust fund—under the [bill]—
They use the acronym for it—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 legislation or other programs. Exactly what this bill does: It spends the Medicare money on other programs.

They go on to say—and this is CBO speaking, not me:
To describe the full amount of the [Medicare] trust fund—
Again, they use "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—
I repeat: "double count"—
a large share of those savings and thus overstate the improvement in the government's fiscal position.

The simple fact is, what is happening here is a scam, a pure and simple scam on the American people and especially on the seniors in this country because 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 anybody can 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 of 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 this 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 Nebraska to health care, especially for seniors but for all Americans, as we lose the innovation, the energy for innovation, and the resources for innovation. As a result, this bill, in my opinion, should be sent back to the drawing boards and should be redealt.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Texas.

Mr. CORNYN. Mr. President, over the last few days, as we have dug into this bill and the process by which it was written behind closed doors, we have discovered the bill is chock-full of sweetheart deals.

When Americans voted to change Washington last year, they did not think it would be politics as usual here, but unfortunately it has sunk to a whole new level. It is painful for me to read the editorials in hometown newspapers back in Texas and elsewhere around the country to see what editorial opinion and other opinion leaders are saying about the process by which this bill was written, but let me read a couple of lines from the Fort Worth Star-Telegram.

The tawdry use of earmarks to bury the doubts of recalcitrant moderate Democrats was a cynical display of ends-justifies-the-means horse-trading that President Barack Obama campaigned against as a Senator and a candidate.

This was an administration that was elected on the campaign slogan: "Change You Can Believe In."

But when David Axelrod, one of the masterminds of the campaign, one of the advisers to the President, was asked about that, he said:

Well, this is just the way it is. This is the way Washington works.

I, for one, want to stand up and say this is not the way it should work. I know Presidents campaign for office saying they are going to change Washington, but the truth is the hardest fight is to keep Washington from changing you. Unfortunately, it seems as though that is what has happened here.

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 5½ trillion in cuts out of Medicare because, as it turns out, they are in the insurance business and they can sell more Medicare policies with 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 mustered 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 by less onerous taxes 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 we 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 want to ask, 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. They are getting a lump of coal because my State could get some extra money, because I think that is unprincipled, makes me furious. I 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.

In a moment I am going to offer a point of order, but let me first note that one of Senator Reid's first acts as majority leader was to pass the Honest Leadership and Open Government Act. Let me tell my colleagues the name of that again. It is called the Honest Leadership and Open Government Act. In 2007, President Obama, then Senator, said: To earn back the trust to show people that we are working for them and looking out for their interests, we have to start acting like it.

Unfortunately, for the American people, Washington has not yet started to act like it.

This landmark ethics reform legislation required Senators to publicly disclose earmarks and who requested them. Senator Grassley and I both have released a separate document about whether this provision has been complied with, which is now contained in rule LXIV of the Senate Standing Rules, and we found that the majority leader has so far not complied with these public disclosure rules that he himself championed. Since my friends on the other side of the aisle don't seem to care about any of this, we have to insist that this provision be complied with. In other words, I will raise a point of order about this violation of the Senate rules. We need to force the Members of this body to be honest about who has required special favors and earmarks, tax treatments and benefits in the Senate.

I have a parliamentary inquiry. According to rule XLIV, paragraph 4(a) of the Standing Rules of the Senate states:

If during the consideration of a bill or joint resolution, a Senator proposes an amendment containing a congressionally directed spending item, limited tax benefit, or limited tariff benefit which was not included in the bill or joint resolution as placed on the calendar or as reported by any committee, in a committee report on such bill or joint resolution, or a committee report of the Senate on a companion measure, then as soon as practicable, the Senator shall ensure that a list of such items (and the name of any Senator who submitted a request to the Senate for each request included in the list) is printed in the CONGRESSIONAL RECORD.

I would simply inquire of the Chair: Is the Chair aware whether this list of congressionally directed spending items and their Senate sponsors has been printed in the CONGRESSIONAL RECORD?

The PRESIDING OFFICER. The Chair is not aware if such a disclosure has been made.

Mr. CORNYN. Mr. President, under those circumstances, I raise a point of order that the amendment is not in order since it violates the provisions of Senate rule XLIV, paragraph 4(a).

The PRESIDING OFFICER. Paragraph 4(a) of rule XLIV requires that the Senator who proposes an amendment containing a congressionally directed spending item ensure as soon as practicable that the list of such items be printed in the CONGRESSIONAL RECORD. The provision is not enforceable and no point of order lies.

Mr. CORNYN. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The PRESIDING OFFICER. The yeas and nays were ordered.

Mr. BAUCUS. Mr. President, I move to table the appeal of the ruling of the Chair and I ask that the vote occur upon the expiration of all post cloture time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. I ask for the yeas and nays on the bill itself.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays are ordered.

The Senate from Missouri is recognized.

Mr. BOND. Mr. President, last week I had a little fun with an old holiday classic: Clemente Clark Moore's "The Night Before Christmas" which you can Google and find on-line. While I meant this parody to bring some much needed levity to the process, the points I made are very serious. For the American people, there is nothing more serious than the reform bill we are considering today.

Because the majority's failed 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 latest deal they are being 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.

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 can 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 started 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 full tax benefits 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 horrible economic situation, where businesses are shuttering their doors and workers are being laid 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 have very low qualified employees, 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 administrative 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 deals at the expense of the 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 $138 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, which 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 over the government tab or a $1 million larger hit to taxpayers. 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 States can get 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 rural 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 Nebraska.

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 government 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” Charles Dickens is 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 care 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.

Christmas future—several years from now—could look even worse.

That is why in my “The Night Before Christmas” parody it was not funny as much as it was scary and true when I said:

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 watched with dismay 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 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 money and our grandchildren’s money.

If the majority wants 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 toward solving the problems of the uninsured and underinsured, and they could probably get 80 or 90 truly bipartisan votes. But 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. So substantial 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 laws. That is the way 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 let you know how he will be paid or how he will accomplish 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 needing 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 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 needing to do just the Democratic ideas.

I don’t have time to explain how the Democrats are planning to spend $250 billion in adjustments to what they get paid for, and the millions in a federal insurance tax, and more likely to be a backdoor tax on medical care because you are going to be shocked by the numbers. In a given year, the sum of specified HI funds, is essentially an accounting mechanism to pay for new programs outside of Medicare only.

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 those things. But we are going to throw 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 dealmaking. That is when you have to start playing games like ‘‘Let’s write the economic stimulus package; I’ll take health care and you take education.”’ 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 floor. I am not talking about his ability to counsel 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. We 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 will be. On the bright side, if Congress cannot make up its mind, 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 we all agreed that Medicare is going broke. But this bill turns a $500 billion in 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 Medicare patient’s control over his money—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 paid for out of the 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 Part A 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. Instead, it is turned over 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 finance 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 that any surplus in 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 federal borrowing from the public. Similarly, any increase in outlays or decrease in revenues in the HI trust fund in some years represents a draw 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 in any 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 trustees 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 Medicare and other surpluses to finance other 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 ability to finance future Medicare benefits or other programs—would be a good deal smaller. Inserting language that supposedly re-stricts federal funding of abortion in order to achieve “standing up to the special interests who’ve prevented reform for decades and who are furiously lobbying against it now.” They’re furiously lobbying all right—not against Obamacare but for the sundry preferences in the Senate bill. Start with the special tax carve-outs included in the “manager’s amendment”: that Harry Reid dropped Saturday morning. White House budget director Peter Orszag has claimed that the bill’s 40% excise tax on high-cost insurance plans is key to reducing health costs. Yet the Senate Majority Leader’s new version specifically exempts “individuals whose primary work is longshore work.” That would be the longshoremen’s
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, and early retirees and others who are absolved from this tax.

In other words, controlling insurance costs is enormously important, 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 only to 10 states in a prior version, but other Senators have added funds. 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 beneficent decisions about everyone’s health care based only on evidence and the public good. This is politics, and 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 “good risks” 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 nonprofit insurer. These gyrations to tax law are so complex that it still doesn’t clear which nonprofits would qualify, but the protections are sure to apply to certain insurers in Michigan and California. The poor saps stuck with higher premiums everywhere else can thank Mr. Levin and Senators Debbie Stabenow, Dick Durbin, Barbara Boxer, and John Cornyn.

The press corps is passing this favoritism off as sausage-making necessary to “make history;” but that’s an insult to sausages. However, 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.

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 SENATE: 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 legislative process.

In recognition of the negative impact that a mandate to provide health insurance will have on employers, H.R. 3590 exempts employers with fewer than 50 employees from the fines levied on those who cannot afford to provide their employees with the federal minimum standard of health insurance. However, this exemption 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 unconscionable 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 percent and more than $200 billion in economic activity lost in the last year, already is struggling to survive.

And, we would be remix 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 you to remove this provision that needlessly single out small construction industry employers.

Sincerely,


Mr. ENZI. It points out how many 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, Senate Democrats included a last-minute provision overtly targeting the construction industry, including home builders,’’ the National Association of Home Builders said in an alert 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. Everyone else in industry is granted a net deviation if they have fewer than 50 employees.”

Many home builders are small, private organizations working to survive the worst economic downturn in decades. Only 9 percent 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 really 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 rewriting. That’s because Majority Leader Harry Reid—which after batting for weeks to get the minimum number of votes needed to avert a Republican filibuster—has little room to maneuver. Two Senate Republicans have 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 end of the year. He has four 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 average 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 paychecks 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 could be forced 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 increases 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 and are barely surviving.

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 low-income 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 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 the employer mandate, 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 to hire 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 twice that in 2010.

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. BAUKAMMER. 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 devote 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 keep their business afloat; families with preexisting conditions are pleading for a fair system—a system that works for families or businesses like theirs.

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 to come forward 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 rate by 25 percent. The premium that 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 family, she worked 49 hours a week. 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 Tiffany lost her life because she was uninsured. She was 27 years old. Tiffany 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 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 to Tiffany. 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 Tiffany 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 story Marcelas tells me why we need 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 chosen to shy away from these stories—stories that 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 $132 billion 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 ref. If 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.

Colleagues on this side often make 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 comprehensive 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.

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 I ever have any money left?

Well, now that we are about to pass this bill, let me take each question and tell you how this will affect you; what is in this bill, let me take each question and tell you how this will affect you.

When I first spoke on this floor in December 23, 2009
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, than to the efforts of Maria Klobuchar and my colleague, Dick Lugar from Indiana, who is a hero of mine. The Diabetes Prevention Program is based on what we have learned in Minnesota and in Indiana—prediabetes can avoid becoming diabetes if they get access to reasonable 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 what right now. 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 in my Region with my colleague, Dick Lugar from Indiana, who is a hero of mine. The Diabetes Prevention Program is based on what we have learned in Minnesota and in Indiana—prediabetes can avoid becoming diabetes if they get access to community services such as nutritional counseling and gym memberships. These are proven to cut the risk of developing diabetes in half, so people can live healthier lives and their health care costs will go down. We will replicate this program across the country.

We will also guarantee routine checkups and recommended preventive care, such as colonoscopies and mammograms, are covered by all insurance plans at no cost. No copays for preventive care.

I am also happy the bill requires a minimum medical loss ratio, something I have been fighting for with Senator Brownback. This is going to make health insurance companies put at least 85 percent of their premiums toward actual health services, not administrative costs, marketing campaigns or profits or bloated CEO salaries. This is going to make insurance companies much more responsible towards their customers and patients.

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 this bill will work.

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 confusing.

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 them, to 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 nonprofit insurance coverage designed to cover people who can’t pay for insurance on their own. These are called high-risk pools, 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 of their age or whether they 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 this bill doing one thing. For instance, all Minnesota’s $60 million just this year. There is going to be a Web site and purchase coverage through a new insurance marketplace called 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.

Minnesotans and Americans can’t wait. I wish it were true, the whole country would be much more 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.

There is more. We will start closing the Medicare prescription doughnut hole in 2010. We will invest in home visits 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 these are examples of how Minnesotans and Americans who have maxed out their health insurance or who are getting uncomfortably close to their annual or lifetime limits. These arbitrary limits let insurance companies off the hook and leave you holding the bill when you are sick and need help the most. I wish it were true, the whole country would be much more 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.

Lastly, Minnesotans ask me: Will I go bankrupt from health care costs? I hear from a lot of Minnesotans who have maxed out their health insurance or who are getting uncomfortably close to their annual or lifetime limits. These arbitrary limits let insurance companies off the hook and leave you holding the bill when you are sick and need help the most. I wish it were true, the whole country would be much more 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.

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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 request the shares 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.

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

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, a bake 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 over the 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 expenses. I expect you know how wrong this is, but I am left wondering what some of your fellow Congressmen and Senators are thinking. Maybe they will read this 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 Presiding Officer for the extra time, and I yield the floor.

The PRESIDING OFFICER. The deputy majority leader is recognized.

Mr. DUBBIN. 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 better than I. I hope this is a piece of news 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 must 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 writes:

Nurses across this country have waited decades for this historic moment and the time is at hand. Once again, the need for fundamental reform of the U.S. health care system is critical.ANA and nurses around the country are ready to work with you toward enactment of the strongest possible health care reform legislation.

For all of our critics from the other side of the aisle, the simple fact is this: The people who are on the front line of health care, the people to whom we turn every day for critical care and critical decisions about the people we love, endorse this measure. They have come out foursquare for it. I would rather have their endorsement than any political endorsement we might find.

Now let me tell you how this is significant. This bill will change many things. Some on the other side have criticized the bill because it is too big; they want a small bill. I want a bill that is large enough to treat the problem. It is a litmus test: You can give me a prescription but only give me one; I can only take one prescription at a time.

In this bill we address problems existing in our health care system that go to the heart of the challenge that faces our Nation. We have great doctors and hospitals and nurses. But we spend more than twice as much as any other nation on Earth per person for health care in some areas. Many countries spend less and get much better results.

We know the cost of health care is getting beyond us. We know a family of four with a health insurance plan now through their employer pays, on average, $12,000 a year for premiums. Ten years ago it was $6,000. It is projected to double again in just 8 years. People would be working to earn $2,000 a month just to pay for health insurance. That is before you take the first penny home for your family. That is unsustainable.

The first thing we do is address affordability, start bringing down the increase in cost in health care. That is our first responsibility, and this bill does it. The second thing it does is extend the reach of health insurance protection.

As I stand here, one out of every six Americans has no 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 in this nation, 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 gone. We give a tip to 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 talked 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:

Top 10 things Americans will notice:

1. 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: No. 1, if you own a small business you will save more than $10,000 in 6 months tax credits to help your business pay for health insurance for your employees beginning with tax year 2010. Mr. President, 144,000 small businesses in my State of Illinois will be eligible for the small business tax credit so that small businesses can afford to offer health insurance for the owners of the business and for their employees. That is No. 1—and this is all within 90 days of enactment.

2. No, we are going to create immediate options for people who can’t get health insurance today. We estimate that 8 percent of the people in my State have diabetes; 28 percent have
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 let them 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 counting—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 plan if you get sick. That is so-called rescission, 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 want that coming to be paid within 6 months after this bill passes.

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 you are insured with; it means you get a one-year contract that comes to be paid within 6 months after the enactment.

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 prohibits requiring prior authorization before a woman, for example, goes in for a gynecological examination.

No. 7, you will no longer fear losing your job 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. 8, this bill 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 the enactment.

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 them.

No. 10, seniors across America will be eligible for one free wellness visit each year without charge. Think about that: the peace of mind which it brings to you and to your family to know that you do not have to run around and check whether the doctor said you are doing fine and takes care of a problem before it becomes major.

Those are the top 10 things to expect in the first 6 months or a year, and more to follow. This is a bill worth voting for. 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 accept the 10 commandments 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. They have never offered a 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 that 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.

The PRESIDING OFFICER (Mrs. HAGEN). The Senator from West Virginia.

Mr. ROCKEFELLER. 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 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 changes. For example, Medicare, for example—but none truly comprehensive in the way the Americans want to have their health care.

It is a history of big ideas left unrealized for lack of political will, for lack of time—whatever—of leaders and lawmakers and the medical profession all trying boldly yet all falling badly; failing fundamentally to take away the fear of so many, the terror of living and getting sick in America today; the terror of becoming sick in a country that has the world’s best doctors. That is the terror of hope, a beacon of fairness, yet denies men, women, and children access to doctors and nurses, tests and medicines that we know will prevent illness or will make them well; a country that allows people, especially low-income people, but not only low-income people, however, to suffer or watch a beloved family member suffer alone and outside the health care system—all at a profound opportunity to deliver on the promise of health care; where those with insurance know that the coverage they have purchased may not be there when they need it—they will know that—and where a profit-driven health insurance industry does not play mercilessly with people’s lives or steal their hope so that the health insurance company can have a very prosperous future. A very gloomy chapter in our Nation’s business history.

Each of us brings to this moment shared stories about the tragic and trying personal experiences of our friends and neighbors; stories of a family—let me tell you—one family; the story of health care for virtually all Americans, where those who are uninsured finally have some place to go for health care; where those with insurance know that the coverage they purchased may not be there when they need it; and where a profit-driven health insurance industry does not play mercilessly with people’s lives or steal their hope so that the health insurance company can have a very prosperous future. A very gloomy chapter in our Nation’s business history.

I talked about the Bord family. The Bords are two dedicated schoolteachers with health insurance through their employer whose son Samuel had leukemia and needed treatment well beyond the onerous annual insurance limits imposed upon him, without his knowledge, and, therefore, his health insurance stopped producing any care for him at all at 8 years old. What was he to know?

Samuel’s parents were desperate, and they feared for the worst. When he hit his $1 million cap on annual insurance, my office helped his parents to find another payer. They could not get insurance. They could not get money. They could not get money. They could not get out of the hole. So the Bords were left with two gut-wrenching suggestions: consider getting a divorce so that Samuel would qualify for Medicaid, or stop taking their other two children to the doctor and giving them health care so they could spend the money that they had been spending in part on Samuel—take it all away from the other two children to help with Samuel as best they could. When people are desperate, they try anything. The choices are all cruel.

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Nation offered to these caring, hard-working parents with a sick child. How can that be? How can we allow that to be? The answer is, of course, that we cannot.

They did everything in their power, but the bill fell short of what they desired. There are no words. It breaks my heart to think of what his parents went through, not only the pain of watching their son fight a terrible disease but also the uncertainty of paying for his treatment as they could and then have the coverage they counted on and paid for suddenly cease to exist.

I say to my colleagues, when do we say collectively that enough is enough? When do we finally step in and try to solve such an enormous set of problems? So much is at stake, so many people's needs and expectations are so high, and so are mine and so are yours, I say to the Presiding Officer. I know all too well that reform is not about shying away from the tough issues or the tough choices. Reform is 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 to do 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 President and the Vice President of the other side—are there differences. Within the Democratic Party, there are differences. We have struggled to find solutions that will make a difference, that we can afford. We have had to negotiate and compromise.

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 that it does not include a sensible Medicare buy-in provision that would 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 official. 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 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 there is more, a lot more, but I still believe those are among the best and right solutions in this bill for our health care system. They are the best we can do at this particular time, and it is a great deal that we are doing. It is an unavoidable fact that this bill does not do everything I had hoped for but, again, that would not justify turning 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 what the bill does not do. It cannot end there because in so many ways what this bill does do is make good on the powerful promise of meaningful reform that millions of people have dreamt of, have prayed for, have fought for, for so long.

Passing health care reform will mean 31 million previously uninsured Americans will now get health care coverage. Excuse me, 31 million people—extraordinary. It is in the bill. Passing health care reform will extend Medicaid so that vulnerable populations can get the health care they need.

Passing health care reform will close, almost, the doughnut hole that hurts 3.4 million seniors enrolled in the Medicare prescription drug program. Mr. President, 3.4 million seniors is a lot. So we close at least half the doughnut hole, and then we give people a bonus for this coming year. But by the time we are signaling that we are going to close it all. Health care now will be done each year, every year, to make things better.

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 drop people, 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 level playing field where we go to get the numbers. Nobody has done it. So they can play in their shifty darkness and deprive people of things, take 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 host of other ways. Health care 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 people with disabilities, so they can get the regular checkups that are so important. It is a big deal. Somebody told me once that there are about 9 million American seniors who live alone. In West Virginia, it might be on the tops of hills or it might be on some dusty plain, but they are basically alone, by themselves. They are aged, they have problems. Does anybody check in on them? Does anybody call them? Do they have a telephone? Have you eaten your food today? Do you have food? Are you OK? Did you fall down? Did you break your hip? Is there somebody to check? We have to do a lot better than that. Through this bill, we will.

Passing health care reform will mean we finally begin to get politics and lobbyists out of the business of deciding Medicare payments. That is very important for me because we can create new hope—perhaps our only hope—for keeping Medicare stable and solvent for the long term.

The list goes on and on—really, meaningful, life-changing and in some cases saving lives. The changes that will become law. Not since the creation of Medicare and Medicaid nearly 45 years ago has this body or the
other body attempted to make a commitment as fundamental to our future in health care as we are doing here.

Fortunately, this commitment will not end with the passage of this legislation. We will not have to wait another 3 years to try to make the health care system work better. We will not have to put up with the same cause of reform. Because of the intensity of the experience, the passion of the experience, the depth of the feeling in discussing the experience as we have talked back and forth with each other, this now becomes an annual commitment. I promise to you—I believe you will keep this promise to ourselves, which I promise you I will do, and I think you know that I mean what I say when I say it. To those on the right who in all these years somehow have not seen fit to accept any of the various reform ideas that we have put on tables for comprehensive reform, I ask you to seek the facts, find the truth, follow the facts, follow the truth. There are legitimate disagreements between us about how best to solve the problems plaguing our health care system and hurting our people. But the status quo is unacceptable.

Claims that we are rushing this process or have operated in secret are absurd. Claims that we will hurt seniors, close hospitals, take away people’s choices are reckless and disingenuous.

Our work in this institution affects people’s lives every single day in all the work we do for good or for ill. In public life, really, there is nothing neutral: you either do something that helps or you do something that hurts. We have a solemn responsibility to help our people in their hour of need, and that is the reason we are here. It is the only reason we are here—to achieve meaningful reform, not just in health care but in all other needs.

As somebody who has been involved in this debate from the very beginning and fought for strong reforms in the Senate Finance Committee, I know how far we have come to get here. And I, for one, am not going to allow this moment and its great promise to end in failure. The progress will be real. The greatly improved quality of life for millions of Americans will be its measure.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BAUCUS. Madam President, I ask unanimous consent that after Senator HUTCHISON raises a point of order in the name of the Senate Finance Committee, I know also in the queue for the votes if I ask for the yeas and nays.

Mr. BAUCUS. That is my understanding.

Mrs. HUTCHISON. Madam President, we truly are in uncharted waters. This bill has been written by the majority under a veil of secrecy. We are expected to vote on its final passage less than 2 days before families across the country will be sitting down for holiday celebrations. Over the last weeks, my colleagues and I have spoken about some of the things we know to be problematic, ranging from unsustainable cuts to Medicare that will result in catastrophic reductions in care—make no mistake about that. New taxes on individuals, medical devices, prescription drugs, and insurance companies that will clearly raise costs to consumers and stifle innovation, to taxes on small businesses at a time when we know one in six people is out of work. We are in a recession. We are asking businesses to hire people. Yet we are forcing burdens on them, taxes on them that would have the opposite effect. It would cause them not to take a chance to hire someone who will have Obamacare. It will go beyond all the expenses of an employee today. We have talked about that for the last 3 weeks.

Today I wish to talk about the concerns we have been able to have about 3 days to find on the constitutionality of parts of this bill. We have not had too much time to consider this. Certainly, constitutional issues will take much thought. But we do believe some of the bill’s provisions do violence to our constitutional protections. Members, staff, and legal experts are scrambling by the majority’s decision to draft a bill that we didn’t have a chance to look at in detail because it only was released on Saturday, and we haven’t had very much debate time on these legal issues.

I commend many of my colleagues for identifying one of my biggest concerns. The majority claims the commerce clause of the Constitution gives Congress the power to adopt much of what it is we are looking at in this substitute before us. What I disagree with and what I don’t think has been mentioned is, the power to regulate interstate commerce has not been the basis for a robust role in insurance regulation. Our States have the experience, the infrastructure in place to carry out this important regulatory role. In comparison, the Federal role in regulating private insurance has been limited. In fact, following the decision of the Supreme Court in FEDERAL TRADE COMMISSION v. EXCHANGE CONTROL CORPORATION, every agency from any antitrust role in the insurance market, it is our States that have been charged with providing this regulatory oversight during the last 60 years. Yet usurping the role of the States in regulating health insurance is precisely what the substitute that has been put forward will do.

Creating a big role for the Federal Government that Congress does not have the constitutional authority to create is precisely what the substitute that has been put in place for over 60 years. Consider, for a moment, that the commerce clause is being suggested to allow Congress to not only regulate a channel of commerce that historically has been addressed by Congress to carry out this important regulatory role. In comparison, the Federal role in regulating private insurance has been limited. In fact, following the decision of the Supreme Court in FEDERAL TRADE COMMISSION v. EXCHANGE CONTROL CORPORATION, every agency from any antitrust role in the insurance market, it is our States that have been charged with providing this role. In comparison, the Federal role in regulating private insurance has been limited. In fact, following the decision of the Supreme Court in FEDERAL TRADE COMMISSION v. EXCHANGE CONTROL CORPORATION, every agency from any antitrust role in the insurance market, it is our States that have been charged with providing this role. In comparison, the Federal role in regulating private insurance has been limited.

The reason it is short is because the majority has not had much time to consider it. Certainly, constitutional issues will take much thought. But we do believe some of the bill’s provisions do violence to our constitutional protections. Members, staff, and legal experts are scrambling by the majority’s decision to draft a bill that we didn’t have a chance to look at in detail because it only was released on Saturday, and we haven’t had very much debate time on these legal issues.

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Creating a big role for the Federal Government that Congress does not have the constitutional authority to create is precisely what the substitute that has been put in place for over 60 years. Consider, for a moment, that the commerce clause is being suggested to allow Congress to not only regulate a channel of commerce that historically has been addressed by Congress to actually direct the American people to purchase a specific product or service. Everyone within the sound of my voice should be alarmed that Members of Congress actually believe our Constitution, which enumerates and protects our liberties and choices, can be perverted to require Americans to purchase something they may not want and may feel they do not need. Such a view is totally at odds with our Constitution and the principles of liberty that are enshrined in our Constitution.

The person who has raised the point of order is also on the floor with me, Senator Ensign from Nevada. He is the one who has raised the constitutional issues. Members of Congress should be asking themselves whether we will in good faith and in line with our constitutional principles, as we read this very clear and simple 10th amendment. The 10th amendment has made clear the following:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

That is it. The beauty of our Constitution is, it is a very limiting document. That is why it is short. Everything not specifically given to the Federal Government in the Constitution is reserved to the States or to the people. That is the beauty of our Constitution. The reason it is short is because the powers were meant to be limited. What was reserved to the Federal Government was meant to be limited because our Founders knew the government was going to be run by people who may feel they do not need. Such a view is totally at odds with our Constitution and the principles of liberty that are enshrined in our Constitution.

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Today, in the bill we have before us, we have a State, such as my State of Texas and States across the country, which have taken full responsibility for creating, maintaining, and providing oversight for a health insurance plan and will now have to justify changes to the terms of the insurance plan to the Federal bureaucrats. If a State, such as my State of Texas, creates a fully self-insured plan for State employees and for our teachers so creation, administration, and oversight will be...
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 justify grounds for the States to end this day.

Mr. ENGLISH. Madam President, I wish to first compliment the Senator from Texas on her raising a 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 taking clauses 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 of the United States. 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 the oath, 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 purchase 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 doing nothing.

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 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 the 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. Enforcement of a law to require that extra-state 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 to regulate 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 out and buy a car."

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 that case, to regulate inactivity.

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 attention today and thinks about that oath each one of us made when we raised our right hand to defend 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 Senator and 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 the constitutional point of order raised by the Senator 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, separates power into 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.

I yield the floor.

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 allows us to do whatever we may want to do. And we cannot ignore this question by simply punting 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 friends on 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 infinitely malleable. I agree with the 75 percent of Americans who say that this mandate to purchase health insurance is unconstitutional. I do not believe Congress’s power to regulate interstate commerce does not include telling Americans what they must buy.

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 why 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 pushed a constitutional rewrite—a revision of 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 considered 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 the government to regulate inactivity that maybe they were not going to do, in that case, to regulate inactivity.

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 those decisions of conscience.

After weeks of closed-door, clandes-
tine 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 infinitely malleable. I agree with the 75 percent of Americans who say that this mandate to purchase health insurance is unconstitutional. I do not believe Congress’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 in 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? The answer is a “b” is for biggest giveaway for 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 very important. The largest number of 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 services, applies 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—two of the biggest 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 of conscience? Here are some highlights: $300 million for Louisiana, $600 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: Every State in the Union will 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 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; 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 $2 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.

According to a recent study of similar proposals by the Heritage Foundation, 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 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 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. Americans, the citizens, the group most likely to use the health care system, only 33 percent are in favor while 66 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 fanatics, the people running around in right-wing militia and Aryan support groups, it is unbearable 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 same 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 effectively 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 $200 billion. 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 opportunities for Medicare and Medicaid 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 hearts 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 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 years. The PARTNERSHIP bill that would garner 75 to 80 votes, which has always been the case in the past on these major pieces of legislation in the Senate, would be fiscally sound and provide the American people with the fixes they are asking for in the health care system. It is easily achievable if we would just open our hearts and work together. Many of us are standing at the ready, and have been for months, to step forward and pass meaningful health care reform that truly would help American families and please American taxpayers. To date, we have been rebuffed by an unfailing determination by a few to pursue a purely Socialist agenda.

I would ask my colleagues on the other 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 and vote against advancing this bill and work with those of us on this side of the aisle who are committed to making a difference to craft a health care reform bill they can be proud to support.

I have said that, I do praise my colleague and friend from Montana, Senator Baucus. He literally did try for months in many meetings with first the Gang of 7—I was in that and then finally 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 totally Democratic bill in the HELP Committee, a totally Democratic bill that the Reid bill was derived from, 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 75 or 80 votes for a bill that affects every American. If it is, 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.
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 like this 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.

The PRESIDING OFFICER. The Senator from Arizona.

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 try 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 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.

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estimated impacts: amounts. The following table presents these of Part B premiums paid by enrollees and the the actual HI savings from these provisions annually. If such reductions were to prove not the case of Part B, the savings under the PPACA would result in lower beneficiary coinsurance payments for inpatient hospital and skilled nursing care. As before, all of these results are conditional on the continued application of the productivity adjustments to the Medicare “market basket” payment rules.

Expenditure reductions under Part B translate directly to lower financing requirements from general revenues and beneficiary premiums. But they are small in comparison to the improvements in Federal general revenues attributable to such savings can be used to offset other Federal costs, such as those arising under the PPACA coverage expansions. Mr. KYL. I am now happy to yield. Mr. BAUCUS. I ask my good friend from Arizona, is it not true that the last statement from CBO, on the degree to which the underlying legislation does or does not reduce the deficit, stated that the legislation reduces the deficit by $132 billion—that is the last statement after addressing the deficit—and also stating that at the end of the decade, the deficit will be reduced between $560 billion and $1.3 trillion? Isn’t that the last statement from CBO addressing the question on whether this legislation reduces or increases the deficit. Isn’t that true?

Mr. KYL. Madam President, I don’t know the document that my friend is referring to as “the last document.” I think that document, dated December 23, today, is the last document.

Mr. BAUCUS. This is from a day or two ago. It is the CBO letter commenting on the modification.

Mr. KYL. I don’t know. I am not aware of that. My point is this: The document released today, in order to clarify since financing is re-established 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 coverage expansions. Mr. KYL. I am now happy to yield. Mr. BAUCUS. I ask my good friend from Arizona, is it not true that the last statement from CBO, on the degree to which the underlying legislation does or does not reduce the deficit, stated that the legislation reduces the deficit by $132 billion—that is the last statement after addressing the deficit—and also stating that at the end of the decade, the deficit will be reduced between $560 billion and $1.3 trillion? Isn’t that the last statement from CBO addressing the question on whether this legislation reduces or increases the deficit. Isn’t that true?

Mr. KYL. Madam President, I don’t know the document that my friend is referring to as “the last document.” I think that document, dated December 23, today, is the last document.

Mr. BAUCUS. This is from a day or two ago. It is the CBO letter commenting on the modification.

Mr. KYL. I don’t know. I am not aware of that. My point is this: The document released today, in order to clarify since financing is re-established 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 coverage expansions. Mr. KYL. I am now happy to yield. Mr. BAUCUS. I ask my good friend from Arizona, is it not true that the last statement from CBO, on the degree to which the underlying legislation does or does not reduce the deficit, stated that the legislation reduces the deficit by $132 billion—that is the last statement after addressing the deficit—and also stating that at the end of the decade, the deficit will be reduced between $560 billion and $1.3 trillion? Isn’t that the last statement from CBO addressing the question on whether this legislation reduces or increases the deficit. Isn’t that true?
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 understanding under 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; that, 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; and, yes, for $100 million. It is the cheap date equivalent of Taco Bell.

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Mr. SECTIONS. The leader’s time is up at 6 minutes after the hour; is that correct?

The PRESIDING OFFICER. The Republican leader has 6½ minutes reserved.

Mr. SECTIONS. 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 this thus overstate 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. SECTIONS. I think that is correct. The Senator may not know this. I understand that at the request of our Democrat 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 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 of will Senator KYL not agree—I am not afraid to talk about what if we need 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. KYL. 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 the President misspoke at this point. If 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. SECTIONS. To follow up on that, is it not true—and President Obama Monday flatly stated in one press conference that he 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 a fancy way of saying accountants have their way of showing things and that might have confused you—

in practice, improved party financing cannot be simultaneously used to finance other Federal outlays.

You cannot use the same pot of money of $10 to buy two different $10 benefits. You can buy one or the other or half of each, but you cannot buy both. As the old saying goes, you cannot sell the same pony twice.

Mr. SECTIONS. It said, did it not, in that CMS letter that was a fact “despite the appearance of this result from the respective accounting conventions”? Were they not warning us that it might appear this way but it cannot be that way?

Mr. KYL. Mr. President, our colleague Senator Gregg, a respected member of the Budget Committee, pointed out this morning why that is so, and my colleague from Alabama can do that, too.

There are two different systems of accounting by two different parts of the government. The only way they can do this is by sending an IOU back to the Social Security trust fund, but, of course, the IOU comes out of the pocket of the taxpayers where we have to borrow it and it is still an obligation even though it shows up on accounting books as obligation satisfied.

Mr. BAUCUS. Will the Senator yield for a simple question?

Mr. KYL. Sure.

Mr. BAUCUS. I wonder if the Senator is aware that CBO this morning at 9:57 sent an e-mail to staff that its estimates with regard to budget deficit reduction still stand, still hold. CBO still estimates this legislation results in a $132 billion deficit reduction.

Mr. KYL. I did not see that e-mail. I assume that is the same communiqué about which the Senator from Alabama is talking. It shows you exactly why this is so confusing and why I am a little bit concerned about the politicization of the CBO.

Last night and again this morning, we have a memo that says you cannot pay twice. If after that he says I still show that as a surplus, then what he has to also be saying is, and therefore it would not extend the life of the Social Security trust fund. As I said, you can do one or the other, or roughly half of each, but you cannot do both. If he is choosing to say it is applied to one, then our colleagues cannot continue to say that it applies to the other.

Mr. President, Americans’ biggest complaint about the current healthcare system is the increasing cost of health insurance premiums.

President Obama promised that his healthcare reform bill would address this problem. As he said during his campaign, ‘I have made a solemn pledge that I will sign a universal healthcare bill into law . . . that will . . . cut the cost of a typical family’s premium by up to 5 percent.”

By the President’s own yardstick, this bill is a failure, since it actually increases premiums for many Americans and fails to restrain growths for the rest.”

Recently, the nonpartisan Congressional Budget Office (CBO) concluded that, under this bill, those in the individual market—that is, those without employer-sponsored insurance—will face premium increases between 10 and 14 percent. That is approximately $2,100 per family by 2016.

A second study, from the actuarial firm Oliver Wyman, also concluded premiums will rise under this legislation, thanks to burdensome new Federal mandates and requirements and several new taxes that apply.

In the individual market, this study predicts, premiums will rise by $3,300 per year for family coverage and $1,500 for individuals. In my home State of Arizona premiums could rise by as much as 72 percent in the individual market.

This study also tells us that the small group market would see premium
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 will have insurance through small-employer policies.

So what this bill does is raise the cost of insurance for many Americans and then force everyone to buy a policy—and not just any policy, one that is based on the Washingtonians' experience.

Our friends on the other side of the aisle argue that many families will receive government subsidies to help with the increased cost of insurance brought on by new mandates, taxes, and Federal requirements.

There are a few problems with this argument.

First, not every family will qualify for such subsidies. Indeed, 14 million 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 it 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 Small Business Coalition for Aff ordable 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 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 this bill, arguing that their 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 . . . overwhelming. For example, an increase in premiums of an average of 10–13 percent per person. Those estimates, in addition to the financing provisions in the bill, imply 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 two 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 crowd out the compensation pool.

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 Advisers 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 Coolin County, Iowa, chamber of commerce, Christina Roper, 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 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 of 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 wrote every day to us.

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 real letters. 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.

Here is another one of those letters. This one is from a father in North Las Vegas, NV:

Can you imagine what it is like to have a doctor look you in your eye when you hold your 1-year-old child and be told that you will likely outlive your son?

He goes on to say:

I am certain my story is not unique, but it is real. Stop forcing Americans to use the most expensive point of service, the emergency room, to get what the system won’t give them. Let’s make all Americans equal in the eyes of health care, please.

This legislation is not about the number of pages of this bill. It is about the number of people—people such as the man whose letter I just read who was told by a doctor that he would likely outlive his son. It is about the number of people whom this bill will help. That is what this is all about. It is about fairness. So when people are hurt or sick, they can go see somebody who can help them and not lie awake at night wondering if they will outlive their 1-year-old son.

Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 1½ minutes remaining. 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.

ENSIGN 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; Corker unfunded mandates point of order; Baucus motion to table the Cornyn appeal ruling of the Chair; Hutchison constitutional point of order. I have been advised that a Republican Member will vote to table so he can offer his amendment under rule XXII. He is going to be allowed 10 minutes. This will require 67 votes because it is an effort to change the rules. Following that we will have adoption of the substitute amendment and cloture on H.R. 3990. So there is a series of seven votes.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I raise a constitutional point of order because 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 reform 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 Congress, 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 the usual 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—how 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 these 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.

The bill clerk called the roll.

Mr. BAUCUS. Mr. President, our committee and the HELP Committee

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:

Alexander DeMint Lugar
Barrasso Reisch McConnell
Bennett Graham Marzouk
Brownback Grassley Risch
Burr Greg Roberts
Chambliss Hatch Sessions
Coburn Hutchison Shelby
Cooper Inhofe Snowe
Corker Sessions Thune
Corrigan Johanes Vitter
Cornyn Kyl
Craig LeMieux

NAYS—60

Akaka Byrd Durbin
Baucus Cantwell Feingold
Bayh Cantwell Feinlen
Bennet Carper Franken
Bingaman Conrad Grassley
Boxer Conrad Hagan
Brown Dodd Harkin

December 23, 2009

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

The point of order falls.

The majority leader is recognized.

Mr. BAUCUS. 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, quit 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 traveling 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.

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 lawmakers.

The PRESIDING OFFICER. 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, upon passage of the Honest Leadership and Open Government Act, the majority leader said:

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The result was announced—yeas 57, nays 42, as follows:

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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 PRESIDING OFFICER. The Senator from Texas.

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

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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 on the constitutional point of order made by the Senator from Texas, Mrs. HUTCHISON, that the amendment violates the 10th amendment.

The yeas and nays have been ordered.

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

The legislative clerk called the roll.

The yeas agreed to, as follows:

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The following Senator is not voting:

Herb Kohl (D-WI)

The PRESIDING OFFICER. The question is, Does the point of order prevail?

The nays agreed to, as follows:

<table>
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The motion to suspend the rules is not agreed to.

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

The PRESIDING OFFICER. 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 will end 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 this 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 110th 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. Somehow, 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 in S. 1. I hope we will read the relevant parts. I quote:

It shall not be in order in the Senate to consider a congressionally directed spending...
This language had 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 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 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 every avenue 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 provisions of rule XXII, including germaneness requirements, for the purpose of proposing and considering my amendment No. 3297, and I 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 a source of delay. Senators could make one point of order after another under this provision, pointing to different provisions or dictating 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 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? I think it goes 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:

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The PRESIDENT. Are there any other Senators in the Chamber desiring to vote?
The yeas and nays voted—yeas 60, nays 39, as follows:

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and the kids are over there and cannot make it for Christmas dinner tomorrow night. I know another person who has to get out to the West and there are a lot of storms out there. If they can get that early flight, they can make two legs and get home. If they have to go later and they have to do three legs and they may not make it. There are a lot of people around here who are having a lot of problems that we are all here. There is no reason to hold over the vote so I am going to ask unanimous consent that the vote on the passage of the bill and the vote on the debt limit bill occur at 6 p.m. this evening.

The PRESIDING OFFICER. Is there objection?

Mr. VITTER. Addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, that request has not been cleared on this side. On behalf of my colleagues, I object. If the Senate could like to talk to all his colleagues about it, that would be fine, but in the meantime, I would object.

Mr. HARKIN. Mr. President, then I would further ask unanimous consent that the vote on the passage of the bill and the vote on the debt limit bill occur at 7 a.m. tomorrow occur at 12:15 a.m., in the morning.

The PRESIDING OFFICER. Is there objection?

Mr. VITTER. Mr. President, my response would be the same and I would object in the same vein.

The PRESIDING OFFICER. The objection is heard.

Mr. HARKIN. I want Members to know who is keeping us here.

Mr. RISCH. Mr. President?

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Mr. President, I ask unanimous consent that the vote referred to by Senator HARKIN take place at 2 p.m. on January 20, 2010, when we return.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. There are objections.

The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I ask unanimous consent that this first block of time on the minority side be divided equally between the following Senators: myself, Senators CORKER, THUNE, SESSIONS, KYL, and ENSIGN.

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

Mr. VITTER. I thank the Chair. Mr. President, I ask for order on the floor.

The PRESIDING OFFICER. The Senate will be in order.

Mr. VITTER. Mr. President, I ask that time not be counted against me until the floor is in order.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. 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 good perspective on 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 distinguished senior Senator, Ms. LANDRIEU, on the floor.

Mr. VITTER. I thank the Chair. Mr. President, that response would be the same and I would object in the same vein.

The PRESIDING OFFICER. Is there objection?

Mr. VITTER. Mr. President, my response would be the same and I would object in the same vein.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. There are objections.

The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I ask unanimous consent that this first block of time on the minority side be divided equally between the following Senators: myself, Senators CORKER, THUNE, SESSIONS, KYL, and ENSIGN.

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

Mr. VITTER. I thank the Chair. Mr. President, I ask for order on the floor.

The PRESIDING OFFICER. The Senate will be in order.

Mr. VITTER. Mr. President, I ask that time not be counted against me until the floor is in order.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. 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 good perspective on this important debate. First, yesterday, as we were debating health care, my colleague from Louisiana, the distinguished senior Senator, Ms. LANDRIEU, 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. That is also a very true statement, 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 pre-existing 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 debate 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 suggesting that this bill cuts Medicare by $467 billion, almost $1/2 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 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 that are supposed under the health care bill 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.

The same Congressional Budget Office report says “to describe the full amount of HI trust fund savings and 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.”

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 by 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 where it leaves them. 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 limit; it raised the 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. Then we passed an omnibus spending bill earlier this year that increased spending about 8 percent over the previous fiscal year.

This month, we passed another omnibus spending bill that increased the spending 12 percent on top of that. That is what is leading to tomorrow’s debt limit vote. That is what is leading to the statement that our debt limit is
The American people are connecting the dots. They see this trend, which has accelerated dramatically over the last 12 months, and they are truly scared for our collective future for their kids' and their grandkids' future. All these things I mentioned plus this health care bill are part of that.

The American people know in their gut—they do not understand all of the Congressional Budget Office technicalities, but they know in their gut that you cannot have it both ways. You cannot count $467 billion of Medicare cuts as both helping pay for the other spending in the bill and strengthening Medicare. It is one or the other. It cannot be both. It is the same thing in the health care bill with regard to Social Security—$52 billion double-counted. But you cannot have that both ways. It is the same thing in this health care bill cut with regard to the CLASS Act—$52 billion double-counted. You can't have that both ways. Those factors alone put this bill out of balance, adding to the deficit, adding to the debt.

What about the doc fix, the fix of re-imbursing under Medicare to health care professionals such as doctors, which is clearly needed. That was taken out of the health care bill. Why? Because that would cost money. It was taken out. It was just pushed down the road, the can was kicked down the road. That has to be revisited by March 1 of next year. If a real 10-year-or-more doc fix is passed, that will be another $200 billion unpaid for—more deficit and more debt.

The American people get it. They know in their hearts, in their gut, that we are on an unsustainable course. They know all these bailouts and so-called stimulus acts, all these spending bills and now this enormous health care bill are part of that unsustainable course, and they are crying out. They are saying we must reverse course, we are going to increase the debt limit but we are not going to make any effort to cut the spending.

I have given seven complete speeches on the floor about the significant amount of waste in the Federal Government. I will not repeat those now. But that number is now annualized to $380 billion a year—a year, $380 billion worth of waste. Part of it is fraud, but a large part of it is duplication. Let me give some examples of the duplication because I think when Americans hear the word duplication they don't understand what it means.

The Government Accountability Office found that there are 13 Federal agencies that spend $3 billion to fund 207 Federal programs, 207 different programs, to encourage student standards in the fields of math and science—13 different agencies, 207 different programs. We could have spent one-tenth that amount of money and had exactly the same results and saved $2.7 trillion. But we will not do it.

Another example, according to GAO, the tune of $30 billion, the Federal Government funded more than 44 job-training programs administered by 9 different Federal agencies across the Federal bureaucracy. According to the Catalog of Federal Domestic Assistance, there are 14 departments within the Federal Government and 49 inde-pendent agencies that operate exchanges and study-abroad programs. We have 49 programs instead of 1. I have tons of other examples just like that, but I don't want to go on. The easiest thing in the world is to spend somebody else's money. Increasing the debt limit without having a rescission to get rid of programs just like this and have one program that is effective and efficient, that has metrics on it, that measures its goals and is accountable, instead of 49 or 72 or 64 across a large number of different agencies—we can do that, but there is no will here to do that. As a consequence, we do it. Instead of making the Federal Government more efficient, we just raise the debt limit. I am not about to be a part of that anymore.

I know my colleagues get upset with me as soon as come to the floor after year talking about what we do and the fact that we do not fix the real problems. I have been rather hard to get along with, by my colleagues, in terms of them advancing new programs when we do not eliminate the programs that are already doing the same thing.

I think at this time of Christmas, one of the things we ought to be doing is telling the American public that we will change. Next year, instead of creating new programs let's go to look at all the programs and consolidate them and have one that does math and science, one that is for work-study programs abroad, not the numerous numbers we have for which we have no accountability.

America recognizes our incompetence, but we are going to spell it out. In this new year that comes forward, there is not going to be a week that comes by that I do not come to the floor and show another example to the American people of how we are not doing our work. It grieves me—not for me but for my children and everybody else's children, for my grandchildren and everybody else's grandchildren—that we fail to treat the real symptoms of our debt; that is, we will not do the hard work of oversight. We should be condemned for that. We are failing the American people. It ought not to be.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota, Mr. Thune, is recognized.

Mr. THUNE. Mr. President, I appreciate the comments of both my colleagues from Louisiana and Oklahoma touching on an issue that I think is becoming increasingly important to a lot of Americans.

I was listening this morning to one of my colleagues on the other side as he came down here and talked about how spending problems that we are seeing in these debt problems were all inherited from the previous administration. There is sort of a Bush-phobia or something around here among Members on the other side because they do not want to own up for the decisions they have made.

Granted, I would be the first one to admit that when Republicans were in control of the Congress, we didn’t do it right all the time and we lost our way a little bit with regard to spending—since 2006—a Democratic Congress. I need to remind my colleagues that the President doesn’t spend a dime under
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 of Congress, the nondefense discretionary 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 over 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, who 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. Obviously, or we would have 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 a half of nondefense discretionary spending by almost 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 the same inherent problems 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 non discretionary 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 where we got the 400-page amendment for 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 goodies 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 his congressional colleagues 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 if we take 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 fix. If you do that, it ends 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, it is 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, that's not 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 $3 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 those 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 being argued, 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 more extensively about that. I want to point that out because we are going into a big debate about raising the debt limit. Everybody, now that the horse is out of the barn, wants to shut the gate. 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 Actuaries 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 enter the debate about the debt limit, it is important to put some 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 tax increases and 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 $777 billion deficit in the first 10 years. That does not even include the funny 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 severely 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 expense they don’t deserve.

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 during President 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 in 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 debt 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, we will have to add another $1.5 trillion to the 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 says:

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 be of great concern to 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 the fact that what we have to pay is what we have to pick up. I 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 bond holdings. 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 to see the United States to call its bond buyers 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 lending? What do you do is you raise the interest rate to reflect the greater risk in the lending of the 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. It 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? Any competent 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 colleague 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 hope our Democratic colleagues are 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 limit the 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 are going to vote not 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—well, 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 reenforce the spending caps we have put in place. We should not extend the caps unless we have a fix of the re-expiration of the spending caps. Those expired 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 in order to stop President Clinton’s spending. But there were battles over containing spending, and it worked. A big key to it was the spending limits, the spending caps. Those expired in 2002, and, look, we began to show the increase over again. So I think as a condition of voting for a debt increase we should have a fix of the re-storing of the caps.

Senator KYL made reference to the fact that under President Obama’s 10-year budget submitted earlier this year, which was scored by 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 the budget was passed. So in truth it will be worse than this.

But let’s look at this. In 2008, the deficit 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 fixating 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 that are surging year after year. It is the result of several things.

The CBO is cautious, but they are acknowledging that interest rates are going to go up. We have virtually zero interest rates in short-term Treasuries today. That is not going to continue. So you have more debt and higher interest rates. You get surging interest payments. In 2017, we have interest payments over $600 billion. It goes over, in 2019—1 year’s interest—$799 billion. As I recall, the supplements we have used to fund the war in Iraq represented about $70 billion a year. A couple years ago, our highway spending was about $40 billion a year. Aid to education is about $100 billion a year. In 1999, in 1 year, we will pay $799 billion. I think, at a minimum, just in interest. You see how those numbers are? It is unsustainable. We cannot continue to do this.

The American people understand it. CNN did a poll last month. They asked this question of the American people:

Which of the following comes closer to your view of the budget deficit—the government should run a deficit if necessary when the country is in a recession and at war or the government should balance the budget even when the country is in a recession and is at war?

What do you favor? Sixty-seven percent say: “Balance the budget.”

Well, what is Congress doing? Running the most incredible series of deficits we have ever seen, tripling the national debt in 10 years—all in furtherance, basically, of President Obama’s budget, which calls for this.

Sure, President Bush was not as frugal and fiscally responsible as he should have been. However, if his debt was driven by war costs. But regardless, he could have been more frugal and spent less. But the deficits he had would come in at half or less than half of the deficits we are going to see on average over the next 10 years. So I have to say, we are losing our perspective.

This health care reform bill is a serious matter. We have a report this morning from the Congressional Budget Office that clarifies what has been pretty obvious to us for some time, but it was difficult to get an official accounting of how these numbers are scored or added up by the Congressional Budget Office.

But, basically, what they say is pretty simple. They are saying that proposals in this bill that raise the payroll tax on Medicare and reduce expenditures within Medicare—cutting Medicare—saves money. It puts more money in the pot. But it is part of the Medicare trust fund pot. As to that savings, it is, in essence, treat it over here and pay for this new health care program that was just voted on earlier today.

So we are going to take this savings and increased revenue to Medicare, and we are going to spend it over here. This is a chart I just put together to try to show that. As shown on this chart, here is Medicare. You raise Medicare income and you cut their costs and you can pay the interest on some surplus still in Medicare. If we do not do something about it, Medicare will be in deficit in 2017—8 years. So this transfer of money then goes to the U.S. Treasury, and: Oh, we have extra money. That’s where the health care reform that has never before been passed, creating benefits for people who have never received these kinds of benefits before because we want to be helpful to those people, create more insured people in America.

But as the CBO said, you cannot count this money twice. What about the people who are paying into Medicare, who have been paying into it for 40 years? They have not received a benefit until they get to age 65—and it is their money they are putting into Medicare. They are not just giving it over here to the U.S. Treasury.

As one of them wrote me: You are taking my money. I am 67. I am just now beginning to draw Medicare. You are taking my money and giving it to somebody else. I have never received any benefits from Medicare until now, and you are taking it from me.

So as a matter of that, our accounting occurs, the U.S. Treasury cannot take that money just free and clear. It is not extra, free money.

I see my colleague. I want Senator BAUCUS to recognize that according to the CBO Director—he told me last night, there are bonds issued. Treasury has to give a bond to Medicare, a Treasury note, an IOU. So when Medicare starts running in default—as it will within the next 15 years if this bill were to become law—Medicare starts running into default, they are going to have the Treasury pay for it. So, in effect, this bond causes the U.S. Treasury to pay interest to Medicare.

During this first 10 years, the U.S. Treasury will pay interest to Medicare of $69 billion on the money they borrowed—this IOU here. Then, when it goes into default—as it is inevitably heading into default—the Treasury will have to pay those bonds. So it increases the debt.

What CBO says, without any equivocation, is—it is not disputable—the debt of the United States will be increased by this bill, not decreased. It will not be a $132 billion surplus in reality but will be a $170 billion deficit, just as that. Then, when you get to what Senator THUNE talked about, other gimmicks in the bill, it makes that even worse.

You say, well, the CBO has a score that says it is a $132 billion surplus. It reduces our debt by $132 billion. Well, the way they are doing this, and the way that accounting is done, with trust funds and nontrust funds in a unified
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 $132 billion, 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, in a time of recession, we need to get this artificial $72 billion infusion of cash in the early years, which is being counted on by the Congressmen and Senators in that room—it will not add to the deficit. As I mentioned earlier, my staff corrected me. The off-the-top-of-my-head calculation was $177 billion in deficit; it is actually $187 billion. So you add that to what you mentioned, pretty soon you have what they are claiming is a $170 billion savings turns into a very similar figure.

So I would ask the Senator from Alabama—again, I give him great credit for bringing this to light, raising this issue with the CBO—what does that mean for this piece of legislation we are going to be voting on tomorrow, a $2 1/2 trillion expansion of the government financed through tax increases and Medicare cuts. Yet even with all that, the assumption is, this is not going to meet the requirement the President set out; that is, that it doesn't add a single dime to the deficit.

What does that mean to that commitment made by the President and to this legislation's sort of fiscal situation? What does that mean for the American people who were listening, all the Congressmen and Senators in that room—it will not add to the debt. So what we now know is that this bill is going to add to the debt. 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 debunks 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 payments in health care and others and the money that way. So, on paper, it definitely should extend the life of Medicare.

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 owe—we think, and that we will have to pay 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.

Mr. SESSIONS. 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 owe—we think, and that we will have to pay 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.

Mr. THUNE. If the Senator will further yield, in addition to the other items that are being used to get us to where this argument can be made, which is, that there are savings from this, this $132 billion savings and deficit reduction the majority has talked about also includes the creation of an entirely new program called this CLASS Act.

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 the President 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 is, in fact, $132 billion in savings here or deficit reduction.

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 and, 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 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 fine but it is 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 actuarily sound and it is going to take additional Federal Government revenue over the next 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 can 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 $850 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 fact that is inaccurate is the increasing debt and the 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. Isn’t 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, there 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
no legal merit: that the health care reform legislation would be unconstitutional. There is, of course, much to debate about how to best reform America’s health care system. But there is little doubt that bills that infringe on constitutional powers. Specifically, they argue that Congress lacks the authority to compel people to purchase health insurance or pay a tax.

Congress clearly could do this under its power pursuant to Article I, Section 8 of the Constitution to regulate commerce among the states. The Supreme Court has held that this includes authority to regulate activities that have a substantial effect on interstate commerce. In its earliest days, the Constitution could be treated whether or not he or she is engaged in commercial activity.

The relationship between health care coverage and the national economy is even stronger and readily apparent. In 2007, health care expenditures amounted to $2.2 trillion, or $7,421 per person, and accounted for 16.2 percent of the gross domestic product.

Ken Klukowski, writing in POLITICO, argued that “people who declined to purchase government-managed insurance would not be engaging in commercial activity, so there’s no interstate commerce.” Klukowski’s argument is flawed because the Supreme Court never has said that the commerce clause applies to those who are engaged in commercial activity.

Quite the contrary: The court has said that Congress can use its commerce power to forbid hotels and restaurants from discriminating based on race, even though their conduct was refusing to engage in commercial activity. Likewise, the court has said that Congress may only enact legislation that falls within the powers it was expressly granted, and not implied power to regulate activities that, taken cumulatively, have a substantial effect on interstate commerce.

Under an unbroken line of precedents stretching back 70 years, Congress has the power to regulate activities that, taken cumulatively, have a substantial effect on interstate commerce. People not purchasing health insurance unquestionably has this effect.

There is a substantial likelihood that everyone will need medical care at some point. A person with a communicable disease will be treated whether or not he or she is insured. A patient in a hospital that will be rushed to the hospital for treatment, whether or not he or she is insured. Congress would simply be requiring everyone to be insured to cover their potential costs to the system.

Congress also could justify this as an exercise of its taxing and spending power. Congress can require the purchase of health insurance and then tax those who do not do so in order to pay their costs to the system. This is similar to Social Security taxes, which everyone pays to cover the costs of the Social Security system. Since the 1980s, the Supreme Court has accorded Congress broad power to regulate interstate commerce and has left it to Congress to determine this.

Nor is there any basis for arguing that an insurance requirement violates individual liberties. No constitutionally protected freedom is infringed. There is no right to not 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. The income tax has ever been invalidated on that basis.

Since the late 1930s, the Supreme Court has ruled that government economic regulations are constitutional so long as they are reasonable. Virtually all economic regulations and taxes have been found to meet this standard for more than 70 years. The key 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 here, but constitutional protection is not among the hard questions to consider.


(With 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 doubts, 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 individuals 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 bill is an appropriate job for the federal government, or instead should be left to state and local authorities.

IS A REGULATION OF HEALTH CARE A REGULATION OF INTERSTATE COMMERCE?

Under the Tenth Amendment, Congress may only enact legislation that falls within the powers delegated to it in the Constitution. 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. In recent years of the Republican, there has been controversy about the scope of those powers.

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 go to Virginia on a mission to determine whether that power could nonetheless be inferred from the powers that are enumerated in the Constitution—including the powers to regulate interstate 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 into execution the” specifically enumerated powers.

Arguing for a position that would today be called states’ rights, Jefferson said no. The enumerated powers had to be construed narrowly, he said, or else the federal government would completely overwhelm state sovereignty. Hamilton disagreed, however. He explained that in order to carry out the powers it was expressly granted, Congress must have implied powers, statically under the Hamiltonian view, but for the most part, the Hamiltonian position has prevailed, especially with respect to regulating commerce. Thus, under the Supreme Court’s 1942 decision in Wickard v. Filburn, Congress can forbid a farmer from growing more wheat than his farm can produce. The Court held that making an exception to the general prohibition on marijuana use for medical marijuana use that is authorized by state law would subvert Congress’ Commerce Clause power to police other marijuana production, distribution, and possession.

That same logic applies to the individual mandate in the health insurance context. As I explained in my last column, the main point of the individual mandate is to ensure that insurance companies cover people even though they have pre-existing conditions. Without the individual mandate, however, many young, healthy people would decline insurance until they got sick, creating a severe adverse selection problem. The individual mandate is closely connected with the regulation of health insurance, just as the Court said in Raich that the regulation of marijuana that was used for medical purposes is closely related to the regulation of the broader market for marijuana.

Is this Commerce Clause business? It therefore counts as interstate commerce, regulable by Congress. Just as, in Raich, Congress acted constitutionally by excluding individual uses of non-commercial interstate 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 1895 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 be unconstitutional under the Commerce Clause. In Lopez, the Court invalidated a federal criminal law forbidding
possession 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 involved statutes that Congress clearly lacked authority to enact, because it was not rationally connected to any constitutionally valid end. Congress cannot regulate ‘‘economic’’ intrastate activities on the ground that they affect interstate commerce.

Accordingly, because David Casey and Lee Ritkin, writing in The Washington Post in August, concluded that Lopez and Morrison make clear that the Constitution cannot be read as authorizing a source of congressional power for the individual mandate because a human being’s mere existence is not a form of economic activity, McCulloch, says the exact opposite: ‘‘[t]he Constitution means on more than the assertion that the Constitution mandates on Article I grounds amounts to no or restrictions thereon.’’

As we have seen, the individual mandate is ‘‘plainly adapted’’ to the undoubtedly legitimate end of regulating the enormous and enormously important health-care sector of the national economy. It is therefore constitutional.

THE TAXATION POWER

In light of the broad interpretation the Supreme Court has given to the enumerated powers of Congress, an Act may be justified under the Constitution on more than one ground. Thus, the individual mandate could alternatively be upheld as a valid exercise of the Article I power to ‘‘lay and collect taxes, duties, imposts, and excises’’ be ORDERED by the Sixteenth Amendment’s authorization of an income tax. After all, in most versions of the individual mandate, Americans are not literally required to purchase health insurance: Instead, they are told to pay a tax from which they can be exempted if they have health insurance.

To be sure, as Casey and Ritkin observe, a 1922 case, Bailey v. Drexel Furniture Co., holds that Congress may not use taxation as a ‘‘pretense for a regulatory objective that it could not accomplish directly. But subsequent cases upholding ‘occupational taxes’ on businesses that Congress clearly-regulated, have made clear that a tax that serves a revenue-raising purpose is not invalid simply because it also serves a regulatory purpose. And there is no doubt that the unassessed income earners would serve a valid revenue-raising purpose—namely, to defray the costs of subsidizing health insurance for those who could not otherwise afford it.

Thus, even if Congress lacked the power to adopt the individual mandate under the Commerce Clause, the taxing power would separately authorize a tax on the uninsured, despite its regulatory impact.

FEDERALISM IN CONGRESS: ITS MEMBERS, TOO,
CAN CONSIDER THE CONSTITUTIONAL DIMENSION OF LEGISLATION

The foregoing analysis shows why an individual mandate would be upheld against a court challenge, so long as the courts faith-fully put aside the regulatory pretense. Nonetheless, members of Congress are entitled—indeed, some might say they are obligated—to reach their own constitutional judgments about the conduct before them. And that is especially true when there 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 goes out institutional concerns: Except in extreme cases, the Justices lack the fact-finding capacity and democratic legitimacy to make all of the fine-grained judgments about what matters should be federalized and what matters should be best left to the states. In the words of the late constitutional law scholar Herbert Wechsler, ‘‘On 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 congressional representatives—Senators—and that in most districts respect state lines. In addition, as Stanford Law School Dean Larry Kramer has noted in more recent scholarship, the national political process for selecting the congressional delegation to state politicians. Taken together, these and other mechanisms ensure that Congress will not simply federalize every-thing, leaving no area of regulatory discre- tion to the states.

Wechsler’s point was mostly descriptive: Copyright, said, would in fact account of state interests. But we might add a normative dimension: Congress should take its constitutional role seriously in matters of federalism, because it is to be highly deferential in such matters if and when federal statutes are constitutionality tested.

Accordingly, it would be perfectly appro-priate for one or more members of Congress to vote against the individual mandate or any other provision of the health-care law knowing that they think such matters should be left to state regulation or to private deci-sion makers. But it would be equally appro-priate for Congress to conclude otherwise and thereby join the ranks of the other indus-trialized countries—including those, like Canada and Germany, with robust commit-ments to federalism—that have comprehen-sive 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 before us will increase the limit by $290 billion. It will also lift the limit on the 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 would default on the interest payments on this debt for the first time in the history of this country. Second, the Federal Gov-ernment 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 bor-row. One simple question: How much will we 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 reces-sion 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 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 adminis-tration even took office. That ran up a huge number, a huge addition to our deficits and debt.

Second, the new administration inhe-rited the great recession. The recession has lowered revenues. To compensate for reduced federal revenues, the Treasury has had to borrow more.

In addition, the recession has in-creased the need for Federal spending
on things such as unemployment insurance and Medicaid costs for folks who can no 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 have been in 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 cannot borrow 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 do this monthly Social Security benefit payments 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 for 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 current climate, it is much harder 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. 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 our hard-earned people 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 even within 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 yes vote. I think this 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 Senator staffs and leaders who 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 roll call, a roll call 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 effort, and, if I may, 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 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, making it a stronger one. Beginning with Frank Macchiarella, 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 Khosla, 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 last couple of 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 these steps right over here when Landon 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 House of Representatives, and 6 years later I arrived here as a freshman Senator 30 years ago. Going back to the sixties, I had a lot to do with this Chamber and watched it over the years.

The best moments occur when we work together. This has been a bitter and difficult battle over the last number of months. But as someone who
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 this Nation.

Partisanship—there is nothing wrong with that. It is our ability to act civilly with each other. I have been deeply disturbed by some of the debate I have heard, usually from newer Members, usually have been here 1, 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, the ad hominem arguments that I think ridicule the institution, belittle and demean the contributions that each and every Member 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, either their honesty, their integrity, does a great disservice to this institution, in my view.

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 for and all 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 have 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, outmanned, outgunned, and sensing that morale was flagging in light of recent setbacks, penned these words to be read to his deeply troubled and impoverished troops. And on Christmas Eve, 1776, he gathered his officers at McKonkey’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, unbeknownst to most of you, for the next 18 months. And certainly try men’s souls. Like GEN 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 a more important vote in our Senate careers. History will judge harshly those who have chosen to shrink 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 add to 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, revive 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 them better. It 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 the very best she can, a great deal of interest and great enthusiasm, 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 at worst, 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 promise of a brighter tomorrow, 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 be stricken.

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

Mr. HARKIN. Madam President, first of all, before he leaves the floor, I want to thank my dear friend, my colleague, my classmate from 1975, for all his dedication and his leadership, we 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 near the 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. As we look forward to the prospect, 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 Congress 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 health care is fully paid for. Indeed, 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 health 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 by raising the ceiling on the initial coverage period by $500 next year.

We will own the immediate guarantee of this bill of 50 percent price discounts on brand-name drugs and biologics purchased by low- and middle-income Medicare beneficiaries who are in the doughnut hole. We will own the fact that this bill will provide tax credits to small businesses to make employees’ coverage more affordable. Tax credits of up to 35 percent of the cost of premium for small businesses will be available to small businesses next year.

In addition, we will own the fact that this bill requires health insurance companies to allow children to stay on their family’s policies until age 26. Democrats were the first to say yes on this bill.

I urge all of our colleagues to vote yes on this bill. With all due respect to William F. Buckley, it is not written in stone that conservatives have to say no to history. We have always been there to 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...
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 Wingo, Lisa 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. If the Supreme Court in 10 years ago; that is, that every person with a disability has a right to at least a 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 make it happen. 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;

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 Spah, John Blevins, and Staci Dit 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 public policy. I 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 for letting me go. The PRESIDING OFFICER (Mr. BURBIS). The Senator from Illinois is recognized.

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

The PRESIDING OFFICER. The Senator has all minutes.

Mr. BURBIS. 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 have the 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.

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—such as 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, and 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 us 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 have 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 to respond to a 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 rates—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 shortage of workforce—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 out both Medicare payments and per capita spending. I strongly believe that a fundamental way to achieve the goal of more efficiency in Medicare is to re-align 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, Iowa, or to the home State of my good 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. However, areas and regions 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 structure 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 an incentive 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 share to 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, Labor, 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. Clearer definitions about how the legislation resolves the potential for exclusion of certain work group such as flight crews and railroad 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
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 crew 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 plans in scheduled work schedules. However, that potential that a pilot might not be considered a full-time employee for purposes of this legislation under a rule that defined full-time status as an average of 30 or 40 hours per week. The same is true of other flight crew employees.

Additionally, railroad hours-of-service employees, who work by the mile or by the day, could also find it difficult to meet the definition of full-time employee under a strict “hours worked” standard. Many train and engine service railroad employees are paid by the mile and or by the day paid for time available to work, and are not paid by the hour. Although these workers are undoubtedly full-time employees with in their profession, the annual or weekly hours they are calculated to work might not satisfy a narrow minimum hour component that did not take into account a more flexible hours of service concept for certain types of jobs.

Currently all flight and cabin crew members employed by Part 121 commercial air carriers and train and engine service railroad employees paid by the mile or by the day are full-time employees and receive the same benefits afforded other full-time workers. Is it the Senators’ understanding that this bill is intended to allow these workers to be classified as of full-time employee in the definition of “full-time employee” for purposes of the employer incentives to provide quality health care coverage?

Mr. HARKIN. Yes, that is my understanding. That 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. 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 pregnancy, birth, and the immediate postpartum period. They provide parent education, logistical and emotional support. They help new mothers make better decisions and deliver healthier babies. What makes these programs work is the culturally sensitive mentoring within the community.

In Chicago, the community-doula model has made a big difference in the lives of these young moms and their babies. The Chicago Health Connection came up with this model. They trained mentors from the community to work with at-risk moms, many of whom didn’t know where else to turn. These mentors spend time in the neighborhood, finding and befriending pregnant women who need help.

With the guidance of the doula, the Chicago Health Connection found that more young mothers were going to their prenatal care appointments, making better lifestyle choices, and—not surprisingly—delivering healthier babies. The doulas stay with the moms and encourage breastfeeding, cuddling, and interactive play.

Bina Holland is a community-based doula at the Easter Seals Children’s Development Center in Rockford, IL. She has had a powerful impact on one of her clients—a 14-year-old girl who was 5 months pregnant and severely underweight. Bina taught her about healthy nutrition habits to strengthen her body to carry a baby. Bina also encouraged the young woman to visit her doctor regularly and to openly talk with the doctor about the health status of the baby.

The girl delivered her baby early at 2 1/2 lbs, and Bina was there to explain the health benefits of breastfeeding. The young mom agreed to nurse her child, and each week Bina monitored the baby’s growth. The child was nursed to health, and the mother successfully graduated from the doula program. Thanks to Bina.

Community-based doulas are a powerful resource for maternal and child health, and the model is effective. In communities that have employed it, outcomes include better prenatal care, higher birth weight, higher breastfeeding rates, better parenting skills, fewer preterm births and better delivery, and delays in subsequent 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. Today, 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 the 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 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 programs are a proven example of the health outcomes that education, prevention and health literacy can bring. With grants to promote the community health
Mr. FEINGOLD. Mr. President, I will vote for the comprehensive health reform bill that was passed in the U.S. Senate, but I will also work to improve its flaws. There is much that is good about this legislation. It will, over the course of 10 years, help ensure that nearly every American has access to good and affordable health insurance. It will put Medicaid and Medicare spending on a more sustainable and stable path. It will increase access to home and community-based long-term care services, increase our medical workforce, and end some of the worst abuses by the private insurance. But there are serious deficiencies—like the failure to establish a public health insurance option—that we know of, and there will undoubtedly be some gaps in the bill that we will discover during implementation. The commitment that is made with this legislation is ongoing, and will require diligent oversight and improvements in the years to come.

I am pleased that many of the priorities I laid out at the start of this process have been addressed in this bill. The bill includes provisions I fought for that help make sure Wisconsin is treated fairly. Those provisions include fixes to the flawed Medicare formula in the bill that denies our state fair reimbursement, financial incentives for the kind of low-cost, high-value care practiced in Wisconsin, and hundreds of millions of dollars in additional Medicaid assistance for Wisconsin to account for the State’s leadership in expanding coverage to its citizens. But I also recognize that this bill does not do as much as I would like to reform our current health care system, and I will work to try to make sure the final version fixes these flaws.

I receive countless letters and emails from people on health care reform. Some of the most heart-breaking letters I receive are from people who are sick or caring for a sick loved one and do not have health insurance. Some of these people are recently laid off due to the recession, and have lost their health insurance. Some people had health insurance, but were dropped from their coverage because they became sick during the economically necessary health care. And some people were denied health insurance altogether, either because it was priced out of their reach, or because they had a preexisting condition. In far too many cases, these people have been forced to declare bankruptcy because of their medical bills. Two thirds of all personal bankruptcy cases in the United States are due to medical debt, and over 50 percent of those individuals had health insurance. And in the most egregious cases, people have been left in Wisconsin and around the country have reached lifetime limits on care that are set by an insurance bureaucrats, and 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 not be dropped from the same insurance policy. Restricting or denying coverage based on pre-existing conditions is prohibited for all Americans, beginning with children effective 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 because of a preexisting condition. Pre-existing conditions can be anything from serious, chronic diseases like diabetes or cancer to medical episodes like acne or even pregnancy. In nine States, being a victim of domestic violence 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 appeal. And group insurers are required to spend at least 85 percent of every premium dollar on actual health care; if they are spending less, they are required to refund the difference to the customer. This policy, along with others, will require an unprecedented level of transparency in the insurance business.

One of the strongest points of this bill for me, and perhaps one of the most underappreciated, is the commitment made to realign Medicare spending to reward our doctors and hospitals for the quality of care they provide to their patients, rather than the quantity. Moving to a value-based system is one of the single most effective ways to reduce health care spending and improve the quality of care. Wisconsin is a national leader in value-based care. More than 90 percent of every health care provider operated like those in Wisconsin, over $100 billion a year in taxpayer dollars could be saved. Just last year, the Congressional Budget Office estimated that nearly 30 percent of Medicare spending could be avoided by integrating and coordinating care, in the manner of high-value providers.

As a result of this bill, Medicare reimbursement for certain health care professionals will be based, in part, on the quality of care they deliver to their patients. Health providers will now have the opportunity to voluntarily join together as Accountable Care Organizations to coordinate the care they deliver to their patients, and to share in the savings they generate for Medicare. They will be given numerous opportunities and incentives to change the way they deliver health care, and will, for the first time, be penalized for delivering low-quality care. For example, if children have high rates of readmissions or hospital acquired infections, they will receive less reimbursement from Medicare. Not only will patients receive smarter care from their physicians, these policies will help ensure that taxpayer dollars are going to pay for the value of care Medicare patients receive, as opposed to the volume of care.

In addition to these positive changes to the way Medicare pays for health care, there is language to finally address the historic inequity in Medicare reimbursement that Wisconsin and other Rural States suffer. Thanks to the leadership of Senator CHUCK GRASSLEY in the Senate Finance Committee, this bill includes language that will increase Medicare reimbursement for Wisconsin physicians and directs the new Secretary of Health and Human Services to analyze and adjust the current formula to ensure more accurate payments for rural providers in the future. Fixing the flawed Medicare formula so that Wisconsin receives its fair share has long been a priority of mine.

I am pleased that this bill more fairly reimburses Wisconsin for the leadership my state has demonstrated in extending coverage to residents through BadgerCare, our State Medicaid program. I was concerned that the Senate Finance Committee bill would have denied Wisconsin much-deserved Medicaid dollars, and I worked hard to try to ensure the bill before the Senate fixed this problem. As a result, relative to the bill that the Senate Finance Committee reported, this bill will bring hundreds of millions more in Medicaid assistance back to Wisconsin. I appreciate the good faith of my fellow Wisconsin Senator, HZNN KOHL, the Chairman of the Finance Committee, SENATOR MAX BAUCUS, and Senator RENN in working with me to ensure that Wisconsin’s investment is acknowledged.

I am also pleased by the attention to long-term care reform in this bill. Modern medicine has turned fatal diseases into chronic diseases, and enabled individuals to live much longer. These are tremendous accomplishments, but the reality is that these individuals need even more assistance because of medical advancements—from their families, communities, and the government.

Long-term care reform is inextricably linked to overall health reform, and one cannot truly succeed without the other. While this bill does not include a comprehensive strategy to reform our long-term care system as I had hoped, it does include one of critical building blocks to assist reform efforts in the future. One of these critical pieces is the Community Living Assistance Services and Supports Act, or CLASS Act. The CLASS Act would create a voluntary insurance program to help pay for home care and other assistance for adults who become disabled. Those choosing to participate would pay monthly premiums into an insurance trust, and after 5 years, could access a cash benefit if they become disabled and need assistance.

Another critical component of this bill is the attention paid to expanding
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 bring health care costs down. 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. From this 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 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 meeting their needs, they would 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 profit.

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 that they have already worked hard 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 benefits for years to come. 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 work 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 the insurance exchanges, they may find better deals. Under this proposal, wealthy, hard-working, middle-class American can’t afford just the one health insurance policy available to him at his job, with

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, which 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 supports to Medicaid beneficiaries with disabilities, who would 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 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.

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 the 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 $129 billion by 2019 and roughly $1 trillion by 2029. While the bill does not go as far as I would like, I believe it is an important step toward creating a balanced approach to health care reform.
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 State innovation, including States like Oregon and Vermont. That is why I have authored and championed in the Senate Finance Committee section 332, the waiver for State innovation. If States think they can do health reform better than under this bill, I trust them. If they have a 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 that end, I urge the President to set up a waiver as a safety net that would have been provided under the waiver exempting them from the legislation. This provision will give States the flexibility to innovate, to develop their own approaches, to develop the right type of chemotherapy for their specific cases. Personalized medicine, personalized tests, they can get the freedom to innovate in a way that is captured in the Medicare Advantage bonus payments, Independence at Home, DSH, program which reimburses hospitals that care for the uninsured. Currently Hawaii’s temporary enrollment expires in 2012, but the new bill will make DSH permanent resulting in more than $100 million for Hawaii’s health care industry over the next 10 years. I am also pleased that we have included the reauthorization 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 emergency rooms 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 have to choose between the moments, Members of the U.S. Senate have faced choices that could fairly be described as historic. Each of these choices was 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 time well or prepared us for the next.

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:

- Intend to work with Senator SANDERS
- Given State. This provision will give the bill. To me, this provision is a safety net that would have been provided under the waiver exempting them from the legislation. 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. We, and 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 achieve the same end result: better 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 health insurance, and I am pleased that it will help maintain the health and safety of our seniors.
- 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.
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 $38,000 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 insurance, 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-group plans and 80 percent for 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 doctors over the same period. It is long past time to ensure that we are spending precious health care dollars on care and not on paperwork and bureaucracy. Hospitals will become more transparent as well—every hospital in the Nation will publish a list of standard charges for the items and services it provides.

The bill includes incentives to boost the availability of insurance, including financial incentives under Medicare to increase the number of primary care physicians. And it also promotes standardizing health information technology in an effort to reduce costly administrative overhead. This is not what we hoped for. But it is what we can get done. It is what we should do.

The minority has offered no alternatives, just apocalyptic rhetoric. Some of them stood before rallies, leading chants about socialism. They claimed it is a big government take-over. “Kill the bill” was their slogan. Before television cameras our efforts to produce reform were compared to the activities of financial fraudsters like Bernard Madoff.

For those familiar with the facts, these notions are rightly seen as falsehoods. One of these falsehoods—the notion that health care reform would mean “death panels” voting to end the lives of citizens—has just been named by an independent fact-checking organization its “Lie of the Year.” That’s quite a distinction. When discussing the scare tactics being used by opponents of health reform, the policy directors of Medicare have observed that opponents of health reform have targeted (seniors) and have . . . misrepresented the facts, and have consciously tried to scare seniors who depend on health care. So no surprise that they feel anxious, because they’re hearing messages every day designed to scare the bejesus out of them.”

The extreme rhetoric of the minority is a repeat of similar rhetoric which was used when Social Security and Medicare were being considered by the Congress.

In 1935, as Social Security was being debated, one Republican warned the program would “enslave workers,” and another declared “the lash of the dictator will be felt.” If it passed. Three decades later, as the Congress debated the Medicare Program, one Republican Member of Congress said, “Let me tell you here and now, it is socialized medicine.” A future Republican President of the United States said that if Medicare passed, “you and I are going to spend our sunset years telling our children and our children’s children what it was like in America when men were free.”

Incredibly, the same Republican Party that once equated Medicare with socialism would now have the public believe they are defending Medicare from the threat of socialism. The mental gymnastics this requires is breathtaking. If this bill is such a threat to seniors, why does AARP support its enactment? If it will destroy our health care system, why do so many of the groups that know health care first-hand, from the American Medical Association to the American Heart Association, and dozens of others support passage of this bill? If this bill will explode the deficit, why does the nonpartisan Congressional Budget Office tell us it will reduce the deficit by $1.32 trillion over the first decade after enactment, and up to $1.3 trillion in the second? Are all these organizations, the nonpartisan CBO, independent checkers, scores of economists and 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 operation—do 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—do they tell her 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 record 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. 3990 does not contain any congressionally directed spending as defined in rule XLIV.

Rule XLIV defines a congressionally directed spending item as “a provision or report language included primarily as an instruction, direction, order, recommending, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authorization, or other benefit or right to, or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory
or administrative formula-driven or competitive award process.” To the best of our belief, no item meets this definition. There are numerous items that affect one or more States or localities differently than others, but none of these definition because—A no specific amount is associated with the provision, (B) the provision involves distribution through “a statutory or state law” or “a competitive award process” or (C) the criteria are such that more than one State or locality will or may benefit. It is quite common in legislation for formulas and programs to make adjustments to affect States similarly and to make exceptions to affect one or the other provision was included at the request of the Senate Finance Committee’s Ranking Member Charles Grassley, Iowa.

The rule defines a “limited tax benefit” as “any revenue provision that (A) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and (B) contains eligibility criteria that are not uniform in all respects and that are specific to potential beneficiaries of such provision.”

Section 10905 provides exceptions to the annual fee on health insurance providers for certain insurers. One of these exceptions is provided in the following language that meets the requirements—a mutual insurance company with market share in a State for 2008 between 40 percent and 60 percent and whose medical loss ratio for all markets—the individual rate, small group, and large group—in Nebraska for 2006 was 90 percent or higher. The performance-based exception is available if the entity has an average medical loss ratio for years after 2011 for the previous three years for all markets of 89 percent or higher—prior year for 2012 fee and prior two years for 2013 fee. It may be argued that this provision could be considered a “limited tax benefit” as defined in rule XLIV, at the same time, the Joint Committee on Taxation has indicated that the universe of potential beneficiaries depends in part on how “medical loss ratio” is ultimately determined under the statute. In the interest of transparency, the provision included at the request of Senator Ben Nelson so that nonprofit Blue Cross Blue Shield of Nebraska would not be excluded from the exemption of nonprofit insurers from the fee. In keeping with the spirit of rule XLIV, Senator Nelson has provided Senator Baucus with a certification that neither he nor his family has a pecuniary interest in this item.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from Senator Nelson of Nebraska dated December 21, 2009.

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


Chairman MAX BAUCUS, Chairman CHARLES GRASSLEY, U.S. Senate Committee on Finance, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Baucus and Ranking Member Grassley:

Consistent with the provisions of Rule XLIV of the Standing Rules of the Senate, I am submitting this letter with regard to Section 10905 of Senate Amendment 3276.

Section 10905 of the amendment creates a limited exemption from the annual fee on health insurance providers established by Section 9010 of Amendment No. 2786 to H.R. 3590, the Patient Protection and Affordable Care Act of 2009. The exemption from the fee is created for certain non-profit insurers with a high medical loss ratio. Among other criteria, provided for under this section, an exemption from the fee is made available to any entity which is a non-profit mutual insurance company in Nebraska. The performance-based exception is available only if the entity has an average medical loss ratio for years after 2011 for the previous three years for all markets of between 40% and 60% and whose medical loss ratio for all markets (individual, small group, and large group) in Nebraska for 2006 was 90 percent or higher. The performance-based exception is available only if the entity has an average medical loss ratio for years after 2011 for the previous three years for all markets of 89 percent or higher—prior year for 2012 fee and prior two years for 2013 fee.

This provision could be considered a “limited tax benefit” as defined in Rule XLIV, and I anticipate that Blue Cross Blue Shield of Nebraska may benefit from this provision, provided that they maintain the high medical loss ratio under the proviso. My purpose for requesting this provision was so that Nebraska’s sole non-profit insurer would not be excluded from the annual fee for the insurance fee as set forth in Section 10905.

Consistent with the requirements of paragraph 9 of Rule XLIV, neither I nor my immediate family have any pecuniary interest in this item.

Sincerely,

E. BENJAMIN NELSON

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. New documents that 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 much of the country 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.

To have a debate about whether this legislation is the right or wrong way to improve health care for all Americans. We have had hours and hours, in fact, days and weeks of committee hearings and meetings with good bipartisan discussion on options and ways to accomplish this. But now, apparently, we have a mandate by the majority demanding we have a final vote in the Senate before Christmas.

While we debate this, let me say I believe we have need to have meetings with the people who are going to be most affected, the American people, because the final details of this bill were not crafted in front of the American public. I think most people in America know the President pledged that this legislation will be crafted in the public view that is public, where, in fact, he said C-SPAN cameras could be present—in his words: So people could see the deals people were making and who was working for the American people and who was cutting deals.

The C-SPAN camera was not present, the table was not open, the room was closed, and the bill was negotiated in secret. But we are starting to find out what the deals were, and the deals are outraging the American people as they see specific exemptions in certain burdens in the bill being given to certain States in order to get the votes from the Senators for those States.

We heard about different proposals dealing with the State of Louisiana, the State of Florida, the State of Connecticut, the State of Nebraska, and the list is growing as we have an opportunity to deeply delve into the bill and determine exactly what is in it.

But we will not have time to know all the details of these deals. We will not have time to even know all the details of how the bill works because this 2,700-page bill, 400 pages of which were only disclosed last Saturday, will be voted on at 7 o’clock in the morning.

Three days ago, I asked Idahoans who, similar to most Americans—in fact, all Americans—want health care reform, to sign a petition on the Internet asking the Senate to . . . defeat H.R. 3590 . . . because we need reform that will lower costs while increasing quality . . . and keeping health care decisions between a patient and their doctor.

The response to this request has been remarkable. In fact, I suspect that, as I am speaking, we have already gotten over 20,000 signatures on the petition on the Internet. I asked people to go to my Internet site, mikecrapo.com, and simply sign the petition. Here is a partial stack. We are still printing out the rest of the names of the people who signed the petition, but somewhere between 19,000 and 20,000—and growing—people signed the petition.

Here is the remarkable thing about it. When I asked the people of Idaho to sign this petition, I asked them to do two things. I asked them, first, to go to the Web site and sign the petition. Then, second, I asked them to contact everyone within their circle of influence—people on their Christmas card list, people on their e-mail contacts
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 Senator to oppose 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 personal, private, and a sensitive matter among individuals and their doctors and their family. This bill makes health care a public policy decision controlled by a government bureaucracy. Americans don’t want that kind of government control over our health care. Americans want a system of incentives in health care delivery. Americans want a system that provides them choice among individuals and their doctors, and that lets them maintain their current insurance, if they choose to keep it. Americans believe that this bill goes the opposite direction.

Yet what are we achieving? In an earlier discussion of the House bill, I believe the Wall Street Journal said it was the worst bill ever. We now have a different bill in the Senate, but it is still falls into the same category. Why? Because it drives the uninsured, the people who are paying taxes, the people who are paying for their health care, without the tax increases, without the massive increase in the growth of government, without the pork barrel spending and the sweetheart deals, without the Medicare cuts and the unconstitutionality of the whole tax plan. It imposes massive unfunded mandates on our State governments this bill presents.

Among the steps many of us are trying to see enacted are things such as allowing insurance companies to compete across State lines, allowing small businesses to band together to negotiate group rates for insurance, requiring pricing disclosures from health care providers to promote a competitive, consumer-driven health care market, and offering incentives for patients and the private sector to create wellness programs and other efficiencies in health care delivery. In fact, when a bill similar to this was presented as a substitute amendment in the House, the provisions the House Republicans proposed, it was scored, contrary to the bill we will be voting on, by CBO that it would actually reduce the cost of health care in America by significant percentages. Yet we are now continuing to plow full steam ahead with a vote at 7 o’clock in the morning on a bill that will increase the cost of health care.

The petition I brought forward asks Congress to listen. It registers the fears of many Americans that they are being ignored by the administration and by the majority in Congress. I am going to continue to aggressively push for their wishes on the floor of the Senate.

I wish to take an opportunity now to go ahead and get into a little bit more of the detail we do know about this bill. Why do I say it is the wrong direction? Let’s examine what Americans want in health care reform. If you asked most Americans—and there have actually been a number of polls that have shown this—do they want health care reform, they say yes. When they are asked what they mean by that and what they want, the overwhelming answer is that they want to stop the skyrocketing increases in the cost of their health care insurance, they want to control the skyrocketing increases in medical care. They also say they want to see increased access for those who don’t now have access to quality insurance, both because they are compassionate and want to see that kind of health care for everyone and know that they are paying for it in their insurance premiums, for those who have insurance, and in their taxes, those who pay taxes. They want to assure that we continue to have the highest quality of health care possible. That is what we are supposed to be doing. That is what this bill should be working on. That is the objective we should be achieving.

This legislation instead raises taxes on the middle class, increases premium costs for many people now carrying insurance, cuts senior programs, and fails to lower health care costs. Simply put, there has not been a piece of legislation this decade that has come forward with more opposition than this health care reform bill. The more Idahoans and Americans know about the bill, the more they dislike it.

Health care is a personal, private, and 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 can improve the health care system without the tax increases, without the massive increase in the growth of government, without the pork barrel spending and the sweetheart deals, without the Medicare cuts and the unconstitutional tax plan this bill presents.

The deficit that is called the deficit. That is whether we are increasing the size of our government by such massive amounts that we are taxing the American people. It increases the cost of health care reform. It raises taxes by hundreds of billions of dollars. It cuts Medicare by hundreds of billions of dollars. It grows the government by $2.5 trillion. It forces the needy uninsured not into a program where most of them can get insurance but into a failing and less robust medical system, Medicaid. It imposes damaging unfunded mandates on our State governments that are already sharing the burden of Medicaid and facing difficult troubled economic times. It means increased taxes not just at the Federal level but at the State level with unfunded mandates. It leaves millions of Americans uninsured, and it establishes massive government controls over our health care economy.

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 government by $2.5 trillion. Although there 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 $1.2 trillion. If you 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 proposing that we adopt this bill often put forward a neoclassical objective of the American people want 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 premiums, 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 or we are taxing more. They argue that the deficit 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 ¼ trillion of Medicare cuts, that we don’t have $½ 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 four 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 say you pay for it not from other 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, and actually spend it on the uninsured and those one-and-one claim you are saving one that is already facing fiscal collapse. It is these kinds of budget gimmicks that make many of us object to the bill. If you didn’t have those budget gimmicks, if you didn’t have those tax increases, if you didn’t have Medicare cuts, there is no way you could say this bill is deficit neutral.

One of the things CBO does report—I want to move to the question of the cost—is that the premiums in the individual market will go up, not down. What does that mean? CBO breaks the insurance market into three categories: the individual market, the small group market, and the large group market. The individual market is the one that is primarily there for small businesses that don’t have a large or a small group opportunity or individuals who don’t get their insurance through their employer. It represents about 17 percent or almost 73 million of all insured people in the country. Their insurance rates under this bill—17 percent of all Americans—are going to go up. The amount by which they will go up is about 10 to 13 percent, according to CBO.

The next group is the small group market. They represent another 13 percent. Again, CBO says under this bill their rates are going to go up, not quite as much between 1 and 3 percent, but up, not down.

That brings us to the large group market. The large group market actually fares a little better. This is the remaining 70 percent of those insured in the United States. Basically, the CBO report says that for them there is a chance theirs may go down by a percent or two, but basically, it could be stable, a zero-percent change as well. Because individuals in the large group market, 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—and 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 numbers, 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 so bad? Is that a tax increase, and the tax increases are not small for these families.

What does it do to Medicare? It cuts Medicare by $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 tax increases are 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 5 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. The President is actually saying that if you make $200,000, that is everybody who pays taxes, not your income taxes, not your payroll taxes, not your excise taxes, 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 dollar increase, the single dime. This 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 very limited people in the country. Their insurance rates under this bill—17 percent of all Americans—are going to go up. The amount 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.

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year and, again, if you want to look at the first full 10 years, by $953 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 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 have. A lot of cuts are a tale talking 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 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 that 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. If you do not, 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 told us 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 what 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 was put forward by 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 step 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 costs. We need to protect 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 we will 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 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 consider the questions of whether it will 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 winner of every policy thing 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-outs. 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 $35 trillion to finance additional government spending. So, why would the Nation’s largest lobbying organization, avowed to protect the interests of Americans, 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 people who signed this petition—people cuts to the tune of $465 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 $8 billion to $15 billion. You heard Democrats 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 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 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 buy their 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 these unconstitutional mandates—is just a tax on a national 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 he always wanted—Democrats 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, what is taking us so long to talk about the winners and losers in the so-called abortion compromise. The language to prevent taxpayer dollars from being used to fund elective abortions is completely unacceptable. The new abortion provision is significantly weaker than the amendment I introduced with Senator BEN NELSON to ensure that the Hyde amendment, which prohibits use of federal dollars for elective abortions, applies to any 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 not stop the one-state’s tax dollars from 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 trivial deals conferred on States in this $2.5 trillion spending bill. How hefty are the pricetags for decisions of conscience? Here are some highlights: $300 million for Louisiana; $600 million for Vermont; $500 million for Massachusetts; $100 million for Nebraska.

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. 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 many millions 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 $27 billion in new taxes are collected before any American sees the benefits. These taxes are 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.

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 Reid bill not only increases our tax burden 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 benefits.

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 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 individuals and families making less than $250,000 a year.

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 does 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 birthed the politics 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. Instead 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 rivaling the most hated institutions on the planet and dismal 22 percent and falling.

One of the biggest tragedies of letting this bill move forward is that it will do nothing to address the fundamental issue of rising health care costs in this country. According to the Congressional Budget Office, this bill will break another one of President Obama’s campaign promises by increasing Medicare and Medicaid costs by $200 billion. 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 any faith in Congress to effectively address the issue of health care reform. The opportunity to save Medicare and Medicaid from their impending financial collapse will be lost for another generation.

The historic blizzard in Washington earlier this month was a perfect symbol of the anger and frustration brewing in the hearts of the American people against this bill. I urge the majority once again to listen to the voices of the American people for the good of this country. My Republican colleagues and I are united 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 their futures. Don’t stick them with even more government spending and government intrusion.

We can fix health care. Many of us have been working to do just that for many years. A truly bipartisan bill that would garner 75 to 80 votes in the Senate, would be fiscally sound and provide the American people with the fixes they are asking for in the health care marketplace is easily achievable. Many of us are standing at the ready, and have been for months, to step forward and pass meaningful health care reform that truly would help American families and please American taxpayers. To date, we have been frustrated by an unfailing determination by a few to pursue a nearly Socialist agenda. I would ask my colleagues on the other
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. A health care bill that their side might propose is one that they can be proud to support.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, it is truly exciting 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, is what I have been fighting for.

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 we get good health care, 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 will give him—give him kudos for the job he has done here; and I will talk about that in a minute—but, first, we do not know if we 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 to have 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 father, 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 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 what will happen 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 in New York. Oh, 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 have seen in the auto industry, 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 the dialysis. But if you have a leg amputation, one of those serious retina operations, they pay. They don’t pay for the early stages. They don’t pay for the nutrition therapy, the exercise therapy that could arrest diabetes in the early stages. We do that.

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 ROCKEFELLER, 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 are covering 94 million more people.

It is no wonder that CBO has said that in the first 10 years, we save $1.3 trillion. We are doing whoever becomes President in 2020 a huge favor because with the cost-control provisions in this bill, should they become law, it will get a real 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 lifeline for jobs in New York because training doctors is probably our second biggest industry in New York because training doctors is probably our second biggest industry in New York—is not cut out 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 KLOBUCHAR 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 profound redemptive.

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 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 who we would reward and who we would penalize. 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 with my colleagues and with the country as I am sure others have done before.

So this bill is a very good bill on both sides of the ledger. It will reduce costs rather significantly and in a smart way, without hurting patient care. It will reduce costs. It will reduce costs to what was good for him. He had a modest man, but I wanted to share that with my colleagues and with the country as I am sure others have done before.

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This is a very fine day for this country, this Senate, and Leader REID. Tomorrow will be an opportunity for us 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 the 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 be successful. Even when we got 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 him 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, on behalf of the administration. 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. In taxpayers 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 a chance to go 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 and as a result of 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 get from these reforms. That is the kind of system that is working in parts of the country as we have learned in the Pacific Northwest that are more efficient at lowering the cost of Medicare and thereby rewarding those States with better Medicare payments.

What it actually means for individuals is that they are going to get shorter or longer waiting 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 health outcomes. Why? Because that is what we are going to get from these reforms. That is the kind of system that is working in parts of the country as we have learned in the Pacific Northwest that are more efficient at lowering the cost of Medicare and thereby rewarding those States with better Medicare payments.

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 make dollars for every procedure we do in America 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 work 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 have proven for 20 years that we get 35 percent delivery. It is cost-effective because we can 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 have a great deal in these facilities. 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 this one provision because of how much money it is going to save the Federal Government.

The Basic Health Plan. Many of my colleagues may have heard me talk about the Basic Health Plan as a basis of this legislation that we added in this country. Many people across the country may not understand the Basic Health Plan because they do not have something similar to the Basic Health Plan in their States.

Nearly 20 years ago, the Washington State Legislature passed the Basic Health Plan because it allowed States to negotiate for lower rates. Essentially, it is a public-private partnership. Some people call it a public option. I call it a public plan. We will be able to have that plan now for 20 years.

This provision of allowing States to do something similar to the Basic Health Plan is a provision we added in the Finance Committee that now will give States access to the individual market would have to pay over $5,850, and the individual would pay $1,200, and the Federal Government would end up paying $4,000. Already somebody is coming out ahead. That is not right. That sounds like a better deal than me being able to afford this current rate. That would be $5,850. It means I would be uninsured.

The Basic Health Plan has been in operation for 20 years, driving down costs through negotiated rates, as I said, by 35 and 40 percent, and it is a far different picture for the individual.

In our State, the individual only pays $400—$400 versus $1,200. Look at the government. The government rate adds to that, $3,700, but it is cheaper. Why? Because the State has negotiated with insurers and driven down the cost.

I know that stakeholders have 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 hope we can expand the Basic Health Plan in contrast 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 taxpayer can 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 11 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 in the eighties, the Health Plan in the mid eighties people put a plan in place 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.

Ms. KLOBUCHAR. Mr. President, I ask to speak for 12 minutes.

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 many issues that is key to our State; that is, cost reform, delivery system reform, because for too long people in cost-efficient States, such as Minnesota,
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 get a room, usually if you spend more money you have a better view. 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—showing, 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 conferring and not knowing about what other specialists 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 person 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 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 their health care. Now they are spending $6,000 a year on their health care. Peoples’ wages have been rising 1½ times more per person on health care than any other country, we all know there are many problems in our health care system.

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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 benefits. The current Medicare payment policies are not working well 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 storefronts that say they are a doctor’s office, when all that is behind it is a bunch of fraudsters who are going to steal payments from us to get care for their patients, and 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 to steal 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. I am going to shop around for 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 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. In 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.

Beginning 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 her 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 companies 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 this bill, insurance companies immediately must fully cover regular checkups 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 con narratives in the years ahead. We still need to negotiate 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 in the Washington Post. This is what she wrote this weekend:

"The bill before Congress will finally deliver the American people the care they deserve." Tomor-row 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 also 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, because we have 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 31 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 those individuals.

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 seniors and for older citizen. 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 of the Children’s Health Insurance Program might be caught in the preexisting condition problem. 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 will be illegal in 2010.

We also, over a number of years, will have to get to that as we move for-
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 asking you to share my story with others in Congress and I’m 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 years. It 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.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CASEY. Mr. President, I ask unanimous consent that the President proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

MORNING BUSINESS

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

NATIVE AMERICAN APOLOGY

Mr. INOUYE. Mr. President, I wish today to discuss the Native American resolution that was recently passed as part of the fiscal year 2010 Defense appropriations bill.

I believe that it is well known to most Members of this body that the original inhabitants of the lands that now constitute the United States, the indigenous, aboriginal, indigenous people of America, occupied and exercised sovereignty over more than 550 million acres of land prior to the first European contact.

In the early days of our history, well before our Nation was formed, the native people fought alongside our soldiers in the Revolutionary War. The Indian tribes enabled the survival of General George Washington and his troops during the harsh winter at Valley Forge by providing food to the troops.

A few years later, as our Founding Fathers were engaged in the challenge of forming a new nation, they drew upon the democratic model of government that they learned from the native nations out of war, poverty, and despair. Throughout the generations, they have shown us the true meaning of courage in the face of the greatest odds, and the quiet strength to persevere.

This provision signifies a new day, brings a message of hope, and provides a foundation for the future.

Mr. President, I would like to thank Senator BROWNBACK for his leadership on this measure.

LEGISLATIVE WORK OF COMMITTEE ON THE JUDICIARY

Mr. LEAHY. Mr. President, this has been an extraordinary year in the history of the Senate Committee on the Judiciary. Thanks to the members and their work through 87 hearings and 33 business meetings this year we have been productive. Here are some of the legislative highlights:

We have considered and reported to the Senate several important legislative initiatives that have been considered and reported to the Senate the Fraud Enforcement and Recovery Act that President Obama signed into law in May. We reported the important Patent Reform Act, which can help our economic recovery and lead to additional American jobs. We reported significant cyber security legislation, including the Personal Data Privacy and Security Act.

We also reported the Improving Assistance to Domestic Violence Victims Act; Public Corruption Prosecution Improvements Act; the Crime Victims Fund Preservation Act; and the Performance Rights Act. We reported the Railroad Antitrust Enforcement Act; the USA PATRIOT Act Sunset Extension Act and the Satellite Television Modernization Act.